

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Honorable William P. Keesley

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

RECEIVED

NOV 07 2016

SC Court of Appeals

Alexander Guice,Appellant,

v.

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

**RESPONDENTS' RETURN IN OPPOSITION TO APPELLANT'S
MOTIONS FOR STAY PENDING ADJUDICATION OF
PETITION TO THE SUPREME COURT AND
TO PROCEED IN FORMA PAUPERIS,
AND IN SUPPORT OF RESPONDENTS' REQUEST FOR SANCTIONS**

Pursuant to Rule 240, SCACR, Respondents US Food Service, Inc. and ACE American Insurance Company c/o Gallagher Bassett Services, Inc. hereby oppose Appellant Alexander Guice's Motion for Leave to Stay Pending Adjudication of Petition for Writ of Prohibition and/or Mandamus Filed With the Supreme Court ("Motion to Stay"), and his Motion for Leave to Proceed *In Forma Pauperis* ("Motion to Proceed IFP"). In addition, Respondents move for sanctions pursuant to Rule 269, SCACR.

Appellant's Motion to Stay, along with his petition to the South Carolina Supreme Court, are yet additional attempts by Appellant to circumvent the appellate briefing process as set forth in Rule 208, SCACR. Due to Appellant's continuing attempts to circumvent proper judicial and appellate process, Respondents have expended a great deal of effort and resources in responding to his repetitive and frivolous filings.

While Respondents did not oppose Appellant's prior request for some extension of time in which to file his initial reply brief, rather than filing his reply brief, Appellant chose instead to file the instant frivolous Motion to Stay, along with his Motion to Proceed IFP, as well as a petition to the Supreme Court. Combined, Appellant's Petition, Complaint and Memorandum in Support against Judge Lockemy in the Supreme Court contain 60 pages of legal argument as to why he should win his appeal, not to mention the voluminous attachments (27 separate attachments comprised of 223 pages of attachment materials) (Att. C).¹ Clearly, whatever physical limitations Appellant is experiencing, they are not sufficient to preclude him from filing multiple motions and petitions.²

At this point, Appellant's claim has been the subject of two "proceedings" before the Workers' Compensation Commission (not including his original 2005 proceeding), two separate appellate proceedings before the circuit court (under Docket Nos.: 2013-CP-32-01272 and 2014-CP-32-00399), multiple appeals to this Court (under Appeal

¹ In the interest of conservation, Respondents are attaching hereto only Appellant's: 1) Petition for Writ of Prohibition and/or Mandamus, 2) Notice, 3) Complaint, 4) Proof of Service, and 5) Memorandum in Support of Petition for Writ of Prohibition and/or Mandamus, and are not including the 223 pages of attachments.

² Ironically, one of Appellant's complaints to the Supreme Court is that this Court has "failed to act promptly and swiftly in determining whether Petitioner is entitled to benefits under The South Carolina Workers' Compensation Act ..." (Complaint, Att. C, p. 2).

Nos.: 2013-000713, 2013-001804, 2013-002491, and the instant appeal, No. 2015-001821) and, at this point, three appeals/petitions to the Supreme Court (under Appeal Nos.: 2014-001450, 2014-002625 and his current petition). When the Supreme Court denied his petition for a writ of mandamus in Case No. 2014-002625, it cautioned Appellant against filing further frivolous motions and petitions. (Order, dated, February 5, 2105, Att. A). As noted by Judge Keesley when he awarded attorneys' fees to Respondents below, defense of this case has been made "needlessly difficult because the Appellant insisted on taking unfounded positions, did not accept reasonable explanations, caused redundant filings in various forums, and liberally made unwarranted defamatory accusations." (Order, filed July 17, 2015, p. 26, Att. B). Appellant continues to do so.

The primary basis for Appellant's petition to the Supreme Court appears to be that this Court lacks jurisdiction to hear his appeal "as of June 24, 2016," which is the date this Court denied Appellant's Motion to Strike Respondents' Initial Brief and Leave to Stay. Denial of a motion to strike does not divest this Court of jurisdiction, and Appellant cites no case law in support of his contentions otherwise. Appellant also asks the Supreme Court (again) to simply grant him the relief he seeks. As the Court explained in, Key v. Currie, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991), the South Carolina Supreme Court "will not entertain matters in its original jurisdiction where the matter can be entertained" by lower courts, and "[o]nly when there is an extraordinary reason such as a question of significant public interest or an emergency will this Court exercise its original jurisdiction." Appellant's petition does not raise any extraordinary reasons or questions of significant public interest or emergency. Instead, Appellant's

petition to the Supreme Court is clearly frivolous and does not serve as a basis to stay his appeal before this Court.

Apparently, Appellant has moved to proceed *in forma pauperis* both in this appeal in in his petition to the Supreme Court. (See Verification, attached to Motion to Proceed IFP). Because allowing Appellant to proceed *in forma pauperis* would only encourage additional frivolous motions and petitions, see Richardson v. Stewart, 386 S.C. 282, 688 S.E.2d 124 (2010), Respondents oppose his Motion to Proceed IFP. In In re Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996), cited by the Supreme Court in its February 5, 2105 Order, (Att. A), filing repetitive and frivolous petitions raising the same claims that have been dismissed previously constitutes grounds for denying a motion to proceed *in forma pauperis*. Such grounds clearly exist in the instant appeal.


Finally, Rule 269, SCACR, provides in pertinent part that, “[w]here an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.” Instead of simply filing his initial reply brief in order to move his appeal forward, Appellant has filed multiple motions and petitions that only serve to delay the ultimate resolution of his appeal. Each time Appellant files a frivolous motion or petition, he wastes the Court’s time and Respondents are compelled to incur costs responding in order to protect their interests. Respondents believe that sanctions should be imposed on Appellant to dissuade him from continuing to file frivolous motions. Rule 269, SCACR.

CONCLUSION

For all the reasons stated herein, Respondents respectfully request this Court to deny both Appellant's Motion to Stay and his Motion to Proceed IFP, and caution and/or sanction him against filing further frivolous motions.

Respectfully submitted,

November 4, 2016


Erin L. Hantske, S.C. Bar No.: 76313
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735 Johnnie Dodds Blvd, Suite 200
Mt. Pleasant, South Carolina 29465
(843) 576-2900
Attorney for Respondents

Attachment A

The Supreme Court of South Carolina

Alexander Guice, Petitioner,

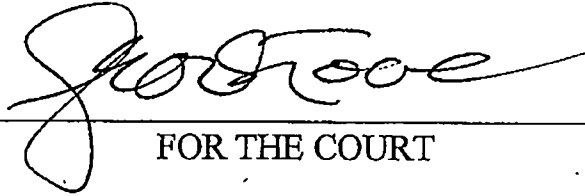
v.

The Honorable William P. Keesley, Respondent.

Appellate Case No. 2014-002625

ORDER

Motion for Judgment on the Pleadings filed by Petitioner in the above matter is denied.



C.J.

FOR THE COURT

Columbia, South Carolina

February 25, 2015

cc: Erin Leigh Hantske, Esquire
Mr. Alexander Guice
William P. Keesley, Esquire

The Supreme Court of South Carolina

Alexander Guice, Petitioner,

v.

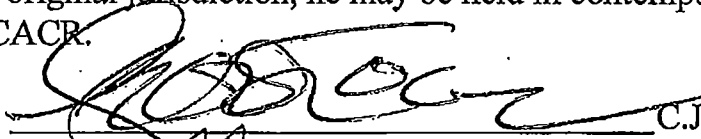
The Honorable William P. Keesley, Respondent.

Appellate Case No. 2014-002625

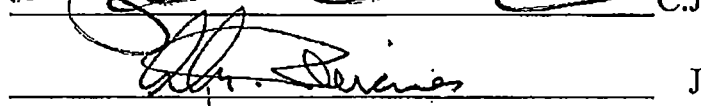
ORDER

By order dated January 14, 2015, this Court denied petitioner's petition for a writ of mandamus, motion to proceed *in forma pauperis* and motion for sanctions. Petitioner has now filed a petition for rehearing. The petition is denied.

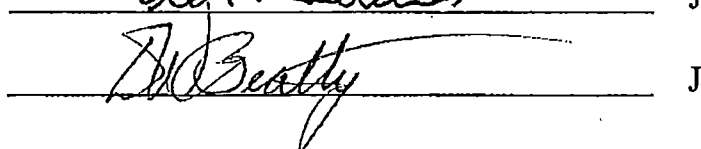
In addition, due to the frivolous nature of petitioner's prior filings, we hereby direct the Clerk of Court not to accept any further petitions from petitioner asking this Court to entertain matters in its original jurisdiction unless he pays the \$25 filing fee generally required by Rule 240(d), SCACR, for the filing of motions and petitions. *In re Maxton*, 325 S.C. 3, 478 S.E.2d 679 (1996). Additionally, any future petitions from petitioner must be accompanied by a properly notarized affidavit by petitioner which certifies that he in good faith believes the matter raised in the petition is nonfrivolous and proper for this Court to consider in its original jurisdiction. *Id.* Petitioner is warned that should he continue to file frivolous petitions in this Court's original jurisdiction, he may be held in contempt or sanctioned under Rule 269, SCACR.



C.J.



J.



J.

