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SC Court of Appeals

**PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Opinion No. 6111
(S.C. Ct. App. Filed May 21, 2025)

Zachary Brown, Claimant Respondent.

v.

Southeastern Services, H.H.I., LLC, Employer Respondent,

and

and Uninsured Employers' Fund, Defendant Petitioner.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies the Petition for Rehearing was made and finally ruled upon by the Court of Appeals on June 27, 2025.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in dismissing the Fund's appeal as interlocutory by misapplying the Administrative Procedures Act's exception for immediate review under S.C. Code Ann. § 1-23-380, where delayed review risks irreparable harm to the Fund due to potential insolvency of the employer?
2. Does the Court of Appeals' decision conflict with precedent recognizing that jurisdictional issues, such as whether an employer is subject to the Workers' Compensation Act, warrant immediate appellate review due to their foundational impact on the case?
3. Does the Court of Appeals' restrictive interpretation of the APA's interlocutory exception undermine the Workers' Compensation Act's purpose of efficient resolution by barring immediate appeals of temporary benefit awards and jurisdictional findings?
4. Is the issue of whether a sole member of a single-member LLC, taxed as a sole proprietorship, counts as an employee for jurisdictional purposes under the Workers' Compensation Act a matter of substantial public importance warranting this Court's review?
5. Does the Court of Appeals' restrictive interpretation create a need for workers' compensation parties to file interlocutory appeals to preserve issues for review?

STATEMENT OF THE CASE

Procedural History

This case arises from a workers' compensation claim filed by Zachary Brown (Respondent) against Southeastern Services, H.H.I., LLC (Southeastern) before the South Carolina Workers' Compensation Commission. On July 20, 2022, the Commission, in a split decision, determined that Southeastern was subject to the South Carolina Workers' Compensation Act (the Act) because it regularly employed four or more employees, notably counting the *sole member* of the single-member LLC, which was taxed as a *sole proprietorship*, as an employee. ROA 51; Order of

Appellate Panel. The Commission awarded Respondent temporary disability payments and medical benefits. The South Carolina Workers' Compensation Uninsured Employers' Fund (Petitioner), responsible for paying benefits when Southeastern fails to do so, appealed to the Court of Appeals, arguing the Commission erred in its jurisdictional finding.

Neither Petitioner nor Respondent raised or addressed the issue of whether the Commission's Order was immediately appealable. Nevertheless, on October 24, 2024, the Court of Appeals, *sua sponte*, requested memoranda on this issue. Oral arguments were held on March 12, 2025. On May 21, 2025, the Court of Appeals dismissed the appeal as interlocutory, holding that the Commission's order was neither a final decision nor an interlocutory order requiring immediate review under S.C. Code Ann. § 1-23-380 (Supp. 2024) (Op. No. 6111). Respondent's petition for rehearing was denied on June 27, 2025.

Facts

Respondent sought workers' compensation benefits for an injury allegedly sustained while working for Southeastern. The Commission found Southeastern subject to the Act based on its determination that the sole member of the LLC, taxed as a sole proprietorship, counted as an employee, thus meeting the four-employee threshold under S.C. Code Ann. § 42-1-360 (2015). Petitioner asserts this finding is erroneous, as the sole member of an LLC taxed as a sole proprietorship should not be counted as an employee for jurisdictional purposes. The Court of Appeals did not address the merits of this issue, dismissing the appeal solely on procedural grounds.

Basis for Review

The Fund seeks certiorari on the grounds that the Court of Appeals' dismissal misapplies the Administrative Procedures Act (APA), conflicts with precedent on jurisdictional appeals, and

raises a significant public issue regarding the scope of the Workers' Compensation Act's jurisdiction over single-member LLCs.

ARGUMENT

1. Did the Court of Appeals err in dismissing the Fund's appeal as interlocutory by misapplying the Administrative Procedures Act's exception for immediate review under S.C. Code Ann. § 1-23-380, where delayed review risks irreparable harm to the Fund due to potential insolvency of the employer?

