THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Avery B. Wilkerson, Susan S. Barden, and
T. Scott Beck, Commissioners

Appellate Case No.: 2012-212389

Judy Marie Barnes, Employee,

Petitioner,

v.

Charter 1 Realty, Employer, and Technology Insurance Co. Amtrust South, Carrier,

Respondent.

BRIEF OF THE PETITIONER

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STATEMENT OF THE ISSUE ON APPEAL

I. Whether this Court should reverse the decisions below because an employee who suffers injuries when she trips and fall hurrying to perform work-related duties satisfies the requirement that the accidental injury arise out of and in the course of the employment?

STATEMENT OF THE CASE

On September 2, 2008, Judy Barnes, filed a W.C.C. Form No. 50 alleging she sustained an accidental injury to her left leg, hip, arm, and shoulder arising out of and in the course of her employment on July 8, 2008. (App., p. 20). On October 8, 2008 the Respondents filed a W.C.C. Form No. 51 denying Barnes sustained a compensable accidental injury. (App., p. 23).

On December 10, 2008, a hearing was held in Beaufort County before Commissioner Derrick L. Williams. On January 13, 2009, Commissioner Williams filed a Decision and Order finding and ruling that Barnes had failed to prove a compensable injury. (App., p. 1 - 13).

On January 26, 2009, Barnes filed a W.C.C. Form 30. (App., p. 30). On May 27, 2009 the review was heard before an Appellate Panel of the Commission. On December 23, 2009, the Appellate Panel filed a Decision and Order affirming the Commissioner's decision. (App., p. 15 - 19).

On January 21, 2010, Barnes filed a Notice of Appeal to the South Carolina Court of Appeals. On January 25, 2012, the Court of Appeals issued an unpublished *per curiam* Decision that affirmed the decision of the Appellate Panel. (App., p. 316 – 317). On February 8, 2012, Barnes filed a Petition for Rehearing En Banc with the Court of Appeals. (App., p. 319 – 324). On May 31, 2012, the Court of Appeals denied the Petition for Rehearing. (App., p. 343).

On June 18, 2012 Barnes filed a Petition for Writ of Certiorari. On November 20, 2013 this Court granted the Petition.

FACTS

No one disputes Barnes tripped and fell on her employer's premises. No one disputes this occurred while Barnes was performing her assigned duties during her regular working hours. No one disputes that Barnes sustained very serious injuries. The dispute is whether there is a causal connection between the conditions under which Barnes' work was performed and her resulting injuries. The facts are admitted or established making the question whether Barnes' accidental injury was compensable a matter of law.

The only evidence about why or how Barnes tripped and fell came from her testimony. The Commission found, "[Barnes] was a credible witness. She had a 10 year work history with Charter One Realty and was known to be a dependable and loyal employee. [Barnes] did have some efficiency issues; however, based on all the employer witnesses' testimonies, she was a good employee." (App., p. 12, Finding of Fact No. 4; p. 16, Finding of Fact No. 4). The finding that Barnes was credible was not appealed. (App., p. 16, Finding of Fact No. 4).

After graduating college, Barnes began her career as an administrative assistant. (App., p. 40, line 22 to p. 41, line 2; App., p. 41 lines 5 - 16). She began working as an administrative assistant for the Respondent Employer in 1998. (App., p. 42, lines 14 - 18). She was the administrative assistant for three real estate agents. (App., p. 43, lines 5 – 7, 12 - 13). Her normal duties were communicating with buyers, sellers, attorneys, and other real estate agents,

researching taxes and regimes fees, designing brochures, helping with listing properties, and assisting with closing sales. (App., p. 43, line 16 to p. 44, line 24).

On July 8, 2008, in addition to her regular duties, Barnes was assigned to check the e-mails of one of her agents who was out of the office before her lunch break. (App., p. 46, line 25 to p. 46, line 5). At about 11:30 a.m., she remembered the assignment and, not knowing how long it would take to perform, was hurrying down the hallway to get to her agent's office, to use her agent's computer, to respond to her agent's e-mails. She tripped and fell while hurrying down the hallway. (App., p. 48, lines 1 - 2); p. 254, line 14). Barnes testified:

> I got up from my desk and was hurrying down the hall, because one of my three agents that I support and work for there, a lady named Betty, had asked me specifically to check her e-mail before I went to lunch, usually she is able to check her own, but she had a specific request and I remembered of course in time to scoot in there, get her e-mail and act on [it] if it was something I would recognize, if it were a client, a listing client or a transaction person or attorney or someone that needed to be answered, so my instruction was to check on those before I left for lunch ...

