

**RECEIVED**

**Dec 18 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Cynthia C. Dooley, Chair  
T. Scott Beck  
Melody L. James

---

WCC No. 1923480

---

Appellate Case No.: 2023-001264

---

Takara L. Stewart,.....Appellant,

v.

South Carolina CVS Pharmacy, LLC, Employer, and  
XL Insurance America, Inc., Carrier.....Respondents.

---

**RESPONDENTS' REPLY TO APPELLANT'S RETURN  
TO RESPONDENTS' MOTION TO DISMISS  
OR, IN THE ALTERNATIVE, MOTION TO STRIKE,  
MOTION TO COMPEL, AND MOTION TO STAY**

---

Michelle DeLuca Yarbrough  
(S.C. Bar No. 15603)  
Gallivan, White & Boyd, P.A.  
P.O. Box 10589  
Greenville, South Carolina 29603  
Telephone: (864) 271-5349  
Facsimile: (864) 271-7502

Attorneys for Respondents

Pursuant to Rules 240(c), (d), and (f) of the South Carolina Appellate Court Rules (“SCACR”), the undersigned, as attorneys for Respondents South Carolina CVS Pharmacy, LLC and XL Insurance America, Inc. (hereinafter “Respondents”), hereby reply to Appellant’s Return to Respondents’ Motion to Dismiss or, in the alternative, Motion to Strike, Motion to Compel, and Motion to Stay.

### **ARGUMENT**

In the Return, Appellant states “There was never a prejudice intent . . . to not include the Respondents [sic] Designation of Matter exhibits.” (Return pp. 1-2). She also states, “the exclusion of the Respondents [sic] Designation of Matter [was a] mere oversight.” (Return p. 2). Based on these statements, Appellant admits to violating the provisions of SCACR Rule 210(c) which requires the Record on Appeal (“ROA”) to include all matter designated to be included by any party under Rule 209 (Designation of Matter) and shall comply with the requirements of Rule 267 (Forms of Papers). For that reason, this Court should require Appellant to add all of the items from Respondents’ Designation of Matter to the ROA.

Appellant argues that “The Final Brief, pursuant to SCACR 211, is to be an exact replica of the Respondents [sic] initial brief submitted on October 30, 2024” to support an argument that Respondents could have already filed their Final Brief (Return p. 3). Appellant misinterprets the appellate court’s rule in that she fails to understand that Respondents are prevented from drafting their Final Brief until the ROA is correct because SCACR 211 requires Respondents to make specific citations, by page number, to the ROA. Because documents contained in Respondents’ Designation of Matter were not included in the ROA filed by Appellant, it is literally impossible for Respondents to make the required citations. Respondents are not trying to “circumvent punctuality” as Appellant claims, (Return p. 3); rather, Respondents are merely trying to comply

with the SCACR which requires them to make citations to the ROA instead of to the individual documents themselves like was done in the Initial Brief.

Appellant argues in her Return why the content of her ROA is correct. However, if you compare the ROA with the Respondents' Designation of Matter, you will still see that the following documents are not properly included the initial, updated, and second updated (filed with the Return) ROA:

- (1) **MISSING:** Appellant's Form 50, dated April 8, 2020 and February 24, 2021;
- (2) **MISSING:** Respondents' Form 51, dated May 8, 2020 and March 26, 2021;
- (3) **REFERENCED AS pp. 12-13 IN ROA BUT DOCUMENTS NOT ACTUALLY INCLUDED IN ROA:** The following excerpts from Appellant's and Respondents' APA Submissions and Exhibits:
  - a. Respondents' Brief Exhibit D p. 66, Exhibit E p. 83, and Exhibit G;
  - b. APA 2 pp. 3-4
  - c. APA 5, pp.12, 19-21, 23-24;
  - d. APA 12, pp. 37-38, 40; and
  - e. APA 13, pp. 46-47, 50-52;
- (4) **MISSING:** Transcript of Deposition of Dr. Ashley Hicks: pp. 5:25-6:2, 16:22-25, 17:1-21, 27:24 – 28:2, 8-10, 30:2-5; 32:17-25; 33:8-10, 23-34:4, 22-25, 36:3-37:17, 38:9-20, 39:3-13, 39:24-40:22, 40:10-12, 19-22, 41:9-23, 42:25 – 44;
- (5) **INCLUDED ENTIRE TRANSCRIPT INSTEAD OF THE LIMITED SELECTED PORTIONS:** Transcript of the hearing before Commission Aisha Taylor on June 3, 2021 pp. 28:16-25, 29:6-22, 35:23-36:6, 43:2-5, 43:23-46:19, 48:7-12, 49:10-51:15, 52:21-53:7, 54:14-22, 55:1-17, 56:18-20, 57:11-13, 17-24, 58:19-23, 61:22-62:8, 63:4-14, 23-24, 64:7-19, 66:20-22, 68:6-22, 76:17-77:6;
- (6) **MISSING** Defendants/Appellants' Brief to the Full Commission dated April 13, 2023; and
- (7) **MISSING** Defendants/Appellants' Reply Brief to the Full Commission dated May 2, 2023.