The Court of Appeals erred in holding that the Commission's order was not immediately appealable under S.C. Code Ann. § 1-23-380, which permits interlocutory review when "review of the final agency decision would not provide an adequate remedy." The Court acknowledged the Fund's argument that Southeastern's potential insolvency could prevent recovery of benefits paid if the jurisdictional finding is later reversed (Op. No. 6111 at 6). However, it misapprehended the inadequacy of delayed review by relying on *Moore v. North American Van Lines*, 319 S.C. 446, 462 S.E.2d 275 (1995), which addresses employer restitution after a final reversal, not the Fund's unique statutory role under S.C. Code Ann. § 42-7-200(C)-(D) (2015). The Fund's ability to recover from an insolvent employer is not guaranteed, risking irreparable harm to public funds. Rather than embrace judicial economy, the Court of Appeals has encouraged further litigation and longer lasting litigation (by either the Employer and/or the Fund "seeking reimbursement" from the Claimant *via* a lawsuit after an eventual final denial of benefits) (Op. 6111 at 6).

Moreover, the dismissal encourages protracted litigation, contrary to the Act's goal of "quick and efficient resolution" (*Russell v. Wal-Mart Stores, Inc.*, 426 S.C. 281, 826 S.E.2d 863 (2019)). By barring immediate appeals of jurisdictional findings, the decision forces the Fund and Employers and Carriers to pay benefits under a potentially invalid order, increasing costs and delaying resolution. This interpretation also risks ending direct appeals in workers' compensation coverage disputes, driving up settlement costs and undermining due process for all parties.

As a result of the decision of the Court of Appeals, Claimants will only be able to appeal outright denials of benefits, and any other matter (temporary total disability, medical treatment, and unfair compensation rate calculations) will have to wait, no matter how long it takes to achieve maximum medical improvement. Carriers who are successful in defending coverage on compensable claims at the Commission will be forced to keep claims open for years, filing mandatory and periodic forms with the Commission and paying defense counsel. Carriers who are not successful in defending coverage on compensable claims must wait, in many cases, years before having their appeals heard.

Most certainly, the Court of Appeals' decision will neuter the Fund's right to appeal subject matter jurisdiction. When such appeals are heard, the damage will already have been done, the benefits will be paid, and the employers will be insolvent, in all practicality. It will, as a matter of course, render the Fund's appeals of subject matter jurisdiction in any matter toothless. Certainly, payment of benefits to Claimants who are not entitled and from employers who are not subject to the Act and from public funds is not a purpose of the Workers' Compensation Act.

2. Does the Court of Appeals' decision conflict with precedent recognizing that jurisdictional issues, such as whether an employer is subject to the Workers' Compensation Act, warrant immediate appellate review due to their foundational impact on the case?

The Court of Appeals overlooked precedent recognizing that jurisdictional issues warrant immediate review due to their foundational impact. In *Green v. City of Columbia*, 311 S.C. 78, 427 S.E.2d 685 (Ct. App. 1993), the Court held that an interlocutory order is appealable if it "affects the merits or deprives the appellant of a substantial right." Similarly, *Canteen v. McLeod Regional Medical Center*, 384 S.C. 617, 682 S.E.2d 504 (Ct. App. 2009), defines an order affecting the merits as one that "finally determines some substantial matter forming the whole or part of some cause of action or defense in the case." The Commission's finding that Southeastern is

subject to the Act is a threshold jurisdictional issue that forms the *entire* defense to this case. That is, *prima facie*, a substantial right that has been affected. Denying immediate review risks forcing the Fund to comply with an order outside the Commission's authority, conflicting with these precedents.

Subject matter jurisdiction determines whether the South Carolina Workers' Compensation Commission has the legal authority to hear and decide a case. Without proper jurisdiction, any award of benefits would lack legal validity and could be overturned on appeal, wasting time and resources for all parties involved. Verifying jurisdiction helps filter out claims that do not meet the Act's criteria, reducing the risk of fraudulent or ineligible claims receiving benefits. For example, confirming whether a sole member of a single-member LLC qualifies as an employee under the Act is essential to ensure benefits are awarded only to those entitled, protecting the integrity of the workers' compensation system.

