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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**SC Court of Appeals**

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Case No. 2014-001269

Boisha Wofford, alleged surviving spouse, and Kaelyn Wofford, surviving child, on behalf of  
Brian Wofford, deceased employee,.....Appellants,

v.

City of Spartanburg, through the South Carolina Municipal Insurance Trust.....Respondents.

REPLY TO APPELLANTS' RETURN TO RESPONDENTS' MOTION TO DISMISS

This matter is currently pending before this Court on appeal from an Order of the South Carolina Worker's Compensation Commission. Appellants are represented by Kenneth Anthony and K. Jay Anthony, and Respondents are represented by Stephanie Lamb Pugh and Helen Hiser. Respondents filed a Motion to Dismiss this appeal on July 9, 2014. Appellants responded to this Motion on January 17, 2014. Respondents hereby submit their Reply to Appellants' Return to Respondents' Motion to Dismiss.

Contrary to Appellants' assertion in their Return that Respondents are engaging in a game of "gotcha," Respondents submit that Appellants have still not made clear what exception to the going and coming rule they are appealing in this matter, which is why Respondents

asserted Appellants' Notice of Appeal was vague in their initial Motion to Dismiss. As evidence of what exception they are appealing, Appellants refer to a prior brief written by Respondents to the South Carolina Workers' Compensation Commission. In that brief, Respondents discussed, in addition other legal arguments, that Appellants were asserting the applicability of the duty or task exception to the going and coming rule. Appellants use this reference as evidence that this is the exception they are appealing to this Honorable Court. However, this argument ignores the fact that the Commission denied the compensability of this claim on multiple grounds, two of which dealt specifically with different exceptions to the going and coming rule. Thus, the question still remains: what exception are they appealing? Respondents are still not sure whether Appellants are appealing the duty or task exception to the going and coming rule or whether they are appealing the special errand exception or both. This same confusion was present at the Commission level.

Additionally, the Commission denied the compensability of this claim on multiple grounds and legal theories. Given Appellants' abandonment of their second issue on appeal in their Initial Brief, the only issue remaining is whether "The Full Commission erred in finding that the death of Brian Wofford did not arise out of and in the course of his employment as Appellants' claim falls within an exception to the 'going and coming' rule." Therefore, Appellants failed to appeal the Commission's findings that even if Brian Wofford (Wofford) was working on the morning of this accident, that his decision to drive out of town to his mother's house and stay for three hours resulted in a substantial deviation from employment. (See Appellate Panel Decision and Order, dated May 12, 2014, attached as Exhibit A). The existence of a substantial deviation is a separate legal theory from the applicability of the going and coming rule. See Matute v. Palmetto Health Baptist, 391 S.C. 291, 705 S.E.2d 472 (Ct. App.

2011); White v. S.C. State Highway Dep't, 226 S.C. 380, 85 S.E.2d 290 (1955). Even if this Honorable Court reversed the Commission's decision on the applicability of the going and coming rule, there is still a finding that Wofford substantially deviated from his employment on the date of this accident. The finding of a substantial deviation in and of itself results in the non-compensability of this claim. See id., 85 S.E.2d at 290; Falconer v. Beard-Laney, Inc., 215 S.C. 321, 54 S.E.2d 904 (1949). Therefore, Appellants' assertion that this error does not fall within the "two issue" rule is incorrect. In fact, the case of Anderson v. S.C. Department of Highways and Public Transportation, 322 S.C. 417, 472 S.E.2d 253 (1996), cited by Appellants in their Return, is very instructive on the claim at hand. In that case, the South Carolina Supreme Court explained that when a trial court issues an order covering multiple causes of action, and the appellant only appeals one of those causes of action, the "two issue" rule requires the affirmation of the lower court's decision, because there is an alternative sustaining ground for the verdict. Id. at 120-421, 472 S.E.2d at 254-55.

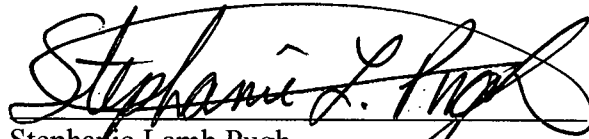
In comparison to the claim at hand, the South Carolina Workers' Compensation Commission, who serves as the judge and jury for workers' compensation claims, issued an order finding that this claim was not compensable for multiple reasons, including, in part, the non-existence of multiple exceptions to the going and coming rule and the fact that even if Wofford was considered to have been working on the date of this accident that he had substantially deviated from his employment. Because Appellants failed to appeal the substantial deviation finding, Respondents submit that this claim should be dismissed, because there is an alternate sustaining ground.

