

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

RECEIVED

JAN 25 2016

William P. Keesley, Successor Circuit Court Judge

SC Court of Appeals

Case No. 2013-CP-32-01272

Case No. 2014-CP-32-00399

Appellate Case No. 2015-001821

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

WCC Case No. 0506205

Alexander Guice, Employee, Appellant,

v.

US Foodservice, Inc., Employer, and
Ace American Insurance Company, c/o
Gallagher Bassett Services, Inc., Respondents.

**REPLY TO RETURN TO MOTION FOR SUMMARY JUDGMENT
AND STAY PENDING ADJUDICATION**

Pursuant to Rule 240(f), SCACR, Alexander Guice, the named and undersigned *pro se* Appellant, presents this Reply to Respondents' Return in Opposition to Motion for Summary Judgment and Stay Pending Adjudication ("Return"), wherein these pleadings are submitted by Appellant in *propria persona*. See *Haines v. Kerner*, 92 Sct 594. Appellant was duly served with a

copy of the Respondents' Return to the Motion for Summary Judgment dated January 12, 2016 via U.S. regular mail, with service perfected upon Appellant on January 16, 2016. In support of this Reply to Respondents' Return, Appellant would allege as follows:

ARGUMENT

- 1. On Return, Respondents' failed to oppose Appellant's contention that the parties in the above-entitled action are bound by the South Carolina Workers' Compensation Act.**

In reply, Appellant contends a review of the Respondents' Return confirms that Appellant's reliance upon S.C. Code Ann. § 42-1-310 (1996) and submission of the unopposed redacted WCC Form 12A (Motion for Summary Judgment, Att. "A") for the proposition that the parties in this matter are bound by the Workers' Compensation Act ("Act"); that Appellant was injured by accident arising out of and in the course of employment with the Respondent Employer on May 05, 2005; and the mutually agreed upon average weekly wage in this matter is \$1,161.00 was not opposed by Respondents', and Appellant moves the Court to accept the same as a matter of fact and law. S. C. Code Ann. § 42-1-310.

- 2. On Return, Respondents' failed to meet their burden in terms of establishing that this Court lack jurisdiction over the instant appeal or that this Court lacks jurisdiction to grant Appellant's Motion for Summary Judgment.**

In reply, Appellant contends the Respondents' contention(s) and supporting authorities alleging this Court lacks jurisdiction to consider and grant Appellant's Motion for Summary Judgment is without merit based on several relevant factors.

As an **initial matter**, Appellant contends every authority cited by the

Respondents' to support their argument that this Court lacks jurisdiction to consider a summary judgment application in the first instance makes no expressed or specific reference to support Respondents' arguments, and in fact, Appellant contends Respondents' are attempting to force a limited construction to support their argument. See *S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006); also see *Epstein v. Coastal Timber Co.*, 393 S.C. 276, 285, 711 S.E.2d 912, 917 (2011)("Words in a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's application."); also see *Byerly v. Conner*, 307 S.C. 441, 444, 415 S.E.2d 796, 799 (1992) (stating an appellate court will give a regulation's terms their plain and ordinary meaning and may not resort to a forced interpretation to limit or expand the regulation's operation). *Id.*

For example, Respondents' cite S.C. Code Ann. § 14-8-200(a), which provides in pertinent part:

Except as limited by subsection (b) and Section 14-8-260, the court has jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit court, family court, a final decision of an agency, a final decision of an administrative law judge, or the final decision of the Workers' Compensation Commission. This jurisdiction is appellate only, and the court shall apply the same scope of review that the Supreme Court would apply in a similar case. The court has the same authority to issue writs of supersedeas, grant stays, and grant petitions for bail as the Supreme Court would have in a similar case. The court, to the extent the Supreme Court may by rule provide for it to do so, has jurisdiction to entertain petitions for writs of certiorari in post-conviction relief matters pursuant to Section 17-27-100. *Id.*

However, neither §14-8-200(a) & (b); § 14-8-260; nor §18-9-270 (1999 supp.)("The Supreme Court or the Court of Appeals may reverse, affirm, or modify the judgment, decree, or order appealed from in whole or in part and as to

any or all of the parties, and the judgment shall be remitted to the court below to be enforced according to law”) expressly or implicitly prohibits this Court, or the Supreme Court, from considering a summary judgment application in the first instance. *Id.*

Still further, Respondents’ reliance upon *Azar v. City of Columbia*, 778 S.E.2d 315, 316, 2015 S.C. LEXIS 325 * (2015) (“[w]hen reviewing a grant of summary judgment, this Court applies the same standard applied by the circuit court pursuant to Rule 56(c), SCRPC”), is without merit, because *Azar* does not expressly or implicitly state that this Court is prohibited from considering a summary judgment application in the first instance. *Id.*

Moreover, Appellant filed the summary judgment application pursuant to Rule 240, SCACR. *Id.* Motion for Summary Judgment, previously filed. Rule 240(a), SCACR (“This Rule governs all motions or petitions filed in the appellate court, including **but not limited to...**”)(Emphasis added) does not prohibit a party from filing and serving a summary judgment application with this Court for consideration in the first instance. Rule 240(a), SCACR.

However, once a summary judgment application is filed with this Court, well-settled authority indicates that this Court applies the same standard in considering summary judgment applications as set forth in Rule 56, SCRPC. See *Quail Hill, L.L.C. v. Cnty. of Richland*, 387 S.C. 223, 234, 692 S.E.2d 499, 505 (2010) (stating appellate courts apply the same standard as the trial court under Rule 56(c), SCRPC). *Id.* Thus, Respondents’ assertion and reliance upon Rule 81, SCRPC, and Rule 101(a), SCACR in support of their proposition is without

merit.

As such, considering this Summary Judgment application in the first instance would not serve to expand or limit this Court's jurisdictional authority over the instant appeal, and in fact is consistent with the Court's jurisdictional authority, under the Administrative Procedures Act ("APA") to "affirm", "modify" or "reverse" Orders or decisions from the lower court or administrative tribunals. S.C. Code Ann. § 1-23-380(5) (2008 supp.).

