THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

The Honorable Melody L. James, The Honorable Aisha Taylor,
and The Honorable Cynthia C. Dooley
Commissioners for the Appellate Panel

Appellate Case No. 2025-000655

Christina Walthour, Claimant……...Respondent,

v.

Remedy Intelligent Staffing, Inc., Employer, and
XL Insurance America, Inc., Carrier……...Petitioners.

PETITIONERS' REPLY TO RESPONDENT'S RETURN TO PETITIONERS' PETITION FOR WRIT OF CERTIORARI

/s/Michael E. Patterson, Jr.
Michael E. Patterson, Jr. (SC Bar #78437)
Mingledorff & Patterson, LLC
245 Seven Farms Dr., Ste. 310, Box 13
Charleston, SC 29492
Telephone: (843) 471-1015
E-mail: michael@mptrial.com
Attorney for Petitioners

Other counsel of record:

James G. Christmas, Esq.
Robert Clyde Limehouse, III, Esq.
250 Mathis Ferry Rd., Ste. 102
Mount Pleasant, SC 29464
Telephone: (843) 900-1499
E-Mail: gc@gchristmaslaw.com; trey@gchristmaslaw.com
Attorneys for Respondent

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STATEMENT OF THE CASE

This is an appeal from the South Carolina Workers' Compensation Commission Appellate Panel (the "Appellate Panel"). On October 25, 2024, Petitioners timely filed a Notice of Appeal with the Court of Appeals for review of the Appellate Panel's decision and order. Justice Hewitt determined that the Appellate Panel Order was not a "final decision" as defined by S.C. Code Ann. § 1-23-380, and dismissed Petitioners' appeal. Petitioners filed for review, and a three judge panel from the Court of Appeals affirmed Justice Hewitt's Order. Subsequently, Petitioners timely filed a Writ of Certiorari, to which Respondent's filed a Return. This is Petitioners' Reply to Respondent's Return.

RESPONSE TO ARGUMENTS I – III

1. **Respondent's first argument is not relevant to the questions presented by Petitioners' Writ of Certiorari.**

The ultimate question presented by Petitioners' Writ of Certiorari is whether or not the Appellate Panel's decision was a "final decision" as defined by S.C. Code Ann. § 1-23-380, and if not, then whether the Appellate Panel's decision provides Petitioners with an adequate remedy as defined by S.C. Code Ann. § 1-23-380 and South Carolina case law? Respondent's first argument does not address any of these issues but rather focuses on a specific provision contained in S.C. Code Ann. § 42-17-60 that has no bearing on whether Petitioners' appeal should be dismissed or reinstated. The inclusion of Respondent's first argument appears to be an effort to color the opinion of the Court by disparaging Petitioners.

2. **Respondent's second argument fails to provide an accurate interpretation of South Carolina case law.**

Respondent first cites Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013) to support Respondent's position that the Appellate Panel's decision was not a final decision as

contemplated by S.C. Code Ann. § 1-23-380. However, there are two important pieces of information that are not included in Respondent's analysis.

The first important piece of information that Respondent failed to include is the fact that the decision in Bone was decided under a substantially different version of the South Carolina Workers' Compensation Act, Title 42, et seq., SC Code Ann., as well as a substantially different version of the South Carolina Administrative Processes Act, Title 1-23, et seq., SC Code Ann.

The Court explained the statutory changes, in the second footnote of Bone, stating,

> "Section 1–23–380 originally provided for review by the circuit court, but it was amended in 2006 to direct appeals to the Court of Appeals. The workers' compensation statutory amendment making this change (§ 42–17–60) was not enacted until 2007 and applies to injuries on or after July 1, 2007, which is after the date of Bone's accident." Bone, 404 S.C. at 74, 744 S.E.2d at 556 (2013).

Therefore, the Court has explicitly stated that the decision in Bone only applies to cases involving injuries that occurred prior to July 1, 2007. Thus, the decision in Bone is not applicable to the case at bar.

The second important piece of information that Respondent failed to include is the fact that despite the inapplicability of Bone to the present case, the decision in Bone was a plurality decision and not a majority decision. Therefore, the decision in Bone is not binding precedent.

Respondent next cites Davis v. S.C. Dep't of Corr., 444 S.C. 138, 906 S.E.2d 569 (2024), reh'g denied (Oct. 10, 2024), in support of Respondent's position. However, Respondent failed to address the portion of Davis that is relevant to the case at bar. Specifically, the Court in Davis stated the following,

> "In our view, the intent of the South Carolina General Assembly is to allow the Appellate Panel to ***administratively review a final "award" (grant or denial of a claim)*** by the single commissioner (under section 42-17-50), and then to permit, in turn, ***judicial review*** of the

"final agency decision" of the Appellate Panel ***in a direct appeal to the court of appeals*** (under section 1-23-380)." Id., (Emphasis added).

According to the Court in Davis, a final decision on the merits is one in which a decision is issued regarding the ***"grant or denial of a claim."*** Id.

There is no question that the Appellate Panel Order is a ruling on the "grant or denial of the claim." At the hearing before the single commissioner and the Appellate Panel, Petitioners contention was that Respondent's claim was not a compensable claim. Both the single commissioner and the Appellate Panel ruled against Petitioners and determined that Respondent's claim was compensable. Therefore, Petitioners have exhausted their administrative remedies, a final decision on the merits has been issued, and Petitioners are now entitled to judicial review by the Court of Appeals. Id., see also Davis, 444 S.C. at 153, 906 S.E.2d at 577 (2024).

