

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
COURT OF COMMON PLEAS

Honorable Thomas A. Russo

Case No. 2013-002491

**RECEIVED**

MAR 21 2014

**SC Court of Appeals**

Alexander Guice, ..... Appellant,

v.

US Food Service, Inc. and  
ACE American Insurance Company  
c/o Gallagher Bassett Services, Inc., ..... Respondents.

**RESPONDENTS' REPLY TO  
APPELLANT'S RETURN AND COUNTERCLAIM**

Respondents US Food Service, Inc. and ACE American Insurance Company c/o Gallagher Bassett Services, Inc. hereby respond to Appellant Alexander Guice's Return and Counterclaim ("Return and Counterclaim") to Respondents' Motion to Dismiss the appeal in the above-reverenced matter. Respondents were served with Appellant's Return and Counterclaim by mail on March 13, 2014.

First, Appellant has failed to counter Respondents' arguments that: 1) he has not exhausted his administrative remedies, pursuant to S.C. Code Ann. §§ 1-23-380 & 390; Nucor Steel v. South Carolina Pub. Serv. Comm'n, 312 S.C. 79, 439 S.E.2d 270 (1994), or 2) that the orders he is attempting to appeal are not final orders, pursuant to Bone v. U.S. Food Serv., 399 S.C. 566, 733 S.E.2d 200 (2012); Charlotte-Mecklenburg Hosp.

Auth. v. South Carolina Dept. of Health & Env'tl Control, 387 S.C. 265, 692 S.E.2d 894 (2010). Instead, his Memorandum With Citation of Authorities in Support of Appellant's Return and Counterclaim to Respondents' Motion to Dismiss argues the merits of his appeal, rather than respond to the substantive issues raised in Respondents' Motion to Dismiss. The closest Appellant comes to addressing the finality issue is to state, without any support whatsoever, that "the March 27 'letter' rendered by Mr. Cannon in fact had the weight of and was a 'Decision' which is appealable pursuant to Rule 201 SCACR." (Return p. 20). This assertion is incorrect, completely unsupported and, as such, should be rejected. See First Savings Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (failure to provide legal support for argument is deemed an abandoned of the issue).

Second, Appellant asserts that Respondents' Motion to Dismiss failed to comply with certain of this Court's rules regarding motions practice, in particular that the motion and attachments are not properly numbered and that Respondents did not file a separate memorandum. To begin with, Respondents are in compliance with Rule 240(c): the pages of the Motion to Dismiss are consecutively numbered and the exhibits are also numbered consecutively as Exhibits A-N. Respondents included a clearly defined "Argument" within their Motion, setting forth concisely the reasons why this appeal is not properly before this Court for appellate review, which includes citations to appropriate legal authority. Appellant's attempt to play a hyper-technical game of "gotcha" should be rejected. Appellate rules should not be interpreted "to create a trap for unwary lawyers." In re: November 4, 2008, Bluffton Town Council Election, 385 S.C. 632, 641, 686 S.E.2d 683, 688 (2009). Instead, to the extent this Court finds any

noncompliance with its rules, which Respondents dispute, this Court should deem the Motion sufficiently compliant. Respondents note that Appellant did not allege any prejudice to him or to this Court resulting from the alleged imperfections he attempts to raise.

Third, Appellant's Return and Counterclaim is a thinly-disguised attempt to have this Court decide not only the substance of this appeal, but also the merits of his appeal of the July 17, 2013 Commission Decision which he erroneously appealed directly to this Court and which has been remanded to the Circuit Court, where it remains pending. (Att O (Remand Order)). The fact that Respondents pointed out the fact that Appellant's appeal of the July 17, 2013 Commission Decision is pending before the Circuit Court does not somehow bestow jurisdiction over that appeal back in this Court, as Appellant appears to believe. Instead, Appellant's continual appeal of non-final orders and attempts to raise matters pending before other forums to this Court is indeed "a gross waste of the Court's, Agency's and parties' time, resources, and materials ..." (Return and Counterclaim, p. 21). This Court should reject Appellant's invitation to "act in a preemptive manner," (*id.*, p. 24), and decline to address the substance of either the instant appeal or the previously appealed and remitted July 17, 2013 Commission Decision.<sup>1</sup>

Finally, Respondents have not missed the deadline to file their initial brief and designation of matter. Respondents not only requested that this Court suspend the

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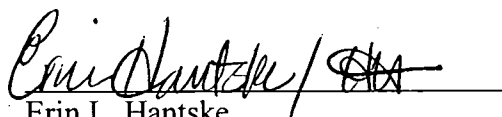
<sup>1</sup> Appellant erroneously argues that dismissing the instant appeal will result in a miscarriage of justice. (Return and Counterclaim, pp. 16-17). Although he is correct that the Commission's regulations allow for motions to be filed with the Commission, "[t]he Commission will not address a motion involving the merits of the claim ..." S.C. Code Reg. § 67-215(B). Thus, his Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments, clearly a motion involving the merit of his claim, was not proper and there has been no miscarriage of justice.

deadline by which they must file their initial brief until their Motion to Dismiss has been decided, but this Court's rules provide for the same. Rule 240(b), SCACR, provides, in pertinent part, that "[a] motion to dismiss an appeal .... automatically stay[s] the time limits for perfecting the appeal until the motion is decided." Appellant's arguments against the same are unfounded and unsupported. First Savings Bank, 314 S.C. at 363, 444 S.E.2d at 514.

### CONCLUSION

For all the reasons stated herein and in Respondents' Motion to Dismiss, Respondents move this Court to suspend the briefing schedule in this appeal until after the Motion to Dismiss has been decided, and to dismiss Appellant's appeal.

Respectfully submitted,



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*Attorney for Respondents*

March 18, 2014

**Att. 0**

# The South Carolina Court of Appeals

Alexander Guice, Employee, Claimant, Appellant,

v.

U.S. Food Service, Inc., Employer, and Gallagher Bassett  
Services, Inc., Carrier, Defendants, Respondents.

Appellate Case No. 2013-001804

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## ORDER

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Appellant has filed a notice of appeal from an order of the Full Commission of the South Carolina Workers' Compensation Commission. Because Appellant's injury occurred prior to July 1, 2007, Appellant should have filed this appeal with the Court of Common Pleas. *See Pee Dee Regional Transp. v. S.C. Second Injury Fund*, 375 S.C. 60, 62, 650 S.E.2d 464, 465 (2007). Accordingly, this Court transfers this appeal to the circuit court. *See* Rule 204(a), SCACR ("In the event 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."); *In re November 4, 2008 Bluffton Town Council Election*, 385 S.C. 632, 641, 686 S.E.2d 683, 688 (2009) (invoking Rule 204(a) and transferring the case to the circuit court because it was the proper appellate forum).

  
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FOR THE COURT

Columbia, South Carolina

cc:

Alexander Guice  
Erin Leigh Hantske  
Virginia L. Crocker

**FILED**  
2/6/13

THE STATE OF SOUTH CAROLINA  
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US Food Service, Inc. and  
ACE American Insurance Company  
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**PROOF OF SERVICE**

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I certify that I have served the **Respondents' Reply to Appellant's Return and Counterclaim** on Alexander Guice, pro se, by depositing a copy of it in the United States Mail, postage prepaid, on March 18, 2014, addressed as follows:

Alexander Guice  
P.O. Box 13281  
Tampa, Florida 33681



Rebecca G. Chapin  
Legal Assistant to Erin L. Hantske  
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**SC Court of Appeals**

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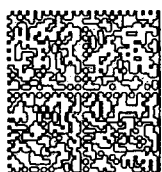
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**SC Court of Appeals**

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