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**Oct 06 2025**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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Appellate Case Number 2020-001236

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Ryan Cook, Employee, Appellant,

-vs-

Condustrail, Inc., Employer, and Benchmark Insurance Company, Carrier, Respondents.

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**RESPONDENTS' PETITION FOR REHEARING**

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## PETITION FOR REHEARING

Pursuant to South Carolina Appellate Court Rules 221 and 240, Condustrial hereby petitions the Court for a rehearing of this matter following its Opinion dated September 10, 2025 (Unpublished Opinion No. 2025-UP-313). The purpose of a Petition for Rehearing under SCAR 221 is not to reargue the case in the appellate court a second time or regurgitate issues already argued/briefed. See Kennedy v. S.C. Retirement Systems, 349 S.C. 531, 564 S.E.2d 322 (2011). Rather, to prevail in its Petition for Rehearing a party must show that the Court overlooked or misapprehended a specific fact or argument. *Id.* For the ensuing reasons, Condustrial respectfully submits that the Court has misapprehended the issues/arguments presented in this case by conflating two distinct principles of law- the “premises rule” and the “going and coming rule-” only one of which can logically apply to confer coverage of this case under the South Carolina Workers Compensation Act (“Act”). As such, the Court should grant this Petition for Rehearing to amend its rulings accordingly.

## ARGUMENTS

### **I. The “premises rule” is simply not applicable to the instant case.**

As an initial matter, the Court holds that the private road owned by BP where Cook’s accident occurred was not “in practical effect” a part of Condustrial’s premises, nor was such road in close proximity to Condustrial’s premises. (Unpublished Opinion No. 2025-UP-313 p. 10). As such, the Court acknowledges the fundamental premise that Condustrial, as Cook’s “employer,” did not “own, maintain, or otherwise control” the premises where the accident occurred within the plain meaning of the "premises rule." See Williams v. South Carolina State Hospital, 245 S.C. 377, 140 S.E.2d 601 (1965)(if the employee is injured while passing, with the express or implied consent of the employer, to or from his work by way over the employer's premises, or over those of another in such proximity and relation as to be in practical effect a part of the employer's premises, then the injury is one arising out of and in the course of the employment as much as though it had happened while the employee was engaged in his work at the place of its performance)(emphasis added). Therefore, the Court’s own finding that Condustrial did

not own, maintain, or control the road where the accident occurred should be the end of the inquiry insofar as the “premises rule” is concerned with this case.

Yet, while acknowledging that Condustrial did not own, maintain, or control the premises where the accident occurred as Cook was going home for the day, the Court still held that BP’s private property was “imputed to” Condustrial’s property for compensation purposes under the “premises rule.” (Unpublished Opinion No. 2025-UP-313 at p. 4). The Court’s attempts to reconcile this incongruous result with citation to irrelevant South Carolina. Kilgore Group, Inc. v. S.C. Employment Security Commission, 313 S.C. 65, 437 S.E.2d 48 (1993) and Turner v. Medustrial Healthcare Staffing Service et al, Op. No. 2024-UP-110 merely address the employment relationship vs. independent contractor test. **However, the issue of Cook’s employment relationship with Condustrial was never disputed.** Likewise, Condustrial does not dispute that any injuries Cook may have sustained while on the clock actually performing his job duties at the BP plant would have been compensable against Condustrial. As such, the Court’s reliance on Kilgore and Turner supra for the proposition that a third-party like BP’s premises can be imputed to Condustrial’s premises for compensation purposes under the Act is misplaced.

Next, the instant case is distinguishable from Evans v. Coats & Clark, 328 S.C. 467, 492 S.E.2d 807 (Ct. App. 1997). In Evans, the Court reversed the Commission’s denial of benefits when the claimant was injured in the lobby of a building where her employer leased office space even though her employer did not own, maintain, or control that common area. In that case, the common area lobby of the building was undoubtedly in “close proximity and relation to” her employer’s office (the exact verbiage from “premises rule” adopted by the Court in Williams supra). As such, the lobby essentially became, in all “practical effect” her employer’s premises for application of the “premises rule.” See Davaut v. University of South Carolina, 418 S.C. 627, 795 S.E.2d 678 (2016) (quoting Williams supra). In addition, the employer in Evans created the risk where the accident occurred by choosing to lease space in an office building with multiple tenants sharing common areas with rites of passage. The Supreme Court specifically noted in Davaut that the “divided premises rule” is especially warranted when the employer creates the risk causing the accident. Davaut, 418 S.C. at 638. This impetus for the “divided premises rule” is not implicated in the instant case because there is no evidence Condustrial created any risk that actually caused the

accident. Condustrial had no control whatsoever over BP's private road where Cook was injured in an MVA over a mile from the plant where he performed his actual job duties.

