

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APR 20 2016
SC Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1205080

Jesus Martinez, Employee,Appellant,

v.

Landmark Builders of SC, LLC, Employer, and
Amerisure Insurance Company, Carrier, Respondents,

v.

CCS Masonry, LLC, Employer, and
State National Insurance Company, Inc., Carrier, Respondents,

v.

SC Uninsured Employers' Fund,Respondent.

MOTION TO DISMISS APPEAL

Pursuant to Rules 240 and 260, SCACR, Respondents Landmark Builders of SC, LLC and Amerisure Insurance Company hereby move to dismiss this appeal on two grounds.

First, the order appealed from is not a "final judgment, appealable order or decision," as is required under Rule 201(a), SCACR. The Decision and Order attached to the Notice of Appeal is the decision of a single Hearing Commissioner of the South Carolina Workers' Compensation Commission. Commissioner Susan S. Barden heard the parties on September 29, 2015 and filed her Decision and Order on March 4, 2016. Claimant Jesus Martinez did not appeal that Decision and Order to the Full Commission

within 14 days of notice of the award. Instead, an appeal of the Decision and Order was filed with this Court.

A party cannot appeal the decision of a single Hearing Commissioner to this Court without first having that decision reviewed by the Full Commission. *Janhrette v. Union Camp Paper Corp.*, 293 S.C. 59, 59-60, 358 S.E.2d 704, 705 (1987); *see also Riddle v. Fairforest Finishing Co.*, 198 S.C. 419, 18 S.E.2d 341 (1942) (holding that a claimant cannot bypass Full Commission review and appeal the decision of a single commissioner directly to the courts). S.C. Code Ann. § 42-17-40 provides for initial hearing and decision by “[t]he commission or any of its members ...” S.C. Code Ann. § 42-17-50 allows a party to file an application for review by the “commission within fourteen days” of notice of the award. S.C. Code Ann. § 42-17-60 is the only provision that provides for appeals to this Court, and those appeals are from a “decision of the commission.” As the Supreme Court noted in *Riddle*, the term “commission” means “the South Carolina Industrial Commission [sic], and, of course, that means the [individuals] who are appointed commissioners to administer the Act, and, of course, must mean all of them and not just one of them.” 198 S.C. at 423, 18 S.E.2d at 343. Therefore, although the Decision and Order is binding on the parties as to the factual matters decided therein, it is not properly before this Court because it was not timely appealed to the Full Commission. As a result, this Court should dismiss this appeal with prejudice because the appealed Decision and Order is not an appealable decision of the Commission.

Second, this Court should dismiss the appeal because it was not filed by Claimant Jesus Martinez or any attorney representing him. Instead, it was filed by Jesse B. Martinez, who is Claimant’s son. (Att. A, Partial Transc. Of Single Commn’r hearing).

The Notice of Appeal indicates that Jesse B. Martinez filed the appeal as “Representative for Appellant.” To the best of the undersigned’s knowledge, Jesse B. Martinez is not a licensed attorney in the State of South Carolina.¹ While Claimant can file an appeal and other pleadings on his own behalf, *pro se*, his son cannot file pleadings in the appellate courts of South Carolina on Claimant’s behalf.

“South Carolina limits the practice of law to licensed attorneys.” *Medlock v. University Health Serv., Inc.*, 404 S.C. 25, 27, 743 S.E.2d 830, 831 (2013); S.C. Code Ann. § 40-5-310 (“No person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar ... or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina”).² “The generally understood definition of the practice of law embraces the preparation of pleadings and other papers incident to actions ...” *Medlock*, 404 S.C. at 27, 743 S.E.2d at 831. This includes the filing of a Notice of Appeal and other representation in appellate courts. *See Brown v. Coe*, 365 S.C. 137, 139, 616 S.E.2d 705, 706 (2005); *Renaissance Enter., Inc. v. Summit Tel. Serv., Inc.*, 334 S.C. 649, 650, 515 S.E.2d 257, 258 (1999).

