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**Mar 07 2025**  
**SC Court of Appeals**

**THE STATE OF SOUTH  
CAROLINA  
In the Court of Appeals**

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**APPEAL FROM  
THE SOUTH CAROLINA  
WORKERS' COMPENSATION  
COMMISSION**

Aisha Taylor, R. Michael Campbell, II, T. Scott Beck, Commissioners

SCWCC File No. 2203275

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**APPELLATE CASE NO. 2023-001944**

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Amy Perez, Claimant,  
Appellant.

v.

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Aman Medical Transport, LLC, Employer, and SC Uninsured Employers'  
Fund, Carrier, Respondents.

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**APPELLANT'S PETITION FOR  
REHEARING**

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## LEGAL STANDARD

A petition for a rehearing should be granted whenever it shows that the Court has “overlooked” or “misapprehended” a point of fact or law. Rule 221(a), SCACR; *see also Protestant Episcopal Church in Diocese of S.C. v. Episcopal Church*, No. 2020-000986, 2022 WL 13560664, at \*1 (S.C. Aug. 17, 2022) (granting petition for rehearing in part); *S.C. Coastal Conservation League v. Dominion Energy S.C., Inc.*, 432 S.C. 217, 219, 851 S.E.2d 699, 700 (2020) (granting petition for rehearing).

## ARGUMENT

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Appellant hereby files this Petition for Rehearing on Opinion No. 2025-UP-071, which was filed on February 26, 2025. The Appellant respectfully requests a rehearing of the decision rendered in this matter based on the following.

**I. The Court Erred in Finding the Claimant’s Third Party Settlement is Barred by Notice as an Action was Never Commenced Against the Third Party and the Defendants were Notified of the Third Party Settlement.**

**A. An Action was not Commenced.**

The Court erred in applying Section 42-1-560 which only requires that, “Notice of the *commencement of an action* shall be given within thirty days thereafter to the Workers’ Compensation Commission, the employer and carrier upon a form prescribed by the Workers’ Compensation Commission.” (emphasis added). In this matter, there was no commencement of an action against the third party, as the matter was settled without litigation. Thereby, notice was not required to be provided to the Respondents because no

action had been commenced against the third party. Therefore, the Court's decision that the Claimant's third party settlement was barred due to failure to provide proper notice is contrary to the statutory requirements.

**B. Even Though Notice was not Required, it was Still Provided.**

In addition, the Respondents, were properly notified of the settlement. The Claimant notified the Respondents during the process of settling her UIM claim against the Employer's insurance carrier. Specifically, the Employer's acting agent imputed notice onto the Respondents through correspondence with the Employer's insurance company. The correspondence from United Specialty Insurance Co. explicitly referenced the settlement negotiations of the UIM claim with the Employer and the Employer's insurance carrier. The insurance company's correspondence states, "I do not see any support for personal property of Ms. Perez's that was destroyed in the loss. If you have some, please provide documentation of the damaged property. *Additionally, the named insured, AMAN Medical Transport, LLC is making a claim under the underinsured motorist property damage coverage for lost income resulting from this accident.*" (R. pp. 64-65). (emphasis added). This communication imputed notice to the Respondents regarding the settlement negotiations. Therefore, the Respondents were on notice when United Specialty Insurance Co. negotiated the UIM claim for the maximum \$25,000.00 in bodily injury and the maximum \$25,000.00 for property damage.

**II. The Appellant did not Compromise the Settlement.**

The Claimant did not elect a remedy and the case law supports this decision. S.C. Code Ann. § 42-1-560(b) applies to compromised settlements. *See Fisher v. S.C. Dep't of*

Mental Health, 277 S.C. 573, 575, 291 S.E.2d 200, 201 (1982). Here, the Claimant did not compromise a settlement as she obtained the maximum recovery available under the liability policies including, \$50,000.00 in coverage from the liability carrier, Liberty Mutual Ins. Co., \$25,000.00 (Liability BI) and \$25,000.00 (Liability PD) as well as the maximum \$25,000.00 (UIM BI).

