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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Clifton B. Newman, Circuit Court Judge

Case No.: 2019-CP-40-04650

Appellate Case No.: 2023-001289

Tasha Jones; and Shaniqua Thompson.....Respondents,

v.

Lyndon Southern Insurance Company,.....Appellant.

RESPONDENTS' RETURN TO MOTION

The Respondents pursuant to Rule 240 (e), SCARC, hereby makes this return to the February 19, 2026, Appellant's Petition for Rehearing. The underlying appeal stems from this appellate court's decision affirming the decision of the trial court in the above-stated action. The basis of the return is the following: **1**) The Appellant failed to comply with the requirements of Rule, 221(a), SCARC. **2**) There is no material fact or principle of law that the appellate court overlooked and/or disregarded.

Pursuant to Rule 240 (e) and 240(c) 2, the Respondents submit the accompanying memorandum in support of their Return to Motion.

April 17, 2026.

s/ *Dietrich A. Lake*

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RESPONDENTS' MEMORANDUM IN SUPPORT OF DENIAL OF APPELLANT'S PETITION FOR REHEARING

COUNTER-STATEMENT TO MOTION PRESENTED

1) The Appellant's Petition for Rehearing from this appeal should be denied.

STATEMENT OF THE CASE

This is a petition for rehearing as a result of this appellate court affirming the decision of the trial court in the above-stated matter which arose from an automobile accident which occurred on **June 15, 2017**, and a failure to pay an Order of Judgment from **June 19, 2019**.

A trial was held the week of June 19, 2023, and the Appellant had an opportunity

to present all of its' evidence to the jury, present all of its' defenses to the jury, and present all of its' arguments to the court. At the conclusion of the jury trial on June 23, 2023, more than six (6) years after the underlying accident which gave rise to this litigation, the Respondents received a jury verdict in their favor. The Appellant, once again, had an opportunity to file any post-trial motion that it wanted to after the jury had reached its' verdict but remained silent. The Appellant verbally told the trial court that it voluntarily declined to poll the jurors about their verdict and verbally told the trial court that it voluntarily declined to make any post-trial motions before jury was the discharged. Finally, the Appellant did not request at the conclusion of the trial (by way of any verbal or written motion) that the trial court grant the Appellant additional time to make any post-trial motions.

The Appellant filed its' motion for new trials on the very last day that any post-trial motion could be filed, which was July 3, 2023. The most critical, noteworthy, and uncontradicted fact to this appellate court was the fact that the Appellant filed its' Notice of Appeal on August 11, 2023, which was six (6) months before the trial court issued its' final orders. The Notice of Appeal of August 11, 2023, that the Appellant filed with the appellate court **only** addressed the verdict form and the Form 4 Order of June 23, 2023; the trial court had not issued a final order on the Appellant's post-trial motions at the time the Appellant filed its' **only appeal** in this case. The Appellant knew that it erred by filing its' Notice of Appearance on August 11, 2023, before the final order had been issued by the trial court; so, the Appellant consented to a remand of the matter to the trial court on October 9, 2023. The Appellant knew or should have known at the time it consented to remand that a further appeal would be needed to address the trial court's

final order. The trial court heard oral arguments on the Appellant's motion on January 30, 2024; the trial court denied the Appellant's post-trial motions pursuant to the trial court's final Form 4 Order an Order dated March 27, 2024. The Appellant had an opportunity to file its' post-trial motions after the trial court's final decision on March 27, 2024, but once again, the Appellant failed to act in any way even though its' post-trial motions raised issues that had either never been raised and/or raised and ruled upon at the conclusion of the trial and/or in the trial court's order of March 27, 2024. The Appellant failed to file any other post-trial motions after the trial court's Order of March 27, 2024, and the Appellant failed to request that the trial court reconsider and/or raise and rule upon any parts of the Order of March 27, 2024. **The Appellant never appealed the trial court's final Order of March 27, 2024**.

This appellate court issued its decision almost nine (9) years after the accident which gave rise to the underlying litigation on January 21, 2026. The Appellant timely filed its' corrected Petition for hearing on February 27, 2026. By letter dated April 13, 2026, this appellate court requested that the Respondents file a Return on the Appellant's Petition for Rehearing.

