

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2022-000655

Emmitt R. Gunnells,Appellant,

v.

Galey & Lord Industries,Employer,

and

SC Insurance Guaranty Assoc., Respondents.

MOTION TO DISMISS APPEAL

Pursuant to Rule 240, SCACR, Respondents Galey & Lord Industries and the South Carolina Insurance Guaranty Association¹ hereby move this Court to dismiss the pending appeal.

The basis for the motion is as follows:

1. Mr. Emmitt Gunnells sustained a compensable injury on January 14, 2001. The matter proceeded to several hearings before the Commission and the Commission awarded lifetime indemnity benefits on January 7, 2003. The Commission subsequently addressed Claimant's attorney's entitlement to attorney's fees pursuant to an approximated life expectancy as provided by S.C. Code Ann. § 19-1-150 and *Glover by Cauthen & Suitt*

¹ The South Carolina Insurance Guaranty Association has assumed the role of the insolvent insurer in this action pursuant to statute. See S.C. Code Ann. § 38-31-60(b).

Const. Co., 318 S.C. 465, 458 S.E.2d 535 (1995) (permitting payment of attorney's fees deducted from the end of a lifetime award).

2. In compliance with the Commission orders, Defendants paid Claimant weekly indemnity benefits at the applicable compensation rate.
3. At some point after those benefits were paid, Defendants inadvertently increased the amount of the weekly checks, leading to an overpayment of benefits which Defendants sought to recover pursuant to S.C. Code Ann. § 42-9-210 (2015).
4. After a hearing before the Commission, the Single Commissioner agreed with Defendants and permitted the weekly benefits to be stopped in order for Defendants to recoup the overpayment.
5. Aggrieved by this decision, Claimant appealed the Single Commissioner's decision to the South Carolina Workers' Compensation Commission's Appellate Panel, which affirmed the Single Commissioner via Decision and Order on May 9, 2022.
6. Two days following the issuance of this Appellate Panel Decision and Order, Claimant filed a Notice of Appeal with the South Carolina Court of Appeals.
7. At the time of Claimant's injury in 2001, the Workers' Compensation Act provided that an appeal from a decision of the Workers' Compensation Commission is "to the court of common pleas of the county in which the alleged accident happened, or in which the employer resides or has his principal office." *See* S.C. Code Ann. § 42-17-60 (Supp. 2006).
8. In June 2007, the aforementioned statute was amended by Act No. 111 of 2007. The amended statute provides that an appeal from a decision of the Workers' Compensation

Commission would now be to the South Carolina Court of Appeals and no longer routes appeals to the court of common pleas. S.C. Code Ann. § 42-17-60 (2015).

9. The General Assembly's Act, Act No. 111, further provided that the amendment takes effect "upon approval by the Governor and applies to injuries that occur on or after that date." Act 11, 2007 S.C. Acts. 111.
10. Later in 2007, our Supreme Court issued *Pee Dee Regional Transportation v. S.C. Second Injury Fund*, 375 S.C. 60, 650 S.E.2d 464 (2007), in response to a party's Motion to Determine Jurisdiction. In that case, the parties questioned whether the proper appellate procedure for a January 2002 injury was to the court of common pleas or to the court of appeals. The Supreme Court reviewed the changes in the statute and determined that its language was "not ambiguous and clearly states" it only applies to injuries that occur on or after July 1, 2007. Accordingly, the "change regarding the appeal procedure, like all other provisions of the Act, is only applicable to Workers' Compensation cases in which the injury occurred on or after July 1, 2007," and jurisdiction over the appeal for a January 2002 injury "lies in the Court of Common Pleas," and the appeal pending at the court of appeals was dismissed. *Id.* at 62, 650 S.E.2d at 464.
11. The Supreme Court has more recently reaffirmed such interpretation. *See Skinner v. Westinghouse Electric Corp.*, 380 S.C. 84, 85 n.1, 668 S.E.2d 795, 796 n.1 (2008) ("Significantly, this appeal is not governed by current law. This case predated Act 111, 2007 S.C. Acts 111, which requires appeals from the Workers' Compensation Commission to go directly to the Court of Appeals if the injury occurred on or after July 1, 2007.").

12. In the present case involving an injury from January 2001, no perfected appeal was taken to the court of common pleas, and was only filed in the Court of Appeals. As this procedure is not in compliance with the Act's statutory framework in existence at the date of injury, the Court of Appeals must dismiss the appeal for lack of appellate jurisdiction.
13. The undersigned was listed as counsel of record in this matter on December 27, 2024.
14. The Court of Appeals issued a notice of oral argument in this matter on May 6, 2025, and that oral argument has been scheduled in Courtroom II at 10:40 AM on June 3, 2025.
15. Upon preparing for oral argument, the undersigned discovered the lack of appellate jurisdiction, and prepared this motion in order to timely apprise the court of this jurisdictional issue prior to oral argument.
16. Admittedly, the issue of appellate jurisdiction has not been raised in any of the briefing to-date. However, the undersigned directs the court's attention to this court's decision in *Levi v. N. Anderson Cty. EMS*, 409 S.C. 374, 762 S.E.2d 44 (Ct. App. 2014), in which it clarified that traditional issue preservation rules are not applicable to jurisdictional issues because "[a]n appellate court may dismiss an appeal or error proceeding on its own motion where it appears from the record that the court is without jurisdiction . . . even though no objection is raised by the opposite party." 409 S.C. at 379, 762 S.E.2d at 47 (quoting *Berry v. Zahler*, 220 S.C. 86, 89, 66 S.E.2d 459, 460 (1951)).
17. Because the underlying injury in this action occurred in January 2001, the controlling statutory language for appellate procedure is set forth in the statute as it existed prior to 2007, requiring that an appeal "shall be to the Court of Common Pleas." *Pee Dee Regional*, 375 S.C. at 61, 650 S.E.2d at 464 (referring to the prior version of section 42-17-60). *See also Wigfall v. Tideland's Utils.*, 354 S.C. 100, 111, 580 S.E.2d 100, 111

(2003) (“The term ‘shall’ . . . means that the action is mandatory.”). Accordingly, Respondents move that this appeal be dismissed.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC



May 22, 2025

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CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of May, 2025, caused to be served a copy of Respondents' Motion to Dismiss by electronic transmission a copy of same, as follows:

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Reply To

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May 22, 2025

RECEIVED

May 22 2025

SC Court of Appeals

VIA EMAIL and U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Emitt R. Gunnells v. Galey & Lord Industries and SC Insurance Guaranty Association
Our File No.: 2039.24002
Appeal No.: 2022-000655

Dear Ms. Kitchings:

Enclosed for filing please find the Galey & Lord Industries and the South Carolina Insurance Guaranty Association's Motion to Dismiss Appeal, and the Proof of Service concerning the same.

Our check in the amount of \$50.00 for filing the Motion will be sent via U.S. Mail with a copy of this letter.

If you have any questions, please contact me.

Very truly yours,

D. Tyler Hembree

DTH/ma

Enclosures

cc: Stephen J. Wukela, Esquire (via email only)