William P. Keesley J.
Kaye L. Hantske J.

Columbia, South Carolina

February 25, 2015

cc:

Erin Leigh Hantske, Esquire

Alexander Guice

William P. Keesley, Esquire

Attachment B

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

ORIGINAL

CASE NO. 2014-CP-32-00399
 2013 CP-32-01272

FILED
 2015 JUN 17 10 2 13

ALEXANDER GUICE

US FOOD SERVICE, INC. AND ACE
 AMERICAN INSURANCE COMPANY C/O
 GALLAGHER BASSETT SERVICES, INC.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Judge	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
US FOOD SERVICE, INC. AND ACE AMERICAN INSURANCE COMPANY C/O GALLAGHER BASSETT SERVICES, INC.	ALEXANDER GUICE	\$32,933.13
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

WPA
 #1

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

ALEXANDER GUICE,)
Claimant,)

Civil Action No. 2013-CP-32-01272
Civil Action No. 2014-CP-32-00399

v.)

US FOODSERVICE, INC.,)
Employer,)

ORDER

and)

ACE AMERICAN INSURANCE)
COMPANY C/O GALLAGHER)
BASSETT SERVICES, INC.,)

Carrier,)

Respondents.)

WAC
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FILED
2015 MAR 17 PM 3:16
COURT OF COMMON PLEAS
LEXINGTON SC

These two cases were consolidated and came for hearing on various issues detailed below. The court finds in favor of the Respondents and dismisses these cases.

The foundational claims of Mr. Guice (the Appellant) relate to his assertion that he is entitled to be relieved from a full and final settlement agreement that resolved his original workers' compensation claim in its entirety. The Appellant is self-represented. He did not appear for the hearing.

This matter has a convoluted and detailed procedural history, which is further complicated by the existence of two separate files that overlap to a large degree. The length of this order is an effort to make sure that any issues that have been raised are ruled upon and to provide context and clarify the basis for rulings, particularly as they relate to the Appellant's claims of misconduct against this court that are in pending motions.

Mr. Guice was injured on May 5, 2005, and filed a workers' compensation claim. The Respondents provided medical treatment and temporary compensation payments. The parties entered into a comprehensive Settlement Agreement and Release ("settlement") "in full and final satisfaction of all claims whatsoever as a result of the alleged accident." 1 Appellant signed this settlement, which was approved by the Commission pursuant to S.C. Code Ann. §42-9-390, and the Commission's order was filed on January 5, 2006. At the time, Appellant was represented by counsel. The Commission's approval of the settlement was not timely appealed.

*WPK
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Nearly seven years later, the Appellant sought to reopen his claim by filing submissions without the assistance of counsel. On December 7, 2012, Appellant filed a Form 50, Request for Hearing, and then an Amended Form 50 dated January 5, 2013, alleging entitlement to additional medical examination and treatment, temporary total disability benefits, and permanent disability as a result of his May 5, 2005 work-related accident. He also attacked the validity of the settlement and raised issues of unlawful termination of employment, unlawful reduction of his

1 Under the settlement, dated December 22, 2005, Respondents paid Twenty Thousand and No/100 (\$20,000.00) Dollars and, in return, Appellant released the Employer and its workers' compensation insurance carrier from "any and all claims, demands, actions, or causes of action under the South Carolina Workers' Compensation Act, on account of any and all injuries, disability, disfigurement, specific loss, death, operations, medical, hospital or like expenses, continuances, recurrences, aggravations, changes of condition, ailments, illnesses, and diseases or other damages, consequences or results, past, present or future, in any way connected with, or arising from the alleged injury sustained by Claimant on or about May 5, 2005" The settlement was "full, final and complete regardless of whether the Claimant is able to keep any employment whatsoever, or is able to earn any wages at any time in the future"

average weekly wage calculation, unlawful termination of temporary total compensation payments, inadequate legal representation, and he sought penalties.

A workers' compensation hearing was scheduled for March 28, 2013, based upon Appellant's submission to the Commission. However, on February 22, 2013, Commissioner Susan S. Barden issued an Order holding that, as Appellant had "settled on a full and final basis on or about January 6, 2006, [Appellant's] hearing request is hereby denied." Commissioner Barden canceled the hearing date and dismissed "any and all motions filed pertaining to WCC No. 0506205," which was the Commission's file number for this matter. Appellant then began pursuing two separate avenues to have his claim heard.

First, on February 28, 2013, he filed a Form 30, Request for Commission Review, of Commissioner Barden's February 22, 2013 Order. In his notice of appeal to the Full Commission, he alleged seven different points of appeal, including: (1) "Did Commissioner Susan S. Barden have proper jurisdictional authority to make any judgments regarding WCC No. 0506205"; (2) "Was Commissioner Barden's Order invalid due to no regulatory or statutory grounds stated to support canceling the hearing"; (3) "Did the Order signed by Commissioner Barden on 02/22/2013 violate Rule 5(b)(3) SCRCF"; (4) "Did the Order signed by Commissioner Barden on 02/22/2013, with respect to canceling the hearing, violate Rule 7(b)(1) SCRCF"; (5) "Did Commissioner Barden's Order dated 02/22/2013 violate the Appellant's right to a hearing"; (6) "Was the Appellant subjected to a conspiracy involving Commissioner Barden, Virginia L. Crocker, Judicial Director, and Erin L. Hantske, Esquire, the representative for the Respondent"; (7) "Is Commissioner Barden's conduct subject to be reported to the SC Ethics Commission IAW Rule 501(3)(D)(1) SCRCF with respect to the Order dated 02/22/2013."

Second, on March 4, 2013, before any action had been taken by the Commission on

Appellant's Form 30 appeal, Appellant mailed a Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments ("Motion for Reinstatement") to the Commission. It lists many of the same issues he raised in his Form 50, including but not limited to the following: 1) unlawful termination of his employment; 2) unlawful reduction in his average weekly wage/compensation rate; 3) unlawful termination of temporary total compensation payments; 4) challenges to the settlement; 5) complaints about his former legal counsel; and, 6) a request for penalties. Respondents opposed Appellant's motion for reinstatement.

On March 18, 2013, Appellant mailed a proposed Order granting his motion for reinstatement to the Commission. On March 27, 2013, Mr. Gary Cannon, Executive Director of the Commission, wrote to the Appellant, returning Appellant's motion for reinstatement, along with the filing fee. The letter stated that Mr. Cannon was "returning the Motion and the filing fee because the Commission does not have subject matter jurisdiction for the issues set forth in the Motion." It is this March 27, 2013 letter from Mr. Cannon that Appellant appealed to the circuit court and ultimately the Court of Appeals. The Court of Appeals remanded that case as discussed herein. The first circuit court complaint was filed in April 2013 (Case Number 2013-CP-32-01272).

On May 3, 2013, the Respondents filed a motion to dismiss the appeal pending before the circuit court. That motion is now before this court and is decided, *de novo*, as discussed below.

On May 8, 2013, the Appellant filed a motion seeking entry of default. He is not entitled to default, this being an appeal.² Mr. Guice then sent letters objecting to the court's roster.

A hearing was held before The Honorable Thomas A. Russo on June 3, 2013. Although Appellant was notified of the hearing, he failed to attend or arrange to have counsel present.

Judge Russo decided to proceed with the hearing, and he granted Respondents' motion to dismiss based on lack of jurisdiction because the Appellant had failed to exhaust all of his administrative remedies. Judge Russo also ordered that, "Upon exhaustion of all administrative remedies, the above-referenced Claimant may have an appeal to the circuit court once that agency has reached a final decision." Judge Russo issued that order on June 13, 2013.

On July 1, 2013, the Appellant filed a motion to reconsider or to alter or amend. Judge Russo held a hearing on September 3, 2013, which the Appellant did not attend. Judge Russo denied the motion in a Form 4 order entered on September 6, 2013.

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Appellant timely appealed Judge Russo's order to the South Carolina Court of Appeals by way of Notice of Appeal dated November 13, 2013. Respondents filed a motion to dismiss the appeal before the South Carolina Court of Appeals dated February 28, 2014. The Respondents asserted that the Appellant's appeal should be dismissed because he failed to exhaust his administrative remedies before filing his appeal to the circuit court and because neither the March 27, 2013 letter from Mr. Cannon, nor the circuit court order, was a final order for purposes of appeal. When Appellant initiated his appeal to the Court of Appeals concerning the March 27, 2013 letter from Mr. Cannon, he had already filed a Form 30 appeal of Commissioner Barden's dismissal of his claims to the Full Commission. That process was not final. In fact, it was pending at the time he appealed Director Cannon's March 27, 2013 letter.

Commissioner Barden's February 22, 2013 order considered and dismissed the issues Appellant raised in his Form 50s, all of which centered on the same issues raised in his motion for reinstatement. At the time the Appellant filed his appeal to the Court of Appeals, the Commission was in the process of considering his Form 30 appeal from Commissioner Barden's February 22, 2013 order.

