

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 18, 2012

Michael E. Chase, Esquire
Carmelo B. Sammataro, Esquire
Turner, Padget, Graham & Laney, P.A.
P. O. Box 1473
Columbia, SC 29202

Blake A. Hewitt, Esquire
John S. Nichols, Esquire
Bluestein, Nichols, Thompson & Delgado, LLC
P.O. Box 7965
Columbia, SC 29202

Re: Bone, Cathy C. v. U.S. Food Service

Dear Counsel:

The record in the above case has been reviewed and the time allotment for oral argument for this case is as follows:

Petitioners	10 minutes
Respondent	10 minutes
Petitioner in Reply	5 minutes

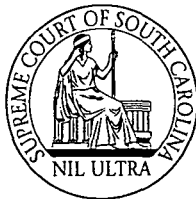
This case is scheduled for hearing on Thursday, January 26, 2012 at 10:00 a.m.

Very truly yours,

Daniel E. Shearouse, Clerk

By Debbie M. Hopkins
Administrative Assistant

DES/dmh



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 17, 2012

Blake A. Hewitt, Esquire
John S. Nichols, Esquire
Bluestein, Nichols, Thompson
& Delgado, LLC
P.O. Box 7965
Columbia, SC 29202

Re: Bone, Cathy C. v. U.S. Food Service

Dear Counsel:

The following Order has been endorsed on your Motion to Argue Against Precedent in the above entitled case on appeal.

“Motion granted.

s/ Jean H. Toal C.J.
For the Court

January 17, 2012.”

Please be advised that by copy of this letter we are advising all interested parties of the action by the Court.

Very truly yours,

CLERK

DES/lda

cc: Michael E. Chase, Esquire
Carmelo B. Sammataro, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2008-CP-32-2876

RECEIVED

JAN 13 2012

S.C. Supreme Court

Cathy C. Bone, Respondent,

v.

U.S. Food Service and
Indemnity Insurance Company
of North America, Petitioners.

MOTION TO ARGUE AGAINST PRECEDENT

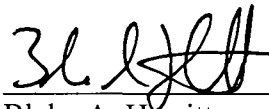
This motion is filed pursuant to Rule 217 of the South Carolina Appellate Court Rules. Among other things, that rule instructs that where a party seeks to give oral argument against precedent, a motion seeking permission to do so shall be filed at least 15 days prior to oral argument. Oral argument in this case is set for January 26, 2012, which is 13 days from the date of this motion. The respondent therefore also requests that the Court accept this motion 2 days out of time.

The precedents concerned are this Court's decisions in *Allison v. W. L. Gore*, 394 S.C. 185, 714 S.E.2d 547 (2011); *Hunt v. Witt*, 279 S.C. 343, 306 S.E.2d 621 (1983); *King v. Singer Co.*, 276 S.C. 419, 279 S.E.2d 367 (1981); and *Owens v. Canal Wood Corp.*, 281 S.C. 491, 316 S.E.2d 385 (1984). On page 12 of the respondent's brief, the respondent asked

the Court to overrule the analysis of these cases (not their holdings) to the extent that the cases relied on law that pre-dates the adoption of the Administrative Procedures Act.

Because the respondent is only taking issue with the analysis—not the holdings or the results—in these cases, this motion may not be necessary. However, in the event the Court deems this argument to be “against precedent,” the respondent would like to have the opportunity to present this position at oral argument.

Respectfully submitted,

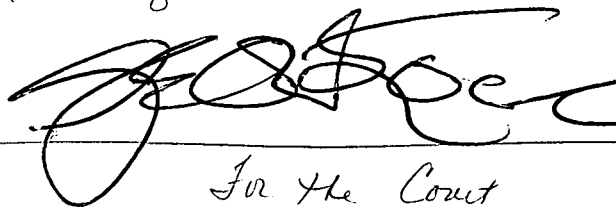


Blake A. Hewitt
John S. Nichols
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO
Post Office Box 7965
Columbia, SC 29202
(803) 779-7599
(803) 779-8995 (facsimile)

Attorneys for Respondent

January 13, 2012

Motion granted.



For the Court

C.J.

January 17, 2012

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2008-CP-32-2876

RECEIVED

JAN 13 2012

S.C. Supreme Court

Cathy C. Bone, Respondent,

v.

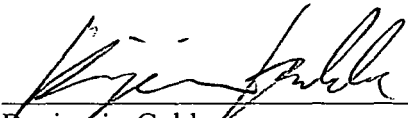
U.S. Food Service and Indemnity
Insurance Company of North America, Petitioners.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below he served counsel for the
Petitioners with a copy of the *Motion to Argue Against Precedent* by hand delivering a copy of the
same to the following address:

Michael E. Chase, Esquire
Carmelo B. Sammataro, Esquire
TUNER, PADGET, GRAHAM & LANEY, P.A.
1901 Main Street, 17th Floor
Columbia, South Carolina 29201

January 13, 2012
Columbia, South Carolina


Benjamin Gable
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC



Margaret Miles Bluestein
John Shannon Nichols
Stacy Elizabeth Thompson
John Dennis Delgado
Allison Paige Sullivan
Ashley Trout Thompson
Blake Alexander Hewitt

OF COUNSEL
O. Eugene Powell, Jr.

January 13, 2012

RECEIVED

JAN 13 2012

S.C. Supreme Court

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: Cathy C. Bone v. U.S. Food Services and Indemnity Insurance Company of America
Case Tracking No.: 2010-171946

Dear Mr. Shearouse:

Please find enclosed for filing the original and seven (7) copies of the *Motion to Argue Against Precedent* in regards to this case. I have also enclosed a proof of service of this document on counsel for the Petitioners and a check in the amount of \$25.00 for filing this motion. Please return the additional filed copies to me via our courier.

Thank you in advance for your attention to this matter.

Sincerely,

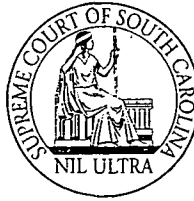
Ashleigh W. Hair
Paralegal to Blake A. Hewitt
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC

/awh

Enclosure

cc: William L. Smith, II, Esquire
Michael E. Chase, Esquire
Carmelo B. Sammataro, Esquire

check # 16862
\$2500



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 4, 2012

Michael E. Chase, Esquire
Carmelo B. Sammataro, Esquire
Turner, Padgett, Graham & Laney, P.A.
P. O. Box 1473
Columbia, SC 29202

Blake A. Hewitt, Esquire
John S. Nichols, Esquire
Bluestein, Nicholes, Thompson & Delgado, LLC
P.O. Box 7965
Columbia, SC 29202

Re: Bone, Cathy C. v. U.S. Food Service

Dear Counsel:

Please be advised oral arguments in this matter will now be heard on Tuesday,
January 26, 2012 at 10:00 a.m. and not 9:30 a.m. as previously scheduled.

Very truly yours,

Daniel E. Shearouse
BS

CLERK

DES/dmh



Margaret Miles Bluestein
John Shannon Nichols
Stacy Elizabeth Thompson
John Dennis Delgado
Allison Paige Sullivan
Ashley Trout Thompson
Blake Alexander Hewitt

OF COUNSEL

O. Eugene Powell, Jr.

December 23, 2011

VIA U.S. MAIL

The Honorable Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RE: Bone v. U.S. Food Services
Case Tracking No.: 2010-171946

Dear Mr. Shearouse:

The purpose of this letter is to advise the court, pursuant to Rule 208(b)(7), SCACR, of significant and pertinent authority that has come to my attention after the filing of my initial brief in this case.

On December 21, 2011, the South Carolina Court of Appeals published its decision in *Price v. Peachtree Electrical Services, Inc.*. That decision is Opinion Number 4923, and I expect it will be published in Shearouse Advance Sheet Number 46. Footnote 4 of the court's opinion contains a discussion of some of the rules for appealability in workers' compensation cases. This issue is addressed throughout the briefing in the *Bone* case.

Thank you for your attention to this letter.

Yours sincerely,


Blake Hewitt

Enclosure

cc: William L. Smith, II, Esquire
Michael E. Chase, Esquire
Carmelo B. Sammataro, Esquire

RECEIVED

DEC 28 2011

S.C. SUPREME COURT
pm 12-23-11



BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

Margaret Miles Bluestein
John Shannon Nichols
Stacy Elizabeth Thompson
John Dennis Delgado
Allison Paige Sullivan
Ashley Trout Thompson

November 15, 2011

Honorable Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

NOV 16 2011

S.C. SUPREME COURT

RE: Bone v. U.S. Food Service
Case Tracking No.: 2010-171946

Dear Mr. Shearouse:

Thank you for your letter advising that this case will likely be reached during the January 2011 term of Court. I have pre-existing travel plans the week of January 2nd through the 6th, and for that reason, an oral argument during the January 25-26 term of court would be better-suited for my schedule. That said, I will be glad to appear for argument whenever the Court schedules it.

With kind regards, I am

Yours sincerely,

Blake A. Hewitt (with permission)

Blake A. Hewitt
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC

BAH/awh

cc: William L. Smith, II, Esquire
Carmelo B. ("Sam") Sammataro, Esquire

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

Carmelo B. Sammataro

E-mail: SSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

November 14, 2011

The Honorable Daniel E. Shearouse
Clerk, SC Supreme Court
P. O. Box 11330
Columbia, SC 29211

Re: Cathy C. Bone v. U.S. Food Service and Indemnity Insurance Company
of North America
Case No.: 2008-CP-32-2876
Supreme Court Tracking No.: 2010-171946
File No.: 200.439

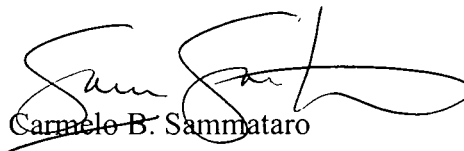
Dear Mr. Shearouse:

In response to the Court's November 10, 2011 letter, I write to advise that the attorneys for Petitioners do not have any conflicts that take precedence over argument at the Court on January 10, 11, 24, 25 or 26. Thank you in advance for your time and assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Yours very truly,

TURNER, PADGET, GRAHAM & LANEY, P.A.


Carmelo B. Sammataro

CBS/tj

cc: William L. Smith, II, Esquire
Blake A. Hewitt, Esquire

RECEIVED

NOV 15 2011

S.C. SUPREME COURT

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The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Blake Alexander Hewitt, Esquire
From: Daniel E. Shearouse
Date: November 10, 2011
RE: January Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the January 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of January 10, 11, 24, 25 and 26. Please notify this office in writing prior to November 18, 2011 as to any scheduling conflicts for the January term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Bone, Cathy C. v. U.S. Food Service



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: William L. Smith, II, Esquire
From: Daniel E. Shearouse
Date: November 10, 2011
RE: January Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the January 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of January 10, 11, 24, 25 and 26. Please notify this office in writing prior to November 18, 2011 as to any scheduling conflicts for the January term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Bone, Cathy C. v. U.S. Food Service



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

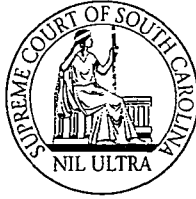
P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Michael E. Chase, Esquire
Carmelo B. Sammataro, Esquire
From: Daniel E. Shearouse
Date: November 10, 2011
RE: January Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the January 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of January 10, 11, 24, 25 and 26. Please notify this office in writing prior to November 18, 2011 as to any scheduling conflicts for the January term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Bone, Cathy C. v. U.S. Food Service



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

October 26, 2011

Michael E. Chase, Esquire
Carmelo B. Sammataro, Esquire
Turner, Padgett, Graham & Laney, P.A.
P. O. Box 1473
Columbia, SC 29202

Blake Alexander Hewitt, Esquire
Bluestein, Nichols, Thompson & Delgado, LLC
P.O. Box 7965
Columbia, SC 29202

William L. Smith, II, Esquire
Chappell, Smith & Arden
P O Box 12330
Columbia, SC 29211

Re: Bone, Cathy C. v. U.S. Food Service

Dear Counsel:

When the roster for the December 2011 term of Court was prepared, the above referenced case was not scheduled. Our records indicate that you are counsel of record in this case.