Although a prior version of S.C. Code Ann. § 40-5-80 allowed a non-lawyer to represent an individual before any tribunal in the State under certain circumstances and conditions, *see In re Unauthorized Practice of Law Rules proposed by the South Carolina Bar*, 309 S.C. 304, 305, 422 S.E.2d 123, 124 (1992), that statutory provision was deleted

¹ Claimant’s prior counsel moved before the Commission to be relieved as counsel which motion was granted by the Commission. (Att. B, Third Motion to be Relieved as Attorney for Mr. Jesus Martinez; Third Order Relieving Attorney for Mr. Jesus Martinez).

² There is no indication that Jesse B. Martinez has been authorized to perform any legal activities by the Supreme Court. A person who violates Section 40-5-310 may face felony charges and may be subject to fines and imprisonment if found guilty.

and replaced in 2002 Act No. 307, Section Two. Section 40-5-80 currently only provides for a person to represent him or herself *pro se*. S.C. Code Ann. § 40-5-80 (2015). Because Jesse B. Martinez has no legal authority to file a Notice of Appeal on his father's behalf or as his father's legal representative, this Court should dismiss this appeal with prejudice.

CONCLUSION

For all the reasons stated herein, this Court should dismiss this appeal with prejudice.

April 14, 2016

McANGUS GOUDELOCK & COURIE, LLC



Helen F. Hiser
S.C. Bar No.: 76124
735 Johnnie Dodds Blvd., Suite 200 (29464)
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900

Kelly F. Morrow
S.C. Bar No.: 72909
1320 Main Street, 10th Floor (29201)
P.O. Box 12519
Columbia, South Carolina 29211-2519
(803) 779-2300

*Attorneys Respondents Landmark Builders of SC,
LLC and Amerisure Insurance Company*

Attachment A

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1205080

EMPLOYEE/CLAIMANT: JESUS MARTINEZ

EMPLOYER/INSURER: LANDMARK BUILDERS OF SOUTH CAROLINA, L.L.C./
AMERISURE MUTUAL INSURANCE COMPANY

C.C.S. MASONRY/
STATE NATIONAL INSURANCE COMPANY, INC.

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 29TH DAY OF
SEPTEMBER, 2015, COMMENCING AT THE HOUR OF 9:13 A.M., IN
LAURENS, SOUTH CAROLINA, BEFORE THE HONORABLE SUSAN BARDEN,
ATTENDED BY COUNSEL AS FOLLOWS:

JAN L. WHITWORTH
VERBATIM REPORTER

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376
(864) 494-2705

APPEARANCES

H. JEFF MCLEOD, ESQUIRE, OF THE FIRM
LAW OFFICE OF H. JEFF MCLEOD
212 E. SHOCKLEY FERRY ROAD
ANDERSON, SOUTH CAROLINA 29624

ATTORNEY FOR THE EMPLOYEE/CLAIMANT,

KELLY FITZHARRIS MORROW, ESQUIRE, OF THE FIRM
MCANGUS, GOUDELICK & COURIE, LLC
POST OFFICE BOX 12519
COLUMBIA, SOUTH CAROLINA 29211

ATTORNEY FOR LANDMARK BUILDERS and
AMERISURE MUTUAL INSURANCE COMPANY,

JARED M. PRETULAK, ESQUIRE, OF THE FIRM
GALLIVAN, WHITE & BOYD, P.A.
POST OFFICE BOX 10589
GREENVILLE, SOUTH CAROLINA 29603

ATTORNEY FOR C.C.S. MASONRY and
STATE NATIONAL INSURANCE COMPANY, INC.

ELLEN GOODWIN, ESQUIRE, OF THE FIRM
SOUTH CAROLINA UNINSURED EMPLOYERS FUND
POST OFFICE BOX 210039
COLUMBIA, SOUTH CAROLINA 29221

ATTORNEY FOR THE S.C.U.E.F.

