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Jan 02 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

WCC File No. 0100434

Emmitt R. Gunnells, Claimant,..... Appellant,

v.

Galey & Lord Industries, Employer, and Arrowpoint Capital Corporation, Carrier,
..... Respondents.

RETURN TO PETITION FOR REHEARING

D. Tyler Hembree
McAngus Goudelock and Courie, LLC
S.C. Bar No. 103108
Attorney for Respondents
P.O. Box 2980
Greenville, SC 29602
864-239-6824
tyler.hembree@mgclaw.com

INTRODUCTION

This Court issued an opinion dismissing the appeal of the Appellant on December 10, 2025. On December 22, Appellant filed a petition for rehearing, raising several arguments including (1) a request to transfer the appeal to the Circuit Court; (2) an ambiguity in the law allows for the notice of appeal to be filed in either court; and (3) Respondents' waived the jurisdictional arguments raised in the motion to dismiss the appeal. On December 23, the Court requested Respondents file a Return to the petition within ten days. Pursuant to Rule 221 of the South Carolina Appellate Court Rules, Respondents now submit this Return and request that the Petition for Rehearing be denied based upon the arguments below.

ARGUMENT

I. Rule 204, SCACR Does Not Apply To This Appeal

The transfer provision of the South Carolina Appellate Court Rules is inapplicable to this case. The rules provide that “in the event that the notice of appeal is filed in the wrong appellate court, the appellate court in which the matter is filed shall issue an order transferring the case to the appropriate appellate court.” Rule 204(a), SCACR (emphasis added). This rule cannot be viewed in a vacuum and must be analyzed within the context of the entirety of the appellate court rules. The scope of the appellate court rules is set forth at the outset of the rules, providing the separate parts of the rules including “Part II governs practice and procedure in appeals, petitions, and motions in the Supreme Court and the Court of Appeals.” Rule 101(a), SCACR (emphasis added). These two courts are the sole “appellate courts” of our state. The transfer provision, Rule 204, is found within that Part II of the appellate court rules. Therefore, the provision only applies to “appeals, petitions, and motions in the Supreme Court and the Court of Appeals” and does not apply to actions that should have been filed in the Circuit Court. Had this appeal been

improperly filed in the South Carolina Supreme Court, the provision would take effect and permit the appeal to be transferred to the South Carolina Court of Appeals. However, that is not the present case. Furthermore, the rules specifically define the Circuit Court as a “lower court.” *See* Rule 202(b)(1), SCACR. The Court’s opinion did not overlook or misapprehend any provision of law in this regard.

II. S.C. Code Ann. § 1-23-380(A)(1) Has No Effect on the Present Case

As an introductory point, Respondents question whether this issue in rehearing is properly preserved for consideration by the Court. Nowhere in the appellant’s prior filings has any reference been made to this statute. *See Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (“The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.” (quoting Jean H. Toal, *Appellate Practice in South Carolina* 309 (1999))).

Even on the merits, Appellant fails to correct or even address the fact that no appeal was perfected in the Circuit Court as required by the Workers’ Compensation Act. The Act is clear that the amendment to section 42-17-60—redirecting appeals to the Court of Appeals—only applies to injuries occurring on or after July 1, 2007. *See Pee Dee Regional Transportation v. S.C. Second Injury Fund*, 375 S.C. 60, 650 S.E.2d 464 (2007). Regardless of where the notice of appeal was filed, there is no appeal for the Court of Appeals to review if no appeal was perfected in the Circuit Court below. Even in *Pee Dee*, the appealing party was well-aware of their obligation to pursue the appeal in the Circuit Court and they perfected the appeal in both courts, which allowed the Circuit Court’s appeal to proceed after the issue was clarified by the Supreme

Court. Appellant did not perfect the appeal here, and this point should not be considered by the Court because it was not presented to the Court to be overlooked or misapprehended.

III. The Appellate Jurisdiction of the Court Cannot be Waived

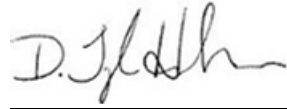
Upon the Respondents' discovery of the lack of appellate jurisdiction, the matter was brought to the Court's attention. Appellant cites Rule 208 of the Appellate Court Rules for the proposition that issues abandoned in briefing are deemed waived; however, none of the provisions specified there deals with jurisdiction of the Court. This issue was addressed by our Supreme Court soon after the 2007 amendments were made to the South Carolina Workers' Compensation Act. *See Pee Dee, supra*. The Supreme Court there determined that the statute is "not ambiguous and clearly states" its applicability to cases with injuries on or after July 1, 2007. *Id.* at 62, 650 S.E.2d at 464. The Court properly determined that it had no choice but to dismiss the appeal pending at the Court of Appeals. *Id.* *See also Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 97 fn. 3, 668 S.E.2d 795, 795 fn. 3 (2008) (reaffirming *Pee Dee*'s mandate that pre-2007 appeals continue to follow the appellate procedure in place at the time of the injury); *Chastain v. Spartan Mills*, 228 S.C. 61, 65, 88 S.E.2d 836, 837 (1955) (finding that an appellate court is bound to dismiss an appeal over which it has no jurisdiction); *Levi v. N. Anderson Cty. EMS*, 409 S.C. 374, 762 S.E.2d 44 (Ct. App. 2014) (permitting an appellate court to dismiss an appeal where it appears from the record that the court is without jurisdiction, regardless of whether the issue was raised by a party).

CONCLUSION

The petition for rehearing does not present any points of law that have been either overlooked or misapprehended by the Court. Respondents request that the petition for rehearing be denied, the appeal be dismissed, and the remittitur be issued.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC



January 2, 2026

D. Tyler Hembree
Post Office Box 2980
201 West McBee Avenue, 2nd Floor (29601)
Greenville, South Carolina 29602
(864) 239-4000
Attorneys for Respondents

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SC Court of Appeals

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.

CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of January, 2026, caused to be served a copy of our Return to Petition for Rehearing by electronic transmission a copy of same, as follows:

Stephen J. Wukela, Esquire
Wukela Law Firm
PO Box 13057
Florence, SC 29504-3057
stephen@wukelalaw.com



D. Tyler Hembree
McAngus, Goudelock & Courie LLC
Post Office Box 2980
201 West McBee Avenue, 2nd Floor (29601)
Greenville, South Carolina 29602
(864) 239-4000
Attorneys for Respondents



Reply To

D. TYLER HEMBREE
Direct Dial: (864) 239-6824
Tyler.Hembree@mgclaw.com

January 2, 2026

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SC Court of Appeals

VIA EMAIL

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 Return to Petition for Rehearing, and the Proof of Service concerning the same.

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)