This case will be placed on the January 2012 Preliminary List of Cases. Court will meet the days of January 10, 11, 24, 25 and 26.

Bone, Cathy C. v. U.S. Food Service
Page Two
October 26, 2011

Very truly yours,

David E. Shearouse
BS

CLERK

DES/dmh

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

Carmelo B. Sammataro

E-mail: SSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

October 12, 2011

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk, SC Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

RECEIVED

OCT 12 2011

S.C. Supreme Court

Re: Cathy C. Bone v. U.S. Food Service and Indemnity Insurance Company
of North America

Case No.: 2008-CP-32-2876

Supreme Court Tracking No.: 2010-171946

File No.: 200.439

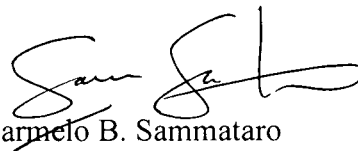
Dear Mr. Shearouse:

In response to the Court's October 5, 2011 letter, I write to advise that the attorneys for Petitioners do not have any conflicts that take precedence over argument at the Court on November 29, November 30 or December 1, 2011. Please contact me if you have any questions.

With kind regards, I am

Yours very truly,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Carmelo B. Sammataro

CBS/tj

cc: William L. Smith, II, Esquire
Blake A. Hewitt, Esquire
(via U.S. mail)

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Phone (803) 254-2200 • Fax (803) 799-3957 • turnerpadget.com



BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

Margaret Miles Bluestein
John Shannon Nichols
Stacy Elizabeth Thompson
John Dennis Delgado
Allison Paige Sullivan
Ashley Trout Thompson

RECEIVED

OCT 12 2011

S.C. SUPREME COURT

October 10, 2011

Honorable Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RE: Bone v. U.S. Food Service
Case Tracking No.: 2010-171946

Dear Mr. Shearouse:

I received your letter advising that this case will likely be reached during the December 2011 term of Court. Please be advised that I have no conflicts.

If you need anything further, please do not hesitate to contact me. With kind regards,
am

Yours sincerely,

Blake A. Hewitt
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC

BAH/awh
Enclosure

cc: William L. Smith, II, Esquire
Carmelo B. ("Sam") Sammataro, Esquire

3011 10/10/11 10:10 AM



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: William L. Smith, II, Esquire
From: Daniel E. Shearouse
Date: October 05, 2011
RE: December Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the December 2011 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of November 29, November 30 and December 1. Please notify this office in writing prior to October 12, 2011 as to any scheduling conflicts for the December term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Bone, Cathy C. v. U.S. Food Service



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Michael E. Chase, Esquire
Carmelo B. Sammataro, Esquire
From: Daniel E. Shearouse
Date: October 05, 2011
RE: December Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the December 2011 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

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Bone, Cathy C. v. U.S. Food Service



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Blake Alexander Hewitt, Esquire
From: Daniel E. Shearouse
Date: October 05, 2011
RE: December Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the December 2011 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

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Bone, Cathy C. v. U.S. Food Service

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

Carmelo B. Sammataro

E-mail: CSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

September 26, 2011

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk, SC Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

RECEIVED

SEP 26 2011

S.C. Supreme Court

Re: Cathy C. Bone v. U.S. Food Service and Indemnity Insurance Company
of North America
Case No.: 2008-CP-32-2876
Supreme Court Tracking No.: 2010-171946
File No.: 200.439


Dear Mr. Shearouse:

Enclosed please find the original and fifteen (15) copies of the Reply Brief of Petitioners regarding the above-referenced matter. Also enclosed are the originals and one (1) copy each of the Certificate of Counsel and the Proof of Service. Please file the original filings and return clocked copies to me via our office courier. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Yours very truly,

TURNER, PADGET, GRAHAM & LANEY, P.A.


Carmelo B. Sammataro

CBS/tj

Enclosures

cc: William L. Smith, II, Esquire
Blake A. Hewitt, Esquire
(w/enc., via hand delivery)

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BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

Margaret Miles Bluestein
John Shannon Nichols
Stacy Elizabeth Thompson
John Dennis Delgado
Allison Paige Sullivan
Ashley Trout Thompson

September 14, 2011

RECEIVED

SEP 14 2011

S.C. Supreme Court

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: Cathy C. Bone v. U.S. Food Services and Indemnity Insurance Company of America
Case Tracking No.: 2010-171946

Dear Mr. Shearouse:

Please find enclosed for filing the original unbound and fifteen (15) bound copies of the *Brief of Respondent* in regards to this case. I have also enclosed a proof of service of this document on counsel for the Petitioners. Please return the additional filed copies to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me .

Sincerely,

Ashleigh W. Hair
Paralegal to Blake A. Hewitt
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC

/awh

Enclosure

cc: William L. Smith, II, Esquire
Michael E. Chase, Esquire
Carmelo B. Sammataro, Esquire

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

S.C. SUPREME COURT

SEP 08 2011

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CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

Carmelo B. Sammataro

E-mail: [SSammataro@TurnerPadget.com](mailto:CSammataro@TurnerPadget.com)

Writer's Direct Dial: (803) 227-4253

September 2, 2011

VIA ELECTRONIC MAIL AND REGULAR MAIL

South Carolina Supreme Court
Attention: Linda Allen
P. O. Box 11330
Columbia, SC 29211

Re: Cathy C. Bone v. U.S. Food Service and Indemnity Insurance Company
of North America
Case No.: 2008-CP-32-2876
Supreme Court Tracking No.: 2010-171946
File No.: 200.439

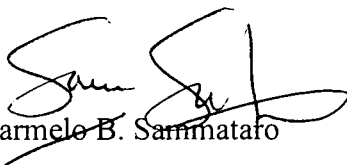
Dear Ms. Allen:

Pursuant to our telephone conversation this morning, I have no objection to opposing counsel's request for a seven-day extension of time to file his brief.

With kind regards, I am

Yours very truly,

TURNER, PADGET, GRAHAM & LANEY, P.A.

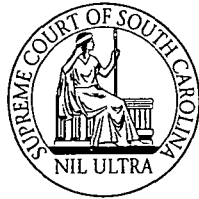

Carmelo B. Sammataro

CBS/tj

cc: William L. Smith, II, Esquire
Blake A. Hewitt, Esquire
(via regular mail and email)

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Bank of America Plaza • 17th Floor • 1901 Main Street (29201) • PO Box 1473 • Columbia, SC 29202
Phone (803) 254-2200 • Fax (803) 799-3957 • turnerpadget.com



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

September 2, 2011

Blake Alexander Hewitt, Esquire
Bluestein, Nichols, Thompson & Delgado, LLC
P.O. Box 7965
Columbia, SC 29202

Re: Bone, Cathy C. v. U.S. Food Service

Dear Mr. Hewitt:

The following Order has been endorsed on your Motion for Extension in the above entitled case on appeal.

“Granted.

Jean H. Toal C.J.
For the Court

By s/ Brenda F., Shealy
Chief Deputy Clerk

September 2, 2011.”

Please be advised that the Brief of Respondent shall be served and filed on or before September 14, 2011.

Very truly yours,

Brenda F. Shealy
CHIEF DEPUTY CLERK

DES/lda

cc: Michael E. Chase, Esquire
Carmelo B. Sammataro, Esquire
William L. Smith, II, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2008-CP-32-2876

RECEIVED

SEP -1 2011

S.C. Supreme Court

Cathy C. Bone, Respondent,

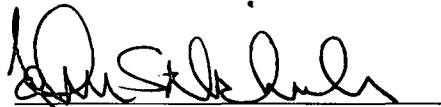
v.

U.S. Food Service and
Indemnity Insurance Company
of North America, Petitioner.

MOTION FOR EXTENSION

Pursuant to Rule 240, SCACR, Respondent requests a 7 day extension of the deadline for filing and serving the Brief of Respondent. The current deadline is September 7, 2011. The Respondent requests that the deadline be extended to September 14, 2011.

Respectfully submitted,



Blake A. Hewitt
John S. Nichols
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO, LLC
Post Office Box 7965
Columbia, SC 29202
(803) 779-7599
(803) 779-8995 (facsimile)

Attorneys for Respondent

September 1, 2011

Granted

Jean H. Toal C.J.
For the Court

By Suzanne J. Shady
Clerk

Chief Deputy

September 2, 2011

*check #16289
\$2500*

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2008-CP-32-2876

RECEIVED

SEP -1 2011

S.C. Supreme Court

Cathy C. Bone, Respondent,

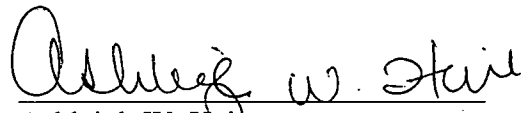
v.

U.S. Food Service and Indemnity
Insurance Company of North America, Petitioners.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the
Petitioner with a copy of the *Motion for Extension* by mailing copies of the same by United States
Mail with first class postage prepaid to the following address:

Michael E. Chase, Esquire
Carmelo B. Sammataro, Esquire
Tuner, Padget, Graham & Laney, P.A.
Post Office Box 1473
Columbia, South Carolina 29202


Ashleigh W. Hair

September 1, 2011
Columbia, South Carolina



Margaret Miles Bluestein
John Shannon Nichols
Stacy Elizabeth Thompson
John Dennis Delgado
Allison Paige Sullivan
Ashley Trout Thompson
Blake Alexander Hewitt

OF COUNSEL

O. Eugene Powell, Jr.

September 1, 2011

RECEIVED

SEP -1 2011

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

S.C. Supreme Court

RE: Cathy C. Bone v. U.S. Food Services and Indemnity Insurance Company of America
Case Tracking No.: 2010-171946

Dear Mr. Shearouse:

Please find enclosed for filing the original and seven (7) copies of the *Motion for Extension* in regards to this case. I have also enclosed a proof of service of this document on counsel for the Petitioners and a check in the amount of \$25.00 for filing this motion. Please return the additional filed copies to me via our courier.

Thank you in advance for your attention to this matter.

Sincerely,

Ashleigh W. Hair
Paralegal to Blake A. Hewitt
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC

/awh

Enclosure

cc: William L. Smith, II, Esquire
Michael E. Chase, Esquire
Carmelo B. Sammataro, Esquire

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

Carmelo B. Sammataro

E-mail: SSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

September 2, 2011

VIA ELECTRONIC MAIL AND REGULAR MAIL

South Carolina Supreme Court
Attention: Linda Allen
P. O. Box 11330
Columbia, SC 29211

Re: Cathy C. Bone v. U.S. Food Service and Indemnity Insurance Company
of North America
Case No.: 2008-CP-32-2876
Supreme Court Tracking No.: 2010-171946
File No.: 200.439

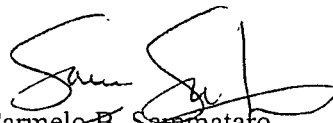
Dear Ms. Allen:

Pursuant to our telephone conversation this morning, I have no objection to opposing counsel's request for a seven-day extension of time to file his brief.