Second, Appellant contends in considering the summary judgment application, the Court would not infringe upon the parties' protected due process rights in any way or manner. Specifically, this Court has been provided sufficient and undisputed evidence of record by the Appellant, and evidence relied upon by the Respondents, to consider approving or denying the summary judgment application, wherein there will be no future requirement for the taking of depositions, sworn testimony, or the need for a jury based on the fact section 1-23-380 of the APA provides that judicial review of an administrative proceeding must be conducted by the court without a jury and shall be "confined to the record". S.C. Code Ann. § 1-23-380 (2008 supp.).

Third, in considering and if meritorious, granting summary judgment in the instant appeal, this Court's actions would be consistent and harmonious with the intent of the legislature; the fundamental purpose of all courts in our state; and the guiding principle undergirding our workers' compensation system.

Specifically, consider that the purpose of summary judgment "... is to expedite disposition of cases which do not require the services of a fact finder."

George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). *Id.* The purpose of summary judgment is consistent with well-settled authorities regarding prompt and swift [expedited] disposition of workers' compensation cases, which clearly establishes the intent of the our Legislature, wherein; "Compensation Laws constitute a form of social legislation and were enacted primarily for the benefit, **protection** and **welfare** of working men [and women] and their dependents; and such laws should be construed liberally¹ in favor of the employees and their dependents, in furtherance of the beneficent purposes for which they were enacted and to **avoid any incongruous or harsh results**". (Emphasis added). See *Cokeley v. Robert Lee, Inc.*, 197 S.C. 157, 14 S.E. 2d 889 (1941); *Dennerly v. Ocmulgee Lumber Co.*, 206 S.C. 481, 34 S.E. 2d 792 (1945); *Baldwin v. Pepsi-Cola Bottling Co.*, 234 S.C. 320, 108 S.E. 2d 409 (1959); *Carver v. Bill Pridemore and Co.*, 278 S.C. 235, 294 S.E. 2d 419 (1982); *Stokes v. First National Bank*, 298 S.C. 13, 377 S.E. 2d 922 (S.C. App. 1988); *Hutson v. S.C. State Ports Auth.*, 399 S.C. 381, 387, 732 S.E.2d 500, 503 (2012); also see 99 C.J.S. *Workers' Compensation* § 16 (2013) (stating "considerations leading to the enactment of the compensation legislation [include] a desire to provide a **remedy** or form of relief to, or settlement of the

¹ In fact, our Legislature has vested this Court with **broad discretionary authorities and powers** to "liberally construe" the Workers' Compensation Act in favor of the undersigned injured Appellant/Claimant, which certainly would include this Court's legal authority and power to consider and grant Appellant's motion for summary judgment if meritorious, or afford this Court the jurisdiction to take **expedited** appropriate actions in terms of issuing a **sua sponte** opinion (if favorable to Appellant) wherein the Court has determined to dispense with further briefing, **vacate** the July 17, 2015 circuit court order on appeal, and order the immediate compliance by Respondents' with the September 25, 2014 Circuit Court Order issued in this matter by The Honorable Brian M. Gibbons.

claims of, injured workers or their dependents that is **prompt and speedy**" (footnote omitted)) (Emphasis added); 82 Am. Jur. 2d *Workers' Compensation* § 12 (2013) ("A state's workers' compensation act . . . provid[es] injured employees with an efficient system of rights, remedies, and procedures with the goal of giving them **prompt** relief. Among the purposes of a workers' compensation act [is] . . . providing **prompt justice** for injured workers and **preventing the delays** that might arise from **protracted litigation**." (footnotes omitted)) (Emphasis added). *Id.*

Moreover, consider the purpose of summary judgment and the well-settled intent of our legislature regarding expedited disposition of workers' compensation cases, with the fundamental purpose of all courts in our state in terms of judges' "Adjudicative Responsibilities" as set forth in Canon 3(B)(8), Code of Judicial Conduct (CJC), Rule 501, SCACR, which provides in relevant part:

"A judge **shall dispose** of all judicial matters **promptly**, efficiently and fairly.

Commentary:

In disposing of matters **promptly**, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved **without unnecessary cost or delay**. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to **reduce or eliminate dilatory practices, avoidable delays and unnecessary costs**..." (Emphasis added). *Id.*

Fourth, in addition to the vested jurisdiction and authority this Court has to consider approving Appellant's summary judgment application in the first instance pursuant to §§14-8-200(a) & (b); §§ 14-8-260; §§18-9-270; §§ 1-23-380; and well-settled authorities as set forth in *Cokeley supra*, this Court also has

inherent jurisdictional authority, in the administration of justice, to consider granting Appellant's summary judgment application in the first instance. See *Greenfield v. Greenfield*, 245 S.C. 604, 141 S.E.2d 920 (1965) (holding "the inherent powers of a court, which are essential to its existence and protection and to the **due administration of justice** within the scope of the jurisdiction **expressly conferred, do not depend upon express constitutional or legislative grant**"). (Emphasis added). *Id.*

Indeed, if this Court agrees **today** with Appellant that the Commission lacked jurisdiction at the time it issued the Settlement Agreement and Release on January 05, 2006 **or** that the Respondents' failed to preserve any issues for review or reconsideration by this Court in their Rule 59(e) Motion to Alter/Amend **or** that the Circuit Court, by way of The Honorable William P. Keesley ("Successor Judge Keesley"), the successor circuit judge, lacked jurisdiction when it issued the seven *sua sponte* administrative orders and the July 17, 2015 Circuit Court Order on appeal, then it would constitute avoidable delays and a waste of unnecessary costs if this Court were to deny Appellant's summary judgment application only to reach the same determination at the end of this already and unintentionally-protracted appellate process².

