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**Sep 05 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM  
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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

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Zachary Brown, Claimant ..... Respondent.

v.

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

and

and Uninsured Employers' Fund, Defendant ..... Petitioner.

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**REPLY TO RETURN TO PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

- I. **The Opinion of the Court of Appeals presents special and important issues warranting this Court’s review, including a direct conflict with this Court’s precedent on the appealability of jurisdictional determinations in administrative cases.**
- II. **The Court of Appeals erred in dismissing the appeal as interlocutory, as delayed review under the APA would not provide an adequate remedy for the UEF.**

## ARGUMENT

- I. **The Opinion of the Court of Appeals presents special and important issues warranting this Court’s review, including a direct conflict with this Court’s precedent on the appealability of jurisdictional determinations in administrative cases.**

Contrary to Respondent’s assertions in his Return, the Opinion of the Court of Appeals does conflict with this Court’s precedent and raises novel questions of law that merit certiorari under SCACR Rule 242(b). Respondent mischaracterizes the Petition as relying solely on overruled Court of Appeals decisions like *Green v. City of Columbia*, 311 S.C. 78, 427 S.E.2d 685 (Ct. App. 1993), and *Canteen v. McLeod Regional Medical Center*, 384 S.C. 617, 682 S.E.2d 504 (Ct. App. 2009). While this Court overruled the broad “involving the merits” standard in *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep’t of Health & Env’t Control*, 387 S.C. 265, 692 S.E.2d 894 (2010), and clarified its inapplicability to APA-governed cases in *Bone v. U.S. Food Serv.*, 404 S.C. 67, 744 S.E.2d 552 (2013), the Petition does not hinge on those standards. Instead, it highlights a deeper conflict: the Opinion’s rigid application of the APA’s finality requirement undermines this Court’s recognition that jurisdictional determinations – particularly those mandating immediate expenditure of public funds – are inherently appealable when delayed review risks irreparable harm.

The Opinion creates uncertainty by treating the Commission’s order – which conclusively determined jurisdiction, compensability, and entitlement to temporary benefits – as purely

interlocutory, despite its directive for the Uninsured Employers' Fund (UEF) to disburse funds without an adequate mechanism for recovery. This conflicts with *Bone*'s policy-driven approach, where this Court rejected "unfairness" arguments but acknowledged the real-world implications of unreviewable interim payments. Here, the conflict is amplified because the UEF, as a public fund, faces unique risks not present in private carrier cases, raising a novel question: whether APA finality should yield when jurisdictional errors compel irreversible public expenditures. S.C. Code Ann. §§ 1-23-390 and 14-3-330 gives the Supreme Court the authority to hear this case ("The Supreme Court shall have appellate jurisdiction for correction or errors of law in law cases, and shall review upon appeal . . . [a]n order affecting a substantial right made in an action when such order . . . determines the action and prevents a judgment from which an appeal might be taken . . . ."). The Opinion of the Court of Appeals operates as a final judgment on the issue of appealability.

Moreover, Respondent's dismissal of "policy implications" as insufficient overlooks SCACR Rule 242(b)'s explicit inclusion of "special and important" reasons, such as matters of substantial public importance. The Opinion risks eroding the Workers' Compensation Act's purpose of protecting both exempt<sup>1</sup> employers and public funds under S.C. Code Ann. § 42-7-200 by allowing potentially erroneous jurisdictional findings to evade review until after payments are made. This is not mere delay; this is fiscal irresponsibility and a profound absence of equity, as the UEF's ability to recover from insolvent employers or claimants is unlikely and illusory, per *Moore v. North American Van Lines*, 319 S.C. 446, 462 S.E.2d 275 (1995) (permitting reimbursement but not guaranteeing it). To wit, though the Employer engaged counsel and counsel appeared at the hearing before the Single Commissioner, Employer has not filed a single piece of

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<sup>1</sup> SC Code Ann. § 42-1-150 specifically exempts all employers who regularly employ fewer than four (4) employees within the State, as does the employer herein.

paper as part of any appeal at any level. Granting certiorari would clarify this tension, promoting judicial economy and consistent application of the APA in workers' compensation appeals.