(App., p. 254, line 14 to p. 255, line 1). Barnes tripped and fell because she "was hurrying, in haste, and perhaps not negotiating otherwise, you know I was hurrying to try to get my work done." (App., p. 258, lines 5 - 8). The Commissioner found, "[Barnes] testified that she was hurrying and tripped and fell in the hallway." (App., p. 16, Finding of Fact No. 8). The finding that Barnes was hurrying when she tripped and fell was not appealed.

Hurrying not only contributed to why Barnes tripped and fell, it also contributed to the seriousness of the injuries she received. Barnes suffered multiple

fractures. She suffered a fracture of her left femur and hip that had to be surgically repaired with a fixation plate, rod, and screws. (App., p. 176). She additionally suffered a comminuted fracture of her left humerus and rotator cuff. (App., p. 176). The rotator cuff had to be surgically repaired by suturing the fragments together "bone to bone." (App., pp. 175 – 176, 185, 187).

Following her surgery and rehabilitation, Barnes' was not able to return to her job as an administrative assistant. (App., p. 21, lines 4 - 12; p. 56, lines 16 - 18).

ARGUMENT

I. This Court should reverse the decisions below because an employee who suffers injuries when she trips and falls hurrying to perform work-related duties satisfies the requirement that the accidental injuries arise out of and in the course of the employment.

As Professor Larson comments, "[t]he heart of every compensation act, and the source of most litigation in the compensation field, is the coverage formula." Larson's Workers' Compensation Law, § 3.01. Forty-three states, including South Carolina, adopted the British coverage formula requiring an accidental injury arise out of and in the course of employment. *Id.*. Section 42-1-160, S.C. Code Anno., 1976 as amended, provides:

> "Injury" and 'personal injury" mean only injury by accident arising out of and in the course of employment...

"Whether an accident arises out of and in the course of employment is a largely a question of fact for the Commission and the claimant bears the burden of proof," however, "[u]pon admitted or established facts the question of whether an accident is compensable is a question of law." Jordan v. Dixie Chevrolet, 218 S.C. 73, 77, 61

S.E.2d 654, 656 (1950); Douglas v. Spartan Mills, Spartex Div., 245 S.C. 265, 266, 140 S.E.2d 173 (1965). The problem, as Justice Bussey once commented, is "[w]hile there is agreement as to the proper rule, as usual, the difficulty arises in the application of the rule to the facts of a particular case." Carter v. Penney Tire and Recapping Co., 261 S.C. 341,345, 200 S.E.2d 64, 65 (1973).

A. The coverage formula is broadly construed in favor of coverage.

The construction of the coverage formula is at the heart of this appeal. All the provisions of the Workers' Compensation Act are broadly construed in favor of coverage because "...the Workmen's Compensation Act is a form of social legislation wherein and whereby the employer and employee surrender benefits previously enjoyed under the common law in exchange for other benefits provided under the Act." Bagwell v. Ernest Burwell, Inc., 227 S.C. 168, 171, 87 S.E.2d 583, 584 (1955). As this Court has previously instructed:

> The American concept of workers' compensation is founded upon the recognition of the advisability, from the standpoint of society as well as of employer and employee, of discarding the common-law idea of tort liability in the employer-employee relationship and of substituting therefor the principle of liability on the part of the employer, regardless of fault, to compensate the employee, in predetermined amounts based upon his wages, for loss of earnings resulting from accidental injury arising out of and in the course of the employment.

Case v. Hermitage Cotton Mills, 236 S.C. 515, 531, 115 S.E.2d 57, 66 (1960). "The employee receives the right to swift and sure compensation; the employer receives immunity from tort actions by the employee. This *quid pro quo* approach has worked to the advantage of society as well as the employee and

the employer." Parker v. Williams & Madjanik, Inc., 275 S.C. 65, 69-70, 267 S.E.2d 524, 526 (1980).

