

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION**

Appellate Case No. 2013-001212

Joseph Mickle,

Appellant-Respondent,

v.

Boyd Brothers' Transportation,
Inc., Employer, and
Lumbermans' Underwriting
Alliance, Carrier,

Respondents-Appellants

**MOTION TO FILE INITIAL RESPONDENT'S
BRIEF OF APPELLANT-RESPONDENT OUT OF TIME**

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MAY 16 2014

SC Court of Appeals

The South Carolina Workers' Compensation Commission issued its Order affirming the ruling in favor of Claimant, Joseph Mickle, on May 14, 2013. On May 20, 2013, the employer attempted to file a Notice of Appeal from that decision. On May 31, 2013, Claimant filed a notice of appeal from the Commission's Order, amended on June 4, 2013, seeking to correct a calculation error in the Commission's Order.

However, it was discovered that the employer had filed its appeal with the wrong court, i.e., with the Richland County Circuit Court rather than the Court of Appeals. Therefore, on May 14, 2013, the employer filed a Motion to Consolidate, acknowledging that its notice of appeal was improperly filed and seeking to consolidate its appeal with the appeal properly filed before the Court of Appeals by Claimant.

On July 25, 2013, the transcript having been received, Counsel for Claimant filed the Initial Brief of Claimant-Appellant. Meanwhile, with its Motion to Consolidate pending, the employer filed its Initial Brief of Respondent on August 15, 2013. At that point, it was Counsel for Claimant's understanding that the employer's appeal was not yet properly before the Court. Counsel for Claimant called the Court several times over the ensuing months to inquire whether the case had been

transferred to the Court; Counsel was informed that the employer's appeal remained in abeyance pending the transfer from Richland County and a ruling on the Motion to Consolidate.

On October 3, 2013, the Court of Appeals issued its Order indicating that the employer's Motion to Consolidate was premature because its appeal was not yet before the Court. The Court of Appeals directed the Clerk of Court for Richland County to transfer the employer's appeal to the Court of Appeals within ten days. On January 16, 2014, the case was transferred from Richland County.

On March, 10, 2014, the Court of Appeals issued its Order indicating that the employer's appeal had been transferred to the Court and that it would be treated as a cross-appeal, with Claimant identified as the Appellant-Respondent and the employer as the Respondent-Appellant. The parties were further advised that the "respondent's initial brief and designation of matter was due to be served and filed within thirty days," i.e., by April 9, 2014.

Upon receiving the Court's Order, Counsel for Claimant did not recall that the employer had filed an Initial Brief of Respondent back in August of 2013 and, therefore, mistakenly believed that the Court's Order had set the due date for the employer's Brief of Respondent for April 9, 2014.

On March 14, 2014, the employer filed its Initial Brief of Respondent-Appellant responding only to the single issue raised in Claimant's appeal and not including the cross-appeal issues. Counsel for Claimant, Appellant-Respondent, compiled and submitted the Record on Appeal on April 16, 2014.

On April 28, 2014, Counsel for Claimant, Appellant-Respondent, filed the Final Brief of Appellant-Respondent raising the issue from the Claimant's appeal. However, on April 23, 2014, the employer filed its Final Brief of Respondent-Appellant, including its argument on cross-appeal. Therefore, at that point, counsel could only assume that the Court's March 10, 2014, Order indicating that the "brief of respondent" was due within thirty days actually meant that it was the Initial Respondent's Brief of Appellant-Respondent on cross-appeal that was due on April 9, 2014. Upon Counsel's realizing the error, the Initial Respondent's Brief of Appellant-Respondent was immediately drafted; a copy is enclosed along with this Motion.

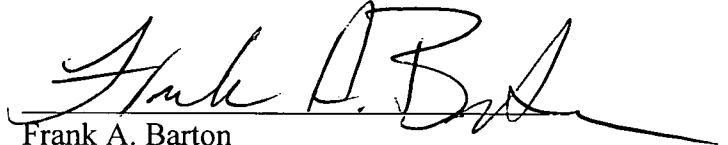
Of course, Counsel deeply regrets the confusion, the error, and the failure to timely file the Initial Respondent's Brief and designation of Appellant-Respondent on cross-appeal. However, the failure to timely file was not intentional, not for the purpose of delay, and not due to any lack of readiness to draft the brief in response to the employer's appeal. Instead, the failure to timely file was inadvertent, resulting from the employer's appeal's being held in

abeyance for some ten months and Counsel for Appellant-Respondent's regrettable, but hopefully understandable, confusion as to whose "brief of respondent" was due according to the March 10, 2014, Order of the Court.

Therefore, Counsel for Appellant-Respondent respectfully moves the Court to accept Appellant-Respondent's Initial Brief of Respondent out of time.

May 13, 2014

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Frank A. Barton", written over a horizontal line.

Frank A. Barton

Mullis Law Firm

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COUNSEL FOR APPELLANT-RESPONDENT

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PROOF OF SERVICE

I, the undersigned, an employee of the MULLIS LAW FIRM do hereby certify that I have served the Appellant-Respondent, Joseph Mickle's, Motion to Accept Initial Brief of Respondent Out of Time. this 13th day of May, 2014, by regular U.S. mail with proper postage affixed, addressed as follows:

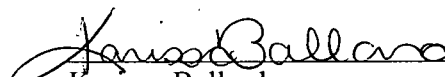
Duke K. McCall, Jr.
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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
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