Based on the foregoing, Respondents' proposition that this Court lacks

² According to the South Carolina Appellate Case Management System ("C-Track"), as of January 19, 2016 the Court of Appeals has approximately **1,480** active appeals pending, which does not include the active appeals before the Court of Appeals from the Family Courts in our state, which are not displayed on C-Track due to confidentiality purposes or petitions for rehearing and other filings regarding closed appellate cases. Source: <http://ctrack.sccourts.org/public/caseSearch.do>

jurisdiction on appeal to consider Appellant's summary judgment application in the first instance is patently without merit.

3. On Return, Respondents' failed to meet their burden in terms of establishing that the Workers' Compensation Commission had proper jurisdiction at the time it approved the Settlement Agreement and Release in this matter on January 05, 2006.

In reply, Appellant contends the Respondents' failed to meet their burden of establishing that the Workers' Compensation Commission had proper jurisdiction at the time it approved the Settlement Agreement and Release in this matter on January 05, 2006 based several relevant factors.

As an **initial matter**, a review of the Respondents' Return to the summary judgment application confirms that the Respondents' failed to challenge or oppose; **1)** the validity of Appellant's submission of Redacted WCC Form 18, WCC Case No. 0506205, dated 12/01/2005 stamped received by the Commission on 12/05/2005 (Motion for Summary Judgment, Att. "**B**"); **2)** Appellant's reliance upon the aforementioned WCC Form 18 that Appellant received temporary compensation payments from the Employer's Representative for approximately 213 consecutive days, including the first 150 days (Motion for Summary Judgment, p. 6); **3)** Appellant's reliance upon the aforementioned WCC Form 18, this Court's holding authority as set forth in *Martin v. Rapid Plumbing*, and the October 27, 2005 MMI Medical Report that the Employer's Representative unlawfully terminated entitled TTD Disability Compensation Payments, in violation of § 42-1-620, § 42-9-260(F) and S.C. Reg. 67-506(D) & (E) of the Act (Motion for Summary Judgment, p. 8); **4)** the validity of the copies of the last three check receipts of compensation received from the Employer's

Representative (Motion for Summary Judgment, Att. "B"); 5) Appellant's reliance upon the aforementioned copies of the check receipts of the last three compensation payments received by the Employer's Representative that said Employer's Representative unlawfully withheld entitled TTD Disability compensation payments from Appellant from October 27, 2005 until after Appellant entered into the aforementioned Settlement Agreement and Release on or around December 22, 2005 (Motion for Summary Judgment, p. 8); 6) the validity of the copies of Appellant's Workers' Compensation Medical Reports dated 10/28/2005; 10/27/2005; 10/19/2005; and 10/06/2005 (Motion for Summary Judgment, Att. "C"); 7) Appellant's reliance on the aforementioned WCC Medical Reports, S.C. Code Ann. § 42-1-160 (Supp. 2005), and the Court's holding authorities, as set forth in *Howell v. Pac. Columbia Mills*; *Oliver v. South Carolina Dep't of Hwys. & Pub. Transp.*; and *Sigmon v. Dayco Corp.*, that Appellant's impairment of "permanent lifting restrictions" is a compensable injury which arose as a proximate cause to the admitted work-related accident which occurred on May 05, 2005 (Motion for Summary Judgment, p. 9); 8) the reliance upon the aforementioned compensable injury of permanent lifting restrictions that said compensable injury was not referenced to or resolved in the aforementioned Settlement Agreement and Release (Motion for Summary Judgment, p. 9); 9) the validity of the Employer Representative's December 30, 2005 correspondence to the Commission providing a copy of the proposed Settlement Agreement and Release but not providing a copy of the aforementioned WCC Medical Reports (Motion for Summary Judgment, Att. "E"); 10) Appellant's reliance upon the

aforementioned Dec. 30, 2005 Employer Representative Correspondence to the Commission that the Employer's Representative failed to file the WCC Medical Reports with the Commission, in violation of S.C. Reg. 67-1301(B)(2005) and the terms and conditions set forth in the aforementioned agreement (Motion for Summary Judgment, p.11); and **11**) that the Commission failed to consider the medical reports prior to approving the settlement agreement and release in violation of the terms and conditions as set forth in the agreement (Motion for Summary Judgment, p. 11). Return to Motion for Summary Judgment, previously filed.

Second, by reference, Respondents' filed a true copy of their "Defendants' Reply to Appellant's Motion for New Trial" as Attachment "1" to their Return, as supporting issue(s) in opposition to the argument that the Commission lacked jurisdiction at the it issued the Settlement Agreement and Release; however, Appellant contends ALL arguments set forth in the aforementioned Reply to Motion for New Trial are without merit. Specifically, a review of the Respondents' Reply to the former Motion for New Trial confirms that the Respondents' heavily relied upon the Commission's promulgated regulation of S.C. Reg. 67-801. In fact, Reg. 67-801 was the only authority relied upon by the Respondents' in the aforementioned Reply to Motion for New Trial. Reply to Motion for New Trial, p. 2-7 (Return to Motion for Summary Judgment, Att. "1").

However, just as Appellant meritoriously asserted in the "Answer to Reply to Motion for New Trial", p. 25 (Motion for Summary Judgment, Att. "H"), Appellant again relies upon our Supreme Court's holding authority as set forth in

Society of Professional Journalists v. Sexton, 283 S.C. 563, 324 S.E. 2d 313 (S.C. 1984)(“a regulation. ...must fall when it alters or adds to a statute.”), that S.C. Reg. 67-801 is controlled by §§ 42-1-620; §§ 42-9-260(F); and therefore, S.C. Reg. 67-801, as relied upon by Respondents, “must [again] fall”³. *Id.*

Third, Appellant contends Respondents’ “bald” assertion that Appellant’s signature on the Settlement Agreement and Release served to confer consent or jurisdiction to the Commission at the time it approved the agreement on January 05, 2006 (“Settlement Agreement and Release, as signed by Appellant and entered by the Commission” (Reply to Motion for Summary Judgment, p. 4)); however, Appellant’s signature on the aforementioned agreement could not legally confer jurisdiction to the Commission. Specifically, in *State v. Langford*, our Supreme Court held,