With kind regards, I am

Yours very truly,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Carmelo B. Sammataro

CBS/tj

cc: William L. Smith, II, Esquire
Blake A. Hewitt, Esquire
(via regular mail and email)

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TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

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COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

Carmelo B. Sammataro

E-mail: SSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

August 10, 2011

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk, SC Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

RECEIVED

AUG 10 2011

S.C. Supreme Court

Re: Cathy C. Bone v. U.S. Food Service and Indemnity Insurance Company
of North America
Case No.: 2008-CP-32-2876
Supreme Court Tracking No.: 2010-171946
File No.: 200.439


Dear Mr. Shearouse:

Pursuant to your request for our office to modify our recent filings to correctly identify our clients as "Petitioners" instead of "Appellants," enclosed please find the original and fifteen (15) copies of the Brief of Petitioners reflecting this change. Also enclosed are the original and one (1) copy of the Proof of Service. Please file the original filings and return clocked copies to me via our office courier. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Yours very truly,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Carmelo B. Sammataro

CBS/tj

Enclosures

cc: William L. Smith, II, Esquire
Blake A. Hewitt, Esquire
(w/enc., via hand delivery)

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TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
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Carmelo B. Sammataro

E-mail: SSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

August 8, 2011

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk, SC Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

RECEIVED

AUG - 8 2011

S.C. Supreme Court

Re: Cathy C. Bone v. U.S. Food Service and Indemnity Insurance Company
of North America
Case No.: 2008-CP-32-2876
Supreme Court Tracking No.: 2010-171946
File No.: 200.439

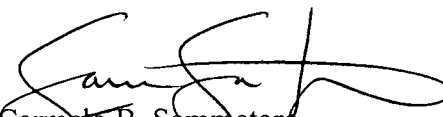
Dear Mr. Shearouse:

Enclosed please find the original and fifteen (15) copies of the Brief of Appellants regarding the above-referenced matter. Also enclosed are the original and one (1) copy of the Proof of Service. Please file the original filings and return clocked copies to me via our office courier. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Yours very truly,

TURNER, PADGET, GRAHAM & LANEY, P.A.


Carmelo B. Sammataro

CBS/tj

Enclosures

cc: William L. Smith, II, Esquire
Blake A. Hewitt, Esquire
(w/enc., via hand delivery)

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TURNER PADGET

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E-mail: SSammataro@TurnerPadget.com

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July 28, 2011

RECEIVED

JUL 28 2011

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, SC Supreme Court
P. O. Box 11330
Columbia, SC 29211

Re: Cathy C. Bone v. U.S. Food Service and Indemnity Insurance Company
of North America
Case No.: 2008-CP-32-2876
Supreme Court Tracking No.: 2010-171946
File No.: 200.439

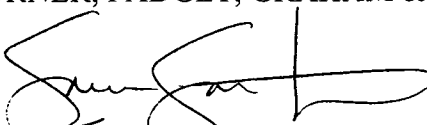
Dear Mr. Shearouse:

As instructed by the Court's letter dated July 7, 2011, I enclose herewith an additional thirteen (13) copies of the Appendix previously filed in the above referenced appeal on September 13, 2010. By copy of this letter, I am advising counsel of record of my communication with the Court and providing them with a copy of the referenced enclosure.

With kind regards, I am

Yours very truly,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Carmelo B. Sammataro

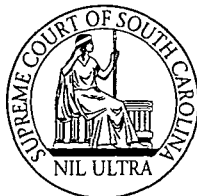
CBS/tj

Enclosures

cc: Blake A. Hewitt, Esquire
(via hand-delivery, w/ encl.)

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The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
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July 7, 2011

Michael E. Chase, Esquire
Carmelo B. Sammataro, Esquire
Turner, Padget, Graham & Laney, P.A.
P O Box 1473
Columbia, SC 29202

Re: Bone, Cathy C. v. U.S. Food Service

Dear Counsel:

Enclosed is the Order granting your Petition for Writ of Certiorari in the above entitled matter.

It will be necessary for you to furnish this office with an additional thirteen (13) copies of the appendix within thirty (30) days from the date of this letter.

Brief of Petitioner should be served and filed on or before August 8, 2011. The brief is not properly filed until we have proof of service.

Brief of Respondent should be served and filed within thirty (30) days after petitioner's brief is filed. We must have proof of service. Any reply brief should be served and filed within ten (10) days after filing of respondent's brief.

Very truly yours,



CLERK

DES/lda

cc: Blake Alexander Hewitt, Esquire
William L. Smith, II, Esquire
The Honorable Tanya Gee

The Supreme Court of South Carolina

Cathy C. Bone,

Respondent,

v.

U.S. Food Service and
Indemnity Insurance Company
of North America,


Petitioners.

ORDER

We grant the petition for a writ of certiorari to review the Court of Appeals' decision in Bone v. U.S. Food Service, S.C. Ct. App. Order dated June 30, 2010. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 242(i), SCACR.

 C.J.

 J.

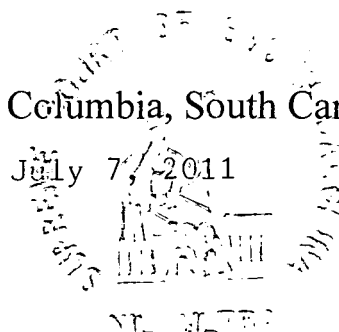
 J.

 J.

 J.

Columbia, South Carolina

July 7, 2011



THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

SEP 13 2010

APPEAL FROM LEXINGTON COUNTY
Court Of Common Pleas

S.C. SUPREME COURT

G. Thomas Cooper, Jr., Circuit Court Judge

Order of Dismissal (S.C. Ct. App. Filed July 1, 2010)

Cathy C. Bone,.....Respondent,

v.

U. S. Food Service and Indemnity Insurance Company of North America,..... Petitioners.

PETITION FOR A WRIT OF CERTIORARI

Michael E. Chase
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ATTORNEYS FOR PETITIONERS

Other Counsel of Record:

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Blake A. Hewitt
Bluestein, Nichols, Thompson & Delgado, LLC
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Columbia, SC 29202
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ATTORNEYS FOR RESPONDENT

INDEX

CERTIFICATE OF COUNSEL1

QUESTION PRESENTED1

STATEMENT OF THE CASE.....1

ARGUMENT.....3

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CONCLUSION.....6

CERTIFICATE OF COUNSEL

Counsel for Petitioners certifies that the Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on August 13, 2010.

QUESTION PRESENTED

Pursuant to Rule 242 of the South Carolina Rules of Appellate Procedure, Petitioners U. S. Food Service and Indemnity Insurance Company of North America (“Petitioners”) hereby petition this Court for a writ of *certiorari* to the court of appeals to review that court’s decision in this matter. In making this petition, Petitioners respectfully assert that the court of appeals erred in dismissing the instant appeal, via Order filed July 1, 2010, and that this Court should review the following issue:

1. Should this Court grant *certiorari* to correct the erroneous ruling by the court of appeals dismissing this appeal as interlocutory?

STATEMENT OF THE CASE

Respondent Cathy C. Bone (“Respondent”) filed her Form 50, Request for Hearing, on or about August 7, 2007, seeking payment of partial disability benefits resulting from an alleged work-related injury to her back on June 26, 2007. Appellants Lexington 5 D, d/b/a US Food Service, Inc. (“Employer”) and GAB Robins North America, Inc. (“Carrier”) (collectively “Appellants”) filed a timely Form 51, Employer’s Answer, in which they denied Respondent’s claim and asserted all applicable defenses. Specifically, Appellants denied the claim given that it was not reported until July 3, 2007, the same day Respondent injured her back while changing a tire on her way to work. Following a hearing on November 5, 2007, the single commissioner issued her Decision

and Order dated February 11, 2008, in which she determined that Respondent was not credible, failed to meet her burden of proof, and was not entitled to benefits.

Respondent timely appealed the single commissioner's order to the Appellate Panel of the Full Commission with the filing of her Form 30, Request for Commission Review. Following oral argument on May 29, 2008, the Full Commission issued its Decision and Order dated June 19, 2008, in which it unanimously affirmed the single commissioner's order. Respondent timely appealed the Full Commission order to the South Carolina Court of Common Pleas for Lexington County. Following oral argument on March 9, 2009, the circuit court issued its order dated March 26, 2009, in which it determined that the denial of the award was not supported by substantial evidence, found as a matter of law that Respondent sustained a compensable injury, reversed the Decision and Order of the Full Commission, and remanded this action to the Commission for further proceedings consistent with its order. This appeal followed with the filing of Appellant's Notice of Appeal filed April 29, 2009.

Respondent filed her first motion to dismiss this appeal on October 29, 2009, in which she took the position that the circuit court order was not a "final order" and, therefore, was not subject to immediate appellate review. Thereafter, via letter order dated December 21, 2009, the court of appeals denied the motion and instructed the parties to address this issue as the first issue on appeal in their respective briefs. Following the submission of initial briefs, Respondent once again moved to dismiss the appeal, and the court of appeals granted that motion via order dated June 30, 2010. In its order, the court of appeals relied upon this Court's opinion as stated in *Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health and*

Environmental Control, 387 S.C. 265, 692 S.E.2d 894 (2010). *Certiorari* is appropriate in this case inasmuch as the court of appeals' order results from an overly broad, incorrect reading of this Court's opinion to erroneously dismiss the instant appeal and unnecessarily delay appellate review to the prejudice of all parties herein.

ARGUMENT

The order of the South Carolina Court of Appeals dismissing this instant appeal as interlocutory results from an erroneous and overly broad reading of the holding in *Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control*, 387 S.C. 265, 692 S.E.2d 894 (2010). Upon closer examination, that case actually supports immediate review of the circuit court's order because finally determines the legal rights of the parties; to wit, the legal conclusion that Respondent sustained a compensable injury in the course and scope of her employment. The circuit court's order overturns the factual findings of the single commissioner and the Full Commission and holds, as a matter of law, that "[t]he evidence of record shows Claimant sustained a compensable injury." (R. p. 5) Thus, the circuit court made a conclusive finding as to compensability, and the only remaining task for the Commission on remand is to fix the amount of benefits. Inasmuch as the challenged order constitutes a final order with regard to the legal question of compensability, it is immediately appealable, and Appellants are entitled to immediate appellate review.

I. The Circuit Court Order Is Subject To Immediate Review Because It Constitutes A Final Decision Pursuant to S.C. Code Ann. § 1-23-380.

South Carolina Code Ann. § 1-23-380(a) contemplates judicial review of a final decision in a contested case such as this. Further, S.C. Code Ann. § 1-23-390 provides

for appellate review of “any final judgment of the circuit court.” The circuit court order is just such a final decision. The finding to the contrary by the court of appeals – that “[t]he order on appeal remands the matter to the Appellate Panel for further proceedings; thus, it is not a final judgment, and it is not immediately appealable.” (Order, p. 2) – fails to accurately describe the effect of the circuit order and implies that further fact finding on the legal question at issue (work-related injury resulting in entitlement to compensation benefits) by the Commission is necessary. To the contrary, the circuit court order effectively decides the only issue in these proceedings – whether or not Respondent sustained a compensable injury. Thus, the order is not “interlocutory” in the sense contemplated by the court of appeals because it determines with finality the only legal question presented.

II. The *Charlotte-Mecklenburg Hospital Authority* Opinion Does Not Counsel In Favor Of Dismissal.

The court of appeals order relies upon an incorrect and overly broad reading of this Court’s holding in *Charlotte-Mecklenburg*. Without analysis of why the order in that case was not subject to immediate review, the court of appeals would deny appellate review in any case when the primary legal issue has been decided with finality but where the execution of such an order is tasked to the administrative agency on remand. *Charlotte-Mecklenburg* hits on exactly the distinction between final orders and truly interlocutory orders presented in Appellants’ substantial briefing on this issue and accepted by the court of appeals in its dismissal. The circuit court order finally determined the legal issue of compensability, is a final order subject to immediate review, and this Court should grant *certiorari* to reverse the court of appeals order to the contrary.