ARGUMENT

I

THE APPELLATE COURT SHOULD DENY THE APPELLANT'S PETITION FOR REHEARING FOR FAILURE TO FOLLOW THE RULE REQUIREMENT OF RULE 221, SCRAC.

Rule 221(a), SCACR clearly states in the last sentence that "A petition for rehearing shall not exceed fifteen (15) pages; the Appellant's Petition for Rehearing is a total of forty (40) pages including the exhibits (twenty-two [22] pages) and proof of

service (one [1] page). Rule 240(c), SCACR requires that "the pages of the motion or petition and all supporting documents shall be consecutively numbered;" Exhibit A of the Appellant's Petition for Rehearing is not numbered on some pages and is not consecutively numbered as required by the rule.

The Appellant again presented with the opportunity to comply with the rules enumerated in Rule 221(a) and Rule 240(c) but failed to do so again without explanation and/or approval from the court. The interpretation of this rule is no different from the Respondents' arguments made in their brief concerning how a rule or statute should be interpreted by the court. Our Supreme Court has consistently held that "if a rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary, and the stated meaning should be enforced. *Maxwell v. Genez*, 356 S.C. 617, 591 S.E.2d 26 (S.C. 2003). The court further stated in *Genez* that our courts should apply "the same rules of construction used to interpret statutes." Our courts have held that a South Carolina rule and/or statute should be interpreted according to its' "clear meaning."

Rule 221(a), SCACR is clear that the petition should not exceed fifteen (15) pages, and the Appellant's brief is almost three (3) times the amount allowed under the rule. Rule 240(c), SCACR is clear that the petition and all supporting documents be numbered consecutively. The Appellant's Petition for Rehearing does not address the previously stated errors by the Appellant, and the Appellant does not allege that this error arose from a lack of procedural unclarity; therefore, it appears that the Appellant believes that the rules do not apply to it so as long as its' repeated errors do not prejudice the Respondents. The Appellant repeatedly asserts that the Respondents

have not suffered from any prejudice from a case that has been ongoing since 2017; yet, the Appellant has not offered any evidence that the failure to pay the uninsured motorist benefits for almost nine (9) years to the Respondents is not prejudicial.

A denial of the Appellant's Petition for Rehearing is the appropriate remedy in this matter because the Appellant has not complied with the requirements clearly laid out in Rule 221(a) and Rule 240(c), SCACR. This appellate court has the discretion and authority to grant such a remedy as indicated in *Henning v. Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992), where a party did comply with the rules. The Appellant in this case clearly violated the page and format requirements of Rule 221(a) of Rule 240(c), and the court in *Henning* clearly states the rules "are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State." The Appellant seeks to put more information before this court than is allowed by the rules in an unfair attempt to sway the court by presenting more quantity than quality, which is no accident and/or inadvertent mistake by the Appellant based upon the Appellant's documented history of not complying with the rules to either timely preserve its' appeal in this matter and/or sign its' original Notice of Appeal; the rules are not mere technicalities.

ARGUMENT

II

THE APPELLATE COURT SHOULD DENY THE APPELLANT'S PETTION FOR REHEARING AS THERE IS NO MATERIAL FACT OR PRINCIPLE OF LAW THAT THIS APPELLATE COURT HAS OVERLOOKED AND/OR DISREGARDED

The Appellant's Petition for Rehearing merely attempts to re-argue the case and final brief rather than pointing out specific points that they allege were overlooked by

this court. The Appellant is essentially trying to convince this appellate court against that the Appellant's major appellate and preservation errors are somehow minor errors that should allow the Appellant to get another "bite at the apple." The Appellant's petition is actually silent as to what specifically this appellate court overlooked and/or disregarded.

Rule 221(a), SCACR clearly states … " a petition for rehearing shall be in accordance with Rule 240 and shall state with **particularity** the points supposed to have been overlooked or misapprehended by the court." Our Supreme Court has held fast to Rule 221(a) and has held that an appellant "must demonstrate the Court overlooked or misapprehended their argument." *Kennedy v. South Carolina Retirement Sys*., S.C. Sup.Ct. Order dated July 23, 2001. Furthermore, our Supreme Court has held that the true purpose of a petition for rehearing "is not have presented points which lawyers for the losing parties have overlooked or misapprehended, and the purpose of a petition for rehearing is not just to have the case tried in this court a second time." *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234 (S.C. 1933). Our Supreme Court in *Arnold* reasoned in the opinion that many of the petitions for rehearing "are filed just for delay;" furthermore, that many of the petitions "rehash" what has been said before in the briefs that has already been "considered" by the court. The reasoning in *Arnold* reflects that the granting of these petitions should be "rare" due to Appellants not showing with **particularity** the points supposed to have been overlooked or misapprehended by the appellate court.