On July 17, 2013, the Full Commission entered a final order and Appellant appealed the July 17, 2013 order to the South Carolina Court of Appeals, which was not the correct forum at that point. Since Appellant's injury occurred prior to July 1, 2007, he should have filed this appeal with the Court of Common Pleas. Accordingly, the Court of Appeals *transferred* Appellant's appeal to the circuit court (see Rule 204(a) SCACR) by way of an order dated December 6, 2013. Based upon this previous transfer from the Court of Appeals to the circuit court, the Court of Appeals granted Respondents' motion to dismiss because the Appellant had another appeal pending under the same workers' compensation file number. Accordingly, the case was remanded to the circuit court with the notation to "consider the merits of this appeal in conjunction with Appellant's appeal from the Commission's final Order."

At that point, Mr. Guice had the pending 2013 action in Common Pleas, but he decided to file another action in circuit court on January 31, 2014. He filed several documents, and the new file was given Case Number 2014-CP-32-00399. He filed a document dated December 23, 2013, which is captioned as a Notice of Appeal. He filed a document dated December 26, 2013, which is captioned as an Amended Notice of Appeal. A document dated January 2, 2014, is captioned as a Notice of Demand, which is addressed to Respondent's counsel. He filed a Summons, which is attached to a Brief, with numerous attachments. The Summons and Brief are dated January 26, 2014.

These documents constituting the beginnings of the new file are difficult to put into a normal procedural framework. It appears that the Respondents moved to dismiss under Rule 12(b)(1) and 12(b)(6), SCRCR, stating that if the filing is deemed to be a Complaint, the court lacks jurisdiction. It also raises the fact that no Complaint was attached to the Summons and that any statute of limitations for a complaint would have expired. The motion to dismiss seeks

attorney's fees and costs. The dismissal request was filed with the Clerk of Court on March 11, 2014. The Respondents also seemed to wrestle with how to construe the initial filings in the 2014 case because they filed an Answer on March 11, 2014.

Apparently, Mr. Guice received a copy of the motion to dismiss before it was filed as evidenced by the fact that he filed separate responsive documents five days before the motion to dismiss and the Answer were filed. On March 6, 2014, the Appellant filed documents captioned as a Reply and as an Answer. In any event, the court determines that the Summons filed to begin the 2014 case was not appropriate. The action was not accompanied by a Complaint. It is dismissed for the reasons discussed below.

Since motions and appeals were pending in the Court of Common Pleas, the staff of the Clerk of Court for Lexington County properly and routinely docketed matters for a hearing. Mr. Guice raised strenuous objections. Any objections raised by Mr. Guice to the methodology by which these cases were docketed are misguided and based on incorrect assumptions about how cases are called for hearings and trials. A notice of hearing was dated March 13, 2014, scheduling the hearings for April 3, 2014.

On March 19, 2014, the Appellant filed a motion to disqualify, seeking to remove Judge Russo from the case. Mr. Guice's motion is twenty pages long. It asserts that Judge Russo is not fair and impartial regarding his case, and demands that the April 3 hearing have a different judge assigned. The file reflects that Mr. Guice had complained to South Carolina Court Administration about the Lexington County Clerk of Court's office, and a copy of the response from Court Administration, which includes references to Judge Russo, was filed with the Clerk on March 20, 2014.

Judge Russo issued a Form 4 order dated and filed April 3, 2014, in which he continued the hearing. No reason was specified. The motion to disqualify was decided in a written order filed on April 4, which denied the motion. It appears that the pending matters were then set, in the normal course, to be heard at a succeeding non-jury term over which The Honorable Brian M. Gibbons was scheduled to preside. That notice was generated on May 5, 2014.

By letter dated May 12, 2014, the Appellant transmitted a document entitled Notice to the Court. He used that format later with Judge Gibbons, though it has no basis in practice and does not follow permissible actions under the Rules of Civil Procedure. It is directed to "The Honorable Thomas A. Russo, apparent former presiding judicial officer." It "DEMANDS" that a written explanation be placed into the official record of why Judge Russo is no longer the presiding officer and "DEMANDS" that Judge Gibbons enter a written certification that he is familiar with the file and can complete the hearing without prejudice. This court is not clear whether Mr. Guice is confused by the fact that the judicial assignments for circuit court in this state system are unlike the methodology of the federal system and some other states. In any event, having considered his repeated objections to the assignment of judges and docketing of hearings, this court concludes that he is fundamentally mistaken in his assumptions and apparent beliefs that improprieties have taken place regarding the administrative handling of his files.

Judge Russo wrote Mr. Guice a letter dated May 20, 2014, attempting to explain the procedure. He addressed the issues raised in the Appellant's correspondence and Notice regarding the subject of Judge Russo's alleged bias and the handling of these files.

On June 6, 2014, the Appellant filed a written brief addressing the issues concerning his appeal. It discusses the claims of alleged flaws in the decision of the Full Commission rendered July 17, 2013. It argues unlawful termination of employment, improper cessation of temporary

total benefits, raises challenges to the settlement and clincher, attacks the conduct of Appellant's counsel in the original workers' compensation action, challenges the sufficiency of the order of the Commission, and argues against the motion to dismiss. In short, the Appellant addressed the issues that seem to be asserted in both circuit court files.

The hearing in circuit court was rescheduled for June 16, 2014. Although Appellant was notified of the hearing, he failed to attend or arrange to have counsel present, though he submitted a lengthy memorandum. Judge Gibbons presided over the hearing. The order issued by Judge Gibbons lists only one case number in the caption, 2014-CP-32-00399. However, the body of the order included the issues raised in both files. The order begins by stating that the issue before the court was the Appellant's Amended Notice of Appeal dated December 23, 2013. Later, Judge Gibbons' order states that he is entertaining the Respondents' motion to dismiss. It seems clear that Judge Gibbons heard the Appellant's Amended Notice of Appeal dated December 23, 2013, and Respondents' motion to dismiss dated February 24, 2014. After reviewing all submissions presented by the parties and considering briefs and arguments of counsel and Appellant, Judge Gibbons granted Respondents' motion to dismiss and affirmed the decision of the Appellate Panel of the South Carolina Workers' Compensation Commission dated July 17, 2013. Judge Gibbons was more than accommodating to the Appellant, apparently considering issues raised in written communication and, perhaps, in emails.

WPK
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When counsel for the Respondents submitted a proposed order, Mr. Guice filed his memorandum of comments and exceptions. Judge Gibbons' issued his order on July 21, 2014.

Appellant then filed a motion for new trial dated August 4, 2014, alleging that the circuit court's July 21, 2014 order failed to consider the Court of Appeals remand order and demanded that Judge Gibbons' order be set aside for a new trial. Appellant's motion for new trial also

lodged accusations of impropriety against Judge Gibbons. The accusations against the judge and attorney include abuses of discretion, fraud upon the Court, and dishonesty.

As for the merits of the motion for new trial, the gist of the Appellant's assertion is that Judge Gibbons' July 21, 2014 order should be set aside because it did not take into consideration Appellant's prior motion for reinstatement of employment and release of temporary total compensation benefits. This was asserted to be at issue because of the letter from Mr. Cannon denying any additional motions based upon Commissioner Barden's February 22, 2013 order. Again, because of the overlapping claims, it should be noted that Appellant's motion for reinstatement of employment and release of temporary total compensation payments requested relief based upon essentially the same positions. Those included the alleged invalidity of the original 2005 settlement, the Appellant's attempt to reinstate Appellant's employment effective November 2, 2005, immediate release of unlawfully withheld temporary total compensation payments of \$1,154.00 per week effective November 2, 2005, immediate payment of a twenty-five percent penalty for unlawfully withheld temporary total compensation payments, and other relief and actions the Commission deemed just and proper.

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The Respondents filed their Reply to the motion for new trial on August 20, 2014.

Having now reviewed the matter *de novo*, it is apparent that the relief sought in the motion for reinstatement of employment and release of temporary total compensation payments concerned the same 2005 settlement and is the identical relief sought in the current appeal. Judge Gibbons' Order dated July 21, 2014, noted that the Appellant instituted his appeal with the Court of Common Pleas requesting, among other things, to set aside the decision and order dated July 17, 2013, by the Appellate Panel of the South Carolina Workers' Compensation Commission, which fully affirmed Commissioner Barden's February 22, 2013 decision and

order; set aside the decision and order from Commissioner Barden dated February 22, 2013; and, reinstate his employment and temporary compensation. The issues set for determination and the facts in controversy at the time Judge Gibbons considered them, and now at the *de novo* hearing stage, appear to be identical in all material respects to the issues set for determination and the facts in controversy contained in Appellant's pleadings filed with the Court of Appeals. What the Court of Appeals had done was to note that Appellant had a pending appeal with the circuit court based upon the transfer order of December 6, 2013, and remanded the case to the circuit court for consideration. Both circuit court files are seeking the same relief.

On August 25, 2014, Mr. Guice filed a document captioned as a Verified Notice to the Court. It cites ethical canons of the Code of Judicial Conduct. It "DEMANDS" that Judge Gibbons certify that he is not operating under any disability that would impair his ability to decide the issues fairly and impartially. It "DEMANDS" that Judge Gibbons provide a written rationale as to why he did not respond to the exceptions and comments that the Appellant filed regarding the proposed order that had been submitted by Respondents' counsel. It "DEMANDS" explanation about why certain alleged facts were not included in the court's ruling. It "DEMANDS" a written explanation as to why the court failed to address the remand notice from the Court of Appeals in Case Number 2013-CP-32-01272. Both sides provided written arguments related to the Appellant's motion for new trial.