The *Charlotte-Mecklenburg* decision emphasizes the long-standing rule that an order that finally determines the substantive rights of the parties, such as the order of the circuit court in this case, is subject to immediate appellate review. Indeed, the *Charlotte-Mecklenburg* Court emphasized the distinction as follows: “A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.” *Id.*, 387 S.C. at 267, 692 S.E.2d at 895. By contrast, an order does not constitute a final judgment where “there is some further act which must be done by the court prior to a determination of the rights of the parties.” *Id.*, 387 S.C. at 267, 692 S.E.2d at 894. In that case, the administrative law court order was not immediately reviewable because it remanded the action specifically for a determination of the central question in the case - whether the applicants involved were entitled to a certificate of need. Thus, the lower tribunal was necessarily tasked with undertaking an additional fact finding mission.

In contrast, the circuit court’s order in this case concluded, as a matter of law, that Respondent sustained a compensable injury – a finding that unquestionably constitutes a final determination of the rights of the parties to the action and leaves nothing to be done by the Full Commission on remand beyond execution of that judgment. Thus, a closer reading of *Charlotte-Mecklenburg* actually supports the opposite conclusion reached by the court of appeals and militates in favor of immediate appellate review. Accordingly, Appellants respectfully seek reversal of the order of dismissal, as well as reinstatement of the appeal in this matter.

CONCLUSION

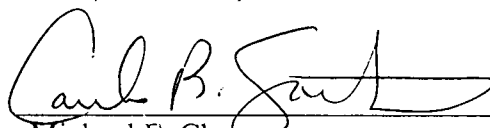
For all of the reasons stated herein, Appellants respectfully submit that a grant of *certiorari* is proper and that the order of dismissal should be reversed and this appeal reinstated.

Respectfully submitted,

TURNER, PADGET, GRAHAM & LANEY, P.A.

September 13, 2010

By:



Michael E. Chase
Carmelo B. Sammataro
Turner Padget Graham & Laney P.A.
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
Fax: (803) 799-3957

ATTORNEYS FOR PETITIONERS

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

APPEAL FROM LEXINGTON COUNTY
Court Of Common Pleas

SEP 13 2010

G. Thomas Cooper, Jr., Circuit Court Judge

S.C. SUPREME COURT

Order of Dismissal (S.C. Ct. App. Filed July 1, 2010)

Cathy C. Bone,.....Respondent,

v.

U. S. Food Service and Indemnity Insurance Company of North America,.....Petitioners.

PROOF OF SERVICE

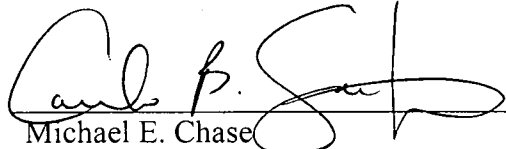
I certify that I have served Appellants' Petition for a Writ of Certiorari and Appendix upon Cathy C. Bone by hand delivering copies of the same on September 13, 2010, to her attorneys of record:

William L. Smith, II, Esquire
Chappell, Smith & Arden
1510 Calhoun Street
P. O. Box 12330
Columbia, SC 29211

Blake A. Hewitt, Esquire
Bluestein, Nichols, Thompson & Delgado, LLC
1614 Taylor Street
P. O. Box 7965
Columbia, SC 29202

TURNER PADGET GRAHAM & LANEY P.A.

September 13, 2010



Michael E. Chase
Carmelo B. Sammataro
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Columbia, SC 29202
Phone: (803) 254-2200
Fax: (803) 799-3957

ATTORNEYS FOR PETITIONERS

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
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Carmelo B. Sammataro

E-mail: SSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

September 13, 2010

VIA HAND DELIVERY

The Honorable Tanya Gee
Clerk of S.C. Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED

SEP 13 2010

S.C. SUPREME COURT

Re: Cathy C. Bone v. U.S. Food Service and Indemnity Insurance Company
of North America

Case No.: 2008-CP-32-2876

Case Tracking No.: 2009125246

File No.: 200.439

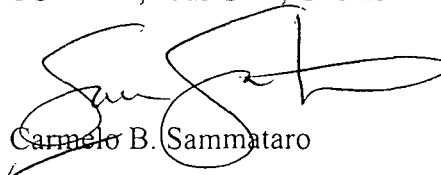
Dear Ms. Gee:

Pursuant to Rule 242(c), SCACR, enclosed please find copies of the Petition for a Writ of Certiorari and Proof of Service for filing with the Court. Also enclosed is a copy of our letter of even date to the South Carolina Supreme Court under cover of which the originals of these documents are being filed. I would greatly appreciate your returning clocked copies of the Petition and Proof of Service to my attention via our office courier. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Yours very truly,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Carmelo B. Sammataro

CBS/tj

Enclosures

cc: William L. Smith, II, Esquire
Blake A. Hewitt, Esquire
(via hand delivery, w/enc.)

BUSINESS • LITIGATION • SOLUTIONS

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September 13, 2010

VIA HAND DELIVERY

The Honorable Tanya Gee
Clerk of S.C. Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Cathy C. Bone v. U.S. Food Service and Indemnity Insurance Company
of North America
Case No.: 2008-CP-32-2876
Case Tracking No.: 2009125246
File No.: 200.439

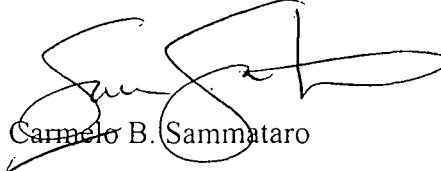
Dear Ms. Gee:

Pursuant to Rule 242(c), SCACR, enclosed please find copies of the Petition for a Writ of Certiorari and Proof of Service for filing with the Court. Also enclosed is a copy of our letter of even date to the South Carolina Supreme Court under cover of which the originals of these documents are being filed. I would greatly appreciate your returning clocked copies of the Petition and Proof of Service to my attention via our office courier. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Yours very truly,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Carmelo B. Sammataro

CBS/tj
Enclosures
cc: William L. Smith, II, Esquire
Blake A. Hewitt, Esquire
(via hand delivery, w/enc.)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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SEP 15 2010

S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

S.C. Ct. App. Order dated June 30, 2010

Cathy C. Bone, Respondent,

v.

U.S. Food Service and Indemnity
Insurance Company of North America, Petitioners.

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COUNTER-STATEMENT OF THE CASE

The “statement of the case” section of the *Petition for a Writ of Certiorari* filed by U.S. Food Service and Indemnity Insurance Company of North America correctly recites the procedural history of this matter. By way of her counter-statement of the case, Respondent Cathy C. Bone would add two things.

First, Respondent strongly disagrees with the assertion that the Court of Appeals’ order dismissing this appeal results from an overly broad and incorrect reading of this Court’s decision in *Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control*, 387 S.C. 265, 692 S.E.2d 894 (2010). See (Pet.p.3) (“*Certiorari* is appropriate in this case inasmuch as the court of appeals’ order results from an overly broad, incorrect reading of this Court’s [*Charlotte-Mecklenburg*] opinion to erroneously dismiss the instant appeal and unnecessarily delay appellate review to the prejudice of all parties herein.”). That disagreement is explored in the argument section of this *Return*.

Second, Respondent would draw attention to one aspect of this case’s procedural posture: the Petitioners have appealed an order from the Circuit Court which remanded this workers’ compensation case to the Workers’ Compensation Commission for additional proceedings. See (App.pp.196-200) (Circuit Court’s Order). The Commission denied Respondent’s claim for benefits because it believed that Respondent injured her back while she was changing a tire on the way to work. *Id.*; see also (App.pp.145-146) (the Statement of the Case section of Respondent’s *Initial Brief* to the Court of Appeals). Respondent denied that she had changed this tire, but the Commission found against her on the point.

Respondent appealed that order to the Circuit Court, the Circuit Court reversed the Commission's decision, and this order is the subject of this appeal.

ARGUMENTS

Because the Petitioners Appealed an Order from the Circuit Court Which Remands an Administrative Case to an Administrative Agency for Additional Proceedings, the Court of Appeals Correctly Dismissed the Petitioners' Appeal.

The Petitioners offer two reasons that this Court should grant *certiorari* to review the order dismissing this case. First, Petitioners argue that the Circuit Court's order is a "final judgment" and is subject to immediate appeal because the "only issue" in this case is whether Respondent sustained a compensable injury. See (Pet.pp.3-4). Second, Petitioners seek to distinguish this Court's recent order in *Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control*, 387 S.C. 265, 692 S.E.2d 894 (2010). (Pet.pp.4-5).

Neither of these arguments should be persuasive. Two of this Court's previous decisions directly compel the conclusion the Court of Appeals reached, and the *Charlotte-Mecklenburg* case is also directly on point. Petitioners suggest this Court should hold that although the order on appeal remands a case for additional proceedings, that order is a "final judgment." It is not.

I. Two of this Court's Previous Decisions Directly Control this Case and Require Dismissal of Petitioners' Appeal.

This case is directly controlled by this Court's decisions in *Montjoy v. Asten-Hill Dryer Fabrics*, 316 S.C. 52, 446 S.E.2d 618 (1994) and *Leviner v. Sonoco Products*

Company, 339 S.C. 492, 530 S.E.2d 127 (2000). *Montjoy* and *Leviner* stand for the proposition that an order from the Circuit Court which remands a case to an administrative agency for additional proceedings is not immediately appealable.

These cases state the rule in direct terms. *Montjoy* was an appeal from an order of the Circuit Court remanding a case to the Workers' Compensation Commission. This Court wrote "we have consistently held that an order of the circuit court remanding a case for additional proceedings before an administrative agency is not directly appealable." *Montjoy*, 316 S.C. at 52, 446 S.E.2d at 618.

Leviner was a workers' compensation case as well. In *Leviner*, the Circuit Court issued a form order remanding the case to the Commission. When the Circuit Court filed a written order more than thirty days later, questions arose about the Circuit Court judge's authority to issue this second order and about which order was the judge's "final" order on the case. This Court wrote that the second order was a nullity, that the Circuit Court's "final" order was the first order, and that "[w]hile final, this order was not directly appealable since it remanded the matter to the single commissioner for further proceedings." *Leviner*, 339 S.C. at 494, 530 S.E.2d at 128. *Leviner* relied expressly on *Montjoy* as the authority for this rule. See *Leviner*, 339 S.C. at 494, 530 S.E.2d at 128.

Just like *Montjoy* and *Leviner*, this is an appeal of a Circuit Court order remanding Respondent's case to the Workers' Compensation Commission for additional proceedings. See (App.pp.196-200) (Circuit Court's Order). There is no need to grant *certiorari*; this Court's past decisions compel the conclusion that the Court of Appeals reached. The Court of Appeals correctly relied on these cases in reaching its decision. See (App.p.285).

II. The Circuit Court's Order Is Not a "Final Judgment" for the Purposes of Immediate Appealability.

Judicial review of administrative cases is limited by statute. Section 1-23-380 of the South Carolina Code provides that a party may seek judicial review only after the party has exhausted all administrative remedies and is aggrieved by "a *final decision* in a contested case." S.C. Code Ann. § 1-23-380 (Supp. 2009) (emphasis added). The statutes also allow administrative cases to be appealed beyond the first level of judicial review. Section 1-23-390 provides for appellate review "of a *final judgment* of the circuit court or the court of appeals." S.C. Code Ann. § 1-23-390 (Supp. 2009) (emphasis added).