In light of the above, Respondents respectfully request that this Honorable Court dismiss Appellants' appeal. Not only is Appellants' Notice of Appeal so vague in nature that

Respondents are unable to determine what exactly they are appealing, but Appellants also failed to appeal all of the grounds upon which the Commission based its finding of non-compensability.

Respectfully submitted,

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*Attorneys for Respondents*

July 23, 2014

# Exhibit A

**APPELLATE PANEL  
DECISION AND ORDER  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
1207113**

**Boisha Wofford, alleged surviving spouse,  
and Kaelyn Wofford, surviving child, on behalf  
of Brian Wofford, deceased employee,**

**CLAIMANTS/APPELLANTS,**

**v.**

**City of Spartanburg,**

**EMPLOYER AND SELF-INSURER,**

**through the**

**South Carolina Municipal Insurance Trust,**

**DEFENDANTS/RESPONDENTS.**

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**Appellate Panel Review held in  
Columbia, South Carolina on February 18, 2014**

**Appellate Panel Decision and Order  
Filed \_\_\_\_\_, 2014.**

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**APPEARANCES:**

**Claimant/Appellant represented by Kenneth C. Anthony, Esquire of The Anthony Law Firm, PA.  
Defendants/Respondents represented by Stephanie Lamb Pugh, Esquire, of McAngus Goudelock  
& Courie, L.L.C. of Greenville, South Carolina.**

## STATEMENT OF THE CASE

The underlying claim was heard by Commissioner T. Scott Beck on August 15, 2013. On November 7, 2013, Commissioner Beck issued the following Findings of Fact, Conclusions of Law, and Order:

### FINDINGS OF FACT

1. Claimants allege that Decedent's accident, which took place on May 18, 2012, and resulted in Decedent's death, arose out of and in the course of Decedent's employment with the City of Spartanburg. Defendants deny these allegations.
2. Decedent worked as a Parks & Recreation Director for the City of Spartanburg and as such, he was a salaried employee. His typical workday was from 8am-5pm, but he had the ability to flex his schedule depending on his job responsibilities.
3. I find that Decedent was not working at the time of his death. He never reported to work on the day of his accident; instead, he delegated his job duties to his subordinates. He made/received four to five minutes worth of phone calls, sent/received nine very brief text messages/emails, and engaged in one very brief chat with his subordinate. Therefore, on the date of his death, he spent approximately ten minutes communicating remotely with his subordinates. I find that Decedent's use of his work phone to communicate with his subordinates on the morning of his accident was a convenience to Decedent. The fact that he made a few work related calls, texts, etc. is not dispositive. Because he communicated remotely with his subordinates, he did not have to come in to work to perform his job duties. I find that this remote, telephonic/electronic communication does not rise to the level that would bring Decedent's actions within the course and scope of his employment.
4. Instead of coming to work on the day of his accident, Decedent drove approximately nine miles from his apartment in the opposite direction to his mother's home in Moore, South Carolina to pick up his motorcycle and visit with his mother. He remained at his mother's home approximately three hours. This visit to his mother's house was of a purely personal nature. I find that even if it can be said that Decedent was working at some point on his date of accident, that the trip and visit to his mother's house in Moore, South Carolina, was a substantial deviation from his employment.
5. I find that Decedent's accident, which occurred at the corner of Reidville Road and Plateau Street in Moore, South Carolina, and was approximately two miles from his mother's house, took place at a location that Decedent's work duties did not require him to be. Nothing about Decedent's job, on the date of his accident, required that he travel to or visit any location in Moore, South Carolina or that he go and pick up his motorcycle in Moore, South Carolina. The only job duties Decedent had on the date of his accident were located in the City

of Spartanburg, which was about ten and a half miles or twenty-five minutes away from Decedent's mother's home.

6. This claim is barred by the going and coming rule, and there are no applicable exceptions.

7. I find that Decedent was not charged with any work related duties at the time of his accident but instead was on a purely personal mission to get to work. There is no evidence establishing that Decedent was tasked with any work related responsibility at the time of his accident. He was merely on his way to work to engage in his typical job responsibilities.