ALSO ATTENDING: ASHLEY WHEELING-GOODSON
JULIA LEZEANO/INTERPRETER
JESSIE MARTINEZ/CLAIMANT'S SON
MICHAEL L. WHITE
BARTON TIFFANY
POLICE OFFICER

I N D E X

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JESUS MARTINEZ (THROUGH INTERPRETER) :

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PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN LAURENS, SOUTH
CAROLINA.

* * * * * * * * * * * * * * * * * * * *

BY COMMISSIONER BARDEN:

_____ TODAY'S DATE IS SEPTEMBER 29TH, 2015. THIS
IS SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
FILE NUMBER 1205080. THIS IS THE CASE OF THE
CLAIMANT MR. JESUS MARTINEZ WHO IS OUTSIDE IN THE
LOBBY BUT WILL BE HERE MOMENTARILY AND IS
REPRESENTED BY ATTORNEY JEFF MCLEOD WHO IS PRESENT
TODAY. THE NAMED DEFENDANTS IN THIS CASE ARE
LANDMARK BUILDERS AND ITS CARRIER AMERISURE MUTUAL,
BOTH OF WHICH ARE REPRESENTED BY ATTORNEY KELLY
MORROW; C.C.S. MASONRY AND ITS CARRIER STATE
NATIONAL, BOTH OF WHICH ARE REPRESENTED BY ATTORNEY
JARED PRETULAK, AND WE HAVE REPRESENTING THE U.E.F.
ATTORNEY ELLEN GOODWIN. THE PURPOSE OF TODAY'S
HEARING IS TO DETERMINE ISSUES RAISED IN FORMS 50
AND 51. THIS IS A DENIED CLAIM IN ITS ENTIRETY.
OTHER THAN THE U.E.F., THE NAMED DEFENDANTS
STIPULATE THAT THE CORRECT AVERAGE WEEKLY WAGE IS
\$800 YIELDING A COMPENSATION RATE OF \$533.36. THE
U.E.F. TAKES NO POSITION AS IT HAS NO EVIDENCE AS TO

Attachment B

Law Office of
H. JEFF McLEOD
212 E. Shockley Ferry Rd.
Anderson SC 29624
Phone 864.226.3330 ☐ Toll-Free 800.698.1786
Fax 864.226.9912

December 7, 2015

South Carolina Workers' Compensation Commission
Attention: Judicial Department
P.O. Box 1715
Columbia, SC 29202-1715

Re: JESUS MARTINEZ V. CCS MASONRY, LLC et al.
SCWCC File No.: 1205080
Our File No.: 2692

Gentlemen,

Please find enclosed the Third Motion to Be Relieved As Attorney for Mr. Jesus Martinez and our **Proposed** Third Order Relieving the Attorney for Mr. Jesus Martinez, our Certificate of Mailing on all the parties's attorneys and Mr. Martinez, as well our check for \$25 as the motion filing fee.

If this Proposed Order meets with your approval, please process in your usual manner and return a "clocked" copy in the enclosed self-addressed stamped envelope.

Sincerely,


H. Jeff McLeod
Attorney At Law

Enclosures
cc:

Mr. Jared M. Pretulak
Atty for CCS Masonry & St. National
Ms. Kelly F. Morrow
Atty for Landmark & Amerisure

Ms. Ms. Ellen H. Goodwin, Esq.
Atty for SC Uninsured Employers' Fund
Mr. J. Kevin Couch
Atty for Uninsured Employers' Fund
Mr. Mr. Jesus Martinez:

RECEIVED

DEC 10 2015

Per 21493.15090

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

Jesus Martinez,
Claimant,

vs.

CCS Masonry LLC,
Employer
State National Insurance Company,
(CCS') Carrier,
Uninsured Employers' Fund,
(CCS' Potential) Carrier,
Landmark Builders of South Carolina,
Employer, and
Amerisure Insurance Company,
(Landmark's) Carrier,
Defendants.