The Respondents' brief points out that the procedural history of this case is clouded by the voluminous, repetitive submissions of the Appellant and the duplicitous nature of filings. The Respondents stated that in order to evaluate the Court of Appeals' order of April 24, 2014, "it is necessary to consider the entire procedural background of this matter." This court agrees.

Judge Gibbons considered the motion of the Appellant (the motion for new trial), and he considered the Appellant's assertion that there was a failure to properly consider the remand. Judge Gibbons issued an Order dated September 25, 2014, granting Appellant's motion for new trial. He made reference to the fact that the case has a convoluted procedural history. He noted that the Appellant did not appear for the hearing, but sent numerous documents to the court before and after the hearing, some by email. He did not recall having reviewed two files in the case. The September 25 order contains the following language:

Since my written Order of July 30, 2014 does not appear to set forth the Court's decision in detail and since it does not specifically address matters contained in 2013-CP-32-1272 as instructed by the SC Court of Appeals, the Court agrees with Appellant/Claimant that he should be granted a new trial or hearing in Circuit Court. This Court of course could have reopened this matter for further consideration, but declines to do so as explained more fully below.

...

Further, for this court to continue to be the presiding judge, after receiving numerous pages of meritless and spurious allegations of unethical, incompetent, and impartial behavior from the Appellant/Claimant would put the Court in a precarious ethical posture.

The order clearly states that the allegations raised post-hearing against Judge Gibbons were determined to be "baseless and meritless." It also clearly states that the judge recused himself on his own (*sua sponte*) from further involvement in these cases. Specifically, Judge Gibbons stated in the September 25 order that "while categorically denying any unethical behavior in how this matter was heard and decided" and "mindful of the disdain of allowing disgruntled litigants to seek recusal for adverse rulings, the integrity of the Court simply must be upheld in this matter."

WPK
#12

These parties had different interpretations of the September 25 order. Specifically, there is a dispute about the portion of the Order that states, "[t]he Appellant/Claimant's motion for new trial or hearing is GRANTED as to all particulars set forth in his motion . . ." The order unequivocally states, "[t]his matter be reassigned in the discretion of the Chief Administrative Judge of the Eleventh Judicial Circuit for a *de novo* hearing on all matters instructed by the SC Court of Appeals in both pending Case Numbers 13-CP-32-1272 and 14-CP-32-399."

At that point, the Appellant seized upon the language of Judge Gibbons' order, including the language about granting relief "as to all particulars set forth in his motion." The Appellant became convinced that he had prevailed on all of his substantive claims. This interpretation is without support. Judge Gibbons did not have the ultimate merits of the case before him when he issued that order. The full sentence reads, "1. The Appellant/Claimant's motion for new trial or hearing is GRANTED as to all particulars set forth in his motion and that my Order of July 30, 2014 be and hereby is VACATED." The motion pending before Judge Gibbons was the motion for a new trial (essentially, a Rule 59 motion). It would make no sense for a judge to order a new trial or hearing, if the judge intended to grant all the substantive relief requested by the Appellant.

The Respondents moved to alter or amend by motion filed on October 17, 2014. Since Judge Gibbons had declared himself to be recused, and since his order directed that the Chief Judge for Administrative Purposes provide instructions for a *de novo* hearing to be conducted, the files were provided to the undersigned judge to administer in the role of Chief Judge. Immediately upon receiving the files, the undersigned judge began a process of trying to gain familiarity with the files and to issue directives.

On October 22, 2014, the Appellant filed a motion for sanctions, and Reply to the Respondents' Motion to Alter or Amend. This was based on the Appellant's erroneous interpretation of Judge Gibbons' order of September 25. Since the Appellant believes that Judge Gibbons ruled that the Appellant is entitled to all the money he has claimed, he made a demand upon Respondents' counsel to pay that money. The motion for sanctions is without merit, since Judge Gibbons did not rule that the Appellant is entitled to the sums claimed.

A series of administrative orders followed, beginning on October 23, 2014. The self-represented Appellant, who lives in another state, was repeatedly asserting issues through email and letters, which are not proper filings. It took a long period to review these files, and it became apparent that the best use of judicial resources and the most promising way of having the cases proceed expeditiously would be to have them assigned to one judge. The court issued administrative orders doing the following things.

WJM
#14

- 1) The cases were designated as complex litigation and assigned to one judge, the undersigned judge, to avoid having different judges duplicating the effort to follow the difficult procedural history.
- 2) Because of that decision, a hearing that had been routinely scheduled for November 10, 2014 before a visiting judge was continued.
- 3) The two cases were consolidated under Rule 42(a), SCRCP, because they seemed to be seeking essentially the same relief.
- 4) It did not appear that the Clerk of Court's file included the file of the Workers' Compensation Commission. So, an order was issued directing that the Commission files be maintained by the Commission and obtained by the Court of Common Pleas.

The order to maintain the files was entered in an abundance of caution due to the age of the underlying workers' compensation case.

In addition, as noted in Judge Gibbons' last order, it was obvious that the files were more confusing than necessary because of the use of email communications to attempt to raise issues that should be raised by properly filed motions and briefs. So, instructions were issued, including the requirement that any attempt to file a motion had to be raised through a proper filing with the court and that the use of emails was to be curtailed and limited to proper purposes.

Since Judge Gibbons had an outstanding motion to reconsider, but he had recused himself from the case, the parties were advised in an administrative order that Judge Gibbons would be contacted, in writing, to see if he would handle that motion. If he determined not to handle the reconsideration motion, the court advised the parties that it would have to consider Judge Gibbons to be unavailable and commence the process of determining if the court could declare itself sufficiently familiar with the record to make a ruling (citing Rule 63, SCRCP, and the order of Chief Justice Toal (Order 2011-02-04-01) dated February 4, 2011 that established the procedures to follow in such instances).

WJM
#15

On November 3, 2014, the Appellant filed a motion, forty-four pages in length, plus attachments, objecting to the court's issuance of these administrative orders. His assertions fall into several categories, none of which have merit. Only one of the points seems to have any foundation in fact, and it relates to a drafting issue.

The drafting in one of the administrative orders could have been more precise. In Paragraph 6 of the October 23, 2014 administrative order, that was filed very late in the afternoon of that day, the court stated, in part:

There is a dispute as to the interpretation to be given to orders issued by The Honorable Brian M. Gibbons. Both the appellant and the respondent have

filed motions for reconsideration of the order(s). It is the undersigned judge's understanding that Judge Gibbons has recused himself from this matter. If he is recused, he may take the position that he is precluded from further involvement in this case. . . .

The Appellant challenges two things. He challenges the use of the term "reconsideration." In common parlance in the South Carolina legal community, a motion to alter or amend is called a reconsideration motion, and the Respondents' October 17, 2014 motion to alter or amend Judge Gibbons' order of September 25 was an outstanding motion for reconsideration.

The more significant assertion relates to Mr. Guice's reading as to the statement that both parties had filed reconsideration motions to Judge Gibbons' orders. The wording in that one sentence in the administrative order uses the *plural* - "orders." Judge Gibbons had entered two orders. He entered the first order granting the Respondents' motion to dismiss. In response, the Appellant styled his motion as one for a new trial, but he cited Rule 59, which is a motion to alter or amend. In common parlance, Mr. Guice had filed a reconsideration motion. So, it was a correct statement that both parties had filed reconsideration motions to Judge Gibbons' orders. While the Administrative Order could have been stated with more precision to state exactly what was pending as opposed to what had already been decided, there is nothing in the way it was drafted that is prejudicial to anyone and it does not have any negative impact upon the cases, despite the Appellant's contrived argument that it somehow does. Even if one accepts that the statement is incorrect, it is preposterous to read into those words some sinister intent, incompetence, or abuse of discretion.

More to the point of any motion to set aside the administrative orders, Mr. Guice believes that he had received a ruling in his favor and that the administrative orders were not only

unnecessary, but were an intentional attempt to deny his recovery and to cause him injury. For the reasons stated above and below, the court finds that Mr. Guice is mistaken in his interpretation. He did not receive a ruling in his favor on the merits of his claims. Assertions that administrative orders were entered to cause further delay are unfounded.

The Appellant claims some sort of conspiracy to protect various officials. He accuses the Clerk of Court of improper actions. He accuses the undersigned judge, the Clerk of Court, and the Respondents' attorney of committing fraud. He accuses the undersigned judge of abusing his discretion in issuing the administrative orders and in other actions. He asserts that it was illegal and unethical for the undersigned judge to write a letter to Judge Gibbons asking if Judge Gibbons would be deciding the Respondents' motion to alter or amend. He accuses the undersigned judge of racial bias.

None of these very serious accusations are supported by one scintilla of evidence, nor are they supported by any reasonable reading of an applicable rule or law. Mr. Guice has demonstrated no basis for overturning the administrative orders, and any motion he may have to seek to accomplish the withdrawal of those orders is denied.