This Court has observed the broad construction specifically applies to the "arising out of and in the course of the employment" coverage formula. "It is the general policy in South Carolina to construe all provisions of the Workers' Compensation Act, including § 42-1-160, in favor of coverage, and any reasonable doubts are resolved in favor of the coverage." Davis v. S.C. Dep't of Corr., 289 S.C. 123, 125, 345 S.E.2d 245, 246 (1986). "Where employer and employee are subject to the compensation act, ... an injured employee should not be excluded from the benefits of the law upon the ground that the accident did not arise out of and in the course of his employment when there is substantial doubt (arising from the proven facts) of the propriety of such conclusion. These words are construed broadly and should continue to be so construed." Pelfrey v. Oconee County, 207 S.C. 433, 439, 36 S.E.2d 297, 299 (1945).

B. Barnes suffered an accidental injury.

The question presented is whether a trip and fall while hurrying to perform work-related duties is a compensable accidental injury. The answer to this question should begin with the word "accident." To constitute an accident "no slip, fall or other fortuitous event or accident in the cause of the injury is required; the unexpected result or industrial injury is itself the compensable accident." Sigmon v. Dayco Corp., 316 S.C. 260, 262, 449 S.E.2d 497, 498 (1994). *See also*: Hiers v. Brunson Const. Co., 221 S.C. 212, 70 S.E.2d 211 (1952); Colvin v. E.I. DuPont De

Nemours Co., 227 S.C. 465, 88 S.E.2d 581 (1955); Sturkie v. Ballenger Corp., 268 S.C. 536, 235 S.E.2d 120 (1977); Pee v. AVM, Inc., 352 S.C. 167, 170-71, 573 S.E.2d 785, 787 (2002). No one contends that Barnes expected or intended to suffer a severely fractured leg, hip, arm, and shoulder on the day she tripped and fell. Barnes clearly suffered an unexpected and unintended accidental injury. This Court should answer this question "yes." Therefore, the question can be narrowed to whether Barnes' accidental injury arose out of and in the course of her employment.

C. Barnes' accidental injury occurred in the course of her employment.

The term "in the course of" refers to the time, place, and circumstances under which the accident occurred. The term "arising out of" refers to the origin of the cause of the accident. Bickley v. South Caorlina. Elec. & Gas Co., 259 S.C. 463, 467, 192 S.E.2d 866, 868 (1972). The two parts of the phrase are not synonymous and both parts must exist simultaneously before a recovery may be made. Osteen v. Greenville County School Dist. 333 S.C. 43, 48, 508 SE2d 21, 28 (1998). No one contends Barnes was not on her employer's premises, during her regular working hours, and performing her assigned duties at the time she tripped and fell. Barnes' accidental injury clearly occurred in the course of her employment. This Court should answer this question "yes." Therefore, the question can be further narrowed to whether Barnes' accidental injury, that occurred in the course of her employment, arose out of her employment.

D. Barnes' accidental injury arose out of her employment.

This Court has applied a broad and inclusive definition of the term "arising out of" the employment since its decision in the case of Owings v. Anderson County Sheriff's Dep't, 315 S.C. 297, 299, 433 S.E.2d 869, 871 (1993):

> An injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal relationship between the conditions under which the work is to be performed and the resulting injury.

This definition is broad and inclusive and gets to the heart of what Professor Larson calls the "work connection" sought in the arising out of and in the course of coverage formula. Larson's Workers' Compensation Law, § 29.01. Nothing more is needed, it is broad and inclusive, and focuses on whether there is a relationship between the injured worker's injury and his or her work.

When this definition is applied to the admitted or established facts in this case, it leads to the conclusion Barnes' accidental injuries arose out of her employment as a matter of law. The conditions of the work Barnes was assigned to perform included a deadline. Barnes remembered her assignment about a half an hour before the deadline and, not knowing how long it take to perform, was hurrying down the hallway to her supervising agent's office to log onto her agent's computer and respond to her agent's e-mails before the deadline expired. The deadline caused Barnes to be hurrying down the hallway when she "stumbled and fell. ... I tripped and fell. I was in a hurry. I tripped and fell." (Supp. R. p. 48, lines 1 - 5).

Hurrying is what rationally connects Barnes' trip and fall to her employment. Hurrying explains both why she tripped and fell and why she sustained such

serious injuries. Hurrying is a fact of life in today's fast paced work place. This is especially true in businesses, like real estate agencies, where time sensitive communications are often exchanged electronically. On the long list of reasons for accidents, rational minds would have to agree hurrying has to be near the top of the list. To put the point simply, hurrying causes people to make mistakes and mistakes cause accidents.