THIRD MOTION TO BE RELIEVED AS
ATTORNEY FOR
Mr. Jesus Martinez

SCWCC File No.: 1205080

H. Jeff McLeod moves to be relieved as Mr. Jesus Martinez' attorney for good cause, considering the extensive efforts expended and the poor results obtained.

Regulation 67-1203(B) provides that "an attorney may withdraw as counsel on the showing of good cause." Further, the Rules for Professional Conduct, Rule 1.16(b)(7), indicates that an attorney may withdraw from representation for a multitude of reasons, including the financial burden, as well as "other good cause".

This motion is based on the fact that after lengthy negotiations (particularly, with the Claimant), extensive discovery covering literally thousands of pages, the treating surgeon's opinion of causation and a full hearing, this attorney was unable to obtain recognition that the claim was compensability. This attorney has expended his best efforts and some \$2,300 in costs, which have been unavailing; this attorney is exhausted. It is time for a change and the Claimant may have more success with another attorney.

WHEREFORE, the movant requests an order:

C:\Clients2\Martinez,Jesus-WC\Final\Third Relief\Motion to be relieved.wpd

- A. Relieving H. Jeff McLeod as Mr Jesus Martinez' attorney of record;
- B. And for such other and further relief as the Commission deems just.

Respectfully Submitted,

Jeff McLeod
Attorney for Claimant Jesus Martinez
12 East Shockley Ferry Road
Anderson SC 29624
864.226.3330

Anderson, SC
Dated: December 7, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

Jesus Martinez,)
Claimant,)

vs.)

CCS Masonry LLC,)
Employer)
State National Insurance Company,)
(CCS' Carrier,)
Uninsured Employer Fund,)
(CCS' Potential) Carrier,)
Landmark Builders of South Carolina,)
Employer, and)
Amerisure Insurance Company,)
(Landmark's) Carrier,)

Defendants.)

IN THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

THIRD ORDER RELIEVING ATTORNEY
FOR
Mr. Jesus Martinez

SCWCC File No.: 1205080

This matter came before me, pursuant to a Motion by H. Jeff McLeod, for an Order relieving him as Attorney of record for Mr. Jesus Martinez.

Based on the motion and for good cause shown, it is ORDERED, ADJUDGED AND DECREED:

A. Motion of counsel for Claimant Jesus Martinez to be released or relieved as the attorney of record is hereby granted;

B. This Order shall be mailed by Certified Mail to Plaintiff Martinez at his last known address; and

C. Claimant Martinez shall have an affirmative obligation to notify the Defendants' attorneys of his current mailing and residence address.

IT IS SO ORDERED.

Commissioner, South Carolina
Workers' Compensation Commission

Anderson, SC

Dated: _____

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

BEFORE THE SOUTH CAROLINA
WORKER'S COMPENSATION
COMMISSION

Jesus Martinez,
CLAIMANT,
vs.

CCS Masonry LLC,
Employer,
State National Insurance Company,
(CCS') Carrier,
Uninsured Employer Fund,
(CCS' Potential) Carrier,
Landmark Builders of South Carolina,
Employer, and
Amerisure Insurance Company,
(Landmark's) Carrier,
Defendants.

CERTIFICATE OF MAILING

WCC NO: 1205080

H. Jeff McLeod hereby certifies and says that on December 7, 2015 he mailed a copy of the THIRD MOTION TO BE RELIEVED AS ATTORNEY FOR MR. JESUS MARTINEZ and the Proposed THIRD ORDER RELIEVING ATTORNEY FOR MR. JESUS MARTINEZ, by affixing thereto postage for first class mail and depositing in the United States Mail at Anderson, South Carolina, addressed to:

SC Workers' Compensation Commission
Judicial Department
P. O. Box 1715
Columbia, SC 29202-1715