These statutes were modified by Act. No. 387 of 2006 in order to move the first level of judicial review from the Circuit Court to the Court of Appeals. See Act No. 387, 2006 S.C. Acts 3093, 3098-99. A statute dealing specifically with workers' compensation cases was modified by Act No. 111 of 2007, to follow suit. See Act. No. 111, 2007 S.C. Acts 599, 630-31. Those changes are not relevant to this discussion. What is important is that § 1-23-390 limits appellate review to a circuit court's "final judgment" in an administrative case.

This Court has instructed that a final order "disposes of the *whole* subject matter of the action or terminates the particular proceeding or action, *leaving nothing to be done but to enforce by execution* what has been determined." *Charlotte-Mecklenburg*, 387 S.C. at 267, 692 S.E.2d at 895 (citing *Good v. Hartford Accident & Indem. Co.*, 201 S.C. 32, 21 S.E.2d 209 (1942)) (emphasis added). The order on appeal is not a "final order." The order on appeal does not order the payment of any workers' compensation benefits to Respondent. It also does not contain any finding about the extent of Respondent's injury, and it does not

contain a finding about whether Respondent has reached maximum medical improvement and if she has not, whether Respondent is due any temporary benefits while she seeks treatment to reach maximum medical improvement. The order on appeal is not a final judgment because it remands Respondent's case for additional proceedings. There is no judgment for Respondent to enforce.

Petitioners' argument – that the issue of whether Respondent sustained a compensable injury is effectively the only issue in the case – cannot carry the day because there is more to be done on this case at the agency level. When this matter is remanded, the parties may go to the Commission and dispute whether Respondent is temporarily disabled, whether her past medical treatment was reasonable and necessary, whether future medical treatment is necessary, whether Respondent has reached maximum medical improvement, the extent of her permanent impairment, and the extent of Respondent's ability to engage in future work. The Circuit Court's order is not a "final judgment," and this Court should reject the Petitioners' argument that review on *certiorari* would result in a contrary holding.

III. This Court's *Charlotte-Mecklenburg* Decision Directly Controls, and this Court Should Use a Published Order Denying Certiorari as the Vehicle to Overrule Several Court of Appeals Cases That Are Inconsistent with That Decision, *Montjoy*, and *Leviner*.

This appeal is the result of the fact that until it dismissed this appeal, the Court of Appeals was following an approach to administrative appeals which diverged from this Court's approach. Beginning with the case *Green v. City of Columbia*, 311 S.C. 78, 427 S.E.2d 685 (Ct. App. 1993), the Court of Appeals followed an approach where it used the

“involving the merits” or “affecting a substantial right” language of S.C. Code Ann. § 14-3-330 (1977 & Supp. 2009) to allow for immediate review of certain interlocutory agency decisions. *Green* looked to this Court’s decision in *Chastain v. Spartan Mills*, 228 S.C. 61, 88 S.E.2d 836 (1955), a case pre-dating the adoption of the Administrative Procedures Act in 1976 and again in 1977, and held that an interlocutory order of the Workers’ Compensation Commission was immediately appealable if it affected the merits or deprived the appellant of a substantial right. 311 S.C. at 79-80, 427 S.E.2d at 687.¹

This Court decided *Montjoy* in the year following *Green*, see *Montjoy*, 316 S.C. at 52, 446 S.E.2d at 618 (case decided in 1994), but the Court of Appeals continued using *Green*’s approach to appealability. See *Brown v. Greenwood Mills, Inc.*, 366 S.C. 379, 386-388, 622 S.E.2d 546, 550-551 (Ct. App. 2005); *Foggie v. General Electric Co.*, 376 S.C. 384, 388-89, 656 S.E.2d 395, 397-398 (Ct. App. 2008); *Oakwood Landfill, Inc. v. S.C. Dep’t of Health and Env’tl. Control*, 381 S.C. 120, 129-133, 671 S.E.2d 646, 651-653 (Ct. App. 2009); and *Canteen v. McLeod Reg’l Med. Ctr.*, 384 S.C. 617, 621-624, 682 S.E.2d 504, 505-507 (Ct. App. 2009).

As Respondent has attempted to emphasize in her filings in this case, this divergence has an explanation. See, e.g., (App.pp.189-194) (from Respondent’s first *Motion to Dismiss*); *id.* at 148-157 (from Respondent’s *Initial Brief*); and *id.* at 278-280 (from Respondent’s *Reply* in support of her second motion to dismiss). Because the *Green* case looks to this Court’s *Chastain* decision, the *Green* case was looking to law that has been

¹The 1976 version of the APA can be found at Act. No. 671, 1976 S.C. Acts 1758; and the 1977 version at Act No. 176, 1977 S.C. Acts 391.

replaced by the Administrative Procedures Act and its requirement of exhaustion of administrative remedies. When the Court of Appeals addressed how this Court's *Montjoy* decision affected *Green*'s continued application, it looked to the cases cited in *Montjoy* – cases which were decided shortly after the adoption of the Administrative Procedures Act but which used pre-APA analysis on appealability. See *Brown*, 366 S.C. at 387, 622 S.E.2d at 551 (describing that *Montjoy* cited the case *Owens v. Canal Wood Corp.*, 281 S.C. 491, 316 S.E.2d 385 (1984) and *Hunt v. Witt*, 279 S.C. 343, 306 S.E.2d 621 (1983), which held that an order was not immediately appealable because it did not involve the merits).

Owens and *Hunt* did not discuss the then recently-enacted APA. For their appealability analysis, those cases simply cite this Court's decision in *King v. Singer Company*, 276 S.C. 419, 279 S.E.2d 367 (1981). See *Owens*, 281 S.C. at 492, 316 S.C. at 385; and *Hunt*, 279 S.C. at 343, 306 S.E.2d at 622. *King* cites to § 14-3-330 and to *Chastain v. Spartan Mills* and the case *Cord v. E.H. Hines Construction Co.*, 220 S.C. 356, 67 S.E.2d 677 (1951) for the “affecting the merits” analysis of appealability. *King*, 276 S.C. at 420, 279 S.E.2d at 367. *Cord* performs the heavy lifting of the appealability analysis. Because *Cord* is a 1951 case, it looked to the statute that governed appeals in workers' compensation cases at that time and used the then-applicable version of the general appealability statute to derive a rule that allowed appeal of interlocutory orders in administrative cases. See 220 S.C. at 362-363, 67 S.E.2d at 679-680 (describing that the appeal in *Cord* could “be accurately likened to an appeal in a law action from an intermediate order, prior to final judgment but nevertheless affecting the merits and therefore appealable before final judgment. Section 26(D), Code of 1942.”).

That analysis has been supplanted by the APA. Administrative Appeals are governed by §§ 1-23-380 and 1-23-390, and this Court's decision in *Charlotte-Mecklenburg* makes precisely this point. This Court has overruled the decisions of the Court of Appeals in *Canteen* and *Oakwood Landfill* to the extent that those cases rely on § 14-3-330 to permit the appeal of administrative cases, see *Charlotte-Mecklenburg*, 387 S.C. at 266, 692 S.E.2d at 894, but this Court has not addressed the *Green*, *Foggie*, and *Brown* cases which use this same analysis.² In the interest of completeness, this Court should use the order denying *certiorari* in this case to overrule these decisions to the same extent announced in *Canteen*. Sections 1-23-380 and 1-23-390 provide the guideposts that govern administrative appeals.

As a housekeeping matter, Respondent would take issue with the assertion that dismissing this appeal unnecessarily delays appellate review to the prejudice of the parties. The case of *Magaha v. Greenwood Mills, Inc.*, Op. No. 2008-UP-244 (S.C. Ct. App. filed Apr. 24, 2008) demonstrates why this is not so. *Magaha* was a workers' compensation case where the "only issue" in the case was whether the injured worker had complied with the Workers' Compensation Act's notice requirement. See (App.pp.202-209) (decision of the Court of Appeals in *Magaha*). The Commission found against Ms. Magaha on the notice requirement, the Circuit Court reversed, and when the employer appealed, Ms. Magaha moved to dismiss the appeal on the grounds that *Montjoy* and *Leviner* controlled. See (App.pp.211-217) (Ms. Magaha's *Motion to Dismiss*).

Citing *Foggie* and *Brown*, the Court of Appeals held that the Circuit Court's order

²Because *King* cited to § 14-3-330 for administrative appeals, *Charlotte-Mecklenburg* overrules *King* by implication. See *King*, 276 S.C. at 420, 279 S.E.2d at 367.

was immediately appealable. (App.p.207). The Court of Appeals ultimately decided the merits of the case in Ms. Magaha's favor, but when the employer petitioned for certiorari, this Court vacated the unpublished decision of the Court of Appeals and cited *Montjoy* for the proposition that an order of the circuit court remanding a case for additional proceedings before an administrative agency is not directly appealable. (App.p.222). This was over three years after Ms. Magaha had requested that the Court of Appeals dismiss the appeal based on *Montjoy* and *Leviner*. See (App.p.217) (*Motion to Dismiss* dated February 17, 2006) and (App.p.222) (Supreme Court's order dated February 19, 2009).

If Respondent's appeal had been properly dismissed when she raised the issue, the parties could have been in front of the Commission proceeding through the remainder of the issues in the case with an eye toward the time when the case would be properly reviewable by an appellate court. Instead, Petitioners have continued to press their position and unnecessarily prolonged this appeal. When Respondent proposed having her motion to dismiss certified to this Court so this Court could quickly and clearly state the rule on administrative appeals, see (App.pp.158-59; 234-35), Petitioners opposed this request. See (App.p.130, n.2) (from Petitioners' *Initial Brief* to the Court of Appeals). Petitioners' complaint about unnecessary delay should not be taken at face value.

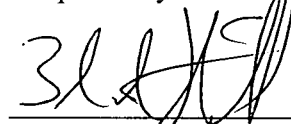
CONCLUSION

The Court of Appeals correctly dismissed this appeal because an order from the circuit court which remands a case to an administrative agency is not immediately appealable. This is the rule of this Court's decisions in *Montjoy*, *Leviner*, and *Charlotte-Mecklenburg*. However, the existence of three Court of Appeals decisions continues to

create confusion on this issue and allows the possibility that litigants will spend resources pursuing premature appeals in agency cases. See, e.g., *Brown v. James*, Op. No. 4674 (S.C. Ct. App. filed) (Shearouse Adv. Sh. No. 29 at 96, 105-106) (citing *Canteen* for appealability). This Court should deny *certiorari*, and in a published order, the Court should overrule the cases of *Green v. City of Columbia*, 311 S.C. 78, 427 S.E.2d 685 (Ct. App. 1993), *Brown v. Greenwood Mills, Inc.*, 366 S.C. 379, 622 S.E.2d 546 (Ct. App. 2005), and *Foggie v. General Electric Co.*, 376 S.C. 384, 656 S.E.2d 395 (Ct. App. 2008), for the same reasons this Court announced in *Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control*, 387 S.C. 265, 692 S.E.2d 894 (2010).

September 15, 2010

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Supreme Court

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SEP 15 2010

S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

S.C. Ct. App. Order dated June 30, 2010

Cathy C. Bone, Respondent,

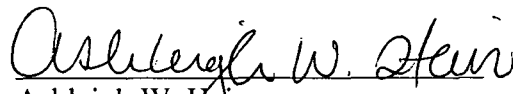
v.

