

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW OF COURT  
Ralph King Anderson, III, Administrative Law Judge

Case No.: 24-ALJ-09-04270-CC

South Carolina Department of Insurance,.....Appellant.

v.

Atlantic Coast Life Insurance Company and Southern Atlantic Re, Inc...Respondents.

**APPELLANT’S MEMORANDUM REGARDING APPEALABILITY**

Appellant/Petitioner South Carolina Department of Insurance (DOI or Department), files this memorandum in response to the Court letter of March 28, 2025 requesting that Appellant the address the issue of Appealability.

1. The current appeal is of a final order from the Administrative Law Court (ALC) issued by The Honorable Administrative Law Judge. The order is final; it is not an interlocutory order. *See Order Under Appeal 2*, at 23.<sup>1</sup>
2. The first paragraph of the Order states that the “matter comes before the South Carolina Administrative Law Court (Court or ALC) pursuant to a request filed by Atlantic Coast Life Insurance Company (ACL) and Southern Atlantic Re, Inc., (SAR) (collectively,

<sup>1</sup> *See Id.* at 2, stating “[a] hearing on the merits was held during January 15, 2025, during which time the Court orally extended its temporary stay of the December 11, 2024 Order until the Final Order on the matter is issued.”

Petitioners) to enjoin Respondent South Carolina Department of Insurance (DOI or Department) from enforcing its December 11, 2024 order in which the Director of DOI ordered that: 1) Petitioners remain under the administrative supervision of Michael J. FitzGibbons, 2) Petitioners notify all producers who sell Petitioners' products that it is prohibited from writing any new business effective December 31, 2024 and, 3) Petitioners cancel all new policies and new annuities after December 31, 2024, returning to the purchaser of a policy or annuity described above, within five (5) business days, all money received from the purchaser in connection with the transaction." *See Order Under Appeal 2*, at 1.

3. Accordingly, the only issue before the ALC was Petitioners' request for an injunction.
4. The Department's position is that the ALC made permanent and final findings in the order at issue.
5. Additionally, the Department's position is that the Honorable ALC Judge, in his order, (1) makes final determinations on issues that were not before the court; and (2) therefore, for which he has no jurisdiction and no jurisdictional authority. These issues are properly before the Court of Appeals.
6. For example, the Order issued by the ALC actually overturned the Department's April 10, 2024 Order in which the Department ordered that Petitioners ACL and SAR be placed under the Department's Supervision. However, Petitioners did not file a timely appeal on that issue, and thus they cannot now seek a change within their December 17, 2024 filing of appeal with the ALC from that April 10, 2024 order.
7. Importantly, the ALC also made findings regarding solvency of Petitioners, and this issue was not before the Court. For example, page 21 of the Order states, "The evidence does

not support the fact that Petitioners exhibit a negative surplus. Conversely, Mr. Cathcart testified that Petitioners are in good and stable financial health and that they have a positive cash flow. In fact, Petitioners' 2024 financial statements reflect a capital and surplus of \$100.7 Million. Additionally, Petitioners' parent company, A-CAP, also has 3.9 billion dollars of liquid assets which could be sold to meet any liquidity requirements" Issues relating to Petitioners' solvency should not have been considered because they were not before the ALC.

8. This appeal is on jurisdictional issues. The Department now is faced with the consequences that the ALC's final order prevents the supervision as ordered by the Department on April 10, 2024.

Respectfully submitted,

*/s/Janet Brooks Holmes*

Janet Brooks Holmes (SC Bar No.11826)

Joseph A. Catalano (SC Bar No. 102441)

The McKay Firm, PA

P.O. Drawer 7217 (29202)

3700 Forest Drive, Suite 404

Columbia, South Carolina 29204

(803) 256-4645

[janetholmes1@mac.com](mailto:janetholmes1@mac.com)

[jcatalano@mckayfirm.com](mailto:jcatalano@mckayfirm.com)

Attorneys for Appellant

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Other Counsel of Record:

Gwendolyn F. McGriff, Esquire  
General Counsel  
South Carolina Department of Insurance  
P.O. Box 100105  
Columbia, SC 29202  
(803) 737-6160  
[gmcGriff@doi.sc.gov](mailto:gmcGriff@doi.sc.gov)  
Attorney for Appellant

Brandon R. Gottschall  
**Hubbard & Gottschall Law**  
1320 Main Street, Ste. 300  
Columbia, SC 29201  
(864) 280-9840  
[brg@hglawsc.com](mailto:brg@hglawsc.com)  
Attorney for Respondents

Carl Micarelli, Esquire  
Robert Fettman, Esquire  
Eric Dinallo, Esquire  
**Debevoise & Plimpton**  
66 Hudson Boulevard  
New York, NY 10001  
(212) 909-6000  
[cmicarelli@debevoise.com](mailto:cmicarelli@debevoise.com)  
[rmfettman@debevoise.com](mailto:rmfettman@debevoise.com)  
[edinallo@debevoise.com](mailto:edinallo@debevoise.com)  
Pro Hac Vice Attorneys for Respondents