The Claimant did not compromise the settlement and procured all the recovery possible under the policies, and, unfortunately, it will not cover her cognizable damages. The Claimant has over \$200,000.00 dollars in medical expenses from Darlington County EMS, McLeod Regional Medical Center, and McLeod Home Health. The Claimant had three operations, with retained hardware, and she was hospitalized for close to a month.

Obviously, liability is not an issue in this matter, and if the matter was to go before a jury, they would likely return an award for three times the medical damages. Three times the medical damages will not even compensate the Claimant for her cognizable damages to include but not limited to pain and suffer, loss of earning capacity, and incidental and consequential damages. The Claimant's conservative cognizable damages are at least \$600,000.00.

### **III. The Court has tried to Limit the Scope of Fisher.**

Judicial authority in South Carolina enables a party to defeat an attempt to force an election of remedies. *See Pamplico Bank & Trust Co. v. Prosser*, 259 S.C. 621, 193 S.E2d 539 (1972). The Court held the doctrine of the election of remedies may also be used against the defendant.

The Supreme Court has provided a procedural device to soften the harsh effects of

S.C. Code Ann. § 42-1-560. At least three theories have been developed to prevent the harsh effect of Fisher. In Lancaster v. Smith Co., 241 S.C. 451, 128 S.E.2d 915 (1962), when the plaintiff pursued the wrong remedy, the court reasoned, “If the party has no such remedy as he invokes, his action in pursuing it does not constitute an election. . . .” In Talley, if the claimant would have waited until they were disabled before filing a workers’ compensation claim, their third-party action would be barred by the statute of limitations. *See* Talley v. John-Mansville Sales Corp., 285 S.C. 117, 328 S.E.2d 621 (1985). Also, in Montalbano v. Automobile Insurance Co. of Hartford, Connecticut, 218 S.C. 367, 62 S.E.2d 915 (1962), the court showed its willingness to stretch this theory to prevent hardship for a party facing an election of remedies claim.

The legislature is also clearly trying to avoid the harsh effects of Fisher by its recent legislation. The Committee on Judiciary proposed the following amendment (JUD4321.004) to H.4321 bill in order for Section 42-1-560(b) to include “failure to notify the Workers’ Compensation Commission, the employer, and the carrier upon a form prescribed by the Workers’ Compensation Commission *does not* constitute an election of remedy.” (emphasis added). In this instance, the legislature is also trying to cure the hardship caused by the election of remedies even when an action has commenced without the employer or carrier’s knowledge.

### CONCLUSION

For the reasons stated herein, the Court should respectfully grant the Petition for Rehearing and hold that the Appellant is entitled to temporary total disability benefits from January 21, 2022, and continuing, ongoing treatment for her right lower extremity, an

orthopedic evaluation of her lumbar spine, and all applicable benefits under the South Carolina Workers' Compensation Act.

March 7, 2025

Respectfully submitted,

*Andrew D. Smith*

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**PROOF OF SERVICE**

I certify that I have served the Petition for Rehearing on The Honorable Jenny Abbott Kitchings, Clerk, South Carolina Court of Appeals, PO Box 11629, Columbia, SC 29211, Aman Medical Transport, LLC, Attn: Shannon Bennett and Rhonda Watts, 285 E. Billy Farrow Hwy, Darlington, SC 29532, SC Uninsured Employers' Fund, addressed to the attorneys on record, Samuel T. Brunson, Brunson Law Firm, PO Box 431, Florence, SC 29503, and Lisa C. Glover, SC Uninsured Employers' Fund, PO Box 1815, Lexington, SC 29071, and to Amy Bracy, Judicial Director, SC Workers' Compensation Commission, PO Box 1715, Columbia, SC 29202 by depositing copies in the United States Mail, postage prepaid, on March 7, 2025.

March 7, 2025

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