U.S. Food Service and Indemnity
Insurance Company of North America, Petitioners.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Appellants with a copy of the *Return to Petition for a Writ of Certiorari* by hand delivering copies of the same to the following address:

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September 15, 2010
Columbia, South Carolina

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SEP 27 2010

THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court Of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Order of Dismissal (S.C. Ct. App. Filed July 1, 2010)

Cathy C. Bone,.....Respondent,

v.

U. S. Food Service and Indemnity Insurance Company of North America,..... Petitioners.

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ARGUMENT

I. THE CIRCUIT COURT ORDER IS SUBJECT TO IMMEDIATE REVIEW.

Respondent's Initial Brief acknowledges the circuit court's order reaches the merits by concluding as a matter of law she is entitled to benefits. (Resp.'t's In. Br. p. 3) Respondent nevertheless argues the challenged order is interlocutory and not immediately appealable pursuant to S.C. Code Ann. § 1-23-390. Applicable authority, however, compels the conclusion that orders in workers' compensation cases like the one at issue here are subject to the final judgment rule and to immediate review where they involve the merits of the underlying action or affect a party's substantial rights. As such, *certiorari* should be granted, and the appeal in this case should proceed.

A. The Administrative Procedures Act Affords Immediate Review.

Respondent's premise rests on the incorrect proposition that recent precedent of this Court compels the conclusion that pursuant to the APA, an order from the circuit court remanding a case to an administrative agency is not immediately appealable. This statement is not only incorrect, but also has been expressly rejected in controlling authority on this precise issue.

It is uncontested that S.C. Code Ann. §§ 1-23-380 and -390 govern appellate review of final administrative agency decisions. At the same time, these provisions clearly permit review of an interlocutory order in a workers' compensation proceeding where that order reaches the merits or affects a substantial right. Section 1-23-380 authorizes review of "a final decision in a contested case" and "does not limit utilization of or the scope of judicial review, redress, relief or trial de novo provided by law."

Further, Section 1-23-390 provides that “[a]n aggrieved party *may obtain a review of a final judgment of the circuit court* or the court of appeals pursuant to this article by taking an appeal in the manner provided by the South Carolina Appellate Court Rules *as in other civil cases.*” (Emphasis added) Thus, a plain reading of the relevant statutory provisions supports immediate review of the order challenged in this appeal, and neither provision should be read to signal a departure from or modification of the final judgment rule as applied in the precedents of this Court.

Respondent’s reliance on *Leviner v. Sonoco Products Company*, 339 S.C. 492, 530 S.E.2d 127 (2000); *Montjoy v. Asten-Hill Dryer Fabrics*, 316 S.C. 52, 446 S.E.2d 618 (1994) and *Magaha v. Greenwood Mills, Inc.*, S.C. Sup. Ct. Order dated February 19, 2009 (unpublished) is misplaced, as those decisions simply do not signal a departure from the final judgment rule in workers’ compensation cases. This authority actually supports construction of Sections 1-23-380 and -390 in a manner that supports immediate review.

The *Montjoy* Court affirmed dismissal of an order characterized as interlocutory and not directly appealable. In so doing, the court relied upon the “final judgment” rule codified in the Administrative Procedures Act at S.C. Code Ann. § 1-23-390. While the *Montjoy* decision is short, it is inaccurate to say that the only background supporting its holding is citation to Section 1-23-390 or that the APA mandates dismissal here. To the contrary, the *Montjoy* Court’s reliance on *Owens v. Canal Wood Corp.*, 281 S.C. 491, 316 S.E.2d 385 (1984) and *Hunt v. Whitt*, 279 S.C. 343, 306 S.E.2d 621 (1983) indicate the court relied on the traditional formulation of the final judgment rule. In *Owens*, the court dismissed an appeal because the challenged order did not “involve the merits of the action.” *Id.* at 492, 306 S.E.2d at 385. Similarly, in *Hunt*, the court dismissed the appeal

as interlocutory where the challenged order remanded the case for the taking of additional testimony and did not affect the merits of the action. 279 S.C. at 343, 306 S.E.2d at 622.

Respondent also finds no support in *Leviner v. Sonoco Products Company*, 339 S.C. 492, 530 S.E.2d 127 (2000). There, the court concluded the trial court lacked jurisdiction to issue a full written order where neither party sought relief pursuant to Rule 59(e), SCRPC, from an earlier Form 4 order within the requisite ten day period. *Id.* at 493, 530 S.E.2d at 127. The second issue was whether or not the circuit court's form order, which reversed a finding of maximum medical improvement and the award of permanent disability, constituted an appealable final judgment. While it was unclear exactly what tasks the Commission was to perform on remand, the remand order was nevertheless not immediately appealable because it required "further proceedings," presumably on the presence or absence of findings supporting a determination that claimant had reached MMI. *Id.* at 218, 530 S.E.2d at 494. The parties were bound by an imprecise remand order for which they did not seek clarification in a timely fashion and that, at least on its face, required further proceedings at the Commission level. The decision simply couldn't "contain the 'involve the merits' language" because the basis of the circuit court's reversal was unclear. (Resp.'t's In. Br. p. 9)

The lower court order in *Magaha* suffered from the same lack of finality that deprived the parties of immediate appellate review in *Montjoy* and *Leviner*. There, the impediment to appellate review was simply that the challenged order did not reach the underlying merits of the claimant's claim for benefits. Thus, even if it were appropriate to rely upon *Magaha* as persuasive, that unpublished opinion clearly does not signal a departure from the final judgment rule in the workers' compensation arena.

B. A Delayed Appeal Is Not A Sufficient Remedy.

Contrary to the arguments advanced by Respondent, the circuit court order in this case clearly constitutes a final judgment on the issue of liability. The challenged order is by its very nature subject to immediate appeal because it determines a question necessarily affecting the merits (*i.e.*, whether substantial evidence supports an award of benefits) and makes a final determination that cannot be adequately addressed after final administrative agency decision (*i.e.*, that Respondent is entitled to benefits). Nothing in the APA or authority construing that statute militates in favor of delayed review, and there is no undecided or important legal issue at play that would warrant certification pursuant to Rule 204(b), SCACR. As such, this Court should grant *certiorari* to allow immediate consideration of the merits of the instant appeal without further delay.

II. THE DECISION OF THIS COURT IN *CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY* DOES NOT COUNSEL IN FAVOR OF DISMISSAL.

Respondent erroneously argues the decision in *Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control*, 387 S.C. 265, 692 S.E.2d 894 (2010), compels dismissal of this appeal. This argument fails to explain why the order in *Charlotte-Mecklenburg* was not immediately appealable and overlooks the applicable statutes providing for immediate review of final orders. This is most likely the case given the fact that the *Charlotte-Mecklenburg* hits on exactly the distinction between final orders and truly interlocutory orders presented in Appellants' substantial briefing on this issue. Because the circuit court order here finally determined the issue of compensability, it is a final order subject to immediate review, and Respondent's motion should be dismissed.

The *Charlotte-Mecklenburg* decision emphasizes the rule that an order that finally determines the substantive rights of the parties, such as the order of the circuit court in this case, is subject to immediate appellate review. Indeed, *Charlotte-Mecklenburg* emphasizes the distinction as follows: “A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.” 387 S.C. at 267, 692 S.E.2d at 895. In that case, the administrative law court order was not immediately reviewable because it remanded the action specifically for a determination of whether the applicants involved were *entitled* to a certificate of need. Thus, the lower tribunal was necessarily tasked with undertaking an additional fact finding mission. In contrast, the order here concluded, as a matter of law, that Respondent sustained a compensable injury – a finding that unquestionably constitutes a final determination of the merits of the action – and was, as a result, *entitled* to benefits. Thus, *certiorari* should be granted and this appeal allowed to proceed.

CONCLUSION

For the reasons stated herein, as well as those set forth in Appellants’ Petition for Writ of Certiorari, the writ should issue, and this appeal should be reinstated.

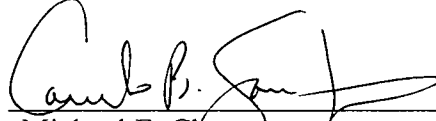
(Signature page to follow.)

Respectfully submitted,

TURNER, PADGET, GRAHAM & LANEY, P.A.

September 27, 2010

By:



Michael E. Chase

Carmelo B. Sammataro

Turner Padget Graham & Laney P.A.

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ATTORNEYS FOR PETITIONERS

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court Of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

RECEIVED

SEP 27 2010

S.C. SUPREME COURT

Order of Dismissal (S.C. Ct. App. Filed July 1, 2010)

Cathy C. Bone,.....Respondent,

v.

U. S. Food Service and Indemnity Insurance Company of North America,.....Petitioners.

PROOF OF SERVICE

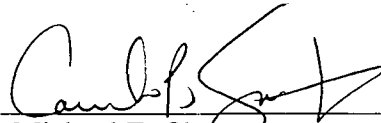
I certify that I have served the Reply to Return to Petition for a Writ of Certiorari upon Cathy C. Bone by mailing copies of the same on September 27, 2010, to her attorneys of record:

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Chappell, Smith & Arden
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Columbia, SC 29211

Blake A. Hewitt, Esquire
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September 27, 2010



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January 31, 2011

RECEIVED

JAN 31 2011

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse, Clerk
South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

S.C. Supreme Court

Re: Cathy C. Bone v. U.S. Food Service and Indemnity Insurance Company
of North America
Case No.: 2008-CP-32-2876
Case Tracking No.: 2009125246
File No.: 200.439

Dear Mr. Shearouse:


In accordance with Rule 208(b)(7) of the South Carolina Appellate Court Rules, I write to advise the Court of the decision of the South Carolina Court of Appeals in the matter of *Long v. Sealed Air Corporation*, Op. No. 4783 (S.C. Ct. App. Jan. 26, 2011) (Shearouse Adv.Sh. No. 4 at 57). I also have attached a copy of the opinion for ease of reference. The holding of the case is relevant to Petitioners' briefing in the above-referenced appeal regarding the finality of the order challenged on appeal.

I am enclosing additional copies of this letter and the opinion and ask that you please return clocked copies of each to me via our office courier. Thank you in advance for your time and attention, and please do not hesitate to contact me should the need arise.

With kind regards, I am

Yours very truly,

TURNER, PADGET, GRAHAM & LANEY, P.A.


Carmelo B. Sammataro

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Turner, Padgett, Graham & Laney, P.A.

January 31, 2011

Page 2

CBS/tj

Enclosures

cc: William L. Smith, II, Esquire
Blake A. Hewitt, Esquire
(via U.S. mail, w/enc.)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Leslie M. Long, Respondent,

v.

Sealed Air Corporation, Employer, Liberty
Insurance Corporation, Carrier, Appellants.

Appeal From Oconee County
Thomas A. Russo, Circuit Court Judge

Opinion No. 4783
Heard September 16, 2010 – Filed January 26, 2011

APPEAL DISMISSED

Jeffrey S. Jones, of Greenville, for Appellants.

R. Scott Dover, of Pickens, for Respondent.

FEW, C.J.: Leslie Long commenced this workers' compensation action alleging an injury to her cervical spine while working for Sealed Air Corporation. The single commissioner held Long failed to report the injury within ninety days as required by section 42-15-20 of the South Carolina Code (Supp. 2010). An appellate panel of the Workers' Compensation Commission affirmed. Initially, the circuit court affirmed. However, Long filed a motion for reconsideration, which the circuit court granted. In its reconsideration order, the circuit court found Long complied with the notice requirement, reversed the appellate panel, and remanded "for further investigation." Sealed Air and its carrier Liberty Insurance Corporation appeal the circuit court's order. We dismiss the appeal because the circuit court's order is not immediately appealable.