“[T]he question of [subject matter] jurisdiction **cannot be waived by any act or admission of the parties**, for the very obvious reason that the parties **have no power** to invest any tribunal with jurisdiction of a subject over which the law has not conferred jurisdiction upon such tribunal. Hence the common expression, ‘Consent cannot confer jurisdiction.’” *Id.* at 223 S.C. 20, 26, 73 S.E.2d 854, 857 (1953)(quoting *City of Florence v. Berry*, 61 S.C. 237, 240, 39 S.E. 389, 390 (1901)). (Emphasis added). *Id.*

Thus, because section 42-1-620 (“No agreement by an employee to waive his rights to compensation under this title **shall** be valid.”) (Emphasis added) expressly prohibited the Appellant from entering into the aforementioned

³ Appellant contends that due to Respondents’ Counsel decision to submit their ‘Reply to Appellant’s Motion for New Trial’ to this Court for review and consideration in support of their position that the Commission had proper jurisdiction to approve the Settlement Agreement and Release, this Court is now informed and aware as to why the Circuit Court, by way of Circuit Judge Gibbons, issued the September 25, 2014 Order GRANTING “all particulars” set forth in Appellant’s Motion for New Trial. September 25, 2014 Court Order (Motion for Summary Judgment, Att. “F”, previously submitted).

Settlement Agreement and Release, particularly due to the admitted 213 consecutive days (including the first 150 days) Appellant received temporary compensation payments, wherein due to the Employer-selected-treating-physician's October 27, 2005 MMI Medical Report opining the unchallenged compensable-injury of permanent lifting restrictions and reporting to the Employer that Appellant could no longer perform the duties of a delivery driver, wherein the Employer's Representative had a fiduciary obligation⁴ to continue payment of TTD disability payments pursuant to section 42-9-260(F) and corresponding S.C. Reg. 67-506(D), and wherein the Employer's Representative failed to perform the mandatory requirements to seek permission from the Commission to suspend or terminate entitled TTD disability payments by the required method and procedure as set forth in section 42-9-260(F) and corresponding S.C. Reg. 67-506(E), the Appellant could not "confer consent" to waive his right to entitled TTD compensation payments by way of Settlement Agreement and Release, to the Commission, and "the law has not conferred jurisdiction upon such tribunal", namely, the Commission, to grant or approve settlement agreements as a lawful means to terminate entitled TTD Disability compensation payments, and as such, the Commission lacked subject matter

4 "A 'fiduciary relationship' is founded on trust and confidence reposed by one person in the integrity and fidelity of another." *Steele v. Victory Sav. Bank*, 295 S.C. 290, 293, 368 S.E.2d 91, 93 (Ct. App. 1988). It exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence. *Id.* see also *Landvest Assocs. v. Owens*, 276 S.C. 22, 274 S.E.2d 433 (1981); also see *O'Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992). Indeed, some relationships are deemed fiduciary as a matter of law. See *State v. Scott*, 330 S.C. 125, 497 S.E.2d 735 (Ct. App. 1998) (holding the employer-employee relationship is deemed fiduciary as a matter of law). *Id.*

jurisdiction at the time it approved the settlement agreement and release in this matter. *Id.*

Because the Respondents' failed to meet their burden to prove the Commission had proper jurisdiction at the time it approved the aforementioned Settlement Agreement and Release, Appellant contends the failure to do so is a **deathblow** to the Respondents' standing and ability to remain viable in the instant appeal at bar. As such, this Court should consider immediately granting summary judgment as a matter of law, by reference, to the Appellant's relied upon holding authorities as set forth above and in the Motion for Summary Judgment. Motion for Summary Judgment, p. 5-12, previously submitted.

4. On Return, Respondents' failed to meet their burden in terms of establishing that Respondents' preserved any issues for review or reconsideration in their Rule 59(e) Motion to Alter/Amend dated October 16, 2014.

In reply, Appellant contends the Respondents' failed to meet their burden in terms of establishing that the Respondents' preserved any issues for review or reconsideration by this Court in their Rule 59(e) Motion to Alter/Amend dated October 16, 2014 based on several relevant factors.

As an **initial matter**, if the Court agrees with the Appellant that the Commission lacked subject matter jurisdiction at the time it approved the Settlement Agreement and Release in this matter on January 05, 2006 then the Court would not be required to render a judgment on this issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues when resolution of another issue disposes of the appeal). *Id.*

Second, a review of the Return filed by Respondents' counsel confirms that Respondents did not challenge or dispute Appellant's contention that Appellant prevailed in the instant appeal pursuant to the September 25, 2014 Circuit Court Order, as set forth by reference in the Motion for Summary Judgment, Issue No. 4, p. 13-16. Return to Motion for Summary Judgment, previously filed.

Moreover, Respondents' failed to challenge or dispute the validity of the copy of the Respondents' aforementioned Motion to Alter/Amend as evidenced by Appellant (Motion for Summary Judgment, Att. "I")⁵. Return to Motion for Summary Judgment, previously filed.

Further, Respondents' failed to challenge or oppose Appellant's proposition that Respondents' failed to preserve a single issue for reconsideration or review by this Court or by the successor circuit court in their Rule 59(e) Motion, or the holding authorities Appellant relied upon as set forth, by reference, in the Motion for Summary Judgment, p. 16-20. Return to Motion for Summary Judgment, previously filed.

Third, as a supporting ground, even if the Respondents' would have preserved a single issue for review or reconsideration by this Court in their Rule 59(e) Motion, which they failed to do, the Circuit Court, by way of successor Judge Keesley, expressly declined to issue a ruling on the Respondents' Rule 59 (e) Motion to Alter/Amend in the July 17, 2015 Circuit Court Order on appeal,

⁵ Appellant would point out that Appellant made a harmless typographical error in the aforementioned Motion for Summary Judgment where Appellant mistakenly referenced the Respondents' Rule 59(e) Motion to Alter/Amend as Att. "J" when it was actually evidenced as Att. "I".

opining, “**The court had evaluated the situation and determined that it should not decide the Respondents pending motion to alter or amend Judge Gibbons’ order**” (Emphasis added) (July 17, 2015 Circuit Court Order on appeal, p. 20 (Motion for Summary Judgment, Att. “L”, previously submitted)).