8. I find that Decedent was not performing a special task, service, mission, or errand for the City of Spartanburg at the time of his accident. Whether Decedent was headed to his office, the City's employee appreciation lunch, or to one of the recreation centers that he supervises, all of these activities were a customary part of his employment with the City of Spartanburg. The evidence establishes that Decedent was on his way to work to perform his typical job duties, duties that fell within his job description and duties that were expected of him on a regular basis.

9. A \$250,000.00 settlement was given to Claimants as a result of the motorcycle accident that resulted in Decedent's death. A portion of the settlement proceeds have already been disbursed. The remainder of the settlement proceeds is being placed in an annuity for the minor child. No proceeds from the settlement were held in trust for Defendants' statutory lien. Therefore, if this claim had been deemed compensable, Defendants would have been entitled to take credit for their lien against the award for death benefits.

10. I find that Claimants never filed a Form S-2, but that because an action was not commenced in the civil court regarding the third party case, that this failure does not bar their claim.

#### CONCLUSIONS OF LAW

1. The Findings of Fact set forth above are construed to be conclusions of law, if applicable.

2. Pursuant to South Carolina Code Annotated § 42-1-160, Decedent did not suffer a compensable injury under the Act. Claimants failed to establish that Decedent's accident arose out of and in the course of his employment, as Decedent was not working at the time of his accident.

3. Even if Decedent's electronic or telephonic communication with his co-workers could be said to bring this claim within the purview of the Act, the Decedent's decision to drive nine miles to his mother's house in Moore, South Carolina, to stay at his mother's house for approximately three hours, and to pick up his motorcycle from his mother's house resulted in a substantial deviation from employment. See White v. S.C. State Highway Dep't, 226 S.C. 380, 85 S.E.2d 290 (1955); Falconer v. Beard-Laney, Inc., 215 S.C. 321, 54 S.E.2d 904 (1949).

4. Pursuant to Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1964) and Matute v. Palmetto Health Baptist, 391 S.C. 291, 705 S.E.2d 472 (Ct. App. 2011), Claimant's claim for benefits is barred by the going and coming rule.
5. There are no applicable exceptions to the going and coming rule. See Matute v. Palmetto Health Baptist, 391 S.C. 291, 705 S.E.2d 472 (Ct. App. 2011).
6. Pursuant to Whitworth v. Window World, Inc., 377 S.C. 637, 661 S.E.2d 333 (2008), the duty or task exception to the going and coming rule is inapplicable, because Decedent's accident, near his mother's home, took place on his way to work. This trip was serving the personal objective of getting Decedent to work. Decedent had no work-related duties to perform on his way to work, nor was he under the control of the City of Spartanburg on his way to work. See also Gregg v. Dorchester County Schools System, 270 S.C. 189, 241 S.E.2d 554 (1978).
7. Pursuant to Bickley v. South Carolina Electric & Gas Company, 259 S.C. 463, 192 S.E.2d 866 (1972), the special errand exception to the going and coming rule is inapplicable, because Decedent was not charged with any task on his way to work. In fact, the testimony revealed that the only job duties Decedent had on the day of his accident were his typical job duties in the City of Spartanburg, which were all contemplated by his job description. At the time of his accident, Decedent was on a personal mission to get to work. Whether Decedent was headed to his office, the City's employee appreciation lunch, or to one of the recreation centers that he supervises, all of these activities were a customary part of his employment with the City of Spartanburg. Nothing was unique or special about any of the aforementioned activities. See also Sylvan v. Sylvan Bros, Inc., 225 S.C. 429, 82 S.E.2d 794 (1954).
8. Claimants' failure to file a Form S-2 is not a bar to benefits. South Carolina Code Annotated § 42-1-560(b) requires that an action be commenced for the Section to be applicable. Pursuant to Rule 3 of the South Carolina Rules of Civil Procedure, an action is commenced when a summons and complaint are filed with the clerk of court. No action was ever filed in Claimants' third party claim. Therefore, Claimants were not required to file a Form S-2.
9. Pursuant to South Carolina Code Annotated § 42-1-560 and by stipulation of the parties, if Claimants had prevailed on this claim, Defendants would have a statutory lien on the third party settlement proceeds.

#### ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED** that Claimant's claim to workers' compensation benefits under the South Carolina Workers' Compensation Act be denied, as Decedent's accident did not arise out of and in the course and scope of his employment.

**IT IS SO ORDERED.**

Within the statutory period, counsel for both parties filed an Application for Review in the case setting forth their reasons for appeal, copies of which were furnished to all interested parties, prior to oral arguments, which took place before the Appellate Panel on February 18, 2014.

By way of appeal, Claimants/Appellants assert the Hearing Commissioner erred in the following:

1. Did the Commissioner err in finding that the decedent was not working at the time of his death?
2. Did the Commissioner err in finding that the claim was barred by the going and coming rule, and that there was no applicable exceptions? Specifically, did the Commissioner err in failing to find that the decedent, on his way to or from his work, was still charged with some duty or task in connection with his employment? Medlin v. Upstate Plaster Services, 329 S.C. 92, 495 S.E.2d 447 (1997).

By way of appeal, Defendants/Appellants assert the Hearing Commissioner erred in the following:

1. Whether the Hearing Commissioner erred in Finding of Fact Number Ten wherein he states, "I find that Claimants never filed a Form S-2, but that because an action was not commenced in the civil court regarding the third party case, that this failure does not bar their claim," when such a factual finding is against the greater weight and preponderance of the evidence in the record.
2. Whether the Hearing Commissioner erred in Conclusion of Law Number Eight, wherein he concludes, "Claimants' failure to file a Form S-2 is not a bar to benefits. South Carolina Code Annotated § 42-1-560(b) requires that an action be commenced for the section to be applicable. Pursuant to Rule 3 of the South Carolina Rules of Civil Procedure, an action is commenced when a summons and complaint are filed with the clerk of court. No action was ever filed in Claimants' third party claim. Therefore, Claimants were not required to file a Form S-2," when such a conclusion of law is against the greater weight and preponderance of the evidence in the record and is based upon erroneous factual findings.
3. Whether the Hearing Commissioner erred in failing to find as a fact and as a conclusion of law that Claimants' failure to maintain the third party settlement

proceeds in trust and/or disbursement of these proceeds is/are a bar to recovery under the South Carolina Workers' Compensation Act.

4. Whether the Hearing Commissioner erred in failing to order that Claimants' claim for benefits under the Act is barred as a result of their election of remedies.

All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration.

Pursuant to South Carolina Code Annotated § 42-17-50, the Appellate Panel shall review the award, weigh the evidence that was presented at the initial hearing, and if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. Based upon a review of the foregoing, we hereby grant a **FULL AFFIRMATION** of the Hearing Commissioner's Decision and Order. Accordingly, the Findings of Fact, Conclusions of Law, and Order of the Hearing Commissioner and as set forth below shall become and hereby are the law of the case:

#### **FINDINGS OF FACT**

1. Claimants allege that Decedent's accident, which took place on May 18, 2012, and resulted in Decedent's death, arose out of and in the course of Decedent's employment with the City of Spartanburg. Defendants deny these allegations.
2. Decedent worked as a Parks & Recreation Director for the City of Spartanburg and as such, he was a salaried employee. His typical workday was from 8am-5pm, but he had the ability to flex his schedule depending on his job responsibilities.
3. We find that Decedent was not working at the time of his death. He never reported to work on the day of his accident; instead, he delegated his job duties to his subordinates. He made/received four to five minutes worth of phone calls, sent/received nine

very brief text messages/emails, and engaged in one very brief chat with his subordinate. Therefore, on the date of his death, he spent approximately ten minutes communicating remotely with his subordinates. We find that Decedent's use of his work phone to communicate with his subordinates on the morning of his accident was a convenience to Decedent. The fact that he made a few work related calls, texts, etc. is not dispositive. Because he communicated remotely with his subordinates, he did not have to come in to work to perform his job duties. We find that this remote, telephonic/electronic communication does not rise to the level that would bring Decedent's actions within the course and scope of his employment.

4. Instead of coming to work on the day of his accident, Decedent drove approximately nine miles from his apartment in the opposite direction to his mother's home in Moore, South Carolina to pick up his motorcycle and visit with his mother. He remained at his mother's home approximately three hours. This visit to his mother's house was of a purely personal nature. We find that even if it can be said that Decedent was working at some point on his date of accident, that the trip and visit to his mother's house in Moore, South Carolina, was a substantial deviation from his employment.

