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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2023-001289

Tasha Jones and Shaniqua Thompson, ..... Respondents,

v.

Lyndon Southern Insurance Company,  
Safe Choice Insurance, LLC, and  
Jupiter Managing General Agency, Inc, Defendants,

Of which

Lyndon Southern Insurance Company is the ..... Appellant.

**RETURN TO MOTION TO DISMISS APPEAL**

Appellant Lyndon Southern Insurance Company (“Lyndon”) respectfully submits this Return in opposition to the Motion to Dismiss Appeal filed by Respondents Tasha Jones and Shaniqua Thompson. The Motion should be denied. On June 27, 2024, Lyndon timely filed its Appellant’s Initial Opening Brief and Designation of Matter to the Record on Appeal. The Brief was complete and fully compliant with all Appellate Court Rules, with the exception that due to a simple oversight, an s/ signature was not added to the Brief prior to filing. *See* Rule 267(b), SCACR. The Court of Appeals accepted the Brief for filing shortly after it was submitted to the Court. (**Exhibit A.**)

## ARGUMENT

Respondents' Motion seeks to turn a molehill into a mountain by treating this minor administrative error as the equivalent of filing no brief at all. Based on this inflated premise, Respondents contend that Lyndon's appeal must be dismissed. They then attempt to bolster their argument by disingenuously claiming that Lyndon "failed to file a motion for extension of time to cure the defect" (Mem. in Support of Motion, at 2), even though Lyndon was unaware of the supposed "defect" until late in the afternoon of Friday, July 12, when Respondents filed their Motion. The inadvertent absence of an s/ signature was not noticed by the Court when the Brief was filed. *See* Rule 267(b), SCACR (requiring signatures on appellate court filings); Rule 267(g), SCACR ("The clerk of the appellate court shall insure compliance with this Rule before accepting any papers for filing."). Moreover, Respondents' counsel elected not to inform Lyndon's counsel of the oversight, choosing instead to file a "gotcha" motion to dismiss late on a Friday afternoon.

Contemporaneously with the filing of this Return, Lyndon is submitting to the Court a Corrected Appellant's Initial Opening Brief together with a Motion for Leave to File. The Corrected Brief is identical to the Brief filed on June 27, 2024, except for the addition of the word "CORRECTED" on the cover page and the addition of counsel's s/ signature at the end of the brief.

Respondents do not identify a single instance where an appeal has been dismissed on the basis of a minor technical violation like the inadvertent omission of an s/ signature in a brief that otherwise complies fully with the Appellate Court Rules. Respondents'

contention that dismissal is mandatory is, moreover, contrary to the preference for deciding cases on the merits and to decisions considering the merits of an appeal despite multiple serious violations of Rule 208, SCACR. In *Henning v. Kaye*, 307 S.C. 436, 437-38, 415 S.E.2d 794, 794 (1992), for example, our Supreme Court refused to dismiss an appeal despite identifying the following numerous failures to comply with the Appellate Court

Rules:

the components of the brief are incorrectly organized and labeled, the issues are not distinctively headed, the table of authorities is not alphabetized or referenced to the body of the brief, the statement of the case contains contested matter and omits required information, and the arguments contain no citations to the record or to the cases listed in the table of authorities.

*See also Whitlock v. Collins*, No. 2013-UP-301, 2013 WL 8538745, at \*2 (S.C. Ct. App. July 3, 2013) (refusing to dismiss appeal on the grounds that appellant filed to inform respondent that the trial transcript had been ordered).

It would be manifestly unjust to dismiss Lyndon's appeal on the basis of a minor technical error that would have been easily and quickly remedied if noticed by the clerk of court at the time of filing, or if Respondents had simply informed Lyndon when they noticed the error. As set forth in detail in Lyndon's Brief, the judgment against it is fatally infected by multiple serious errors, including without limitation the award of \$475,000 in compensatory and punitive damages to Respondent Thompson despite her clear lack of standing to assert either a breach of contract or a first-party bad faith claim against Lyndon.

## CONCLUSION

For the foregoing reasons, Respondents' Motion should be denied.

Respectfully submitted,

*s/ Kirsten E. Small*

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Greenville, South Carolina  
July 15, 2024

*Attorneys for Appellant Lyndon Southern  
Insurance Company*

# EXHIBIT A

## Kirsten E. Small

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**From:** Court Of Appeals Filings <ctappfilings@sccourts.org>  
**Sent:** Thursday, June 27, 2024 4:30 PM  
**To:** Kirsten E. Small; Court Of Appeals Filings  
**Cc:** dietrich@thelakelawfirm.org; Susan P. McWilliams; Randy Helmlly  
**Subject:** RE: Appeal No. 2023-001289, Jones v. Lyndon Southern - Appellant's Initial Brief and Designation of Matter [IWOV-NPDocuments.FID8710580]  
**Attachments:** Jones v. Lyndon Southern - AIB.pdf; Jones v. Lyndon Southern - DOM.pdf; Jones v. Lyndon Southern - POS.pdf

Dear Counsel:

The Court has received your filing. A stamped copy is attached for your records.

Thank you.

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**From:** Kirsten E. Small <KSmall@maynardnexsen.com>  
**Sent:** Thursday, June 27, 2024 4:27 PM  
**To:** Court Of Appeals Filings <ctappfilings@sccourts.org>  
**Cc:** dietrich@thelakelawfirm.org; Susan P. McWilliams <SMcWilliams@maynardnexsen.com>; Randy Helmlly <rh@helmllylaw.com>  
**Subject:** Appeal No. 2023-001289, Jones v. Lyndon Southern - Appellant's Initial Brief and Designation of Matter [IWOV-NPDocuments.FID8710580]

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Good afternoon,

Attached for filing please find Appellant's Initial Opening Brief and Appellant's Designation of Matter to the Record on Appeal. By copy of this email, as shown on the attached proof of service, I am serving counsel for Respondents with the same.

Best regards,

**Kirsten E. Small, CIPP/US**  
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**PROOF OF SERVICE**

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I certify that I have served the foregoing **Return to Motion to Dismiss Appeal** on Respondents Tasha Jones and Shaniqua Thompson by emailing a copy of the same to the following counsel of record for Respondents, using the email addresses listed below:

Dietrich Andre' Lake, [dietrich@thelakelawfirm.org](mailto:dietrich@thelakelawfirm.org)

July 15, 2024

*s/ Kirsten E. Small*

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