Both the Commission and the Court of Appeals simply ignored this common sense and imminently rational connection between Barnes hurrying to perform her assigned duties by a deadline and her tripping and falling. Based on the admitted or established facts, this Court should reverse the decision and rule Barnes' trip and fall arose out of and in the course of her employment as a matter of law.

Barnes' is mindful that the broad and inclusive definition of arising out of the employment set forth above and used by this Court since 1993 is just the first sentence of an older and more restrictive definition first found in in the case of Eargle v. S.C. Electric & Gas, 205 S.C. 243, 32 S.E.2d 240, 242 (1944):

> [An accidental injury] arises 'out of the employment,' when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of' the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workmen would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood. It

> must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence.

This older and more restrictive definition was first found in the case of In Re Employers' Liability Assurance Corp., 215 Mass. 497, 102 N.E. 697 (1913) (also referred to as McNicol's Case).

Barnes does not shy away from this older and more restrictive definition. Barnes would argue, in addition to qualifying under the first sentence of Eargle, her accidental injuries also qualify under the sentences of Eargle that follow. Hurrying was a natural incident of Barnes' job at the real estate agency on the day in question. It should be contemplated or expected that real estate communications involving contracts, offers and counter-offers, or contingencies may require prompt responses. In such a work environment it should be contemplated or expected employees might have to hurry to complete a work assignments by a deadline on occasion. Barnes' injury had its origin in the hurried conditions under which she was performing her job at the time of her trip and fall. Hurrying was a contributing proximate cause of both why she tripped and fell and why she sustained such serious injuries. It would have been peculiar for Barnes to have been hurrying to complete a task unrelated to her job assigned by her supervising agent away from the office on her day off by a deadline. Barnes' trip and fall may not have been foreseen or expected, but, in hindsight, it flowed as a natural consequence of her hurrying to complete her assigned task by a deadline.

Barnes would further argue, however, the test ought not to be as restrictive as the older and more restrictive Eargle definition. Although this Court has not used the older, and more restrictive definition since 1993, it continues to be misapplied in decisions suggesting the injured worker must satisfy all of the tests following the first sentence to prove coverage. It is respectfully submitted this Court never intended such a restrictive definition. This Court should take this opportunity to explain all that must be shownis that, upon consideration of the circumstances, there is a causal connection between the conditions under which the work is performed and the resulting injury. This is the modern and inclusive test found in first sentence.

This Court should further explain the exclusions for risks that are not peculiar to the employment or that are common in the community have been abandoned in latter cases. The first court to abandon them was the Massachusetts Court that originated them in the first place. The Massachusetts Court abandoned them in favor of the broad definition, "[a]n injury arises out of the employment if it arises out of the nature, conditions, obligations or incidents of the employment; in other words, out of the employment looked at in any of its aspects." Caswell's Case, 305 Mass 500, 501, 26 N.E.2d 328, 330 (1940). This is very close to the modern and broad definition used by this Court since 1993 and urged by Barnes.

Caswell's Case was cited with approval by this Court in the case of Jordan v. Dixie Chevrolet, *supra*. 61 S.E.2d at 657. This Court described the new and broader definition in Caswell's Case as the "more modern view" because it "avoided the

paralyzing effect of the earlier decision in McNicol's Case requiring 'peculiar' exposure, and 'denial of compensation for common risks..." In Jordan it was an injured worker's curiosity in pulling the pin of a tear gas grenade that provided a work connection. In finding the case compensable, the Court did not suggest that curiosity is peculiar to the workplace and not common in the community at large. Rather, the Court recognized employees should be expected to be curious in the workplace too. While this Court did not overrule Eargle, finding the claim compensable in Jordan was the first step in this Court's long retreat from the requirement that an accidental injury be peculiar to the employment and not common in the community. *See generally*: Smith v. South Builders, 202 S.C. 88, 24 S.E.2d 109 (1943) (heat prostration); Allsep v. Daniel Const. Co., 216 S.C. 268, 57 S.E.2d 427 (1950) (horseplay); Hiers v. Brunson Const. Co., *supra.* (exposure to rain and cold); Portee v. South Carolina State Hospital, 234 S.C. 477, 131 S.E.2d 512 (1959) (allergic reactions); Lee v. Wentworth Mfg. Co., 240 S.C. 165, 125 S.E.2d 248 (1962) (infections); Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1964) (automobile accidents); Carter v. Penney Tire & Recapping Co., *supra.*, 200 S.E.2d 64 (third-party assaults); Kinsey v. Champion Am. Service Center, 268 S.C. 177, 232 S.E.2d 720 (1977) (co-employee assaults); Dickert v. Metropolitian Life Ins. Co., 311 S.C. 218, 428 S.E.2d 700 (1993) (sexual harassment); Simmons v. City of Charleston, 349 S.C. 64, 562 S.E.2d 476 (S.C. App. 2002), *cert. dismissed,* (spider bites); Ardis v. Combined Ins. Co., 380 S.C. 313, 669 S.E.2d 628 (S.C. App. 2009) (smoke asphyxiation). In each of these cases a work connection was otherwise found. This