5. We find that Decedent's accident, which occurred at the corner of Reidville Road and Plateau Street in Moore, South Carolina, and was approximately two miles from his mother's house, took place at a location that Decedent's work duties did not require him to be. Nothing about Decedent's job, on the date of his accident, required that he travel to or visit any location in Moore, South Carolina or that he go and pick up his motorcycle in Moore, South Carolina. The only job duties Decedent had on the date of his accident were located in the City of Spartanburg, which was about ten and a half miles or twenty-five minutes away from Decedent's mother's home.

6. This claim is barred by the going and coming rule, and there are no applicable exceptions.

7. We find that Decedent was not charged with any work related duties at the time of his accident but instead was on a purely personal mission to get to work. There is no evidence establishing that Decedent was tasked with any work related responsibility at the time of his accident. He was merely on his way to work to engage in his typical job responsibilities.

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9. A \$250,000.00 settlement was given to Claimants as a result of the motorcycle accident that resulted in Decedent's death. A portion of the settlement proceeds have already been disbursed. The remainder of the settlement proceeds is being placed in an annuity for the minor child. No proceeds from the settlement were held in trust for Defendants' statutory lien. Therefore, if this claim had been deemed compensable, Defendants would have been entitled to take credit for their lien against the award for death benefits.

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## CONCLUSIONS OF LAW

1. The Findings of Fact set forth above are construed to be conclusions of law, if applicable.
2. Pursuant to South Carolina Code Annotated § 42-1-160, Decedent did not suffer a compensable injury under the Act. Claimants failed to establish that Decedent's accident arose out of and in the course of his employment, as Decedent was not working at the time of his accident.
3. Even if Decedent's electronic or telephonic communication with his co-workers could be said to bring this claim within the purview of the Act, the Decedent's decision to drive nine miles to his mother's house in Moore, South Carolina, to stay at his mother's house for approximately three hours, and to pick up his motorcycle from his mother's house resulted in a substantial deviation from employment. See White v. S.C. State Highway Dep't, 226 S.C. 380, 85 S.E.2d 290 (1955); Falconer v. Beard-Laney, Inc., 215 S.C. 321, 54 S.E.2d 904 (1949).
4. Pursuant to Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1964) and Matute v. Palmetto Health Baptist, 391 S.C. 291, 705 S.E.2d 472 (Ct. App. 2011), Claimant's claim for benefits is barred by the going and coming rule.
5. There are no applicable exceptions to the going and coming rule. See Matute v. Palmetto Health Baptist, 391 S.C. 291, 705 S.E.2d 472 (Ct. App. 2011).
6. Pursuant to Whitworth v. Window World, Inc., 377 S.C. 637, 661 S.E.2d 333 (2008), the duty or task exception to the going and coming rule is inapplicable, because Decedent's accident, near his mother's home, took place on his way to work. This trip was serving the personal objective of getting Decedent to work. Decedent had no work-related duties

to perform on his way to work, nor was he under the control of the City of Spartanburg on his way to work. See also Gregg v. Dorchester County Schools System, 270 S.C. 189, 241 S.E.2d 554 (1978).

7. Pursuant to Bickley v. South Carolina Electric & Gas Company, 259 S.C. 463, 192 S.E.2d 866 (1972), the special errand exception to the going and coming rule is inapplicable, because Decedent was not charged with any task on his way to work. In fact, the testimony revealed that the only job duties Decedent had on the day of his accident were his typical job duties in the City of Spartanburg, which were all contemplated by his job description. At the time of his accident, Decedent was on a personal mission to get to work. Whether Decedent was headed to his office, the City's employee appreciation lunch, or to one of the recreation centers that he supervises, all of these activities were a customary part of his employment with the City of Spartanburg. Nothing was unique or special about any of the aforementioned activities. See also Sylvan v. Sylvan Bros. Inc., 225 S.C. 429, 82 S.E.2d 794 (1954).