Finally, Respondent cites to Price v Peachtree Elec. Servs., Inc., 405 S.C. 455, 748 S.E.2d 229 (2013) as further support for Respondent's second argument. However, Price is distinguishable both factually and procedurally, although that is not the most glaring reason why Price is inapplicable to the present case. As discussed above, there were significant changes to the South Carolina Administrative Processes Act and the South Carolina Workers' Compensation Act in 2006 and 2007. Therefore, as stated above, the Court determined that the changes would only apply to injuries which occurred on or after July 1, 2007.

In Price, the claimant suffered two injuries, one on December 9, 2002, and the other in November of 2003. Price v. Peachtree Elec. Servs., Inc., 396 S.C. 403, 405–06, 721 S.E.2d 461, 462 (Ct. App. 2011). Therefore, just as in Bone, the injury in question occurred prior to July 1, 2007, which makes Price as inapplicable to the present case as Bone is.

3. **Respondent's third and final argument fails to explain how the dismissal of Petitioners' appeal provides Petitioner with an adequate remedy.**

As an initial matter, Respondent inaccurately refers to the decision in Bone as a "majority opinion." As stated above, the decision rendered in Bone was a plurality opinion and thus is not binding precedent. See Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013).

Petitioners maintain that the Appellate Panel's decision was a final decision, however even if the decision was not a final decision, then Petitioners have been left without an adequate remedy.

It is important to remember that Petitioners denied the compensability of this case. If Petitioners' appeal is dismissed, then Petitioners will be forced to make the following payments:

1. Payment of back owed temporary total disability compensation to Respondent.

2. Begin the payment of ongoing weekly temporary total disability compensation to Respondent.

3. Payment of all causally related medical treatment in the past.

4. Payment for all causally related medical treatment until Respondent reaches MMI.

5. Payment of temporary total disability once Respondent reaches MMI, and all causally related medical treatment Respondent will need in the future.

Respondent's position is that only after all of this takes place will Petitioners have a right to appeal this matter. How does this solution offer Petitioners an adequate remedy? If we follow Respondent's logic, then procedurally, Petitioners cannot appeal until after Respondent has reached MMI.

For Petitioners to maintain their appeal they would not be able to settle the case, and therefore, once Respondent reaches MMI, Petitioners would be forced to a hearing before a Single Commissioner to determine Claimant's permanent partial or permanent total disability. To preserve Petitioners issues for appeal, Petitioners would have to argue that the claim should be denied in its entirety despite the fact that Claimant has received all necessary medical treatment

and temporary wage benefits. At that point, the Single Commissioner would rightfully question how Petitioners' arguments are not at this point moot?

Despite this excellent question, even if the Single Commissioner were to diligently entertain Petitioners arguments that the claim should be denied, and in fact Respondent should be required to reimburse Petitioners for all of the benefits outlined above, then how do the Parties and the Commission adequately and effectively relitigate the issue of compensability?

Assuming arguendo there is an answer to that question, and Petitioners finally get back in front of the Court of Appeals, what happens if the Court of Appeals agrees with Petitioners? What happens if the Court of Appeals agrees with Petitioners that the claim is not compensable?

Petitioners only remedy would be to look to Respondent for payment of everything listed above. This would be an absurd result, but more practically speaking it would put Respondent in an awful position in which Respondent could now owe Petitioners hundreds of thousands of dollars.

The only logical conclusion is that Petitioners do not have any adequate remedy and therefore, Petitioners' appeal should be reinstated.

CONCLUSION

For the reasons stated, Petitioners respectfully request the Court grant the Petition for a Writ of Certiorari.

Respectfully submitted,

/s/ Michael E. Patterson, Jr.
Michael E. Patterson, Jr. (SC Bar #78437)
Mingledorff & Patterson, LLC
245 Seven Farms Dr., Ste. 310, Box 13
Charleston, SC 29492
Telephone: (843) 471-1015
E-mail: michael@mptrial.com
Attorney for Petitioners

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PROOF OF SERVICE

I certify that I have served the Petitioners' Reply to Respondent's Return to Petitioners' Writ of Certiorari on Respondent, through her attorneys of record and the South Carolina Workers' Compensation Commission by depositing a copy of it in the United States Mail, postage prepaid, on June 2, 2025, at the addresses listed below; and, I further certify that on June 2, 2025, the Petitioners' Reply was served on all parties listed below via electronic mail.

James G. Christmas
Robert Clyde Limehouse, III.
250 Mathis Ferry Rd., Ste. 102
Mount Pleasant, SC 29464
gc@gchristmaslaw.com
trey@gchristmaslaw.com

SC Workers' Compensation Commission
Amy Bracy
Judicial Department
P.O. Box 1715
Columbia, SC 29202-1715
abracy@wcc.sc.gov

Supreme Court of South Carolina
The Honorable Patricia A. Howard
P.O. Box 11330
Columbia, SC 29211
supctfilings@sccourts.org

Court of Appeals of South Carolina
The Honorable Jenny Abbott Kitchings
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

(Signature contained on the following page.)

June 2, 2025

/s/Michael E. Patterson, Jr.

Michael E. Patterson, Jr. (SC Bar #78437)
Mingledorff & Patterson, LLC
245 Seven Farms Dr., Ste. 310, Box 13
Charleston, SC 29492
Telephone: (843) 471-1015
E-mail: michael@mptrial.com
Attorney for Petitioners