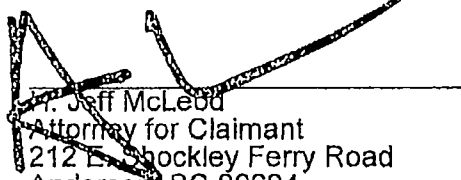
Mr. Jared M. Pretulak
Atty for CCS Masonry & St. National
Gallivan, White and Boyd, PA
55 Beattie Place, Suite 1200
PO Box 10589
Greenville, SC 29603

Ms. Kelly F. Morrow
Atty for Landmark & Amerisure
McAngus, Goudelock & Courie, LLC
PO Box 12519
Columbia, SC 29211

Ms. Ellen H. Goodwin, Esq.
SC Uninsured Employers' Fund
Re: WC#1205080; SAF 2012-4553
Martinez v CCS
PO Box 210039
Columbia, SC 29221-0039

Mr. J. Kevin Couch
Atty for Uninsured Employers' Fund
Wilson Jones Carter & Baxley, PA
872 S. Pleasantburg Drive
Greenville, SC 29607

Mr. Jesus Martinez
3736 Todd Quarter Road
Waterloo, SC 29384-3714


H. Jeff McLeod
Attorney for Claimant
212 E. Shockley Ferry Road
Anderson, SC 29624
(864) 226-3330

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

Jesus Martinez,
Claimant,

vs.

CCS Masonry LLC,
Employer
State National Insurance Company,
(CCS' Carrier,
Uninsured Employer Fund,
(CCS' Potential) Carrier,
Landmark Builders of South Carolina,
Employer, and
Amerisure Insurance Company,
(Landmark's) Carrier,

Defendants.

THIRD ORDER RELIEVING ATTORNEY
FOR
Mr. Jesus Martinez

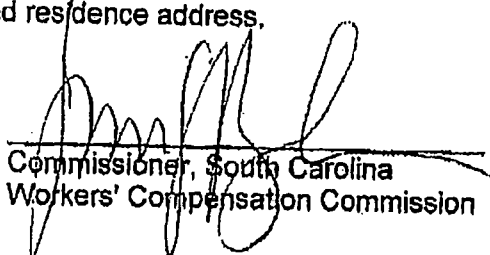
SCWCC File No.: 1205080

This matter came before me, pursuant to a Motion by H. Jeff McLeod, for an Order relieving him as Attorney of record for Mr. Jesus Martinez.

Based on the motion and for good cause shown, it is ORDERED, ADJUDGED AND DECREED:

- A. Motion of counsel for Claimant Jesus Martinez to be released or relieved as the attorney of record is hereby granted;
- B. This Order shall be mailed by Certified Mail to Plaintiff Martinez at his last known address; and
- C. Claimant Martinez shall have an affirmative obligation to notify the Defendants' attorneys of his current mailing and residence address.

IT IS SO ORDERED.


Commissioner, South Carolina
Workers' Compensation Commission

Anderson, SC

Dated: 12-14-15

Jm
Jmc
km
JP
KC

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 party(ies) 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 Kristi Love on December 15, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APR 20 2016

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1205080

Jesus Martinez, Employee,Appellant,

v.

Landmark Builders of SC, LLC, Employer, and
Amerisure Insurance Company, Carrier, Respondents,

v.

CCS Masonry, LLC, Employer, and
State National Insurance Company, Inc., Carrier, Respondents,

v.

SC Uninsured Employers' Fund, Respondent.

PROOF OF SERVICE

I certify that on the 14th day of April 2016, I served the Respondents Landmark Builders of SC, LLC and Amerisure Insurance Company's **Motion to Dismiss Appeal** on Jesus Martinez and counsel of record by depositing a copy of it in the United States Mail, postage prepaid, addressed as follows:

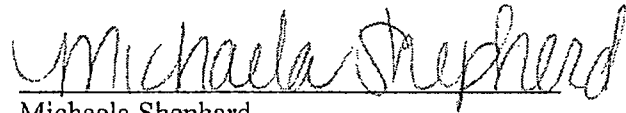
Jesus Martinez
3736 Todd Quarter Road
Waterloo, SC 29384