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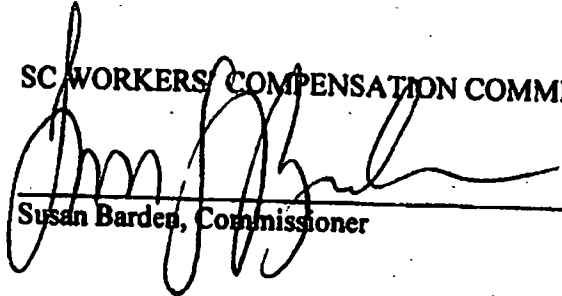
9. Pursuant to South Carolina Code Annotated § 42-1-560 and by stipulation of the parties, if Claimants had prevailed on this claim, Defendants would have a statutory lien on the third party settlement proceeds.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED** that Claimants' claim to workers' compensation benefits under the South Carolina Workers' Compensation Act be denied, as Decedent's accident did not arise out of and in the course and scope of his employment.

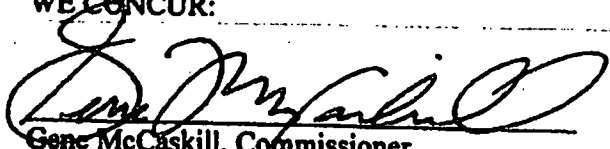
**IT IS SO ORDERED.**

SC WORKERS' COMPENSATION COMMISSION

  
Susan Barden, Commissioner

**FULL AFFIRMATION**

**WE CONCUR:**

  
Gene McCaskill, Commissioner

  
Aisha Taylor, Commissioner

Columbia, South Carolina

\_\_\_\_\_, 2014

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

**By Kim Falls on May 12, 2014**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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Case No. 2014-001269

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Boisha Wofford, alleged surviving spouse, and Kaelyn Wofford, surviving child, on behalf of  
Brian Wofford, deceased employee, ..... Appellants,

v.

City of Spartanburg the South Carolina Municipal Insurance Trust, ..... Respondents.

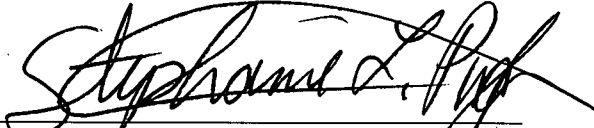
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CERTIFICATE OF SERVICE

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I hereby certify that I have this 23rd day of July 2014, caused to be served a copy of  
Reply to Appellants' Return to Respondents' Motion to Dismiss by mailing a copy of same,  
postage prepaid, in the United States mail, with sufficient postage affixed as follows:

Kenneth C. Anthony, Jr., Esquire  
The Anthony Law Firm, P.A.  
Post Office Box 3565  
Spartanburg, South Carolina 29304

  
Stephanie Lamb Pugh, SC Bar #78483  
Helen F. Hiser, SC Bar #76124  
McAngus, Goudelock & Courie LLC  
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(864) 239-4000  
Attorneys for Respondents

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JUL 25 2014

**SC Court of Appeals**

**Reply To**

STEPHANIE LAMB PUGH  
Direct Dial: (864) 239-6710  
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July 23, 2014

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
Clerk of Court  
P.O. Box 11629  
Columbia, SC 29211

Re: Brian Wofford v. City of Spartanburg  
Case No. 2014-001269  
Claim No.: 63-80506  
Our File No.: 20788.14005

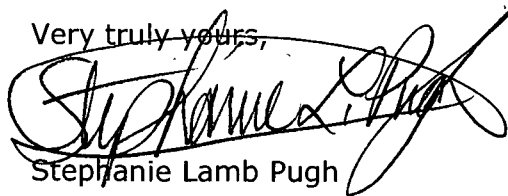
Dear Ms. Kitchings:

Enclosed for filing is Respondents' Motion to Dismiss Appeal in the above-referenced matter. Also, enclosed is the Proof of Service of the Reply to Appellants' Return to Respondents' Motion to Dismiss Appeal.

Please file the original documents and return the clocked-in copies to my attention using the enclosed envelope. By copy of this letter, I am serving counsel of record with a copy of Reply to Appellants' Return to Respondents' Motion to Dismiss Appeal.

Thanking you in advance for your assistance, I am

Very truly yours,



Stephanie Lamb Pugh

SP/rhd

cc: Kenneth Booker  
Martha Gaw  
Kenneth C. Anthony, Jr.

**RECEIVED**

JUL 25 2014

**SC Court of Appeals**