

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

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AUG 27 2015

SC Court of Appeals

Appellate Case No. 2013-001273

South Carolina Public Interest Foundation and Waring S. Howe, Jr., individually, and on behalf of all others similarly situated, Petitioners,

v.

James H. "Jay" Lucas, in his official capacity as Speaker of the South Carolina House of Representatives, Hugh K. Leatherman, in his official capacity as President of the South Carolina Senate, Representative Peter M. McCoy, Jr., Senator George E. "Chip" Campsen, and the State of South Carolina, Respondents.

**SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF
PETITION TO RECALL THE REMITTITUR**

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Attorney for Petitioners

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Petitioners South Carolina Public Interest Foundation and Waring S. Howe, Jr., submit this Supplemental Memorandum of Law in Support of their Petition to recall the Remittitur in this action, and to address precisely when the appellate court is divested of jurisdiction in favor of the lower court, and to respectfully suggest that when the Petitioners filed a Petition to Recall the Remittitur, jurisdiction was still vested in the Court of Appeals.

On Wednesday, August 19, 2015, Petitioners mailed a Petition for a Writ of Certiorari to the Supreme Court with a Certificate of Service by mail to the Court of Appeals and to counsel for all Respondents. Petitioners also served all counsel for the Respondents by email.

On Thursday, August 20, 2015, the undersigned counsel received from the Court of Appeals a copy of the Remittitur to the Clerk of the Circuit Court for Charleston County. On August 20, 2015, the undersigned counsel also filed and served copies of the Petition to Recall the Remittitur, by mail and email.

On Friday, August 21, 2015, the undersigned counsel telephoned the Clerk of Court for Charleston County and learned that the Remittitur had not arrived, nor had it been filed in the office of the Clerk of Court for Charleston County, nor had the Clerk of Court acted upon the Remittitur. On that day, Petitioners also served a copy of the Petition to Recall the Remittitur on the Clerk of Court for Charleston County by mail and email.

South Carolina case law appears to hold that the operative act that transfers jurisdiction from the appellate court to that Circuit Court is the filing of the Remittitur in the Circuit Court, and/or the Circuit Court acting on the Remittitur. This rule seems to go back more than 100 years. In *State v. Keels*, the Supreme Court ruled, “[I]t is more than questionable whether this court has the power to recall the remittitur after it has been sent

down to the Circuit Court **and acted upon by that court.**” *Id.* 39 S.C. 553, 17 S.E.2d 802, 803 (1893) (emphasis added).

In *Christy v. Christy*, the Court of Appeals ruled, “The final disposition of the case occurs when the remittitur is **returned** by the clerk of the appellate court and **filed** in the lower court. **Until that time, the case is pending on appeal.** . . . We therefore conclude an order of the lower court is effective until superseded or until the remittitur is **filed in lower court.**” *Id.* 317 S.C. 145, 151, 452 S.E.2d 1, 4 (Ct. App. 1995) (citations omitted, emphasis added).

In *Brackenbrook North Charleston, LP v. County of Charleston*, the Supreme Court of South Carolina ruled, “Jurisdiction over the case vests in the Circuit Court upon **receipt of the remittitur** from the appellate court.” *Id.* 366 S.C. 503, 508, 623 S.E.2d 91, 93 (2005) (emphasis added). Again the Court ruled, “Appellants contend that **upon receipt of the remittitur,** the Circuit Court was vested with authority We agree.” *Id.* (emphasis added).

In *Harleysville Mut. Ins. Co. v. State*, the Supreme Court ruled, “An opinion of an appellate court **is not final until the remittitur is filed** in the lower court.” *Id.* 401 S.C. 15, 23, n. 2, 736 S.E.2d 651, 655 n. 2 (2012) (emphasis added).