Thus, because the Respondents failed to preserve a single issue in their Rule 59(e) Motion to Alter or Amend the September 25, 2014 Circuit Court Order, and more importantly, if the July 17, 2015 Circuit Court Order on appeal is valid (which Appellant contends it is not), the decision by successor Judge Keesley not to issue a ruling on the Respondents’ Rule 59(e) Motion to Alter/Amend is a **deathblow** to the Respondents’ standing and ability to remain viable in the instant appeal at bar⁶. See Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (holding an issue must have been **raised to and ruled upon** by the trial court in order to be preserved for appellate review) (Emphasis added). *Id.*

As such, this Court should consider immediately granting summary judgment as a matter of law, by reference to the Appellant’s relied upon holding authorities as set forth above and in the Motion for Summary Judgment. Motion for Summary Judgment, p. 13-20, previously submitted.

- 5. On Return, Respondents’ failed to meet their burden in terms of establishing that the Circuit Court, by way of Successor Circuit Judge William P. Keesley, had proper jurisdictional authority at the time it issued the seven sua sponte Administrative Orders or the July 17, 2015 Circuit Court Order on appeal.**

⁶ Appellant contends “A rose is a rose is a rose is a rose...” (Gertrude Stein, Sacred Emily in Selected Writings of Gertrude Stein (Vintage Books, 1990)) in terms of the inability of the Respondents to legally continue in the instant appeal based on their failure to preserve a single issue for this Court to reconsider in the instant appeal. *Id.*

In reply, Appellant contends Respondents failed to meet their burden in terms of establishing that the Circuit Court, by way of successor Judge Keesley, had proper jurisdictional authority at the time it issued the seven *sua-sponte* administrative orders or the July 17, 2015 Circuit Court Order on appeal.

As an **initial matter**, if the Court agrees with the Appellant that the Commission lacked subject matter jurisdiction at the time it approved the Settlement Agreement and Release in this matter on January 05, 2006 and/or that the Respondents' failed to preserve a single issue for review or reconsideration by this Court, then the Court would not be required to render a judgment on this issue. See *Futch. Id.*

Second, a review of the Respondents' Return to the Motion for Summary Judgment confirms that Respondents' did not challenge or oppose the validity of the submission of the seven *sua sponte* administrative orders, the March 27, 2015 Transcript from the Appellate Hearing, or the July 17, 2015 Circuit Court Order on Appeal, as evidenced by Appellant in Attachments "J-L" in the Motion for Summary Judgment. Return to Motion for Summary Judgment, previously submitted.

Furthermore, Respondents' did not challenge or oppose Appellant's reliance of the aforementioned *sua sponte* administrative orders, the Transcript, or the Circuit Court Order on appeal with respect to Appellant's well pled arguments that the Circuit Court, by way of successor Judge Keesley, lacked jurisdiction at the time it issued the seven *sua sponte* administrative orders; convened the March 27, 2015 appellate hearing; and when it issued the July 17,

2015 Circuit Court Order on appeal, by reference, to holding authorities as set forth in the Motion for Summary Judgment, Issue No. 5, p. 20-35. Return to Motion for Summary Judgment, previously submitted.

Because Respondents' failed to meet their burden to establish that successor Judge Keesley had proper jurisdiction at the time it issued the seven sua sponte administrative orders, convened the March 27, 2015 appellate hearing, and at the time it issued the July 17, 2015 Circuit Court Order on appeal, Appellant contends the Respondents' failure to meet its burden constitutes a **deathblow** to the Respondents' standing and ability to remain viable in the instant appeal at bar.

As such, this Court should consider immediately granting summary judgment as a matter of law, by reference, to the Appellant's relied upon and holding authorities as set forth in the Motion for Summary Judgment. Motion for Summary Judgment, p. 20-35, previously submitted.

6. On Return, Respondents' contention that Appellant's Motion for Summary Judgment exceeded the page limitations for filing a motion before this Court is without merit.

In reply, Appellant contends that Respondents "bald" assertion that "Appellant repeats and embellishes many of the same arguments contained in his Initial Brief, without being constrained by or asking permission to exceed the page limitation thereof" (Reply to Motion for Summary Judgment, p. 4) is without merit. First, Respondents' argument is short, conclusory, not supported by cited authority, and therefore must be deemed abandoned by the Court. See First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting

when a party fails to cite authority or when the argument is simply a conclusory statement, the party is deemed to have abandoned the issue on appeal). *Id.*

Second, a review of Rule 240, SCACR, confirms that there is no expressly or implied reference to an alleged page limitation regarding motions filed in this Court. Specifically, Rule 240(c), SCACR, provides in pertinent part:

(c) Form and Content of Motions and Petitions. All motions or petitions filed in an appellate court shall be in writing, shall state the grounds thereof, and shall comply with the requirements of Rule 267. The pages of the motion or petition and all supporting documents shall be consecutively numbered. Each motion or petition shall include the following:

(1) A certificate or affidavit of service reflecting the date of service upon all parties. The original certificate or affidavit of service must be filed with the original motion or petition.

(2) A memorandum with citation of authorities in support of the motion.

(3) Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions. *Id.*

Moreover, Rule 267, SCACR, as cited in Rule 240(c), also makes no expressed reference to a page limitation set to motions filed in this Court. Rule 267 SCACR. As such, Appellant contends the Respondents' argument that Appellant exceeded the page limitations in the Motion for Summary Judgment filed in this action is patently without merit.

7. On Return, Respondents' contention that Respondents' was not afforded enough time to file a proper Return to Appellant's Motion for Summary Judgment is without merit.

In reply, Appellant contends that Respondents' bald assertion that they were not afforded enough time to file a proper Return to Appellant's Motion for

Summary Judgment (Return to Motion for Summary Judgment, p. 3) is without merit based on several factors.