Court should take this opportunity to explain the exclusions found in the older and more restrictive Eargle definition have been abandoned in later cases where a work connection is otherwise shown.

This Court should further explain what remains of the older and more restrictive definition in Eargle is best understood as *dicta* illustrating various non-exclusive ways a work connection can be shown. No one would argue an accidental injury that it is a natural incident of the work or the conditions under which the work is performed is not compensable, but that is not the only way a work connection can be shown. Many industrial accidents arise because of a confluence of circumstances that are not expected, and certainly not intended, by either the employer or the employee. To require that all accidental injuries be expected or contemplated would be inconsistent with the definition of an accidental injury as "the unexpected result" discussed above and is too restrictive. For example, no one would argue an expected tree falling on a lumberjack in the woods is not compensable, but that does not mean a tree falling and striking an employee performing his or her job at an industrial plant is not compensable. Similarly, no one would argue an accidental injury that is proximately caused by some risk inherent in the work, or hazard on the employer's premises, or caused by the employer's "fault" is not compensable, but that does not mean such a risk, hazard, or fault must be the sole cause of the employee's injury. Accidental injuries may have more than one concurrent proximate cause. What is required is a connection between the work and the accidental injury which can be shown in many ways in

addition to the illustrations provided. This Court has never said the illustrations are exclusive or that an injured worker must satisfy all of illustrations before a compensable injury can be shown. Coverage should be found if a work connection can be shown under the modern and inclusive definition found in the first sentence or under any of the illustrations that follow. This is consistent with the broad construction of the coverage formula embraced by this Court.

Perhaps the most troubling problem presented by applying these non-exclusive illustrations is that some of them are derived from negligence law. Negligence law is based on fault. The concepts of negligence and contributory negligence are irrelevant in workers' compensation cases. Jordan v. Dixie Chevrolet, *supra.* 61 S.E.2d at 656. "A basic purpose of the compensation law is to eliminate fault as a requisite to liability... Contributory negligence of a claimant also plays no part, or even his sole negligence. These concepts are difficult to one grounded in the principles of the common law, yet they control in the realm of workmen's compensation." Allsep v. Daniel Const. Co., *supra.* 57 S.E.2d at 429. Professor Larson comments:

> The right to compensation benefits depends on one simple test: was there a work-connected injury? Negligence, and, for the most part, fault, are not in issue and cannot affect the result. Let the employer's conduct be flawless in its perfection, and let the employee's be abysmal in its clumsiness, rashness and ineptitude; if the accident arises out of and in the course of the employment, the employee receives an award. Reverse the positions, with a careless and stupid employer and a wholly innocent employee and the same award issues. Thus, the test is not the relation of an individual's personal quality (fault) to an event, but the relationship of an event to an employment. The

> essence of applying the test is not a matter of assessing blame, but of marking out boundaries.

Larson's Workers' Compensation Law, § 1.03 (2005).

The decision below demonstrates how concepts of fault can be improperly interjected into the workers' compensation no-fault system. The Commission focused on the absence of any "fault," any defect or hazard in the hallway, and never considered whether the conditions under which Barnes' work was being performed may have also contributed to her injury. Hurrying to complete work-related duties by a deadline was the work connection in this case that contributed to Barnes' trip and fall. While the Commission never found Barnes caused or contributed to her own injury, the decision is replete with innuendos she was clumsy, failed to pick her feet up high enough, wore loose fitting shoes, or was dilatory in not performing her assigned earlier that day. Even if such a finding had been made, contributory or comparative negligence would be irrelevant because a work connection was otherwise shown.