Employers and their insurers are obligated to provide benefits only for claims that fall within the scope of the Act. Establishing jurisdiction ensures that employers are not unfairly burdened with liability for non-covered claims, such as injuries outside the workplace or claims by non-employees. This maintains a balance between protecting workers and preventing undue financial strain on businesses.

The workers' compensation system is designed to provide swift and certain relief to injured workers while limiting employer liability to covered claims. Jurisdiction ensures that benefits are awarded only within the system's intended scope, preserving public trust in the system and preventing misuse of resources that could strain the state's workers' compensation fund or insurance markets.

Establishing subject matter jurisdiction is a foundational step in South Carolina workers' compensation cases to ensure legal validity, statutory compliance, fairness, and efficiency. Failing to confirm jurisdiction risks invalid awards (such as the one here), undermines the system's integrity, and could lead to costly legal challenges, making it essential to resolve before awarding benefits.

3. Does the Court of Appeals' restrictive interpretation of the APA's interlocutory exception undermine the Workers' Compensation Act's purpose of efficient resolution by barring immediate appeals of temporary benefit awards and jurisdictional findings?

The Court of Appeals' reliance on *Hilton v. Flakeboard Am. Ltd.*, 418 S.C. 245, 791 S.E.2d 719 (2016), and *Russell v. Wal-Mart Stores, Inc.*, 426 S.C. 281, 826 S.E.2d 863 (2019), to limit interlocutory appeals only "where the Commission's order creates an unreasonable delay in issuing a final order" (Op. No. 6111 at 5) unduly narrows the APA's exception. Section 1-23-380 permits immediate review when delayed review is inadequate, not solely for delay-related issues. By apparently categorically barring appeals of temporary benefit awards¹ and/or medical benefits, the decision risks flooding the system with unreviewable interim orders, undermining the Act's purpose of efficient resolution and creating uncertainty in workers' compensation law.

Barring immediate appeals of jurisdictional findings, including those tied to temporary benefit awards, forces parties to continue litigating potentially invalid claims until a final order is issued. This delays resolution, as parties must exhaust the administrative process before challenging jurisdiction in the courts. For example, if a sole member of an LLC is wrongly deemed

¹ In its Order and at oral arguments, the Court of Appeals made note of what it appeared to insinuate was but a relatively small sum of TTD benefits that the Commission awarded ("roughly \$3,100 for a closed period . . .")(Op. No. 6111 at 2), and which seemed to the undersigned to affect the Court's view of the legal issues at hand.

At oral arguments, the Court questioned Respondent's counsel as to whether Petitioner had paid the TTD award. Presumably by mistake, counsel for Respondent told the Court that Respondent had not paid the award. However, this was not the case. In fact, Petitioner had issued a check (check number 35117) on July 27, 2022, in the amount of \$3,211.07 to Claimant in care of his attorney's office.

an employee, the employer or insurer must comply with the award and proceed through hearings, potentially incurring significant costs, only to later have the case overturned on appeal. Allowing immediate appeals would resolve jurisdictional disputes early, reducing unnecessary proceedings and aligning with the Act's aim of efficiency.

If the jurisdictional findings underlying this award cannot be appealed promptly, employers may be forced to pay benefits for claims outside the Act's scope (e.g., for a non-employee like a sole proprietor misclassified as an employee). This undermines the Act's balance of providing prompt relief to workers while protecting employers from unwarranted liability, leading to inefficiencies and potential financial hardship.

Barring immediate appeals could render jurisdictional challenges moot or cause irreparable harm. For instance, if an employer pays temporary benefits under an erroneous jurisdictional finding and the claim is later dismissed, recovering those payments may be difficult or impossible, especially if the claimant is insolvent. Conversely, claimants may rely on temporary benefits only to face repayment demands if jurisdiction is later found lacking. Allowing immediate appeals mitigates these risks, ensuring disputes are resolved before significant resources are expended.