As an initial matter, if the Respondents' allege they needed more time to file their Return, then perhaps the Respondents' counsel of record, namely, Erin L. Hantske, Esquire and McAngus, Goudelock, and Courie, LLC ("Attorney Hantske"), should have considered utilizing the full ten days afforded to file the Return as set forth in Rule 240(e), SCACR. Rule 240(e), SCACR.

Specifically, a review of the record indicates that Appellant's Motion for Summary Judgment was filed and served in this matter on January 04, 2016 and received by Respondents', through counsel, via USPS Priority Mail, with service perfected on January 06, 2016 at 11:03 a.m. Proof of Service, Motion for Summary Judgment. USPS Verified Track and Confirm Receipt and Affidavit confirming delivery of Motion for Summary Judgment to Respondents' Counsel on January 06, 2016, Att. "P".

Further, not including the January 06, 2016 date of service in the computation of time to file the Return, Respondents' counsel had until January 16, 2016 to timely file and serve their Return pursuant to Rule 240(e), SCACR. *Id.* However, a review of the Respondents' Return confirms that the Return was filed by Respondents' on January 12, 2016 wherein the Respondents', through Counsel, was afforded an additional four (4) days to include additional arguments in their Return, which they voluntarily waived and abandoned. Return to Motion for Summary Judgment, previously submitted.

As such, Appellant contends the Respondents' argument that they was

not afforded enough time to respond to the Motion for Summary Judgment, wherein the Respondents' counsel acknowledged and knew that they had 10 days to respond, but voluntarily waived and abandoned 4 of the 10 days to file and serve their Return, renders their argument meritless. See King v. James, 388 S.C. 16, 30, 694 S.E.2d 35, 42–43 (Ct. App. 2010) ("for a party to waive a right, the party must have known of the right and known that the right was being abandoned."). *Id.*

As such, Respondents' argument that they needed additional time to file a Return to the Motion for Summary Judgment is patently without merit.

8. On Return, Respondents' contention that Appellant is attempting "to sidestep proper judicial process and attempt to force an outcome in his favor" is without merit and duplicitous.

In reply, Appellant contends that Respondents' assertion that Appellant is attempting "to sidestep proper judicial process and attempt to force an outcome in his favor" (Return to Motion for Summary Judgment, p. 4) is without merit and duplicitous, based on several relevant factors.

As an **initial matter**, the July 17, 2015 Circuit Court Order on appeal as issued by successor Judge Keesley must be deemed null and void and disregarded as a nullity pursuant to the well settled and undisputed authorities establishing successor Judge Keesley lacked jurisdiction at the time the aforementioned Circuit Order on appeal was issued, which renders any opinion from successor Judge Keesley void. Motion for Summary Judgment, Issue No. 5, p. 20-35, previously submitted.

Second, aside from the Respondents' reliance upon successor Judge

Keesley's opinion, Respondents' failed to cite a single example where the Appellant has knowingly and willfully attempted to "sidestep proper judicial process and attempt to force an outcome. Return to Motion for Summary Judgment, previously filed.

Third, Appellant has clearly established this Court's broad vested and inherent jurisdictional authority to consider and grant Appellant's summary judgment application in the first instance. See Issue No. 2 and holding relied upon authorities above. To the contrary, there are several examples where the Respondents', through both former Counsel Attorney Barefoot and current Counsel Attorney Hantske, has in fact sidestepped judicial processes, to include, but not limited to;

- Unlawfully suspending and withholding entitled TTD Disability Compensation payments from the Appellant after Appellant reached MMI on 10/27/2005 wherein Appellant had received entitled temporary compensation payments for 175 consecutive days, including the first 150 days, in violation of § 42-9-260(F) and S.C. Reg. 67-506(D);
- Unlawfully withholding entitled TTD Disability benefit payments until after Appellant entered into the unlawful Settlement Agreement and Release on December 22, 2005, in violation of § 42-9-260 and S.C. Reg. 67-506(D);
- Unlawfully terminating entitled TTD Disability benefit payments in violation of § 42-1-620; § 42-9-260 and S.C. Reg. 67-506;
- Filing a Form 51 and an Amended Form 51 making a false statement of material fact by falsely relying upon the unlawful Settlement Agreement and Release to support continued unlawful withholding of entitled TTD Disability compensation payments, in violation of Rule 3.3(a)(1), RPC, Rule 407, SCACR;
- Failing to disclose to the circuit court and the Court of Appeals that said Settlement Agreement and Release failed to include the open material terms of permanent lifting restrictions, in violation of Rule 3.3(a)(1), RPC, Rule 407, SCACR;

- Failing to disclose to the Court of Appeals that Respondents' failed to file the WCC Medical Reports with the Commission for review and consideration in the Return to Motion for Summary Judgment⁷;
- Failing to disclose to the Court of Appeals that the Commission lacked jurisdiction when it approved the Settlement Agreement and Release⁷; and
- Making an intentional false statement of a material fact at the March 27, 2015 appellate hearing, by stating that Appellant **resigned his employment with the Employer**, when in fact, Appellant was subjected to a retaliatory discharge by the Respondent Employer (Transcript, p. 19, L. 9 (Motion for Summary Judgment, Att. "K"), in violation of Rule 3.3(a)(1), RPC, Rule 407, SCACR (Termination Notice, Att. "Q").

Indeed, Appellant would contend Respondents' Counsels of record, both Attorney Barefoot and Attorney Hantske, has clearly demonstrated bad faith actions and conduct against Appellant, particularly based on their verified unlawful and duplicitous conduct as clearly established and confirmed in the record, wherein Appellant has now been deprived access to entitled employment and entitled TTD Disability benefits for more than ten years, although Appellant lawfully prevailed in the instant appeal on September 25, 2014 and wherein the conduct of the fictitious-corporate Respondents', through Attorney Hantske, is in fact making a mockery of the judicial process in the instant appeal.