Jared Matthew Pretulak, Esq.
Gallivan White & Boyd, PA
P.O. Box 10589
Greenville, SC 29603

*Counsel for Respondents CCS
Masonry, LLC and State National
Insurance Company, Inc.*

Lisa C. Glover, Esq.
Ellen H. Goodwin, Esq.
SC Uninsured Employers' Fund
P.O. Box 210039
Columbia, SC 29221

Counsel for SC Uninsured Employers' Fund

A handwritten signature in cursive script that reads "Michaela Shephard". The signature is written in black ink and is positioned above a horizontal line.

Michaela Shephard
Legal Assistant to Helen F. Hiser
McAngus, Goudelock & Courie LLC
735 Johnnie Dodds Blvd., Suite 200
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900

*Attorneys for Respondents Landmark Builders of
SC, LLC and Amerisure Insurance Company*

mgc

Reply To

HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

April 18, 2016

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APR 20 2016

SC Court of Appeals

Via U.S. Mail & Electronic Mail

H. Jeff McLeod, Esq.
212 E. Shockley Ferry Rd.
Anderson, SC 29624-3738

RE: Jesus Martinez v. Landmark Builders of SC, LLC, et al. and Amerisure
Insurance Company
Date of Accident: January 6, 2012
WCC File No.: 1205080
Our File No.: 20493.15096
Claim No.: 12700000
Appeal No.: 2016-000709

Dear Mr. McLeod:

Enclosed please find a copy of Respondents Landmark Builders of SC, LLC and Amerisure Insurance Company's Motion to Dismiss Appeal, which has been filed with the Court of Appeals in the above-referenced matter. We did not serve this motion on you earlier in light of the Commission's Third Order Relieving Attorney for Mr. Jesus Martinez, dated December 14, 2015.

If you have any questions, please contact me.

Yours truly,

McAngus Goudelock & Courie, LLC



Helen F. Hiser

Enclosures

cc: Jesus Martinez
Jared Matthew Pretulak, Esquire
Ellen H. Goodwin, Esquire
Lisa C. Glover, Esquire
The Honorable Jenny Abbott Kitchings



Reply To
HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

April 14, 2016

Via U.S. Mail

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

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APR 20 2016

SC Court of Appeals

RE: Jesus Martinez v. Landmark Builders of SC, LLC, et al. and Amerisure
Insurance Company
Date of Accident: January 6, 2012
WCC File No.: 1205080
Our File No.: 20493.15096
Claim No.: 12700000
Appeal No.: 2016-000709

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents Landmark Builders of SC, LLC and Amerisure Insurance Company's Motion to Dismiss Appeal, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the self-addressed, stamped envelope. Also enclosed is our firm's check in the amount of \$25 for filing the motion.

If you have any questions, please contact me.

Yours truly,

McAngus Goudelock & Courie, LLC



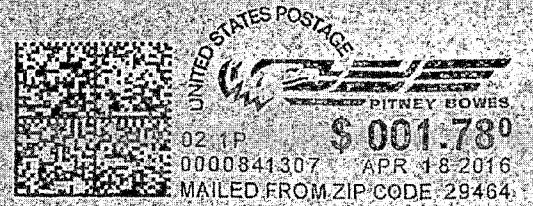
Helen F. Hiser

Enclosures

cc: Jesus Martinez
Jared Matthew Pretulak, Esquire
Ellen H. Goodwin, Esquire
Lisa C. Glover, Esquire

735 JOHNNIE DODDS BLVD, SUITE
200
POST OFFICE BOX 650007
MT. PLEASANT, SC 29465

843.576.2900 PHONE
843.534.0605 FAX
WWW.MGCLAW.COM



ngc | **INSURANCE
DEFENSE**

POST OFFICE BOX 12519
COLUMBIA, SC 29211

RECEIVED

20493.15096/KFM/mls

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

APR 20 2016
SC Court of Appeals