The Workers' Compensation Act aims to provide a predictable, streamlined process for resolving workplace injury claims. If jurisdictional errors cannot be corrected promptly, inconsistent or erroneous rulings may proliferate, eroding trust among employers, workers, and insurers. For example, uncertainty about whether single-member LLC owners are employees could lead to conflicting decisions across cases, creating confusion and undermining the Act's goal of uniform, efficient adjudication.

Jurisdictional issues, such as the classification of LLC members, have implications beyond individual cases, affecting small business owners, insurers, and state agencies. Barring immediate

appeals delays the establishment of clear legal precedent, prolonging ambiguity in the law. This is particularly critical for novel issues, like the employee status of sole LLC members, which require authoritative interpretation to guide future cases. Prompt appellate review by the South Carolina Supreme Court or Court of Appeals would promote consistency and efficiency across the system.

South Carolina courts have recognized that subject matter jurisdiction is a fundamental issue that can be raised at any time and is subject to immediate review (see *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E.2d 464 (2006)). Barring immediate appeals of jurisdictional findings in workers' compensation cases deviates from this principle, risking procedural unfairness and prolonging disputes that could be resolved quickly, thus frustrating the Act's purpose of efficient dispute resolution.

In conclusion, barring immediate appeals of subject matter jurisdiction and temporary benefit awards undermines the Workers' Compensation Act's purpose by delaying resolution, imposing undue financial burdens, risking irreparable harm, and eroding trust in the system. Allowing prompt appellate review ensures jurisdictional accuracy, conserves resources, and upholds the Act's goal of efficient, fair, and predictable resolution of claims.

4. Is the issue of whether a sole member of a single-member LLC, taxed as a sole proprietorship, counts as an employee for jurisdictional purposes under the Workers' Compensation Act a matter of substantial public importance warranting this Court's review?

The question of whether a sole member of a single-member LLC, taxed as a sole proprietorship, counts as an employee for jurisdictional purposes under S.C. Code Ann. § 42-1-360 is a novel issue with significant public importance. The Commission's split decision highlights the need for clarity, as it impacts the scope of the Act's coverage, the Fund's obligations, and the liabilities of small businesses across South Carolina. This Court's review is necessary to resolve this issue and prevent inconsistent application of the Act.

This issue touches on critical legal, economic, and policy considerations that affect a wide range of stakeholders. The classification of a single-member LLC owner as an employee under the Workers' Compensation Act has significant implications for legal compliance and financial protection. Single-member LLCs are common business structures, particularly for small businesses and independent contractors. Uncertainty about whether the sole member is considered an employee for jurisdictional purposes creates ambiguity for LLC owners, insurers, and regulators. A definitive ruling would provide clarity on whether such individuals are automatically covered by workers' compensation, must opt in, or are exempt, thereby ensuring consistent application of the law across South Carolina.

Small businesses, including single-member LLCs, are a cornerstone of South Carolina's economy. The determination of whether a sole member is an employee affects their obligation to purchase workers' compensation insurance, which can be a significant financial burden. If sole members are deemed employees, they may face increased costs, potentially discouraging entrepreneurship or straining small business finances. Conversely, if they are not considered employees, they may lack coverage for work-related injuries, exposing them to personal financial risk. A Supreme Court ruling would resolve this tension, balancing the need for financial protection with the economic realities of small business ownership.insureon.com

The classification of sole members of LLCs as employees or independent contractors has broader implications for labor law, particularly in the context of worker misclassification. States, including South Carolina, are increasingly scrutinizing worker classifications to ensure compliance with labor laws. A Supreme Court decision would set a precedent for how single-member LLCs are treated under the Workers' Compensation Act, potentially influencing how independent contractors and subcontractors are classified in other contexts, such as construction

or gig economy work. This is critical given the potential for hefty fines and penalties for misclassification.

