

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Thomas A. Russo, Circuit Court Judge

Case No.: 2013-002491

Alexander Guice,Appellant,

V.

US Foodservice, Inc., and Ace American Insurance Co.
c/o Gallagher Bassett Service, Inc.,.....Respondents’.

**MEMORANDUM WITH CITATION OF AUTHORITIES
IN SUPPORT OF APPELLANT’S REPLY TO RESPONDENTS’ “REPLY” TO
APPELLENT’S RETURN AND COUNTERCLAIM
TO RESPONDENTS’ MOTION TO DISMISS**

LISTED BELOW, and in accordance with Rule 240(c)(2) SCACR, please find the citation of authorities used in support of the Appellant’s Reply to Respondents’ “Reply” to Appellant’s Return and Counterclaim to Respondents’ Motion to Dismiss, to include the citation of authority and corresponding page(s) the authorities can be reviewed as contained in the aforementioned motion..

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March 22, 2014

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**APPELLANT’S REPLY TO RESPONDENT’S “REPLY” TO APPELLANT’S
COUNTERCLAIM TO RESPONDENTS’ MOTION TO DISMISS**

PLEASE TAKE NOTICE that ALEXANDER GUICE, the APPELLANT, proclaims the pleadings in this case are being filed by Appellant in *Propria Persona*, wherein pleadings are to be considered without regard to technicalities. In particular, Respondent’s improperly filed a “Reply” to Appellant’s Return and Counterclaim to Respondent’s Motion to Dismiss; when in fact, Respondents should have filed a “Return” to Appellant’s Counterclaim and a Reply to Appellant’s Return to Respondent’s Motion to Dismiss. Appellant was served a copy of the Respondent’s “Reply” (Reply) to Appellant’s Return and Counterclaim dated March 18, 2014 via regular mail on March 22, 2014.

First, Rule 240(c)(2) states in relevant part that each motion SHALL include “a memorandum with citation of authorities in support of the motion.” Upon review of the

Respondent's Motion to Dismiss, the Court will confirm that Respondents failed to include a memorandum as to the citation of authorities in support of the Respondents Motion to Dismiss. All case law and authorities contained in Respondents Motion to Dismiss **was required** to be contained in a memorandum included with the Respondents aforementioned motion to dismiss; however, the Respondents failed to comply. Rule 240(g) SCACR establishes that "Failure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition." As such, Appellant continues to assert the Respondent's motion to dismiss must be deemed abandoned, due to the Respondents failure to include the required memorandum, and the time limits must not be stayed to file an initial brief due to the defective and abandoned motion to dismiss filed by the Respondents.

Second, Respondents assert that "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 A-N" (Reply p. 2). However, Rule 240(c) does not establish that supporting documents may be consecutively LETTERED. Further, based on the numerous unnumbered documents associated with each "letter" or "attachment", it was difficult to establish what particular document the Respondents were attempting to assert within each lettered attachment of the Respondents motion to dismiss. Again, Rule 240(g) clearly establishes that the failure of the moving party to perform any act required may be deemed an abandonment of the motion or petition. As such, for a second cause, the Court must deem the Respondents motion to dismiss abandoned, due to the failure of the Respondents to consecutively "number" their supporting documents or attachments, and the time limits must not be stayed due to a defective motion to dismiss filed by the Respondent.

Third, the Respondents "Reply" dated March 18, 2014 is also defective. In particular, Respondents have cited more case law and other authorities, but has again failed to include a memorandum as to the citation of authorities asserted in support of the Respondents "Reply". Respondents "Reply" has failed to comply with Rule 240(c)(2). Further, the Respondents "Reply" continues to provide consecutively 'lettered' attachments, instead of the required consecutively "numbered" attachments, in violation of Rule 240(c). Appellant asserts pursuant to Rule 240(g) the Respondents "Reply" must also be deemed abandoned, and the time limits must not be stayed to file an initial brief due to the defective motion(s) filed by the Respondents.

Fourth, the Respondents erroneously states, "...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 (Reply p. 2)"; however, the Respondents are incorrect. The aforementioned Appellant's "Memorandum with Citation of Authorities" which was included with Appellant's Return and Counterclaim made no arguments, as the same was included pursuant to Rule 240(c)(2).