Moreover, expansion of the "premises rule" to cover accidents occurring on third-party premises over which an employer exercised no maintenance or control and/or did not create the actual risk causing the accident, is also inconsistent with the most recent holdings on the bounds of the "premises rule" from the South Carolina Supreme Court. In Davaut the injured worker was struck by a vehicle while crossing a public street after leaving her place of employment in the library and in route to her car parked in a university owned lot at the end of her workday. The Court carved out a narrow exception for compensability of such accidents by adopting the majority "divided premises rule." The Court stated, "because this case implicates the divided premises rule in the context of an employer-maintained parking lot, we specifically hold that "employees who must cross a public way that bisects an employer's premises, and who are injured on that public way while traveling a direct route between an employer's ... facility and parking lot, are entitled to workers' compensation benefits." [internal citations omitted]. The Court specifically noted that the "divided premises rule" is especially warranted when the *employer creates the risk causing the accident*. See Davaut, 418 S.C. at 638. This impetus is simply not implicated in the instant case because there is no evidence Condustrial created any risk that actually caused Cook's accident.

Further, in Matute v. Palmetto Health Baptist, 391 S.C. 291, 705 S.C. 472 (Ct. App. 2011), this Court unequivocally rejected the notion that the "premises rule" extends to premises not owned, maintained, or controlled by the employer. The claimant in that case clocked out, exited the hospital where she was employed, and fell on a public sidewalk running adjacent to the hospital. The Commission denied the claim on the grounds that 1) claimant was not on the employer's premises at the time of her injury; 2) the accident did not fall within any recognized exception to the "going and coming" rule; and 3) there was otherwise no causal connection between the fall and her employment- i.e. the accident did not arise out of her employment. This Court affirmed, finding simply that "*Palmetto Baptist does not own, maintain, or control the sidewalk on which Matute fell.*" Matute 391 S.C. at 297. (emphasis added). The circumstances compelling compensability of this case are even more attenuated than those presented in Matute. Matute's accident at least occurred in an area *immediately adjacent* to her employer's

premises, whereas Cook's accident occurred on a private road at least a mile beyond the parking lot of the plant where he performed his job duties.

Finally, in facts remarkably similar to the instant case, the U.S. Fourth Circuit Court of Appeals held in E.I. DuPont De Nemours Co. v. Hall, 237 F.2d 145 (1956) that plaintiff's accident was not covered under the South Carolina Worker's Compensation Act when a) plaintiff was employed by the defendant's subcontractor at a facility located on property comprising two hundred thousand acres at the Savannah River Site (SRS); b) plaintiff finished his shift, clocked out, and was leaving for home in a friend's car when he was injured in a motor vehicle accident negligently caused by defendant's employee; and c) the accident occurred on a former public highway acquired by SRS for access to its facilities by its employees, vendors, contractors, and for other business purposes. Regarding the defendant's attempt to apply the premises rule to limit plaintiff's remedy to benefits under the Act, the Court stated, "we see no basis upon which it can logically be applied to the area of more than 200,000 acres, over which *the control exercised by defendant* was merely for security purposes, except as to the limited areas in which work was being carried on." *Id.* at 237 F.2d 149 (emphasis added). The defendant in that case at least exercised some measure of control over the area where the accident occurred, whereas Condustrial in the instant case exercised absolutely no control over BP's private road.

In sum, all South Carolina cases applying the "premises rule" to confer compensability have drawn a line between premises over which the employer exercises at least some modicum of control and those of a third party over which the employer has no control. Extension of the "premises rule" to the offsite premises of a third-party is not justified in this case, especially in light of the remoteness of the accident's location relative to BP's plant where Cook performed his actual work and Condustrial's lack of control over that area when Cook was leaving to go home for the day. Extension of the premises rule to the private property of a third-party over which a defendant employer has no control is contrary to well-established South Carolina law.

## **II. The Court misapplied the "going and coming rule" to confer compensability of this case.**

It is elementary that the "premises rule" only applies to accidents occurring on premises owned, maintained, or controlled, or in close proximity or relation thereto, by the Employer, whereas exceptions to the going and coming

rule apply to accidents occurring off the employer's premises. See Aughtry v. Abbeville County School District, 340 S.C. 604, 533 S.E.2d 885 (S.C. 2000) (the "going and coming rule" is not applicable because claimant's injuries occurred on the school districts premises" 533 S.E. 2d at p. 886); See also Davaut 418 S.C. at 634 ("the general rule in South Carolina is that an injury sustained by an employee *away from the employer's premises* while on his way to or from work does not arise out of and in the course of employment" [internal citations omitted]) (emphasis added). As such, if the "premises rule" is not applicable to the instant case, then the only theory under which Cook's accident can be compensable is via an exception to the "going and coming rule" generally barring coverage under the Act for accidents occurring on the way to or from work.