The Clerk of Court's staff normally prepares dockets based on the documents that are filed. The Appellant reads impropriety in the actions of the Clerk of Court and the judges regarding how these hearings were scheduled, but no showing of impropriety has been made. He has also complained about information on the Internet website done by the Clerk of Court's staff in conjunction with Court Administration. That website makes it clear that the information is not official.³ He puts unwarranted emphasis upon those entries, and he has been given reasonable

³ The disclaimer that must be accepted to access the information reads, in part: Portions of such information may be incorrect or not current. Any person or entity who relies on any information obtained from this web site does so at his or her own risk. In addition, nothing contained within this web site is an official record of the County or the elected officials responsible therefore. All official records of the County and the offices of countywide elected

explanations about why things are done as they are – he recites some of the explanations in his Motion In Objection to Administrative Order. His complaints are unfounded and do not affect his substantive or procedural rights, as he claims.

When Judge Gibbons responded stating that he would not entertain the Respondents' motion to alter or amend due to the judge's recusal, he did so in a letter filed on November 6, 2014. That answer introduced the process under Rule 63.

However, around that time, the Appellant was submitting various documents to the Supreme Court of South Carolina concerning these cases. Among other things, he filed for something that he denominated as a writ of mandamus to require the undersigned judge to take certain actions. Part of his argument was that Judge Gibbons decided all of Appellant's substantive requests for relief. The difficulty this created administratively is that there was a pending motion before the Supreme Court seeking a determination that there was nothing for the circuit court to do – that Judge Gibbons' order had already decided everything. That does not appear to be a request for mandamus as much as a request for a stay, and the uncertainty caused further delay.⁴ The Appellant also apparently had a motion for rehearing filed with the South Carolina Court of Appeals.

On December 8, 2014, the Appellant filed a motion for judgment on the pleadings. That motion is denied and is addressed on page 23 of this order.

On December 9, 2014, the undersigned judge entered an administrative order related to Rule 63, SCRCPP, in response to Judge Gibbons' decision to decline to rule on the Respondents' motion to alter or amend. That administrative order was filed on December 11,

officials are on file in their respective offices and may be reviewed by the public at those offices.

⁴ The order eventually issued by the Supreme Court demonstrates that the difficulty in dealing with these filings was not limited to the Court of Common Pleas.

2014. It referenced the procedure required under Rule 63 and the order of Chief Justice Toal, and it stated that the undersigned judge would have to determine whether sufficient familiarity with the file could be obtained to decide the Respondents' motion.⁵

On December 11, 2014, a copy of the Workers Compensation Commission file was received in the judge's office in digital format. On that day, the undersigned judge wrote a letter to the Appellant concerning the status of the cases. It reads:

This is in response to your letter of November 25, 2014, and the communication that I received today which included copies of your request that the Supreme Court of South Carolina issue a Writ of Mandamus to require me to take certain actions. Earlier this week, I prepared, signed, and mailed to the Lexington County Clerk of Court for filing an administrative order regarding the status of your cases. I am attaching a copy of it, in case you have not received it. If the Supreme Court believes that other directives are appropriate, I will do my best to follow them. In my view, these cases are being properly administered. The sheer volume of the filings has required huge amounts of time.

WAC
#19

Any motions that you have properly filed will be scheduled for hearings as necessary and decided, once the court can get over the initial hurdle of obtaining the information required under Rule 63. There is a particular order in which things have to be addressed. Your interpretation of the status of your cases and the law and procedures will be taken into account.

Today, I received the DVD from the Workers Compensation Commission. My law clerk has opened the disc and advises me that there are over 100 documents on it. The attached order explains what procedure the court deems to be appropriate at this time.

On January 16, 2015, a letter from the South Carolina Court of Appeals was filed with the Clerk of Court for Lexington County. When the Supreme Court issued its directive that it

⁵ It stated, "The court has issued administrative orders and directives to obtain the file from the South Carolina Workers Compensation Commission. That commission has advised the court's staff that the file is voluminous, that it is in electronic format, and that a DVD will be sent to the judge's office upon completion. When that is received, the court will issue further procedural directives in conformity with the provisions of Rule 63 and the Chief Justice's administrative order.

was not going to proceed with the request for mandamus, it appeared at that point that there were no appellate stays in effect to further delay the cases going forward.

So, a supplemental administrative order was issued on March 3, 2015, in which the procedural posture of this claim was outlined, as the parties had been advised in December. The court had evaluated the situation and determined that it should not decide the Respondents' pending motion to alter or amend Judge Gibbons' order. This administrative order gave notice to the parties about the process to be used in handling this matter and deciding this appeal, including notice of a *de novo* hearing to be held on March 27, 2015 at 10:00 a.m. The order made it clear that all pending motions would be heard. The undersigned noted Appellant's belief that the circuit court order of September 25, 2014 granted Appellant all of the relief he sought including back wages and reinstatement of his former employment. Finally, it was noted in the Administrative Order that failure to appear may be deemed an abandonment of any claims made in any pending motions. The parties submitted additional briefs and filings for consideration. At its core, Appellant is seeking to reverse a full and final settlement agreement resolving his original workers' compensation claim in its entirety.

WPK
#20

On March 9, 2015, the Appellant filed several documents. He filed his memorandum in response to the March 3 order and Motion for Relief from the Administrative Orders. He also filed a document in which he purported to cancel the hearing that had been ordered. A motion to stay was filed, and a motion to disqualify the undersigned judge. The motion for stay asserted that the case should not be heard until a decision was made on the Motion for Relief from Administrative Orders, which the court also considered as a request not to proceed until the Motion to Disqualify was decided. As is routine with the Appellant, he stated that his motions are made without a request for oral argument.

THE HEARING ON MARCH 27, 2015

The hearing was not continued or canceled. On March 27, 2015 at 10:00 a.m., the Appellant was not present. After waiting to make sure that the Appellant was not simply late, the bailiff was instructed to conduct a search of the Judicial Center and to call out Mr. Guice's name. The Appellant was not located.

At the outset of oral arguments, the court considered Appellant's motion to have the undersigned recused from hearing this matter. After reviewing the written submissions of the Appellant, the undersigned finds those accusations and claims are completely unfounded. Not only are they unfounded against the undersigned, but it appears he has a pattern of filing motions for recusal against judges or impugning the integrity of judges who make a ruling adverse to him. The motion to remove the undersigned as presiding judge in this matter is denied.

Appellant's motion to stay the proceeding and Appellant's motion to disqualify filed March 9, 2015 are denied as the motion is unsupported, not based on any valid claim, and not pursued. There is no reason to stay these proceedings or disqualify the undersigned.

The file reflects that the Appellant requested to have the undersigned recused after learning the undersigned had been in the hospital briefly in January 2015 for a surgical procedure. To the extent that the Appellant has any pending motion to recuse the undersigned due to disability, the motion is denied as there is simply no merit to such assertion. The procedure was done during a week when the undersigned judge was scheduled for vacation, and it only required an overnight stay in the hospital.

The next issue addressed at oral arguments was the Appellant's notice of cancelation of this hearing.⁶ The Appellant had been advised previously that he does not have the authority to cancel a hearing. He may request a continuance of a scheduled hearing, but cannot unilaterally cancel the same. In his notice of cancellation, Appellant accuses the undersigned of not conferring with Appellant prior to setting this hearing and notes he has something else to do. Appellant also indicates he lives in Tampa, Florida and does not have the financial resources to come to South Carolina. The Appellant has provided no valid reason for the postponement of the hearing, and to the extent any of the filings submitted by Appellant can be construed as a motion for postponement or continuance, they are denied.

As addressed above, to the extent that there is a continuing objection to the administrative orders issued or continuing motions for relief from the administrative orders, those objections and motions are denied. The administrative orders issued in this matter were designed to consolidate a claim with a complex procedural history before a single judge and get this matter to a point where the issues could be heard and ruled upon. The administrative orders were proper administrative functions and any objection to the same is denied.

Concerning Judge Gibbons' order which Appellant asserts in his written submissions granted him reinstatement of his job and back due benefits, the Appellant misunderstands that order and is reading it in a way that is contrary to Judge Gibbons' ultimate ruling. It ruled that there be a *de novo* hearing. Judge Gibbons' last order was not a final determination of the merits and there is no reasonable basis to conclude that it granted the Appellant all of the relief he

⁶ This was not the first time that Mr. Guice issued his own notice of cancelation of a hearing. In one instance, Mr. Guice forwarded a notice of cancellation of the November 10 hearing. An order was issued canceling the hearing, but advising the Appellant as follows: "He may move to cancel a hearing, but does not have the power to cancel a hearing on his own. The Clerk of Court is directed to make a copy of the notice sent by Mr. Guice and put it in the files, but to return the original notice to him. The notice, on its face, is not executed by a judicial officer and has no force or effect."

sought in this matter. Had it been Judge Gibbons' intent to grant final and complete relief, he would not have provided for rescheduling of the motion or vacate his order completely.

Judge Gibbons' order was vacated at the Appellant's request. The Respondents agree that any motion concerning Judge Gibbons' order is moot as that order was subsequently vacated.

With regard to Appellant's motion(s) for judgment on the pleadings, it (they) is (are) denied. This matter comes before this Court on appeal from the South Carolina Worker's Compensation Commission. There are no pleadings with which to grant a judgment in favor of Appellant. Appellant asserts Respondents' failure to specifically respond and deny allegations contained in the numerous submissions constitutes an admission of those allegations and he is therefore entitled to the relief sought. That is a misunderstanding of procedure, and the Respondents have made no such admissions. Appellant is not entitled to a judgment as a matter of law, default judgment, or judgment on the pleadings. The improper use of summonses has already been noted, and attaching a summons to something other than a complaint does not have the consequences that the Appellant believes that it should have. Matters that are within the exclusive jurisdiction of the Workers' Compensation Commission have to be raised and ruled on there.