Fifth, although a rebuttal or counter is not required to an "abandoned" motion, Appellant submits that Respondents improperly asserted the Appellant "failed to counter Respondents' arguments" (Reply p. 1) with regards to the March 27, 2013 "Decision" not being a final order, or that Appellant failed to exhaust the Appellant's administrative remedies. As contained in Appellant's "Return and Counterclaim" Appellant asserted the fact that: (1) Worker' Compensation Commission Jurisdictional Commissioner Andrea C. Roche failed to perform her adjudicative responsibilities, pursuant to S.C. Reg. 67-

707, and the like, and adjudicate the Appellant's "Motion for Reinstatement" dated March 4, 2013 which met the criteria for appeal regarding the March 27, 2013 decision per S.C. Code Ann. 1-23-380(5)(a); (2) Executive Director Gary M. Cannon (Mr. Cannon), who issued the disputed March 27, 2013 decision, lacked the authority to "hear and determine contested cases before the commission", which is reserved to commissioners only (S.C. Code Ann. 42-3-20(C)) which met the criteria for appeal regarding the same per S.C. Code Ann. § 1-23-380(5)(b); (3) Mr. Cannon's March 27, 2013 Decision prejudiced the substantial rights of the Appellant, based on the fact that the Motion for Reinstatement was never lawfully adjudicated by a commissioner, and the same met the criteria for appeal pursuant to S.C. Code Ann. 1-23-380(5)(a)-(f); and (5) the Act provides no administrative remedies with respect to decisions rendered by the executive director in a contested case before the commission which met the criteria for appeal regarding the same per S.C. Code Ann. § 1-23-380(5)(c) & (d).

Sixth, the Appellant is not attempting "to play a hyper-technical game of "gotcha" (Reply p. 2) with Respondents. Appellant would assert that it is the Respondents who continue to be evasive and demonstrate deliberate ignorance and negligence to the ADMITTED FACT that Respondents are in **willful violation** of S.C. Code Ann. § 42-9-260(F) and corresponding S.C. Reg. 67-506(D) of the Act. The Respondents were afforded another opportunity, pursuant to the Respondents "Reply" to:

(A) deny or counter the Appellant's assertion, and supporting documentation, that Appellant received temporary compensation payments for the first 213 days, to include the first 150 days, prior to the Respondents unlawful termination of Appellant's employment and compensation payments (Return and Counterclaim, p. 5, pp. 13), but failed to do so;

(B) deny or counter the Appellant's assertion that Respondents failed to lawfully request a required hearing before the commission, pursuant to S.C. Code Ann. § 42-9-260(F) and S.C. Reg. 67-506(E) of the Act, in particular, to obtain the required permission from the commission, via a required hearing, to terminate compensation payments to the Appellant (Return and Counterclaim, p. 6, pp. 15) but failed to do so;

(C) deny or counter the Appellant's assertion, and supporting documents and law, that the grounds used to discharge the Appellant's employment on November 2, 2005 were unlawful, but failed to do so (Return and Counterclaim, p. 4, pp. 7 and Exhibit 5);

(D) deny or counter the Appellant's assertion, pursuant to S.C. Code Ann. § 42-1-610 and S.C. Code Ann. § 42-1-620 of the Act that the "Settlement Agreement and Release" entered into by the parties and approved by the commission on January 5, 2006

CANNOT lawfully serve to relieve the Respondents obligation to continue compensation payments to the Appellant or provide (or offer) suitable employment to accommodate the Appellant's incapacity (Return and Counterclaim, p. 23-24, pp. 4(A)) but failed to do so;

(E) deny or counter the Appellant's assertion, pursuant to S.C. Code Reg. § 67-707, S.C. Code Ann. § 42-3-20(C) of the Act and Rule 501(3)(B)(1), CJC, Rule 501 SCACR that jurisdictional Commissioner Roche failed to perform her adjudicative responsibilities and issue a written order regarding the Appellant's 'Motion for Reinstatement' (Return and Counterclaim, p. 19-22, pp. 3 (A)-(N)) but failed to do so;