The Appellant's Petition for Rehearing is a clear "rehash" of its' appellant's brief. The Appellant's brief and Petition for Rehearing address the fact that the Appellant made numerous errors in both preserving its' arguments for appellate review and in

perfecting its' appeal for all of its's post-trial motions that were not timely filed; furthermore, both the brief and petition allude to an allegation by the Appellant that the Respondents were not prejudiced by the Appellants' errors, though the Appellant offers no evidence that the Respondents were not prejudiced by the errors and conduct of the Appellant.

The heading for the Appellant's first argument is "any error by Lyndon was non-prejudicial and does not justify dismissal." The heading for the Appellant's second argument is "procedural unclarity does not justify dismissal." The acknowledgment by the Appellant of its' errors in this appeal is not new to this appellate court; the Appellant's errors in this appeal were clearly addressed in this court's opinion and this court clearly articulated that these errors was why the decision of the trial court was now the law of the case. The Appellant's first two arguments are nothing new to this court and the Appellant has not stated with specificity what exactly this appellate court overlooked and/or disregarded as the Appellant is "rehashing" these arguments in its' petition that it did in its' appellate brief. (Argument II of Final Appellant Brief.)

The Appellant's third argument is "Lyndon's appeal is plainly meritorious". Again, the Appellants Petition for Rehearing "rehashes" arguments that the Appellant made in Argument III of its' Final Appellant's Brief. Both the Appellant's Petition for Rehearing and appellate brief reuse and discuss "privity of contract" and discuss issues concerning whether there was a breach of contract and/or whether, or to what extent, either of the Respondents were entitled to punitive damages. There is nothing particularly new for this court to contemplate that has not already been considered by this appellate court; nothing was overlooked and nothing was misunderstood.

CONCLUSION

There are no material facts and/or principles of law that this appellate court overlooked in its' decision of January 21, 2025. The Appellant repeats the same arguments as indicated in the Appellant's Final Brief and addressed by this appellate court in its' decision; the Appellant's Petition for Rehearing points to nothing new and is a mere "rehash" of the Appellant's previous arguments. The Appellant addresses the procedural history of the case and appeal in its' petition; however, this is nothing new because there is a clear and documented record of what the Appellant did not do in the allotted time allowed under the rules. The Appellant addresses the Respondent's claims, damages, and judgments of the trial case in its' petition; however, this is nothing new because we saw the same thing in the Appellant's brief. Finally, the Appellant's Petition for rehearing does not comply with the requirements of Rule 221(a) and Rule 240(c) which addresses the limitation placed on the petition and the format of the Appellant's petition. The Appellant has failed to understand the law regarding issue preservation and appellate review; it is not the appellate court's responsibility to give the Appellant a second opportunity to litigate the case for a second time in the appellate court. *See*, *Arnold*. Rule 203 (b)(1), SCACR clearly states that "A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion …;" the Appellant was required to file an appeal of the

trial court's **final** Order of March 27, 2024 within thirty (30) days after that date pursuant to Rule 203(b)(1), SCACR and the Appellant failed to do so in this matter. This trial court is barred from considering the Appellant's appeal because the Appellant never appealed the final judgment of March 27, 2024 and this appellate court is further bared from considering the Appellant's appeal of the June 23, 2023 Form 4 Order because the Appellant never timely filed its' post-trial motions at the conclusion of the trial and before the jury was discharged; furthermore, the Appellant never requested additional to file any post-trial motions after the June 23, 2023 trial. Therefore, the Appellant's Petition for Rehearing should be denied as the Appellant did not show with any particularity the facts and/or point that this appellate court either overlooked and/or misunderstood when this appellate court addressed the fact that the Appellant failed to preserve the issues for appellate review and failed to perfect its' appeal for review by this appellate court.

Respectfully submitted,

April 17, 2026.

s/ *Dietrich A. Lake*

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