WPC
#23

Having worked through the procedural issues, the question before the court is the Respondents' motion(s) for dismissal of both cases. As discussed above, the Appellant's appeal of Judge Russo's order on November 13, 2013 was at a time when neither the Commission nor the circuit court had entered a final, appealable order. Appellant initiated his appeal to the Court of Appeals concerning Director Cannon's letter after the Appellant had already filed a Form 30 appeal of Commissioner Barden's dismissal to the Full Commission. So, the administrative action was pending at the time he appealed the letter from Mr. Cannon.

Commissioner Barden's February 22, 2013 order considered and dismissed the issues Appellant raised in his Form 50s, all of which centered on the same issues raised in his motion for reinstatement. Judge Russo noted that an appeal in circuit court could be pursued, once Appellant exhausted his administrative remedies. Yet, the Appellant filed his appeal to the South Carolina Court of Appeals while the Commission was in the process of considering his Form 30 appeal from Commissioner Barden's February 22, 2013 order.

The Full Commission entered a final order on July 17, 2013, and Appellant appealed the July 17, 2013 order to the Court of Appeals, which was the wrong court. That was transferred by the Court of Appeals to the Court of Common Pleas. Since the Appellant had another appeal pending under the same workers' compensation file number, there was also a remand, with a notation to "consider the merits of this appeal in conjunction with Appellant's appeal from the Commission's final Order." Those matters are now in circuit court.

WPC
#24
This court believes that it has complied with the Court of Appeals order remanding this matter to the circuit court. At issue before the Court of Appeals was a letter written by the executive director of the South Carolina Workers Compensation Commission on March 27, 2013, returning the Appellant's motion for reinstatement of employment. That letter stated that the motion for reinstatement was being returned as the Commission does not have subject matter jurisdiction for the issues set forth in the motion.

This court had concerns about issues regarding the authority of the executive director to take the action that he did, in the manner that he did, and at the time that he did. The court had questions about the proper procedure to be followed concerning those issues in a Common Pleas proceeding. The court intended to discuss those at the March 27 hearing. Appellant failed to appear to address the court's concerns. Any arguments not raised are abandoned.

Addressing this issue, however, it now appears that all the executive director did was to notify the Appellant that the motion for reinstatement was being returned, with the filing fee. His previously filed claim included a demand for reinstatement of his employment. When the court questioned the only party present at the hearing about the authority of the executive director to make that decision, it was stated that the Appellant's attempted filing was for something the Commission cannot do and that all the director did was return the papers and filing fee. It was asserted that the Commission could not grant the relief that was being requested in the returned documents. So, counsel knew of no authority of the Commission to entertain the proposed filing. More importantly, the merits have been now been addressed by the Commission for the overlapping relief that was being sought.

*WPK
25*
Respondents' motion to dismiss the claims in both cases filed in Common Pleas is granted. Appellant's claims are barred because he signed a full and final settlement agreement and release resolving his workers' compensation claim, which was approved by the South Carolina Workers' Compensation Commission on May 5, 2005. When the Appellant sought to reopen his workers compensation claim in November of 2012 and contest that settlement agreement and release, he also sought reinstatement of his employment and additional compensation benefits for his original work accident and injury. The South Carolina Workers' Compensation Commission, both the single Commissioner and the Appellant Panel, have denied all of Appellant's motions and ruled in favor of Respondents based on this claim having been resolved in its entirety in 2005. The claims all appear to be final resolutions of the matters that were raised and attempted to be raised to the Commission. The file supports the Respondents' contention that the Appellant may not now seek to reopen the workers compensation claim for additional benefits of any kind and that these cases should be dismissed.

To the extent Appellant has additional motions, objections, or issues not addressed herein, Appellant was not present at the hearing, after having been cautioned that the failure to appear may be deemed as an abandonment of those issues. Any motions, objections, or requests for sanctions not addressed herein were deemed abandoned and are denied.

The Respondents' request for attorney fees and costs associated with defending this matter throughout the lengthy and redundant appeal process is granted. Respondents have been forced to respond to multiple duplicative and redundant filings submitted by Appellant over approximately three years since Appellant sought to reopen his original settlement. Respondents requested an order for sanctions, fees, and penalties. They seek sanctions for defending this matter by way of a Reply to Appellant's "Motion For Entry of Clerk's Default" dated May 10, 2013. Since that request, Respondents have appeared for oral arguments on no less than four occasions and have done extensive work to defend against these claims. Appellant has failed to appear for any argument on his behalf. He has been provided with a detailed affidavit in support of the fees and costs requests.

WPA
#26

The Appellant filed documents after the submission of the proposed order. The last one basically asked that the court go ahead and sign the proposed order so that the Appellant can proceed to seek relief in other courts. The proposed order has been modified by the court.

Substantial sanctions are appropriate based on clear and convincing evidence that, from the outset, the relief sought by the Appellant was unsupported by law or procedure. It is also established by clear and convincing evidence that the defense was made needlessly difficult because the Appellant insisted on taking unfounded positions, did not accept reasonable explanations, caused redundant filings in various forums, and liberally made unwarranted defamatory accusations.

The court finds that Respondents' request for attorneys' fees and costs in the amount of \$32,933.13 is reasonable, and it is awarded. In awarding attorney's fees, this court has considered the following six factors: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 759 (1997). The *Jackson* factors support an award of fees requested by Defendant.

1. Difficulty of case

This case was complex and difficult, primarily due to the repetitive, atypical, and detailed filings and assertions raised by the Appellant. The case required having to be knowledgeable about workers' compensation, circuit court, and appellate court issues and procedures.

2. Time expended

Counsel for Defendant has devoted an extremely significant amount of time over a course of years. It is detailed in the second affidavit submitted. Much of the additional time was occasioned by the filings of the Appellant in multiple courts, frequently based on Appellant's misunderstanding of the proper procedures.

3. Professional Standing

The attorneys enjoy good professional standing. The documents submitted by primary counsel have been very well written and have greatly assisted the court. Counsel has demonstrated high standards of professionalism and civility in the face of what appear to be completely unwarranted attacks upon her integrity.

4. Contingency of compensation

This factor is not pertinent to the Court's decision.

5. Beneficial Results

There is no question that Respondents' counsel obtained beneficial results. To obtain these results required tenacity and diligence, at the highest level of professional effort.

6. Customary Legal Fees

The hourly rates are reasonable and rather standard for fees charged in such cases.

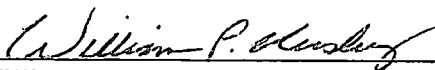
In summary, the factors in *Jackson v. Speed* support the award of attorneys' fees to Respondents.

THEREFORE, IT IS ORDERED:

- 1) That the Respondents' motion to dismiss is granted and the appeals are denied and dismissed.
- 2) That sanctions are imposed and the Appellant must pay to the Respondents' the sum of \$32,933.13. This award of attorneys' fees and costs is a money decree which should be enrolled as a separate judgment and draw interest under S.C. Code Ann. § 34-31-20(B).

#28

AND IT IS SO ORDERED.



William P. Keesley
Judge, 11th Judicial Circuit

July 17, 2015

FILED

2015 JUL 17 01:31:16
CLERK OF COURT
JUDICIAL CIRCUIT
MONTGOMERY, SC

Attachment C

THE STATE OF SOUTH CAROLINA
In The Supreme Court

IN THE SUPREME COURT'S ORIGINAL JURISDICTION

Appellate Case No. _____

Alexander Guice, Petitioner,

v.

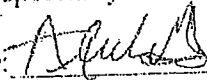
The Honorable James Edward Lockemy,
Acting In His Official Capacity as
Chief Justice, South Carolina Court Of Appeals.
Respondent.

PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS

Pursuant to Rule 245(b), SCACR; and/or other holding authorities, Petitioner **ALEXANDER GUICE**, the *pro se* Petitioner; the Injured Employee ("Petitioner" or "Injured Employee"), alleges the pleadings in this matter are being filed by Petitioner *in propria persona* wherein pleadings are to be considered without regard to technicalities. Hulsey v. Ownes, 63 F3d, 354 (5th Cir 1995); also see Conley v. Gibson, 355 U.S. 41 at 48 (1957). Specifically, Petitioner submits this Petition seeking a WRIT of PROHIBITION and/or MANDAMUS, ordering **The Honorable James E. Lockemy**, Chief Justice ("Chief Judge Lockemy" or "Respondent") of the South Carolina Court of Appeals ("Lower Court"), to issue an appropriate ORDER; (1) VACATING the Order dated June 24, 2016; (2) FINDING that the Commission, and consequently, the Lower Court, lacked jurisdiction over the subject matter of Petitioner's Workers' Compensation Claim No. 0506205, or the parties, at the time it approved the Settlement Agreement and Release on January 5, 2006; (3) FINDING the Settlement Agreement

and Release dated January 5, 2006 to be "NULL and VOID"; (4) FINDING Petitioner was subjected to a RETALIATORY DISCHARGE by US Foodservice, Inc.; (5) REVERSING the Circuit Court Order on appeal dated July 17, 2015; (6) ORDERING the reinstatement of Petitioner's employment with US Foodservice, Inc.; and (7) ORDERING US Foodservice, Inc., et al, to comply with S.C. Code Ann. § 42-9-260(F) & (G); S.C. Reg. 67-506(D) of the Workers' Compensation Act, and well settled law, in terms of the immediate REINSTATEMENT and RELEASE of unlawfully withheld entitled TEMPORARY TOTAL COMPENSATION PAYMENTS to Petitioner, at the Mutually Agreed Upon Average Weekly Wage of \$1,161.00, plus the mandatory 25 PERCENT INTEREST PENALTY, from November 3, 2005 to DATE. The grounds and authorities relied upon by Petitioner in support of this petition for an extraordinary writ is set forth in the attached Memorandum in Support of this Petition.