E. A contributing personal risk does not defeat coverage where a work connection is shown.

Finding no "fault" with the floor, the Commission and the Court of Appeals jumped to the conclusion that Barnes must have suffered a fall solely attributable to personal risk, i.e.: an idiopathic fall. They never considered whether hurrying also contributed to Barnes trip and fall. The Commission's and the Court of Appeals' reliance on the case of Crosby v. Wal-Mart Stores, Inc., 330 S.C. 489, 499 S.E.2d 253, 256 (S.C. App. 1998), was misplaced In that case the worker was simply

walking on a level floor when she fell. She told her safety leader afterwards, "my leg just gave out." *Id.*, 499 S.E.2d at 254. In its initial unpublished decision, Crosby v. Wal-Mart Stores, Inc., Op. No. 95-UP-114 (S.C.Ct. App. filed April 24, 1995), the Court of Appeals noted the **only** work connection asserted by the claimant was she slipped and fell "on something." On remand the Commissioner specifically found there was no evidence the claimant slipped on any "substance, debris, or merchandise," did not know why she fell, and, **most importantly, that there no evidence her job duties were causally related to her fall.** On appeal following the remand, it was based on all three of these findings by the Commissioner that the Court of Appeals affirmed the denial of benefits based on an inference the fall was idiopathic. Unfortunately, this case has been misinterpreted, as in this case, to require that there be some "substance, debris, or merchandise" on the floor for a trip and fall to be compensable.

The facts in the present case are distinguishable. Barnes did not say she was just walking down a level hallway. Barnes said and the Commissioner found "she was hurrying and tripped and fell in the hallway." Barnes never said her leg gave out on her. As argued above, hurrying is what established a causal connection between the conditions under which Barnes was required to perform her work and her resulting injury. Hurrying was a causally related condition connected to her employment that was missing in Crosby.

Coverage should be only denied when a fall is purely personal or idiopathic. Not when the conditions of the work also contribute to the fall. Whether something

Barnes did or failed do, her own clumsiness, or her not being as young and spry as she once was may have contributed to her fall does not preclude hurrying from having been a concurrent contributing cause of her injuries. "The law does not weigh the relative importance of the two causes, nor does it look for primary and secondary causes; it merely inquires whether the employment was a contributing factor. If it was, the concurrence of the personal cause will not defeat compensability." Larson's Workers' Compensation Law, § 4.04. This Court should take this opportunity to clarify that an inference of an idiopathic fall will not defeat coverage when a work connection can be otherwise shown. In cases involving falls at work, it is only when there is no other evidence of a work connection that an inference of a personal risk will defeat coverage. Clarifying this distinction will help prevent fault from being improperly interjected into the workers' compensation no-fault system.

CONCLUSION

This Court should reverse the decision below and rule hurrying to complete an assigned task by a deadline is what establishes a connection between the conditions under which Barnes' work was being performed and her serious injuries as a matter of law. Barnes also urges this Court to clarify that the definition to be applied in determining whether an accidental injury arose out of and in the course of the employment is the modern, broad, and inclusive definition it has applied since 1993 that "an injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal relationship

between the conditions under which the work is to be performed and the resulting injury." This Court should also clarify that the exclusions unless the injury is peculiar to the employment or uncommon in the community have been abandoned in later cases where a work connection was otherwise shown. This Court should also clarify that the illustrations found after the first sentence of Eargle are *dicta* best understood as non-exclusive ways a work connection can be shown under the modern and broader definition. Finally, the Court should emphasize that the Commission and Courts must be vigilant not to not to allow concepts of fault or comparative fault be interjected into the workers' compensation system.

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PETITIONER,

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CHARTER 1 REALTY, Employer, and TECHNOLOGY INSURANCE CO. AMTRUST SOUTH, Carrier, Defendants

Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that he served the Brief of the Petitioner on Nancy Byars, Esquire by depositing a copy of it in the United States Mail, first class postage prepaid, on January 17th, 2014, addressed to Clawson & Staubes, LLC 126 Seven Farms Dr., Suite 200 Charleston, SC 29492-8144.

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January 17, 2014

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CERTIFICATE OF COUNSEL

The undersigned hereby certified that this Brief of the Petitioner complies with Rule 211(b), SCACR.

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