Finally, in her Return, Appellant failed to address Respondents' arguments concerning Appellant's introduction of new evidence. Accordingly, Respondents presume Appellants consent to the exclusion of every page of the 266 page ROA which was not included in Respondents' Designation of Matter or Appellant's Designation of Matter dated August 1, 2024. For that reason, this Court should require Appellant to remove the improper portions of the ROA for non-compliance.

**CONCLUSION**

In light of the foregoing, as well as the arguments addressed in its Motion previously filed, Respondents respectfully move for an Order of this Court striking the Record on Appeal for the above-cited deficiencies and dismissing the appeal. In the alternative, Respondents respectfully move for an Order of this Court striking improper portions of the Record on Appeal for Non-Compliance, requiring Appellant to add all of the items from Respondents' Designation of Matter to the Record on Appeal, and staying the time for Respondents to serve their Final Brief.

Respectfully submitted,

**GALLIVAN WHITE & BOYD, P.A.**



By: \_\_\_\_\_  
Michelle DeLuca Yarbrough  
(SC Bar No. 15603)  
Gallivan, White & Boyd, P.A.  
P.O. Box 10589  
Greenville, SC 29603  
Telephone: (864) 271-5349  
Facsimile: (864) 271-7502

Attorneys for Respondents,  
South Carolina CVS Pharmacy, LLC  
and XL Insurance America Inc.

Greenville, South Carolina  
December 18, 2024.

RECEIVED

Dec 18 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Cynthia C. Dooley, Chair  
T. Scott Beck  
Melody L. James

APPELLATE FILE NO.: 2023-001264  
SCWCC FILE NO. 1923480

Takara L. Stewart, .....Appellant,  
v.  
South Carolina CVS Pharmacy, LLC, Employer, and  
XL Insurance America, Inc., Carrier.....Respondents.

PROOF OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), I certify that I have served a true copy of the RESPONDENTS' REPLY TO APPELLANT'S RETURN TO RESPONDENTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO STRIKE, MOTION TO COMPEL, AND MOTION TO STAY in the above-referenced case has been served upon Takara L. Stewart, at her primary e-mail address listed as, [Takara.L.Stewart@gmail.com](mailto:Takara.L.Stewart@gmail.com), and by depositing a copy of it in the United States Mail, postage prepaid, on December 18, at, 108 E York Street, Suite 236, Savannah, GA 31401.



December 18, 2024  
Greenville, SC

Tawnya Queen, Paralegal  
Gallivan, White & Boyd  
PO Box 10589  
Greenville SC 29603  
Telephone: (864) 271-5421  
Facsimile: (864) 271-7502  
[tqueen@gwblawfirm.com](mailto:tqueen@gwblawfirm.com)

**From:** [Tawnya Queen](#)  
**To:** [takara.l.stewart@gmail.com](mailto:takara.l.stewart@gmail.com)  
**Cc:** [Michelle Yarbrough](#)  
**Bcc:** [8014 214 Takara L. Stewart CVS HEALTH WC Email 8014 214](#)  
**Subject:** Takara L. Stewart v. CVS HEALTH [IMAN-IMANMAIN.FID791965]  
**Date:** Wednesday, December 18, 2024 1:58:18 PM  
**Attachments:** [Respondents Reply to Appellants Return to Respondents Motion to Dismiss.pdf](#)  
[Proof of Service for Resp. Reply to App. Return to Resp. Mot. to Dismiss.pdf](#)

---

Good Afternoon,

Please find attached **RESPONDENTS' REPLY TO APPELLANT'S RETURN TO RESPONDENTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO STRIKE, MOTION TO COMPEL, AND MOTION TO STAY** in the above referenced appellate case. A copy is also being mailed to you.

Thank you,  
Tawnya Queen  
Paralegal to Michelle Yarbrough



**Tawnya Queen**  
Paralegal  
[tqueen@gwblawfirm.com](mailto:tqueen@gwblawfirm.com)

**Gallivan, White & Boyd P.A.**  
55 Beattie Place | Suite 1200 | Greenville SC 29601  
864 271 5421 Direct | [864 271 9580](tel:8642719580) Main | [864 271 7502](tel:8642717502) Fax  
**Mailing** Post Office Box 10589 | Greenville SC 29603

[vCard](#) | [BioURL](#) | [Website](#)

This message is from the law firm Gallivan, White & Boyd, PA and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.