Respectfully submitted,

By: 
Alexander Guice
U.S. African American Citizen
Honorable Disabled Veteran
Post Office Box 13281
Tampa, FL 33681
(813) 562-0547
alguice@hotmail.com
Petitioner, Pro Se

November 1, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

IN THE SUPREME COURT'S ORIGINAL JURISDICTION

Appellate Case No. 2016-

Alexander Guice, Petitioner
Post Office Box 13281
Tampa, Florida 33681
(813) 562-0547

v.

Honorable James Edward Lockemy, Respondent
Post Office Box 750
Dillon, SC 29536
(843) 774-4166

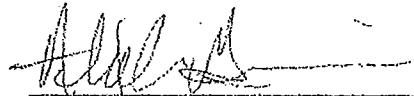
NOTICE

TO: HONORABLE JAMES EDWARD LOCKEMY:

TAKE NOTICE that a COMPLAINT and PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS, IN THE SUPREME COURT'S ORIGINAL JURISDICTION, has been filed against you.

TAKE FURTHER NOTICE. that pursuant to Rule 245, SCACR, you have twenty (20) days, from the date of service, to file a Return to the Complaint. To file a Return, you must file an original and six (6) copies of your return with the Clerk of the Supreme Court and serve a copy of the return on the undersigned Petitioner at the mailing address contact information contained above. Failure to timely file a Return may be deemed a consent to the matter being heard in the original jurisdiction of the Supreme Court of South Carolina. If the petition is granted, you shall have thirty (30) days to serve and file an answer to the complaint. The Supreme Court may provide for discovery, fact finding and/or a briefing schedule as necessary.

Dated: 11/01/2016



Alexander Guice
Petitioner, Pro Se

THE STATE OF SOUTH CAROLINA
In The Supreme Court

IN THE SUPREME COURT'S ORIGINAL JURISDICTION

Appellate Case No. 2016-

Alexander Guice, Petitioner
Post Office Box 13281
Tampa, Florida 33681
(813) 562-0547

v.

Honorable James Edward Lockemy, Respondent
Post Office Box 750
Dillon, South Carolina 29536
(843) 774-4166

COMPLAINT

I, ALEXANDER GUICE, the Petitioner in this civil action do make the following claims:

1. I believe the Respondent, **Hon. James Edward Lockemy**, is a resident of **Dillon County**, who resides at (mailing address) **Post Office Box 750 Dillon, SC 29536**, is within the jurisdiction of the **Supreme Court of South Carolina** and this complaint is properly filed. S.C. Const. art. V, § 5. Rule 245(c), SCACR.

2. I make this complaint on the following:

That on **June 24, 2016**, Respondent failed to respect and comply with the laws of South Carolina when Respondent issued an Order denying the "Motion to Strike Respondent's Initial Brief and Leave to Stay", dated March 8, 2016 and duly filed by Petitioner in the matter of Alexander Guice v. US Foodservice, Inc., et al, Appellate Case No. 2015-0001821, to include, but not limited to:

- i) THAT Respondent failed to relinquish jurisdiction of Workers' Compensation Commission Claim No. 0506205 on June 24, 2016;
- ii) THAT Respondent failed to "Reverse" or "Vacate" the Circuit Court Order, dated July 17, 2015 in the matter of Alexander Guice v. US Foodservice, Inc., et al, Appellate Case Nos. 2013-CP-32-01272 and 2014-CP-32-00399 on June 24, 2016;
- iii) THAT Respondent failed to "Reverse" or "Vacate" the Workers' Compensation Commission Decision and Order, dated July 17, 2013 in the matter of Alexander Guice v. US Foodservice, Inc., et al, WCC Claim No. 0506205 on June 24, 2016;
- iv) THAT Respondent failed to find the "Settlement Agreement and Release", Workers' Compensation Commission Claim No. 0506205, approved by the Commission on January 5, 2006, previously entered into by Alexander Guice and US Foodservice, Inc., et al, on December 22, 2005 "NULL" and "VOID" on June 24, 2016;
- v) THAT Respondent failed to Order US Foodservice, Inc., et al, through Employer Representative, Erin Leigh Hantske, Esquire, and McAngus, Goudelock & Courie, LLC, to immediately reinstate and release to Petitioner unlawfully withheld Temporary Total Compensation Payments, at the Mutually Agreed Average Weekly Wage of \$1,161.00, plus the mandatory 25 percent Interest Penalty, from November 3, 2005 to date on June 24, 2016; and
- vi) THAT Respondent failed to act promptly and swiftly in determining whether Petitioner is entitled to benefits under The South Carolina Workers' Compensation Act, S.C. Code Ann. § 42-1-10 *et. seq.* (*See attached Memorandum in Support of Petition for Writ of Prohibition and/or Mandamus with supporting attachments containing other appropriate authorities relied upon by Petitioner*).

3. I believe, because of the above information, that I am entitled to and do submit this prayer for relief in the form of a judgment granting a Petition for Writ of Mandamus ordering Respondent to perform the above stated imperative duties created or imposed by law.

I state under penalty of perjury that the above is correct and truthful, except those based on my information and belief.

Dated: _____

11/01/2016



Signature of Pro Se Petitioner

THE STATE OF SOUTH CAROLINA
In The Supreme Court

IN THE SUPREME COURT'S ORIGINAL JURISDICTION

Appellate Case No. 2016-

Alexander Guice, Petitioner,

v.

The Honorable James Edward Lockemy,
Acting In His Official Capacity as
Chief Justice, South Carolina Court Of Appeals,
Respondent.

PROOF OF SERVICE

I, **Alexander Guice**, do hereby certify, that I provided a true copy of a cover letter to the Clerk: a 'Complaint'; a 'Petition for Writ of Prohibition and/or Mandamus'; a 'Memorandum In Support for a Petition for Writ of Prohibition and/or Mandamus'; a 'Notice'; 'Verification'; and a 'Proof of Service', by depositing the same in the US Postal Service, via USPS Regular Mail, with sufficient first class and tracking postage prepaid, and addressed to: **Hon. James E. Lockemy, S.C. Court of Appeals, P.O. Box 750 Dillon, SC 29536**, the named Respondent; and **Erin L. Hantske, Esq., P.O. Box 650007 Mt. Pleasant, SC 29465**, Counsel of Record for US Foodservice, Inc., et al, an Interested Party, on this 1st day of November, 2016.

By: 

Alexander Guice
U.S. African American Citizen
Honorable Disabled Veteran
Post Office Box 13281
Tampa, FL 33681
(813) 562-0547
alguice@hotmail.com
Petitioner. Pro Se

November 1, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

IN THE SUPREME COURT'S ORIGINAL JURISDICTION

Appellate Case No. 2016-

Alexander Guice, Petitioner,

v.

The Honorable James Edward Lockemy,
Acting In His Official Capacity as
Chief Justice, South Carolina Court Of Appeals,
Respondent.

**MEMORANDUM IN SUPPORT OF
PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS**

Pursuant to Rule 245(b) & Rule 240(c)(2), SCACR, Petitioner ALEXANDER GUICE, the *pro se* Petitioner, the Injured Employee (“Petitioner” or “Injured Employee”) alleges the pleadings in this matter are being filed by Petitioner in *propria persona* wherein pleadings are to be considered without regard to technicalities. Hulsey v. Ownes, 63 F3d 354 (5th Cir 1995); also see Conley v. Gibson, 355 U.S. 41 at 48 (1957). Specifically, Petitioner submits this Memorandum in support of the Petition for a WRIT of PROHIBITION and/or MANDAMUS against The Honorable James E. Lockemy, Chief Justice (“Chief Judge Lockemy” or “Respondent”), South Carolina Court of Appeals (“Lower Court”), for issuance of an appropriate ORDER granting the same, wherein the undersigned Petitioner would allege as follows:

I.

FACTUAL BACKGROUND

In the matter of Alexander Guice v. US Foodservice, Inc., and ACE American Insurance Company, c/o Gallagher Bassett Services, Inc., Appellate Case Nos. 2013-CP-32-01272 / 2014-CP-32-00399, on appeal from the Workers' Compensation Commission, Case No. 0506205, Petitioner filed a timely 'Notice of Appeal' challenging the dismissal "Order" issued by Circuit Judge Hon. William P. Keesley, dated July 17, 2015. Decision and Order, WCC Case No. 0506205 dated July 17, 2013, Attachment (Att.) A. Notice of Appeal, Appellate Case Nos. Case No. 2013-CP-32-01272 Case No. 2014-CP-32-00399. Order, Appellate Case Nos. Case No. 2013-CP-32-01272 Case No. 2014-CP-32-00399 dated July 17, 2015, Att. B.