(F) deny or counter the Appellant's assertion, pursuant to S.C. Code Ann. § 42-3-20(C) and S.C. Code Ann. § 42-3-80 of the Act that Executive Director Gary M. Cannon lacked the authority to render a decision in a contested case before the commission (Return and Counterclaim p. 19-22, pp. 3 (A)-(N)) but failed to do so;

(G) deny or counter the Appellant's assertion, that the "Decision and Order" dated July 17, 2013 by the Full Commission is clearly erroneous (Return and Counterclaim p. 22-25, pp. 4), but failed to do so;

(H) deny or counter the Appellant's assertion, pursuant to S.C. Reg. 67-202(5) & (10) of the Act, that the commission, and not the Appellant, are both **liable and responsible** for the more than eight (8) years the Respondents have been allowed to willfully violate S.C. Code Ann. § 42-9-260(F) and S.C. Reg. 67-506(D) of the Act (Return and Counterclaim. p. 10), but failed to do so; and

(I) deny or counter the Appellant's assertion the Appellant was afforded ineffective counsel by Robert G. Bacon, Esq. and Harry Pavilack and Associates, LLC and the Bacon Law Firm, LLC from May 2005 to November 2012 (Return and Counterclaim, p. 4, pp. 4; p. 11-12), but failed to do so.

Appellant asserts it would appear the Respondents are relying upon this Court to disregard the undisputed and uncontested facts in this matter, as contained above, to include the unlawful termination of the Appellant's employment, the unlawful termination of the Appellant's compensation payments, the ineffective counsel the Appellant was afforded, the failure of the commission to perform its statutory duty and ensure the Respondents' compliance to the Act, and the Respondents' documented erroneous grounds used to justify the Appellant's unlawful termination of employment and unlawful termination of the Appellant's compensation payments, namely, the Settlement Agreement and Release.

Finally, in the Respondents Reply, the Respondents' state,

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 merits of his claim, was not proper and there has been no miscarriage of justice (Reply, p. 3).

Appellant disagrees with Respondents' rationale on several grounds. The aforementioned rationale of the Respondents was not properly contained in the Respondents' Reply to Appellant's Motion for Reinstatement (Return and Counterclaim, Exhibit 17), and Appellant asserts this argument is both untimely as well as an improper attempt by the Respondents' to submit an argument to the Appellant's Motion for Reinstatement. Additionally, if the jurisdictional commissioner would have complied with the Act and issued a written order with respect to the Appellant's Motion for Reinstatement, S.C. Code Reg. § 67-215(B) would have been a MOOT POINT, in favor of the Respondents' failure to comply with S.C. Code Ann. § 42-9-260(F) and S.C. Code Reg. § 67-506(D) & (E). Further, Appellant's argument of a continuing MISCARRIAGE OF JUSTICE is proper.

In particular, the Commission, pursuant to the unlawful and clearly erroneous March 27, 2013 Decision by Mr. Cannon, and the clearly erroneous Decision and Order of the Full Commission dated July 17, 2013, confirms the Commission's deliberate negligence to perform its statutory duties, pursuant to S.C. Code Reg. § 67-202(5) & (10) and compel the Respondents' to comply with S.C. Code Ann. § 42-9-260(F) and S.C. Code Reg. § 67-506(D) & (E). The Full Commission's "Conclusions of Law", in

particular, that pursuant to S.C. Code Reg. § 67-801 and S.C. Code Reg. § 67-801(E) that the Settlement Agreement and Release relieved the Employer and Carrier from any further responsibility for payment of compensation is in deliberate contradiction to S.C. Code Ann. § 42-1-610, S.C. Code Ann. § 42-1-620, S.C. Code Ann. § 42-9-260(F) and S.C. Code Reg. § 67-506(D) (Return and Counterclaim, Exhibit 25). Similarly, the lower court Order dated June 10, 2013 and subsequent Form 4 dated September 6, 2013 also confirms the lower court's negligence in failing to compel the Respondents' to comply with S.C. Code Ann. § 42-9-260(F) and S.C. Code Reg. § 67-506(D) (Return and Counterclaim, Exhibits 24 and 26).