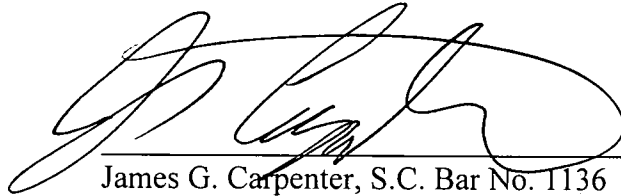
By way of contrast, in *Wise v. South Carolina Department of Corrections*, “The remittitur was sent to the lower court by order dated **October 30, 2006.** On **December 28, 2006,** appellant filed a motion for enlargement of time in this Court.” 372 S.C. 173, 173-74, 642 S.E.2d 551 (2007) (emphasis added). In *Wise*, almost 2 months passed between the Remittitur and the motion. The Supreme Court had no trouble ruling that the jurisdictional opportunity had long since passed.

CONCLUSION

In the case at bar, the Circuit Court had not received or acted upon the Remittitur when the Petitioners filed and served their Petition to recall it. The Petition to Recall the Remittitur is timely.

WHEREFORE, Petitioners pray the Court to recall the Remittitur in this action, to enable the Petitioners to have the South Carolina Supreme Court consider their Petition for Writ of Certiorari.

Respectfully submitted,



James G. Carpenter, S.C. Bar No. 1136
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(864) 235-1269
Attorneys for Petitioners

August 24, 2015

Certificate of Service

The undersigned attorney hereby certifies that he has served a copy of the foregoing Supplemental Memorandum of Law in Support of Petition to Recall the Remittitur on counsel for Respondents by email and US Mail, postage prepaid, on Monday, August 24, 2015 addressed as follows:

C. Mitchell Brown
Michael J. Anzelmo
P.O. Box 11070
Columbia, SC 29211

Robert E. Tyson, Jr.
PO Box 11449
Columbia, SC 29211

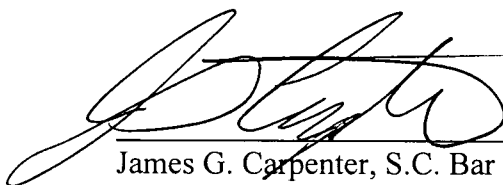
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*LICENSED IN S.C. & N.C.

August 24, 2015

Daniel E. Shearouse, Clerk
SC Supreme Court
PO Box 11330
Columbia, SC 29211

Re: *SC Public Interest Foundation v. James H. "Jay" Lucas*
Petition for Writ of Certiorari
Supreme Court Appellate Case Number 2015-001765

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AUG 27 2015
SC Court of Appeals

Dear Mr. Shearouse:

Thank you for your letter dated August 21, 2015.

We enclose a courtesy copy of Appellants' Supplemental Memorandum in Support of Petition to Recall the Remittitur, which we filed with the Court of Appeals, which addresses the legal issue of precisely when the appellate court is divested of jurisdiction in favor of the lower court via Remittitur, and distinguishes the holding in *Wise v. South Carolina Department of Corrections*, 372 S.C. 173, 642 S.E.2d 551 (2007) from several other rulings from the Supreme Court.

Thank you very much. If you have any questions, please telephone me at (864) 235-1269.

Sincerely yours,

James G. Carpenter

CC w/ enclosure: all opposing counsel



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August 24, 2015

Elizabeth Carter, Deputy Clerk
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: *South Carolina Public Interest Foundation et al. vs. Lucas, et al*
Court of Appeals Case No. 2013-001273

Dear Ms. Carter:

I enclose the original and seven copies of Appellants' Supplemental Memorandum in Support of Petition to Recall the Remittitur.

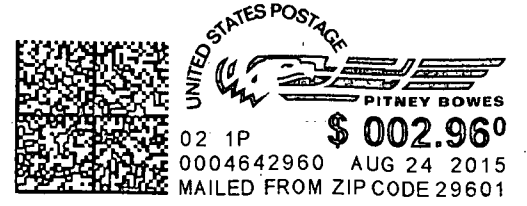
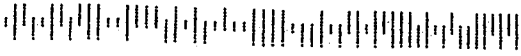
Please file the originals and return a clocked in copy to me in the enclosed, postage paid envelope.

Thank you very much.

Sincerely yours,
THE CARPENTER LAW FIRM, PC

James G. Carpenter

Enclosure
CC w/encl: all opposing counsel



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