Here, the Court finds that "[t]he place of Cook's injury- the BP owned road Cook was instructed to use to access the work to which he was assigned by Condustrial's client – was brought within the scope of his employment with Condustrial as a requirement of his work." Therefore, the Court concludes that this case falls under the amorphous fourth exception to the rule known as the express or implied employment requirement. This is error. Condustrial initially reiterates the elementary premise that getting to and from one's work site is obviously an implied requirement of everyone's employment contract. As such, this exception must be strictly applied or else this exception alone would swallow the entire rule and render every other noted exception to the going and coming rule superfluous. See Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E.2d 384 (1987) ("**there would be nothing to prevent this line of reasoning from being extended to mean that since all employees must leave home in order to come to work, coming to work is an implied requirement of their employment. All accidents occurring on the way to work are compensable. This kind of reasoning would permit the exceptions to swallow the rule.**"). In Howell, the injured worker was struck by a vehicle while crossing the street in a crosswalk to enter his employer's plant. He alleged that crossing the road at that point was the only way he could get to work; thus, it was at least an implied requirement of his employment to do so. The Supreme Court rejected such a broad application of the express or implied requirement of the employment exception and denied compensability.

Further, the facts of the instant case are imminently distinguishable from the only South Carolina case applying this fourth exception to award compensability. In Eargle v. South Carolina Electric & Gas Co., 32 S.E.2d 240 (1944) the Court held that “under the unusual and peculiar facts” of that case, a maintenance worker instructed to report to work on Christmas morning to address an emergency situation at the plant was deemed covered under the Act via an express or implied requirement of his employment contract when he drowned while attempting to report to work via navigating boat in dense fog. Again, the risk of injury and death under such extreme conditions was created by the employer’s insistence that claimant report to work. There is certainly nothing in the instant case rising to the level of “unusual” and “peculiar” circumstances that warrants application of the express or implied requirement of employment exception. Cook was merely going home at the end of the work day in his own vehicle traveling on a private road owned by a third party. See Strickland v. King, 293 N.C. 731, 239 S.E.2d 243 (1977) (coverage under the North Carolina Workers’ Compensation Act is not applicable when employees were injured in a motor vehicle accident occurring on an employer owned road while departing for the day because such accident occurred a mile and a half away from the employer’s plant and the risks the employees were exposed to in going and coming from the plant on such road were not materially different than those encountered on a public highway).<sup>1</sup>

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<sup>1</sup> The South Carolina Worker’s Compensation Act was fashioned after the North Carolina act; therefore, the opinions of North Carolina courts construing its Act are entitled to great respect by South Carolina courts. Carter v. Penney Tire and Recapping Co., 261 S.C. 341, 200 S.E.2d 64 (1973).

In sum, for all the aforementioned reasons the Court’s application of the “implied or expressed requirement” of the contract of hire exception to the “going and coming” rule to award compensability of this claim is misplaced.

**CONCLUSION**

For all the aforementioned reasons, the Court should withdraw its Opinion and issue a substituted Opinion **AFFIRMING** the Commission’s denial of this claim.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "George D. Gallagher", with a long horizontal flourish extending to the right.

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October 6, 2025

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PROOF OF SERVICE

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I certify that I have served the Respondents' Petition for Rehearing by electronic mail on October 6, 2025, addressed to all attorneys of record as shown below:

The Honorable Amy Bracy  
Judicial Director  
S.C. Workers' Compensation  
[judicial@wcc.sc.gov](mailto:judicial@wcc.sc.gov)

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October 6, 2025



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SC Court of Appeals

October 6, 2025

VIA EMAIL: [CTAPPFILINGS@SCCOURTS.ORG](mailto:CTAPPFILINGS@SCCOURTS.ORG)

The Honorable Jenny Abbott Kitchings  
Clerk, SC Court of Appeals  
PO Box 11629  
Columbia, SC 29211

RE: **Ryan Cook v. Condustrail, Inc. 8200-0137**

*WCC No.: 1714378*

*Claim No.: BN1700005085*

*DOA: 09/27/2017*

*Our File No.: 8200-0137*

Dear Ms. Kitchings:

Please find enclosed our Petition for Rehearing in the above-referenced matter. A copy is in the mail along with our filing fee check for \$50.00.

By copy of this letter to the claimant's attorney, Malcolm Crosland, Esquire, I am serving him with a copy of this Petition.

Sincerely,



George D. Gallagher

GDG/rco

Enclosure

cc: Malcolm Crosland, Esquire (w/encl) via email  
Kevin Holmes, Esquire (w/encl) via email  
Amy Bracy (w/encl) via email  
Alina Childers (w/encl) via email  
Tom Sears (w/encl) via email