In Montjoy v. Asten-Hill Dryer Fabrics, 316 S.C. 52, 446 S.E.2d 618 (1994), our supreme court dismissed an appeal from a circuit court order remanding to the Workers' Compensation Commission and stated "we have consistently held that an order of the circuit court remanding a case for additional proceedings before an administrative agency is not directly appealable." 316 S.C. at 52, 446 S.E.2d at 618. In Leviner v. Sonoco Products Co., 339 S.C. 492, 530 S.E.2d 127 (2000), the supreme court cited Montjoy in dismissing a circuit court order remanding to the commission even though the supreme court characterized the order as "final." The court stated: "While final, this order was not directly appealable since it remanded the matter to the single commissioner for further proceedings." 339 S.C. at 494, 530 S.E.2d at

128. As we have been required to do, this court has consistently followed Montjoy when deciding the appealability of circuit court orders in workers' compensation cases. See, e.g., Foggie v. Gen. Elec., 376 S.C. 384, 388, 656 S.E.2d 395, 398 (Ct. App. 2008) (quoting above passage from Montjoy in holding remand order unappealable).

However, we have distinguished Montjoy in limited situations, which are not applicable on the facts of this case. In Hicks v. Piedmont Cold Storage, Inc., 324 S.C. 628, 479 S.E.2d 831 (Ct. App. 1996),^[1] this court found the circuit court's order remanding to the commission appealable because "additional proceedings [were] not required . . ." 324 S.C. at 632 n.2, 479 S.E.2d at 834 n.2. Noting the "order remanded the case merely for a mathematical calculation of death benefits, rather than for any judgment on the merits," this court stated "further proceedings on remand are purely ministerial and do not require the exercise of independent judgment or discretion on the part of the commission." Id.

In this case, the commission's finding that Long did not report the injury within the statutory notice period ended the action. Under the circuit court's order in this case, the commission must determine on remand whether the injury occurred during the scope and course of employment, set the claimant's average weekly wage and compensation rate, and answer other questions which may arise. Therefore, we find no basis on which to distinguish Montjoy as we did in Hicks. Rather, we find the commission must conduct additional proceedings before a final judgment is reached. Thus, Montjoy controls, and this order is not appealable.

We find support for this conclusion in the recent decision of Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health & Environmental Control, 387 S.C. 265, 692 S.E.2d 894 (2010). In Charlotte-Mecklenburg, the supreme court dismissed an appeal from the Administrative Law Court because its order was "not a final decision which is immediately appealable under [section] 1-23-610 [of the South Carolina Code (Supp. 2010)]." 387 S.C. at 267, 692 S.E.2d at 895. The court held that the general appealability provisions in section 14-3-330 of the South Carolina Code (1976), which sometimes allow appeal of interlocutory orders, are "inapplicable" because section 1-23-610 is a more specific statute and "limits review to final decisions of the ALC." 387 S.C. at 266, 692 S.E.2d at 894. The reasoning of Charlotte-Mecklenburg applies to appeals from the Workers' Compensation Commission, which are governed by section 1-23-380 of the South Carolina Code (Supp. 2010). Like its ALC counterpart relied on in Charlotte-Mecklenburg, section 1-23-380 is a more specific statute that limits review to "a final decision . . ." Id.^[2] Under the reasoning of Charlotte-Mecklenburg and in light of section 1-23-380, the general appealability provisions of section 14-3-330 are "inapplicable" to the extent they "permit the appeal of interlocutory orders of . . . an administrative agency." 387 S.C. at 266, 692 S.E.2d at 894.

Further, Charlotte-Mecklenburg specifically overruled two decisions of this court in which we found interlocutory orders appealable under section 14-3-330. 387 S.C. at 266, 692 S.E.2d at 894. The court stated:

To the extent Canteen v. McLeod Regional Medical Center, 384 S.C. 617, 682 S.E.2d 504 (Ct. App. 2009) and Oakwood Landfill, Inc. v. South Carolina Department of Health and Environmental Control, [381] S.C. 120, 671 S.E.2d 646 (Ct. App. 2009) rely on § 14-3-330 to permit the appeal of interlocutory orders of the ALC or an administrative agency, those cases are overruled.

387 S.C. at 266, 692 S.E.2d at 894. Canteen is an appeal from the Workers' Compensation

Commission, 384 S.C. at 619, 682 S.E.2d at 504, and Oakwood Landfill is an appeal from the Board of the Department of Health and Environmental Control reviewing the decision of the ALC. 381 S.C. at 127, 671 S.E.2d at 650. In Canteen we quoted at length from this court's opinion in Brown v. Greenwood Mills, Inc., 366 S.C. 379, 622 S.E.2d 546 (Ct. App. 2005). We relied on Brown in finding the order appealable, stating "we find this case is similar to . . . Brown because the Appellate Panel finally determined the brain injury issue on the merits by denying compensation for Canteen's brain injury." [3] Canteen, 384 S.C. at 624, 682 S.E.2d at 507. As Canteen is based on the same reasoning as Brown, the supreme court's decision in Charlotte-Mecklenburg expressly overruling Canteen is at least an implicit rejection of Brown. In light of Charlotte-Mecklenburg, we can find no basis on which to distinguish any decisions, including Brown, [4] which rely on section 14-3-330 in finding a decision of the commission appealable. Accordingly, we believe the supreme court has effectively overruled Brown, and we will no longer apply it.

In this case, the order on appeal remands the case to the commission for additional proceedings. Accordingly, it is not a final judgment and the order is not immediately appealable. The order may be appealed after final judgment.

APPEAL DISMISSED.

HUFF, J. concurs.

GEATHERS, J. (dissenting): Respectfully, I dissent. The majority dismisses this appeal on the ground that the circuit court's order is interlocutory. I disagree because I believe the circuit court's decision touches upon the merits and therefore constitutes a final judgment for purposes of our jurisdiction over a workers' compensation appeal. For a complete understanding of our jurisdiction in this matter, it is necessary to begin with the governing statute, S.C. Code Ann. § 1-23-390 (Supp. 2010), and then to trace the evolution of published opinions interpreting this statute.

Section 1-23-390 states:

An aggrieved party may obtain a review of a final judgment of the circuit court or the court of appeals pursuant to this article by taking an appeal in the manner provided by the South Carolina Appellate Court Rules as in other civil cases.

(emphasis added). Our supreme court quoted this statute in its opinion in Montjoy v. Asten-Hill Dryer Fabrics; however, in determining if the circuit court's order was appealable, the supreme court focused only on whether the order included language remanding the case for additional proceedings. 316 S.C. 52, 446 S.E.2d 618 (1994). The court did not expressly evaluate the nature of the issues raised on appeal. *Id.* Under section 1-23-390, it was logical for our supreme court to hold that a circuit court ruling remanding a case to the Commission was not immediately appealable when the appeal challenged only the propriety of the remand. See Owens v. Canal Wood Corp., 281 S.C. 491, 491-92, 316 S.E.2d 385 (1984); Hunt v. Whitt, 279 S.C. 343, 343-44, 306 S.E.2d 621, 622 (1983). Such an appeal does not involve the merits of the case. On the other hand, a circuit court ruling on the merits has finality with respect to the issue decided and will become the law of the case if it is not immediately appealed. [5] Therefore, it is untenable to label such a ruling as interlocutory merely because it is accompanied by language remanding the case for further proceedings.

More recent published precedent, beginning with Brown v. Greenwood Mills, Inc., has carefully scrutinized the language in remand orders, recognizing the benchmark set forth by Montjoy's predecessors—whether an order "involves the merits"— and thus reaffirming the legislative intent behind the term "final judgment" as set forth in section 1-23-390:

The question here is whether the circuit court order is a "final judgment" under section 1-23-390. Generally, an order is a final judgment on one or more issues if it constitutes an ultimate decision on the merits. In Owens v. Canal Wood Corp., 281 S.C. 491, 316 S.E.2d 385 (1984), one of the two cases cited by the Montjoy court, [6] the supreme court found the order of the circuit court does not involve the merits of the action. It is therefore interlocutory and not reviewable by this Court for lack of finality. Similarly, in Hunt v. Whitt, 279 S.C. 343, 306 S.E.2d 621 (1983), the supreme court held that because the interlocutory order of the circuit court does not involve the merits of the action, it is not reviewable by this Court for lack of finality.

Accordingly, in determining whether the court's order constitutes a final judgment, we must inquire whether the order finally decides an issue on the merits. An order involves the merits if it finally determines some substantial matter forming the whole or part of some cause of action or defense in the case.

366 S.C. 379, 387, 622 S.E.2d 546, 551 (Ct. App. 2005) (internal citations and quotation marks omitted) (emphasis added); see also Foggie v. Gen. Elec. Co., 376 S.C. 384, 389, 656 S.E.2d 395, 398 (Ct. App. 2008) ("[W]here the circuit court's order constitutes a final decision on the merits and the remand order has no effect on the finality of the decision, the order is immediately appealable.") (emphases added).

This court followed the same analysis in Mungo v. Rental Uniform Service of Florence, Inc.:

This Court has held that an order of the circuit court remanding a case for additional proceedings before an administrative agency is not directly appealable.

However, if the circuit court's order is a final judgment, then it is immediately appealable. Generally, an order is a final judgment on one or more issues if it constitutes an ultimate decision on the merits. An order involves the merits if it finally determines some substantial matter forming the whole or part of some cause of action or defense in the case.

383 S.C. 270, 277-78, 678 S.E.2d 825, 829 (Ct. App. 2009) (internal citations and quotation marks omitted) (emphases added).[7] The more recent interpretation of section 1-23-390 in Brown and Mungo properly carries out the legislature's intent because allowing an immediate appeal of any ultimate decision on the merits gives the appellant an opportunity to prevent the decision from becoming the law of the case. See Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000) ("We will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention."); Foggie, 376 S.C. at 391, 656 S.E.2d at 399 (Pieper, J., dissenting) ("[T]he circuit court did not merely remand for further proceedings, but finally determined the defense of set-off or credit that ultimately will be binding on the parties and the Commission on remand.") (emphasis added).

In comparison to section 1-23-390, section 14-3-330(1) implicitly recognizes the danger of a ruling on the merits becoming the law of the case. Subsection (1) of section 14-3-330 allows the appellate court to review a ruling involving the merits when it is not appealed until final

judgment is entered on the entire case:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; *provided*, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from[.]

Although section 1-23-390 has no such safeguard, in Brunson v. American Koyo Bearings, this court recognized the similarities between the application of 14-3-330 and that of statutes governing administrative law matters:

South Carolina adheres to the final judgment rule. Accordingly, with certain exceptions, an appeal lies only from a final judgment. By statute, an appeal from an interlocutory order is permitted in certain circumstances, including when the order is one involving the merits ... [or] affecting a substantial right. Appeals from administrative bodies, such as the Workers' Compensation Commission, follow the same rules, such that an appeal will not lie from an interlocutory order of the Commission unless the order affects the merits or deprives the appellant of a substantial right. Orders from the Commission remanding a case to the single commissioner for further proceedings generally do not affect the merits and are not considered final.

367 S.C. 161, 165, 623 S.E.2d 870, 872 (Ct. App. 2005) (citations and quotation marks omitted) (emphases added).

In the present case, the majority relies on the supreme court's opinion in Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control, 387 S.C. 265, 692 S.E.2d 894 (2010), for the proposition that Brown is no longer good law. The majority reasons that because Charlotte-Mecklenburg overruled Canteen v. McLeod Regional Medical Center, 384 S.C. 617, 682 S.E.2d 504 (Ct. App. 2009) and because Canteen relied on the analysis in Brown, Charlotte-Mecklenburg implicitly rejected Brown. Significantly, our supreme court denied certiorari in Brown; and, on the same day the court issued its opinion in Charlotte-Mecklenburg, it denied certiorari in Mungo, specifically declining to address this court's analyses in Brown and Mungo when it had the opportunity to do so.