**II. The Court of Appeals erred in dismissing the appeal as interlocutory, as delayed review under the APA would not provide an adequate remedy for the UEF.**

Respondent's Return reiterates the Court of Appeals' narrow reading of the APA's exception to finality but fails to address how the Commission's order creates practical irreparability for the UEF. Under S.C. Code Ann. § 1-23-380, interlocutory review is warranted when final review offers no adequate remedy – a standard this Court has applied sparingly but decisively in cases of extraordinary harm, as in *Hilton v. Flakeboard Am. Ltd.*, 418 S.C. 245, 791 S.E.2d 719 (2016). In *Hilton*, the Supreme Court determined that the Commission's "order cannot stand," and the case was remanded. *Hilton v. Flakeboard Am. Ltd.*, 418 S.C. 245, 247, 791 S.E.2d 719, 719 (2016). Here, the UEF asserts that the split decision of the Commission is riddled with error affecting not only public funds but all of South Carolina's small limited liability companies. That order cannot stand.

Respondent analogizes to *Rose v. JJS Trucking, LLC*, 411 S.C. 366, 768 S.E.2d 412 (Ct. App. 2015), but that case presents a very different scenario. *Rose* involved a Carrier's transfer petition under S.C. Code Ann. § 42-1-415, not a public fund's jurisdictional challenge. In *Rose*, the court found no inadequacy because the employer could seek reimbursement later. Under Section 42-1-415, an employer may petition the Commission to transfer payment of benefits and to reimburse carriers where a statutory employer exercised due diligence in verifying a subcontractor's coverage. The statute requires that the statutory employer and carrier to "pay all benefits due under" Title 42 and to do so "in the first instance . . ." S.C. Ann. § 42-1-415 (A). Further, the UEF's statutory role as a safety net for public funds distinguishes it, as erroneous

payments deplete resources intended for statewide protection without a reliable recovery path. Respondent's reliance on *Rose* is misplaced.

The Commission's order is not merely procedural – it mandates immediate payment of temporary total disability (TTD) benefits and medical care, based on a disputed jurisdictional finding. As clarified in Respondent's Return (fn. 2), the UEF has paid TTD but not medical benefits, underscoring the ongoing harm: without review, the UEF must continue disbursing funds on a claim that should ultimately be non-compensable. This is not the “repeated unexplained ‘do-overs’” of *Hilton*, but an equivalent irreparable scenario where public funds are at stake. *Hilton v. Flakeboard Am. Ltd.*, 418 S.C. 245, 251, 791 S.E.2d 719, 723 (2016). Delayed review frustrates the Act's efficiency, as noted in *Bone*, by forcing the UEF to bear unrecoverable costs from likely insolvent parties and to only do so after what could be years of case administration. Respondent's claim that insolvency “does not make . . . the remedy inadequate” ignores this Court's practical lens in *Bone*, where equity weighs against claimants and payers alike. Here, the imbalance favors claimants, potentially encouraging premature claims without jurisdictional safeguards.

Furthermore, Respondent's policy arguments invert the Act's intent. Barring interlocutory appeals on jurisdictional issues does not promote economy; it stifles it by precluding early correction of errors that could terminate litigation. Nothing prevents preserving issues for final appeal, but where, as here, jurisdiction compels immediate action without adequate post-hoc relief, the APA's exception applies. This Court should grant certiorari to affirm that such orders are reviewable, aligning with the Act's goal of prompt, fair resolution for all parties.

### **CONCLUSION**

For the foregoing reasons, the Petitioner respectfully requests that this Court grant the Petition for a Writ of Certiorari.

RESPECTFULLY SUBMITTED,



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**PROOF OF SERVICE**

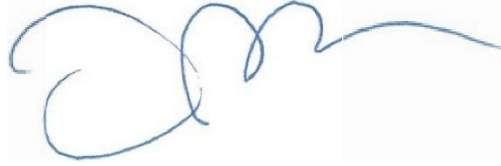
I hereby certify that I have served the Uninsured Employers' Fund's Reply to Return to Petition for Writ of Certiorari and Appendix upon the attorneys of record for the Respondents *via* electronic service on September 5, 2025, as follows:

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The Honorable Patricia A. Howard  
Clerk, South Carolina Supreme Court  
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Columbia, South Carolina 29211

**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 Reply to Return to Petition for Writ of Certiorari for filing regarding the above-referenced matter.

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

Enclosure

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