It would certainly appear that if Respondents' Counsel of record was complying with the Rules of Professional Conduct and fully performing their

⁷ Silence when there is a duty to speak can constitute fraud. *See Moore v. Moore*, 360 S.C. 241, 251, 599 S.E.2d 467, 472 (Ct. App. 2004) (stating "parties in a fiduciary relationship must fully disclose to each other all known information that is significant and material, and when this duty to disclose is triggered, silence may constitute fraud"); also see *Holly Hill Lumber Co. v. McCoy*, 201 S.C. 427, 437, 23 S.E.2d 372, 376 (1942) ("Nondisclosure becomes fraudulent only when it is the duty of the party having knowledge of the facts to uncover them to the other."); see also *Houck v. State Farm Fire & Cas. Ins. Co.*, 366 S.C. 7, 11, 620 S.E.2d 326, 329 (2005).

fiduciary obligations, Appellant would already be receiving entitled TTD disability compensation payments in accordance with the Act. As such, Respondents' assertion that Appellant is attempting to sidestep judicial process is patently without merit.

CONCLUSION

The Respondents should not be afforded a second bite at the apple. Accordingly, based on the foregoing, Appellant moves the Court to deny the arguments advanced by Respondents', and by reference, that the Court grant Appellant's summary judgment application and previously stated relief as set forth in the Motion for summary judgment, as a matter of law.

VERIFICATION

I, **Alexander Guice**, the named and undersigned self-represented Appellant in this matter, do hereby swear, under penalty of perjury, that the information contained herein is true and correct to the best of my knowledge and ability.

Respectfully submitted,

By: 

Alexander Guice
Post Office Box 13281
Tampa, FL 33681
(813) 562-0547
alguice@hotmail.com
Appellant, Pro Se

Sworn to before me this
20 day of January, 2016



Notary Public of Florida
My commission expires 1-13-17

January 20 2016



SANDRA FILIPPONE
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE864684
Expires 1/13/2017

Attachment "P"

RECEIVED

JAN 06 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Successor Circuit Court Judge

Case No. 2013-CP-32-01272
Case No. 2014-CP-32-00399

Appellate Case No. 2015-001821

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION
WCC Case No. 0506205

Alexander Guice, Appellant,

v.

US Food Service, Inc., Employer, and
Ace American Insurance Company c/o
Gallagher Bassett Services, Inc., Respondents.

PROOF OF SERVICE

I hereby certify that the Respondents, through Counsel, were provided a true copy of a cover letter to the Clerk; a 'Motion for Summary Judgment and Stay of Proceedings Pending Adjudication' with supporting attachments; an Amended Designation of Matter; and a proof of service, by depositing the same in the US Postal Service, via Priority Mail, and addressed to: **Erin L. Hantske, Esq., P.O. Box 650007 Mt. Pleasant, SC 29465** on this 4th day of January, 2016.



Alexander Guice
P.O. Box 13281
Tampa, FL 33681
(813) 562-0547
Appellant, Pro Se

January 04, 2016

English

Customer Service

USPS Mobile

Register / Sign In



USPS Tracking®



Customer Service ›
Have questions? We're here to help.



Get Easy Tracking Updates ›
Sign up for My USPS.

Tracking Number: 9505511482786004358777

Updated Delivery Day: Wednesday, January 6, 2016

Product & Tracking Information

Postal Product:
Priority Mail 3-Day™

Features:
USPS Tracking™

Up to \$50 insurance included
Restrictions Apply

Text Updates

Email Updates

DATE & TIME	STATUS OF ITEM	LOCATION
January 6, 2016, 11:03 am	Delivered, To Agent	MOUNT PLEASANT, SC 29464

Your item has been delivered to an agent at 11:03 am on January 6, 2016 in MOUNT PLEASANT, SC 29464.

January 6, 2016, 9:55 am	Out for Delivery	MOUNT PLEASANT, SC 29465
January 6, 2016, 9:45 am	Sorting Complete	MOUNT PLEASANT, SC 29485
January 6, 2016, 6:28 am	Arrived at Post Office	MOUNT PLEASANT, SC 29464
January 5, 2016, 7:20 pm	Departed USPS Facility	COLUMBIA, SC 29201
January 5, 2016, 4:44 pm	Arrived at USPS Destination Facility	COLUMBIA, SC 29201
January 5, 2016, 1:27 am	Arrived at USPS Origin Facility	TAMPA, FL 33605
January 4, 2016, 10:50 pm	Departed Post Office	TAMPA, FL 33630
January 4, 2016, 9:57 am	Acceptance	TAMPA, FL 33630

Track Another Package

Tracking (or receipt) number

9505511482786004358777

Track It

Manage Incoming Packages

Track all your packages from a dashboard.
No tracking numbers necessary.

Sign up for My USPS ›



HELPFUL LINKS

- [Contact Us](#)
- [Site Index](#)
- [FAQs](#)

ON ABOUT USPS.COM

- [About USPS Home](#)
- [Newsroom](#)
- [USPS Service Updates](#)
- [Forms & Publications](#)
- [Government Services](#)
- [Careers](#)

OTHER USPS SITES

- [Business Customer Gateway](#)
- [Postal Inspectors](#)
- [Inspector General](#)
- [Postal Explorer](#)
- [National Postal Museum](#)
- [Resources For Developers](#)

LEGAL INFORMATION

- [Privacy Policy](#)
- [Terms of Use](#)
- [FOIA](#)
- [No FEAR Act/EEO Data](#)

Copyright © 2016 USPS. All Rights Reserved.