As such, it would appear that this Court must ensure the "administration of justice" with respect to compelling the Respondents to comply with S.C. Code Ann. § 42-9-260(F) and S.C. Code Reg. § 67-506(D) & (E) of the Act based on the gross negligence and lack of control by the Commission, and the lower court, and if this Court fails to do so, a MISCARRIAGE OF JUSTICE shall continue.

CONCLUSION

The Respondents' Motion to Dismiss dated February 28, 2014 and subsequent Respondents' Reply to Appellant's Return and Counterclaim failed to comply with Rule 240(c) SCACR and Rule 240(c)(2) SCACR, based on the fact that the Respondents' exhibits were consecutively 'lettered' instead of consecutively numbered, and no memorandum with citation of authorities were included with the Respondents' aforementioned motions and must therefore be deemed abandoned. The Appellant **did not** fail to exhaust his administrative remedies within the workers' compensation commission; the Single Jurisdictional Commissioner failed to perform her adjudicative


duties, pursuant to S.C. Code Ann. § 42-3-20(C), S.C. Code Reg. § 67-707 of the Act, and the like, by failing to adjudicate the Appellant's Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments. The executive director of the commission lacked the authority, pursuant to S.C. Code Ann. § 42-3-80 of the Act to intervene in a contested case before the commission. The March 27, 2013 decision from Executive Director Gary M. Cannon **was not** an order or final order based on the fact Mr. Cannon does not have the authority to issue the same; however the **March 27, 2013 decision** was unlawfully executed with intent deprive and defraud the Appellant, prejudiced the substantial rights of the Appellant, and meets the criteria for appeal pursuant to Rule 201 SCACR and S.C. Code Ann. § 1-23-380(5). The commission has demonstrated **gross negligence** in failing to perform its statutory duties pursuant to S.C. Code Reg. § 67-202(5) & (10) of the Act with respect to the **intentional and deliberate** violation S.C. Code Ann. § 42-9-260(F) and S.C. Code Reg. § 67-506(D) & (E) of the Act by the Respondents', now for more than **eight (8) years**.

The Appellant received temporary compensation payments for approximately **213 consecutive days**, to include the **first 150 days**. The Respondents' **never** filed a Form 21 requesting a hearing before the commission to seek permission to terminate compensation payments to the Appellant, as required, pursuant to S.C. Code Reg. § 67-506(E). No hearing before the commission has ever been convened to consider termination of compensation payments to the Appellant. Therefore, Appellant **did not** settle or waive his rights to compensation on a full and final basis through the Settlement Agreement and Release approved by the commission on January 5, 2006, pursuant to S.C. Code Ann. § 42-1-610, S.C. Code Ann. § 42-1-620, S.C. Code Ann. § 42-9-260(F)

and S.C. Code Reg. § 67-506(D), and as such, Respondents **are not** relieved from any further responsibility or obligation to pay compensation to Appellant or provide suitable employment to accommodate the Appellant's incapacity.

The Settlement Agreement and Release entered into by the parties on December 22, 2005 and approved by the Commission on January 5, 2006 **must** be aside, pursuant to S.C. Code Ann. § 42-1-610 and S.C. Code Ann. § 42-1-620. Based on the substantial rights of the Appellant being violated and prejudiced, by the Respondents' and the commission, for more than 8 years, this Court must perform the required statutory duty, pursuant to S.C. Code Ann. § 1-23-380(5), that the lower court and the commission has **unlawfully** failed to, and **unlawfully** refuses, to perform: **COMPEL THE RESPONDENTS' TO COMPLY WITH S.C. Code Ann. § 42-9-260(F) and S.C. Code Reg. § 67-506(D) of the Act.**

WHEREFORE, based on the foregoing, to include the Appellant's Return and Counterclaim to Respondents' Motion to Dismiss, Appellant moves the Court to deem the Respondents' aforementioned motions abandoned and deny the same, modifying the March 27, 2013 decision by Gary M. Cannon of the commission by granting the Appellant's 'Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments', setting aside the Decision and Order of the Full Commission dated July 17, 2013 and setting aside the Order of the lower court dated June 10, 2013.