Different states have varying rules regarding whether LLC members are included or excluded from workers' compensation coverage by default, and whether they can opt in or out. In South Carolina, the lack of a clear standard risks inconsistent application by lower courts, insurers, and administrative bodies. A Supreme Court ruling would establish a uniform standard, ensuring fairness for sole proprietors and LLC members across the state and reducing disputes over coverage.

The issue affects not only LLC owners but also clients, insurers, and state agencies. For example, clients may require sole proprietors to carry workers' compensation insurance to limit their own liability, even if not legally mandated. Insurers need clarity to underwrite policies accurately, and state agencies require guidance to enforce compliance. A definitive ruling would address these stakeholders' needs, reducing litigation and administrative costs while promoting public confidence in the legal system.

In conclusion, the South Carolina Supreme Court's review of this issue is warranted due to its far-reaching implications for legal clarity, economic stability, public policy, and fairness. Resolving this question would provide a clear framework for single-member LLCs, align state and federal regulations, and protect both business owners and the public interest. A decision would have a lasting impact on South Carolina's business environment and could influence national discussions on workers' compensation for small business owners.

5. Does the Court of Appeals' restrictive interpretation create a need for workers' compensation parties to file interlocutory appeals to preserve issues for review?

The dismissal risks precluding the Fund from challenging the Commission's jurisdictional finding upon final judgment, as delayed review may be deemed waived under *Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E.2d 543 (2000). Requiring the Fund to wait until maximum medical improvement to appeal forces unnecessary expenditure of public funds and risks rendering jurisdictional challenges moot, as benefits paid to an insolvent employer (as many uninsured employers teetering on the threshold of four (4) employees can often be) may be unrecoverable. This undermines the Fund's statutory role under S.C. Code Ann. § 42-7-200 and the APA's provision for interlocutory review.

If the jurisdictional issues cannot immediately be appealed, they may become the law of the case and unappealable at a later date. This will not stop the appeal of issues that the Court of Appeals determine to be interlocutory, as parties will still need to appeal them to preserve them for review. This does not engender judicial economy. In fact, it substantially hinders judicial economy.

CONCLUSION

For the foregoing reasons, the Fund respectfully requests that this Court grant the petition for a writ of certiorari, reverse the Court of Appeals' dismissal, and address the issues on the merits. Further, Petitioner respectfully requests that this Court clarify that jurisdictional findings in workers' compensation cases are immediately appealable under S.C. Code Ann. § 1-23-380 due to their substantial impact and the inadequacy of delayed review.

RESPECTFULLY SUBMITTED,



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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM
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Opinion No. 6111
(S.C. Ct. App. Filed May 21, 2025)

Zachary Brown, Claimant Respondent.

v.

Southeastern Services, H.H.I., LLC, Employer Respondent,

and

and Uninsured Employers' Fund, Defendant Petitioner.

APPENDIX

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and

and Uninsured Employers' Fund, Defendant Petitioner.

PROOF OF SERVICE

I hereby certify that I have served the Uninsured Employers' Fund's Petition for Writ of Certiorari and Appendix upon the attorneys of record for the Respondents *via* electronic service on July 25, 2025, as follows:

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July 27, 2025

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The Honorable Patricia A. Howard
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Re: Zachary Brown v. Southeastern Services, H.H.I., LLC
Appellate Case No: 2022-001153
HPLP File No.: 5415.00185

Dear Ms. Howard:

Enclosed please find the Uninsured Employers' Fund's Petition for Writ of Certiorari for filing regarding the above referenced matter. The Uninsured Employers' Fund is a state agency exempt from filing fees; therefore a filing fee is not enclosed.

Should you have any questions, please feel free to contact me.

Respectfully,

HOLDER PADGETT LITTLEJOHN + PRICKETT, LLC



Michelle A. Adams
Paralegal to Timothy B. Killen

TBK/maa

Enclosure

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The Honorable Jenny Abbot Kitchings (*via email*)