Further, the Charlotte-Mecklenburg opinion states that the opinions in Canteen and Oakwood Landfill, Inc. v. South Carolina Department of Health and Environmental Control are overruled only to the extent that they rely on section 14-3-330 to permit the appeal of an administrative agency's interlocutory order:

To the extent Canteen v. McLeod Reg'l Med. Ctr., 384 S.C. 617, 682 S.E.2d 504 (Ct. App. 2009) and Oakwood Landfill, Inc. v. S.C. Dep't of Health and Env'tl. Control, 381 S.C. 120, 671 S.E.2d 646 (Ct. App. 2009), rely on § 14-3-330 to permit the appeal of interlocutory orders of the ALC or an administrative agency, those

cases are overruled.

387 S.C. at 266, 692 S.E.2d at 894 (emphases added). Therefore, to the extent that Canteen and Oakwood do not rely on section 14-3-330, they are still good law. This includes their reliance on the definition of "final judgment" enunciated in Brown.

Because appeals from administrative bodies follow the same basic analysis in determining whether a ruling constitutes a "final judgment,"[8] it is safe to assume that Brown and those workers' compensation opinions citing Brown do not incorrectly rely on section 14-3-330, but rather those opinions properly rely on section 1-23-390 and simply follow the same jurisprudence employed to interpret section 14-3-330. In fact, Brown does not cite section 14-3-330, but explicitly cites section 1-23-390 and defines the term "final judgment" as used in that statute.[9] Charlotte-Mecklenburg, on the other hand, does not address the appealability of a circuit court order under section 1-23-390, but rather examines the appealability of an administrative agency's order under another statute.

Applying our published case law interpreting section 1-23-390 to the present case, I would hold the circuit court's decision that Claimant gave timely notice of her accidental injury to Employer is the type of judgment that is an ultimate decision on the merits because it finally determines some substantial matter forming a defense available to Sealed Air. See Brown, 366 S.C. at 387, 622 S.E.2d at 551 ("An order involves the merits if it finally determines some substantial matter forming the whole or part of some cause of action or defense in the case."). This is a final decision on the merits, and the remand language in the order has no effect on the finality of that decision. See Foggie, 376 S.C. at 389, 656 S.E.2d at 398 ("[W]here the circuit court's order constitutes a final decision on the merits and the remand order has no effect on the finality of the decision, the order is immediately appealable.").

The circuit court's order does not allow the Commission to pursue the issue of notice any further, and thus the decision is the law of the case unless immediately appealed. In other words, because the circuit court obviously meant for its decision on the issue of notice to be binding on the parties, it will become the law of the case if it is not immediately appealed. Cf. McLendon, 313 S.C. at 526 n.2, 443 S.E.2d at 540 n.2 (interpreting section 14-3-330 and holding that, like the denial of a motion for summary judgment, the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings and, therefore, is not directly appealable); Foggie, 376 S.C. at 391, 656 S.E.2d at 399 (Pieper, J., dissenting) ("[T]he circuit court did not merely remand for further proceedings, but finally determined the defense of set-off or credit that ultimately will be binding on the parties and the Commission on remand.") (emphasis added). In enacting section 1-23-390, the legislature could not have possibly intended to preclude the immediate appeal of a determination that will otherwise become the law of the case when such a result would deny parties to administrative proceedings a meaningful opportunity to be heard.

Accordingly, I would address the merits of the instant case.

[1] This court also distinguished Montjoy in Brown v. Greenwood Mills, Inc., 366 S.C. 379, 622 S.E.2d 546 (Ct. App. 2005). We discuss Brown below in light of the supreme court's recent decision in Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health &

Environmental Control, 387 S.C. 265, 692 S.E.2d 894 (2010).

[2] See also S.C. Code Ann. § 1-23-390 (Supp. 2010) (providing for review of a "final judgment" of the circuit court).

[3] We also relied on Green v. City of Columbia, 311 S.C. 78, 80, 427 S.E.2d 685, 687 (Ct. App. 1993) (holding an interlocutory order appealable because it "involved the merits," without specifically mentioning section 14-3-330), decided before Montjoy.

[4] We acknowledge that Brown does not specifically mention section 14-3-330. However, the Brown court's holding that the appealed order is a "final judgment" under section 1-23-390 is based on a finding that the order "involves the merits," a concept that is relevant only under section 14-3-330. 366 S.C. at 387, 622 S.E.2d at 551. Therefore, we believe Brown relies on section 14-3-330.

[5] Cf. McLendon v. S.C. Dep't of Highways & Pub. Transp., 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994) (interpreting S.C. Code Ann. § 14-3-330 (1976 & Supp. 1993) and holding that, like the denial of a motion for summary judgment, the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings and, therefore, is not directly appealable).

[6] Montjoy, 316 S.C. at 52, 446 S.E.2d at 618.

[7] The Mungo court found the circuit court's order, which reversed conclusions that the claimant had not proven a change of condition or entitlement to psychological benefits, was a "final judgment," despite the fact that it remanded the case to the single commissioner to determine the precise benefits owed to the claimant. 383 S.C. at 278, 678 S.E.2d at 829. The order decided "with finality whether [the] [c]laimant proved these changes in her condition" and, therefore, it was a "decision on the merits." Id. Notably, the supreme court denied certiorari in this case on April 8, 2010.

[8] Brunson, 367 S.C. at 165, 623 S.E.2d at 872.

[9] The majority contends that Brown found a decision of the Commission appealable and that Brown relied on section 14-3-330. This is inaccurate. Brown found a decision of the circuit court appealable under section 1-23-390. Significantly, Brown also relied on case law cited by our supreme court in Montjoy to interpret 1-23-390. See Brown, 366 S.C. at 387, 622 S.E.2d at 551 (noting that the two cases cited by Montjoy determined appealability according to whether the order in question involved the merits).

TURNER PADGET

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April 21, 2011

The Honorable Daniel E. Shearouse
Clerk, SC Supreme Court
P. O. Box 11330
Columbia, SC 29211

RECEIVED

APR 22 2011

S.C. SUPREME COURT

Re: Cathy C. Bone v. U.S. Food Service and Indemnity Insurance Company
of North America
Case No.: 2008-CP-32-2876
Supreme Court Tracking No.: 2010-171946
File No.: 200.439

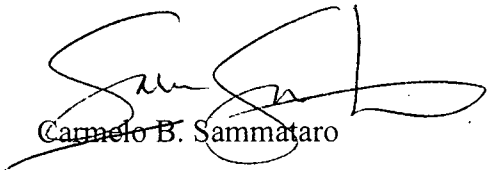
Dear Mr. Shearouse:

The purpose of this correspondence is to request protection for May 20-23, 2010. I will be out of town on a family vacation and, therefore, request that no hearing in the matter of which I am attorney of record be scheduled for the above dates. Please date stamp the enclosed copy of this letter and return it to me via the enclosed envelope. I greatly appreciate the Court's assistance and consideration in this matter. By copy of this letter, I am advising counsel of record of this request.

With kind regards, I am

Yours very truly,

TURNER, PADGET, GRAHAM & LANEY, P.A.


Carmelo B. Sammataro

CBS/tj

Enclosures

cc: William L. Smith, II, Esquire
Blake A. Hewitt, Esquire

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September 27, 2010

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse, Clerk
South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

RECEIVED

SEP 27 2010

S.C. SUPREME COURT

Re: Cathy C. Bone v. U.S. Food Service and Indemnity Insurance Company
of North America
Case No.: 2008-CP-32-2876
Case Tracking No.: 2009125246
File No.: 200.439

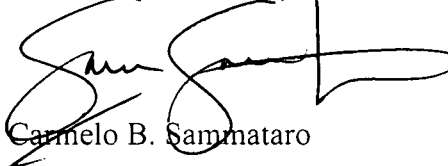
Dear Mr. Shearouse:

Enclosed please find the original and seven copies of the Reply to Return to Petition for a Writ of Certiorari and the original and one copy of our Proof of Service. Please file the original documents, and return clocked copies to me via our office courier. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Yours very truly,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Carmelo B. Sammataro

CBS/tj

Enclosures

cc: William L. Smith, II, Esquire
Blake A. Hewitt, Esquire
(via U.S. mail, w/enc.)

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Margaret Miles Bluestein
John Shannon Nichols
Stacy Elizabeth Thompson
John Dennis Delgado
Allison Paige Sullivan
Ashley Trout Thompson
Blake Alexander Hewitt

OF COUNSEL

O. Eugene Powell, Jr.

September 15, 2010

RECEIVED

SEP 15 2010

S.C. SUPREME COURT

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: Cathy C. Bone v. U.S. Food Services and Indemnity Insurance Company of America
Case Tracking No.: 2010-171946

Dear Mr. Shearouse:

Please find enclosed for filing the original and seven (7) copies of the *Return to Petition for a Writ of Certiorari* in regards to the above-referenced matter. I have also enclosed a proof of service upon counsel for the Petitioners. Please return the additional filed copies to me via our courier.

Thank you in advance for your attention to this matter.

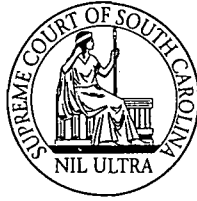
Sincerely,

Ashleigh W. Hair
Paralegal to Blake A. Hewitt
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC

/awh

Enclosure

cc: William L. Smith, II, Esquire
Michael E. Chase, Esquire
Carmelo B. Sammataro, Esquire



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

September 14, 2010

Michael E. Chase, Esquire
Carmelo B. Sammataro, Esquire
Turner, Padget, Graham & Laney, P.A.
P O Box 1473
Columbia, SC 29202

Re: Bone, Cathy C. v. U.S. Food Service
Case Tracking No. 2010-171946

Dear Counsel:

This office has received your Petition for Writ of Certiorari and Appendix in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,



CLERK

Bone, Cathy C. v. U.S. Food Service
Page Two
September 14, 2010

DES/lda

Enclosure

cc: Blake Alexander Hewitt, Esquire
William L. Smith, II, Esquire

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

Carmelo B. Sammataro

E-mail: SSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

September 13, 2010

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse, Clerk
South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

RECEIVED

SEP 13 2010

S.C. SUPREME COURT

Re: Cathy C. Bone v. U.S. Food Service and Indemnity Insurance Company
of North America
Case No.: 2008-CP-32-2876
Case Tracking No.: 2009125246
File No.: 200.439

Dear Mr. Shearouse:

Enclosed please find the following:

1. Original and seven copies of the Petition for a Writ of Certiorari;
2. Original and one copy of the Proof of Service;
3. Original and two copies of the Appendix;
4. Our check for the \$100 filing fee; and
5. Copy of our letter to South Carolina Court of Appeals filing copies of the Petition and Proof of Service.

Please file the original Petition, Proof of Service and Appendix, and return clocked copies to me via our office courier. Thank you for your assistance with this matter, and please contact me if you have any questions.

BUSINESS • LITIGATION • SOLUTIONS

Bank of America Plaza • 17th Floor • 1901 Main Street (29201) • PO Box 1473 • Columbia, SC 29202
Phone (803) 254-2200 • Fax (803) 799-3957 • turnerpadget.com

Turner, Padget, Graham & Laney, P.A.

September 13, 2010

Page 2

With kind regards, I am

Yours very truly,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Carmelo B. Sammataro

CBS/tj

Enclosures

cc: William L. Smith, II, Esquire
Blake A. Hewitt, Esquire
(via hand delivery, w/enc.)