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Appellant, *pro se*

March 22, 2014

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Third, the Respondents "Reply" dated March 18, 2014 is also defective. In particular, Respondents have cited more case law and other authorities, but has again failed to include a memorandum as to the citation of authorities asserted in support of the Respondents "Reply". Respondents "Reply" has failed to comply with Rule 240(c)(2). Further, the Respondents "Reply" continues to provide consecutively 'lettered' attachments, instead of the required consecutively "numbered" attachments, in violation of Rule 240(c). Appellant asserts pursuant to Rule 240(g) the Respondents "Reply" must also be deemed abandoned, and the time limits must not be stayed to file an initial brief due to the defective motion(s) filed by the Respondents.

Fourth, the Respondents erroneously states, "...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 (Reply p. 2)"; however, the Respondents are incorrect. The aforementioned Appellant's "Memorandum with Citation of Authorities" which was included with Appellant's Return and Counterclaim made no arguments, as the same was included pursuant to Rule 240(c)(2).

Fifth, although a rebuttal or counter is not required to an "abandoned" motion, Appellant submits that Respondents improperly asserted the Appellant "failed to counter Respondents' arguments" (Reply p. 1) with regards to the March 27, 2013 "Decision" not being a final order, or that Appellant failed to exhaust the Appellant's administrative remedies. As contained in Appellant's "Return and Counterclaim" Appellant asserted the fact that: (1) Worker' Compensation Commission Jurisdictional Commissioner Andrea C. Roche failed to perform her adjudicative responsibilities, pursuant to S.C. Reg. 67-

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Sixth, the Appellant is not attempting "to play a hyper-technical game of "gotcha" (Reply p. 2) with Respondents. Appellant would assert that it is the Respondents who continue to be evasive and demonstrate deliberate ignorance and negligence to the ADMITTED FACT that Respondents are in **willful violation** of S.C. Code Ann. § 42-9-260(F) and corresponding S.C. Reg. 67-506(D) of the Act. The Respondents were afforded another opportunity, pursuant to the Respondents "Reply" to:

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(B) deny or counter the Appellant's assertion that Respondents failed to lawfully request a required hearing before the commission, pursuant to S.C. Code Ann. § 42-9-260(F) and S.C. Reg. 67-506(E) of the Act, in particular, to obtain the required permission from the commission, via a required hearing, to terminate compensation payments to the Appellant (Return and Counterclaim, p. 6, pp. 15) but failed to do so;

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(D) deny or counter the Appellant's assertion, pursuant to S.C. Code Ann. § 42-1-610 and S.C. Code Ann. § 42-1-620 of the Act that the "Settlement Agreement and Release" entered into by the parties and approved by the commission on January 5, 2006

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(F) deny or counter the Appellant's assertion, pursuant to S.C. Code Ann. § 42-3-20(C) and S.C. Code Ann. § 42-3-80 of the Act that Executive Director Gary M. Cannon lacked the authority to render a decision in a contested case before the commission (Return and Counterclaim p. 19-22, pp. 3 (A)-(N)) but failed to do so;

(G) deny or counter the Appellant's assertion, that the "Decision and Order" dated July 17, 2013 by the Full Commission is clearly erroneous (Return and Counterclaim p. 22-25, pp. 4), but failed to do so;

(H) deny or counter the Appellant's assertion, pursuant to S.C. Reg. 67-202(5) & (10) of the Act, that the commission, and not the Appellant, are both **liable** and **responsible** for the more than eight (8) years the Respondents have been allowed to willfully violate S.C. Code Ann. § 42-9-260(F) and S.C. Reg. 67-506(D) of the Act (Return and Counterclaim. p. 10), but failed to do so; and

(I) deny or counter the Appellant's assertion the Appellant was afforded ineffective counsel by Robert G. Bacon, Esq. and Harry Pavilack and Associates, LLC and the Bacon Law Firm, LLC from May 2005 to November 2012 (Return and Counterclaim, p. 4, pp. 4; p. 11-12), but failed to do so.