Search or Enter a Tracking Number

Attachment “Q”



ROUTE TO:
 1) Human Resources
 2) Payroll (if applicable)

EMPLOYEE STATUS NOTICE (rev 03/2005)
 (Hires/Changes/Transfers)

Effective Date 11/2/05	Employee ID (6 digits) 121674	Name (First) Alexander	(Middle Initial) (Last) Guice
---------------------------	----------------------------------	---------------------------	----------------------------------

Section 1	Action(s) Termination	Reason(s) 109 - NO POSITION AVAILABLE Permanent lifting restrictions	STD % (if applicable)
-----------	--------------------------	--	-----------------------

Section 2	Comments/Special Processing Termination of Employment- Released from Doctor with permanent lifting restrictions not comparable with job duties		
-----------	---	--	--

Job Information - Present (A)		Job Information - Proposed (B)	
Business Unit (5 digits) USF- Conway, S.C site	Job Code (5 chars)	Business Unit (5 digits)	Job Code (5 digits)
Position # (8 digits)	Grade	Position # (8 digits)	Grade
Section 3	Delivery Driver Job Title	Job Title	
	Same	Department # (10 digits) and name	
	Transportation Location (4 digits) and name Conway, S C	Location (4 digits) and name	

General Employment Information - Complete if new hire, rehire, or changing				
Section 4	Reg/Temp: <input type="checkbox"/> Regular <input type="checkbox"/> Temporary	Empl Class: <input type="checkbox"/> Standard (blank) <input type="checkbox"/> Commission <input type="checkbox"/> Stepdown <input type="checkbox"/> Incentive	Union Code: <input type="checkbox"/> Non Union <input type="checkbox"/> Union Union Code.	Employee Type: <input type="checkbox"/> Salaried <input type="checkbox"/> Hourly <input type="checkbox"/> Exception Hourly (only commissionees)
	Full time / Part time: <input type="checkbox"/> Full time <input type="checkbox"/> Part time	Std Work Hours		
	Current Pay Group	Current Tax Location (4 digits)	Proposed Pay Group:	Proposed Tax Location (4 digits)

Compensation - Current (A)		Compensation - Proposed (B)		
Comp Rate Code <input type="checkbox"/> NAANNL(annual) <input type="checkbox"/> NAHRLY(hourly)	Target Bonus %	Comp Rate Code <input type="checkbox"/> NAANNL(annual) <input type="checkbox"/> NAHRLY(hourly)	% Chg	Target Bonus
Comp Rate (annual amount or hourly rate)		Comp Rate (annual amount or hourly rate)		
Section 5	Additional Pay - Present (A)		Additional Pay - Proposed (B)	
	Car Allowance <input type="checkbox"/> Yes <input type="checkbox"/> No Amount/pay period: \$	Other (describe) <input type="checkbox"/> Yes <input type="checkbox"/> No Amount/pay period: \$	Car Allowance <input type="checkbox"/> Yes <input type="checkbox"/> No Amount/pay period: \$	Other (describe) <input type="checkbox"/> Yes <input type="checkbox"/> No Amount/pay period: \$

APPROVALS (some changes may require only some of the signatures indicated)			
Section 6	Immediate Supervisor Mike Sanders	Date 11/2/05	Division HR Date 11-2-05
	R A Bennett	Date 11/2/05	Zone or Region President (for exceptions or regional staff changes) Date
	Division President	Date	Region HR VP (for exceptions or regional staff changes) Date
	Approvals for DIVISION TRANSFERS - Sending Division		Processed by HR Date 11-2-05

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

JAN 25 2016

William P. Keesley, Successor Circuit Court Judge

SC Court of Appeals

Case No. 2013-CP-32-01272

Case No. 2014-CP-32-00399

Appellate Case No. 2015-001821

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION
WCC Case No. 0506205

Alexander Guice, Employee, Appellant,

v.

US Food Service, Inc., Employer, and
Ace American Insurance Company c/o
Gallagher Bassett Services, Inc., Respondents.

PROOF OF SERVICE

I hereby certify that the Respondents, through Counsel, were provided a true copy of a cover letter to the Clerk; a 'Reply to Return to Motion for Summary Judgment and Stay Pending Adjudication' with supporting attachments and a proof of service, by depositing the same in the US Postal Service, via Priority Mail, and addressed to: **Erin L. Hantske, Esq., P.O. Box 650007 Mt. Pleasant, SC 29465** on this 20th day of January, 2016.



Alexander Guice
P.O. Box 13281
Tampa, FL 33681
(813) 562-0547
Appellant, Pro Se

January 20, 2016

Alexander Guice

P.O. Box 13281
Tampa, FL 33681
Phone: (813) 562-0547
Email: alguice@hotmail.com

January 20, 2016

Via Priority Mail

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

JAN 25 2016

SC Court of Appeals

Re: Alexander Guice v. US Foodservice, Inc., et al
Appellate Case No. 2015-001821

Dear Ms. Kitchings:

Please find enclosed an original and seven (7) copies of a 'Reply to Return to Motion for Summary Judgment and Stay Pending Adjudication' with supporting attachments, and a proof of service in regards to the above-entitled action. Please forward to the appropriate personnel for processing, and please return clocked copies of the same to the undersigned in the pre-paid self-addressed envelope enclosed for your convenience.

By copy of this correspondence, Erin L. Hantske, Esq., the Respondents' Counsel of record, has been provided a copy of the same via priority mail with enclosures.

Should you have any questions, please do not hesitate to contact me. Thank you for your assistance in this matter.

Very truly yours,



Alexander Guice
Appellant, *pro se*

/ag

Enclosures: As stated

cc: Erin L. Hantske, Esquire

PRESS FIRMLY TO:

RECEIVED
JAN 25 2016
SC Court of Appeals

 UNITED STATES
POSTAL SERVICE.

Retail

P

US POSTAGE PAID
\$9.75

Origin: 33630
Destination: 29211
2 lb. 5.10 oz.
Jan 20, 16
1189440600-07

1004

PRIORITY MAIL® 2-DAY

Expected Delivery Day: 01/22/16

USPS TRACKING NUMBER



9505 5110 6234 6020 6328 26

PRIORITY®
★ MAIL ★

 UNITED STATES
POSTAL SERVICE®

VISIT US AT USPS.COM®
ORDER FREE SUPPLIES ONLINE

FROM: P. O. BOX 13281
TAMPA, FL 33681

TO: CLERK OF COURT
COURT OF APPEALS
P.O. BOX 11629
COLUMBIA, SC 29211

RECYCLABLE.
DWT™ AND TYVEK® ARE TRADEMARKS OF DUPONT.

LY TO SEAL