

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No.: 2014-001083

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SEP 04 2014

SC Court of Appeals

73428

Old Republic Insurance Company, Appellant,

v.

SC Second Injury Fund, Respondent.

MOTION TO RECONSIDER MOTION TO FILE OUT OF TIME

The Appellants respectfully request the Court reconsider its Order filed on August 25, 2014, granting Respondent's Motion to File Out Of Time. The Respondent's Initial Brief was due on August 4, 2014, following a prior Order of the Court extending the time for service. The Respondent argues, due to a clerical error, that the Brief was not filed until August 6, 2014. However, the Respondent's Brief was not properly filed, under Rule 262(a)(2), SCACR, until August 8, 2014.

I am in receipt of an Initial Brief of Respondent time stamped copy by the Court dated August 6, 2014, although, as it is argued in Appellants' Reply Brief, the Appellants were not properly served in accordance with Rule 262(a)(2), SCACR, until August 8, 2014. Even if the Respondent had made a clerical error in filing the Respondent's Initial Brief on August 6, 2014,

it did not properly serve all Parties on August 6, 2014, as required by Rule 262(a)(2), SCACR. The envelope enclosing the Respondent's Initial Brief, indicates the Brief was not deposited in the U.S. Mail with postage attached until August 8, 2014. (*Exhibit 1*) No explanation has been provided by Respondent as to why there is a discrepancy between the Proof Of Service, indicating Appellants were served on August 6, 2014, and the US Postal Service indicating the Appellants were not served properly until August 8, 2014.

Appellants' initial Argument in its Reply Brief argues that Respondent's Initial Brief should be excluded from the Record in accordance with Turner v. Santee Cement Carriers, Inc., 277 S.C. 91, 282 S.E.2d 858 (1981); Elliott v. S.C. Dept. of Transp., 362 S.C. 234, 607 S.E.2d 90 (Ct. App. 2004); Campbell v. Carr, 361 S.C. 258, 603 S.E.2d 625 361 S.C. 258 (Ct. App. 2004); Wierszewski v. Tokarick, 308 S.C. 441, 418 S.E.2d 557 (Ct. App. 1992); and Rule 208, SCACR. The mere fact the Court may exclude the Respondent's Initial Brief for failure to timely file is clear prejudice to the Appellants.

Furthermore, the entire crux of the Respondent's Argument is based on alleging a deadline for submission of evidence into the record in a section of a statute, and the deadline simply does not exist, as alleged by Respondent. That statute, as well as Rule 262(a)(2), SCACR, is clear and unambiguous. Good cause has not been shown by the Respondent as to why all the Parties were not served until August 8, 2014; wherefore, Appellants respectfully request that the Honorable Court reconsider its Order granting Respondent's Initial Brief and Designation of Matter to file out of time.



Andrew D. Smith

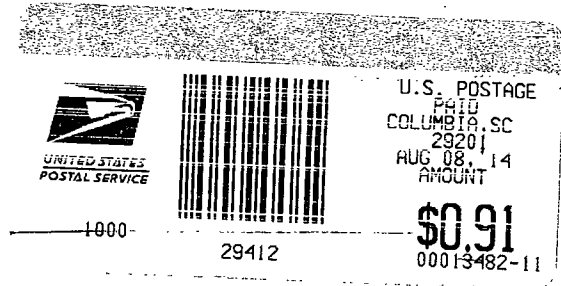
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Attorney for Appellants

Dilligard Edwards, LLC
3790 Fernandina Road, Suite 103
Columbia, SC 29210



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Appellate Case No.: 2014-001083

Old Republic Insurance Company, Appellant,

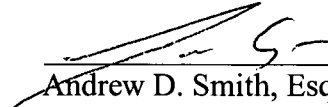
v.

SC Second Injury Fund, Respondent.

PROOF OF SERVICE

I certify that I have served the Motion To Reconsider Motion To File Out Of Time by depositing a copy of this document in the United States mail, first class postage prepaid, on September 2, 2014 to Ms. Latonya D. Edwards, Dilligard Edwards, LLC, 3790 Fernandina Road, Suite 103, Columbia, SC 29210.

This 2nd day of September, 2014


Andrew D. Smith, Esquire
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Attorney for Defendant

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September 2, 2014

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1015 Sumter Street
P.O. Box 11629
Columbia, SC 29211

RE: Old Republic Insurance Company, Appellant,

v.

SC Second Injury Fund, Respondent.

Appellate Case No.: 2014-001083

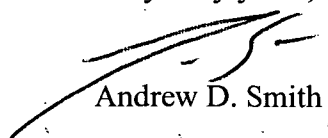
Dear Ms. Kitchings:

Please be advised that I represent the Appellant, Old Republic Insurance Company, in regard to the above-referenced matter. I received the Motion To File Out Of Time, and the Order granting the Respondent's request to file the Respondent's Initial Brief and Designation of Matter out of time. I have respectfully enclosed one (1) original Motion To Reconsider Motion To File Out Of Time, as well as a copy, and a draft of \$25.00 for filing fees.

By copy of this letter, I am providing opposing counsel with a copy of the same.

Thank you in advance for your anticipated cooperation and assistance. Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



Andrew D. Smith

ADS/lmj
Enclosures

Cc: Ms. Latonya Edwards, Esquire
Amy Bracy, Judicial Director, S. C. Workers' Compensation Commission

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SC Court of Appeals

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