Appellant asserts it would appear the Respondents are relying upon this Court to disregard the undisputed and uncontested facts in this matter, as contained above, to include the unlawful termination of the Appellant's employment, the unlawful termination of the Appellant's compensation payments, the ineffective counsel the Appellant was afforded, the failure of the commission to perform its statutory duty and ensure the Respondents' compliance to the Act, and the Respondents' documented erroneous grounds used to justify the Appellant's unlawful termination of employment and unlawful termination of the Appellant's compensation payments, namely, the Settlement Agreement and Release.

Finally, in the Respondents Reply, the Respondents' state,

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 merits of his claim, was not proper and there has been no miscarriage of justice (Reply, p. 3).

Appellant disagrees with Respondents' rationale on several grounds. The aforementioned rationale of the Respondents was not properly contained in the Respondents' Reply to Appellant's Motion for Reinstatement (Return and Counterclaim, Exhibit 17), and Appellant asserts this argument is both untimely as well as an improper attempt by the Respondents' to submit an argument to the Appellant's Motion for Reinstatement. Additionally, if the jurisdictional commissioner would have complied with the Act and issued a written order with respect to the Appellant's Motion for Reinstatement, S.C. Code Reg. § 67-215(B) would have been a MOOT POINT, in favor of the Respondents' failure to comply with S.C. Code Ann. § 42-9-260(F) and S.C. Code Reg. § 67-506(D) & (E). Further, Appellant's argument of a continuing MISCARRIAGE OF JUSTICE is proper.

In particular, the Commission, pursuant to the unlawful and clearly erroneous March 27, 2013 Decision by Mr. Cannon, and the clearly erroneous Decision and Order of the Full Commission dated July 17, 2013, confirms the Commission's deliberate negligence to perform its statutory duties, pursuant to S.C. Code Reg. § 67-202(5) & (10) and compel the Respondents' to comply with S.C. Code Ann. § 42-9-260(F) and S.C. Code Reg. § 67-506(D) & (E). The Full Commission's "Conclusions of Law", in

particular, that pursuant to S.C. Code Reg. § 67-801 and S.C. Code Reg. § 67-801(E) that the Settlement Agreement and Release relieved the Employer and Carrier from any further responsibility for payment of compensation is in deliberate contradiction to S.C. Code Ann. § 42-1-610, S.C. Code Ann. § 42-1-620, S.C. Code Ann. § 42-9-260(F) and S.C. Code Reg. § 67-506(D) (Return and Counterclaim, Exhibit 25). Similarly, the lower court Order dated June 10, 2013 and subsequent Form 4 dated September 6, 2013 also confirms the lower court's negligence in failing to compel the Respondents' to comply with S.C. Code Ann. § 42-9-260(F) and S.C. Code Reg. § 67-506(D) (Return and Counterclaim, Exhibits 24 and 26).

As such, it would appear that this Court must ensure the "administration of justice" with respect to compelling the Respondents to comply with S.C. Code Ann. § 42-9-260(F) and S.C. Code Reg. § 67-506(D) & (E) of the Act based on the gross negligence and lack of control by the Commission, and the lower court, and if this Court fails to do so, a MISCARRIAGE OF JUSTICE shall continue.

CONCLUSION

The Respondents' Motion to Dismiss dated February 28, 2014 and subsequent Respondents' Reply to Appellant's Return and Counterclaim failed to comply with Rule 240(c) SCACR and Rule 240(c)(2) SCACR, based on the fact that the Respondents' exhibits were consecutively 'lettered' instead of consecutively numbered, and no memorandum with citation of authorities were included with the Respondents' aforementioned motions and must therefore be deemed abandoned. The Appellant **did not** fail to exhaust his administrative remedies within the workers' compensation commission; the Single Jurisdictional Commissioner failed to perform her adjudicative


