

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2011-CP-32-04981  
Appellate Case No. 2014-000671

RECEIVED

MAY 04 2016

SC Court of Appeals

Mike Russell, ..... Respondent,

v.

Randolph Gill and Pennsylvania Life  
Insurance Company, ..... Defendants

Of Whom Pennsylvania Life  
Insurance Company is ..... Appellant.

**Appellant's Return to Respondent's Petition for Rehearing**

Pursuant to Rules 221 and 240(e) of the South Carolina Appellate Court Rules, Appellant Pennsylvania Life Insurance Company ("Penn Life") submits its Return to Respondent's Petition for Rehearing in this matter, Op. No. 2016-UP-177 (S.C. Ct. App. filed April 13, 2016) (Shearouse Adv. Sh. No. 15).

**I. The petition should be denied because Respondent merely rehashes arguments previously presented to the Panel.**

Respondent presents eight grounds in the petition. Each argument advances the same argument presented to the Panel in Respondent's appellate briefing as follows:

1. Respondent's grounds numbered 1-3: Respondent presented this same argument to the Panel in briefing and relied on the same citations to the record to support that argument. Compare Petition p. 1 with Respondent's Brief p. 6.

2. Respondent's grounds number 4-5: Respondent presented this same argument to the Panel in briefing and relied on the same citations to the record to support that argument. Compare Petition p. 1-2 with Respondent's Brief p. 5-6.

3. Respondent's ground number 6: Respondent presented this same argument to the Panel in briefing and relied on the same citations to the record to support that argument. Compare Petition p. 2 with Respondent's Brief p. 7-8.

4. Respondent's grounds number 7-8: Respondent presented this same argument to the Panel in briefing and relied on the same citations to the record to support that argument. Compare Petition p. 2-3 with Respondent's Brief p. 7-9.

Thus, the Panel did not overlook the grounds advanced by Respondent in the petition because the Panel previously reviewed, weighed, and rejected the merits of each argument in the Opinion. Accordingly, these grounds cannot constitute a basis for rehearing because they were previously presented to this Court. See Kennedy v. South Carolina Retirement Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (holding it is not "the purpose of a petition for rehearing to have the case tried in the appellate court a second time"). The petition for rehearing should be denied for this reason.

Moreover, the Panel did not misapprehend any of the grounds set forth in the petition in issuing the unpublished opinion in this matter. The Panel correctly reversed the circuit court's ruling for the reasons set forth in Penn Life's Brief of Appellant and Reply Brief. For the sake of brevity, Penn Life incorporates those briefs in opposition

to the grounds advanced in the petition. As shown therein, the Panel did not misapprehend the issue on appeal, and the petition for rehearing should be denied.

**II. Footnote 5 in the Opinion should be removed because Penn Life provided a complete record on appeal to the Court.**

In footnote 5, the Court stated that “more than one hundred pages appear to have been omitted from the Record on Appeal.” Opinion No. 2016-UP-177 at p. 5. Specifically, “the missing pages contain part of the testimony of Russell’s wife, all of Russell’s trial testimony, and part of the testimony from one of the officers who appeared at the scene of the accident [Trooper Rothell].” Id. Penn Life requests removal of that footnote because those materials were not omitted from the Record on Appeal. The file-stamped copy of the Record on Appeal on Court’s Appellate Case Management System, C-Track, shows that the Record on Appeal contained all the information that footnote 5 stated was omitted.

The requisite testimony can be located in the Record on Appeal maintained on C-Track as follows:

1. **Russell’s Wife:** The complete trial transcript (direct, cross, and redirect) pages of Russell’s wife can be located on pages R. 346-396, 402-416 of Volume 1 of the Record on Appeal. A review of those page on file with the Court show the consecutively numbered trial transcript testimony of Mrs. Russell with no page omissions.

2. **Mr. Russell’s Trial Testimony:** The complete trial transcript (direct and cross) pages of Mr. Russell can be located on pages R. 416-491 of Volume 1 of the Record on Appeal. A review of those page on file with the Court show the

consecutively numbered trial transcript testimony of Mr. Russell with no page omissions.

3. **Trooper Rothell:** The complete trial transcript (direct, cross, and redirect) pages of Trooper Rothell can be located on pages R. 492-500 of Volume 1 of the Record on Appeal with resumption on R. 501-535 of Volume 2 of the Record on Appeal. A review of those page on file with the Court show the consecutively numbered trial transcript testimony of Trooper Rothell with no page omissions.

In sum, the filed copy of the Record on Appeal on C-Track shows no omissions from the Record on Appeal. Thus, footnote 5 should be removed from the Opinion.<sup>1</sup>

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

D. Larry Kristina  
Michael J. Anzelmo  
Kristen E. Horne  
Post Office Box 11070 (29211-1070)  
Columbia, SC 29201  
(803) 799-2000

Attorneys for Pennsylvania Life Insurance Company

May 4, 2016

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<sup>1</sup> Penn Life does not seek rehearing the Panel's holding in Section 2 of the Opinion. Rather, Penn Life only requests that footnote 5 be removed from the Opinion.

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SC Court of Appeals


Mike Russell, ..... Respondent,  
v.  
Randolph Gill and Pennsylvania Life Insurance  
Company, ..... Defendants  
Of Which Pennsylvania Life Insurance Company is, ..... Appellant.

**PROOF OF SERVICE**

I, the undersigned Senior Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant, Pennsylvania Life Insurance Company, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by hand delivery to the following address(es):

Pleadings: **APPELLANT'S RETURN TO RESPONDENT'S PETITION FOR REHEARING**

Counsel Served: S. Jahue Moore, Esq.  
R. Nichols Riley, Jr., Esq.  
Moore Taylor Law Firm, P.A.  
1700 Sunset Boulevard  
West Columbia, SC 29169

  
Cindy K. Hess  
Sr. Administrative Assistant

May 4, 2016

# Nelson Mullins

Nelson Mullins Riley & Scarborough LLP  
Attorneys and Counselors at Law  
1320 Main Street / 17th Floor / Columbia, SC 29201  
Tel: 803.799.2000 Fax: 803.255.9024  
www.nelsonmullins.com

Michael J. Anzelmo  
Tel: 803.255.9312  
Fax: 803.255.9024  
michael.anzelmo@nelsonmullins.com

May 4, 2016

**Hand Delivered**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

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SC Court of Appeals

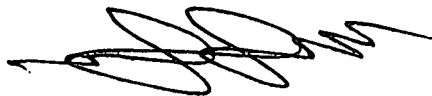
RE: Mike Russell v. Randolph Gill and Pennsylvania Life Insurance Company  
Civil Action No. 2011-CP-32-04981  
Appellate Case No. 2014-000671  
Our File No. 15878/01509

Dear Ms. Kitchings:

Enclosed for filing in the above-reference matter please find the original and seven copies of Appellant's Return to Respondent's Petition for Rehearing. Please return a clocked-in copy to us via our courier.

By copy of this letter to Respondent's counsel, we are serving him with a copy of same.

Very truly yours,



Michael J. Anzelmo

MJA:ckh  
Enclosures  
cc: S. Jahue Moore, Esq.  
R. Nichols Riley, Jr., Esq.