duties, pursuant to S.C. Code Ann. § 42-3-20(C), S.C. Code Reg. § 67-707 of the Act, and the like, by failing to adjudicate the Appellant's Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments. The executive director of the commission lacked the authority, pursuant to S.C. Code Ann. § 42-3-80 of the Act to intervene in a contested case before the commission. The March 27, 2013 decision from Executive Director Gary M. Cannon **was not** an order or final order based on the fact Mr. Cannon does not have the authority to issue the same; however the **March 27, 2013 decision** was unlawfully executed with intent deprive and defraud the Appellant, prejudiced the substantial rights of the Appellant, and meets the criteria for appeal pursuant to Rule 201 SCACR and S.C. Code Ann. § 1-23-380(5). The commission has demonstrated **gross negligence** in failing to perform its statutory duties pursuant to S.C. Code Reg. § 67-202(5) & (10) of the Act with respect to the **intentional and deliberate** violation S.C. Code Ann. § 42-9-260(F) and S.C. Code Reg. § 67-506(D) & (E) of the Act by the Respondents', now for more than **eight (8) years**.

The Appellant received temporary compensation payments for approximately **213 consecutive days**, to include the **first 150 days**. The Respondents' **never** filed a Form 21 requesting a hearing before the commission to seek permission to terminate compensation payments to the Appellant, as required, pursuant to S.C. Code Reg. § 67-506(E). No hearing before the commission has ever been convened to consider termination of compensation payments to the Appellant. Therefore, Appellant **did not** settle or waive his rights to compensation on a full and final basis through the Settlement Agreement and Release approved by the commission on January 5, 2006, pursuant to S.C. Code Ann. § 42-1-610, S.C. Code Ann. § 42-1-620, S.C. Code Ann. § 42-9-260(F)

and S.C. Code Reg. § 67-506(D), and as such, Respondents **are not** relieved from any further responsibility or obligation to pay compensation to Appellant or provide suitable employment to accommodate the Appellant's incapacity.

The Settlement Agreement and Release entered into by the parties on December 22, 2005 and approved by the Commission on January 5, 2006 **must** be aside, pursuant to S.C. Code Ann. § 42-1-610 and S.C. Code Ann. § 42-1-620. Based on the substantial rights of the Appellant being violated and prejudiced, by the Respondents' and the commission, for more than 8 years, this Court must perform the required statutory duty, pursuant to S.C. Code Ann. § 1-23-380(5), that the lower court and the commission has **unlawfully** failed to, and **unlawfully** refuses, to perform: **COMPEL THE RESPONDENTS' TO COMPLY WITH S.C. Code Ann. § 42-9-260(F) and S.C. Code Reg. § 67-506(D) of the Act.**

WHEREFORE, based on the foregoing, to include the Appellant's Return and Counterclaim to Respondents' Motion to Dismiss, Appellant moves the Court to deem the Respondents' aforementioned motions abandoned and deny the same, modifying the March 27, 2013 decision by Gary M. Cannon of the commission by granting the Appellant's 'Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments', setting aside the Decision and Order of the Full Commission dated July 17, 2013 and setting aside the Order of the lower court dated June 10, 2013.


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March 22, 2014

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Thomas A. Russo, Circuit Court Judge

Case No.: 2013-002491

Alexander Guice,Appellant,

V.

US Foodservice, Inc., and Ace American Insurance Co.
c/o Gallagher Bassett Service, Inc.,Respondents'.

PROOF OF SERVICE

I HEREBY CERTIFY I provided the Respondents' a copy of the Appellant's Reply to Respondents' "Reply to Appellant's Return and Counterclaim to Respondents' Motion to Dismiss, a Memorandum with Citation of Authorities in Support of the same and proof of service by depositing the same in the U.S. Postal Service on March 22, 2014 via priority mail, with sufficient priority postage affixed and addressed to: Erin L. Hañtske, Esq. McAngus Goudelock & Courie, LLC Post Office Box 650007 Mt. Pleasant, SC 29465 on this 22nd day of March 2014.

March 22, 2014



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Appellant, *pro se*

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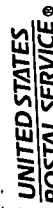
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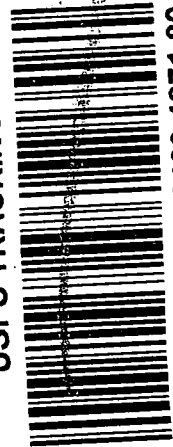
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