The Court of Appeals ("Lower Court") assigned Appellate Case No. 2015-001821 to the instant workers' compensation appeal. Correspondence from Clerk of the Lower Court, dated July 28, 2015, Appellate Case No. 2015-001821, Att. C.

During the current 'Initial Briefing' Stage of the instant appeal, Petitioner filed a "Motion to Strike Respondents' Initial Brief and Designation of Matter" ("Motion to Strike"). Motion to Strike, dated March 8, 2016, Appellate Case No. 2015-001821 (Exhibits to Motion excluded)¹, Att. D. In the Motion to Strike, Petitioner established several material facts, including; (1) that Petitioner, who was hired by US Foodservice, Inc. (employer) on 10/01/2001 as a Delivery Driver, was injured while in the performance of his official duties with employer in a May 05,

¹ All evidentiary attachments hereto were previously evidenced before the Lower Court in Petitioner's 'Motion to Strike'; and/or Petitioner's 'Motion for Summary Judgment', and were never denied or challenged as to their validity by the employer's current representative, or in the alternative, were denied on conclusory grounds or without required citation to authority, and therefore cannot be challenged at this time. McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 344, 479 S.E.2d 67, 75 (Ct. App. 1996) ("Failure to object when the evidence is offered constitutes a waiver of the right to have the issue considered on appeal."). 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).

2005 tractor-trailer accident; that Petitioner reported the injury to Employer on May 5, 2005; and that at the time of the May 05, 2005 work-related accident/injury, Petitioner's mutually agreed upon Average Weekly Wage (AWW) was approximately **\$1,161.00** (Redacted WCC Form 12A, *Employer's First Report of Injury or Illness*, dated 05/21/2005, Att. **E**);

(2) that on or around May 2005, and subsequent the May 5, 2005 work-related accident, Petitioner retained the legal services of Robert Glenn Bacon, Esquire and Harry Pavilack and Associates, P.A. ("Attorney Bacon"), to represent Petitioner's interest regarding the May 5, 2005 work-related accident, and that the Workers' Compensation Commission ("Commission") assigned the May 5, 2005 Workers' Compensation Claim Number 0506205; (3) that Petitioner attended and fully complied with all directives of the employer-selected treating physicians, to include primary authorized health care provider, Alan Tamadon, MD ("Dr. Tamadon");

(4) that on October 27, 2005 authorized health care provider Dr. Tamadon issued a Medical Report, wherein Dr. Tamadon; (a) opined that Petitioner reached Maximum Medical Improvement (MMI); (b) assigned a five percent impairment rating to the whole person of Petitioner; (c) assigned "Permanent Lifting Restrictions" to Petitioner; and (d) reported to employer that Petitioner could no longer perform the duties of a Delivery Driver (October 27, 2005 Medical Report; Notice of Work Status; and Physical Work Performance Evaluation Summary dated 10/19/2005, Att. **F**);

(5) that on October 27, 2005 when Dr. Tamadon opined MMI; assigned the 5 percent impairment rating to Petitioner; assigned permanent lifting restrictions to Petitioner; and reported to employer Petitioner could no longer perform the duties of a delivery driver, Petitioner had received temporary compensation payments from employer for approximately **174 consecutive days**, including the '**First 150 Days**', from May 6, 2005 to October 27, 2005 (Redacted WCC

Form 18, *Periodic Report*, dated 12/01/2005, filed with the Commission by the employer, Commission-date-stamped 12/05/2005, Att. G);

(6) that on November 2, 2005, the employer terminated Petitioner's employment, on grounds of "permanent lifting restrictions" and "no position available" (Employee Status Notice, dated 11/02/2005, Att. H)²;

(7) that on November 2, 2005 Petitioner immediately contacted Attorney Bacon and advised that employer terminated Petitioner; however Attorney Bacon never took any action on behalf of Petitioner to seek reinstatement of employment;

(8) that subsequent termination, the employer's representative, Walter H. Barefoot, Esquire, and Turner Graham, Padgett & Laney, LLC ("Attorney Barefoot"), suspended payments of temporary compensation to Petitioner; (9) that Petitioner contacted Attorney Bacon and advised that Petitioner was not receiving any payments from employer; however, Attorney Bacon took no action on behalf of Petitioner to obtain entitled temporary compensation payments from Attorney Barefoot;

(10) that on or around December 16, 2005 Petitioner had a telephonic conference with

2 Petitioner was "verbally" terminated by Michael L. Sanders, Transportation Manager and Employer Agent, in the presence of and witnessed by Carl J. Peavy, Transportation Supervisor and Employer Agent. Petitioner requested a copy of the written discharge notice at the time of termination; however, Employer Agent Sanders stated the discharge notice would be mailed to Petitioner. After repeated calls by Petitioner to Employer's Division Office located in Lexington, SC requesting a copy of the discharge notice, Petitioner received correspondence from the Employer, and specifically, Kellen K. Pollard, VP of HR, dated **March 9, 2006** stating that Petitioner "left the company in November 2005 because he could not longer perform the duties of a delivery driver". Correspondence from Employer to Petitioner, dated 03/09/2006, Att. I. Employer never mailed a copy of the discharge notice to Petitioner. Petitioner was not INITIALLY served with the Discharge Notice (Employee Status Notice) until a copy of same was provided to Petitioner by Attorney Hantske, the employer's current representative, on or around **December 21, 2012**, more than seven years later, in compliance with Petitioner's duly filed WCC Form 27 (Subpoena), which has never been denied by Attorney Hantske.

Attorney Bacon where Petitioner advised Attorney Bacon that Petitioner was homeless since December 13, 2005 and Petitioner had not received any compensation payments from employer since being terminated. Attorney Bacon made no reference to the issues of the employer's termination of Petitioner's employment or lack of compensation payments to Petitioner; however, Attorney Bacon informed Petitioner that the employer was offering to "settle" Petitioner's workers' compensation claim, for \$20,000.00, of which, Attorney Bacon would receive 33.3% or \$6,666.66. Attorney Bacon further advised Petitioner that if Petitioner did not accept the settlement offer from US Foodservice that Attorney Bacon did not know when Petitioner would receive another payment of any kind from employer;

(11) that on December 22, 2005 Petitioner, while still homeless, went to Attorney Bacon's office and signed the Settlement Agreement and Release ("Agreement"), and that at no time during the December 22, 2005 meeting did Attorney Bacon inform or advise Petitioner that he had an entitled right to any compensation payments from employer or discuss any actions Attorney Bacon would be taking on behalf of Petitioner regarding employer's discharge of Petitioner's employment;

(12) that on or around December 26, 2005 and subsequent Petitioner's entrance into the aforementioned Agreement, Petitioner received, via US regular mail, an envelope from the employer, which enclosed contained three (3) separate envelopes containing temporary compensation payments, for entitled temporary compensation for the payable dates of; (a) from 07/07/2005 to 10/27/2005 (\$578.74); (b) from 11/07/2005 to 12/04/2005 (\$2,370.24); and (c) from 12/05/2005 to 12/17/2005 (\$1,185.12). However, the "check dates" of all three compensation payments were either dated "12/01/2005" or "12/02/2005" and an average of the payable date periods divided by the compensation payment amount established that employer

paid Petitioner at the *maximum compensation rate*, which at the time was **\$592.56**, instead of the *mutually agreed upon AWW* amount of **\$1,161.00** (Att. E) (last three TTC payment receipts from employer, Att. J)³;

(13) that on January 5, 2006 the Workers' Compensation Commission ("Commission"), by way of Commissioner David W. Huffstetler, approved the Agreement (Agreement, dated 01/05/2006, WCC Case No. 0506205, Att. K)⁴; (14) that at no time prior to or after Commission approval of the agreement on Jan. 5, 2006 was a hearing of any kind ever convened before the Commission respective of WCC Case No. 0506205 (E-Mail Correspondence from Commission Agent Eugenia Hollmon dated 11/15/2012, Att. L); and (15) that to date, Petitioner's "permanent lifting restrictions" remains unresolved; Petitioner has never refused any offers of employment from US Foodservice (because US Foodservice has never made any offers of employment to Petitioner); and Petitioner remains unemployed since being terminated by employer on November 2, 2005 (Redacted Social Security Statement, Alexander Guice, dated 09/21/2015, Att. M).

Petitioner's Motion to Strike provided well pled arguments seeking *inter alia* that the

3 For example, from 11/07/2005 to 12/04/2005 (28 days or 4 weeks), employer paid Petitioner approximately \$2,370.24 in compensation (Att. J). \$2370.24 divided by 4 (weeks) is 592.56 or \$592.56 per week.

4 A review of the Agreement (Att. K), on its face, confirms that; (1) there was no reference to § 42-9-390 or Reg. 67-801 of the Workers' Compensation Act ("Act") as the controlling or convening jurisdictional authority the Agreement was filed under with the Commission; (2) there was no express language establishing *how* the Act conferred or vested jurisdiction of the subject matter of the claim or the parties upon the Commission; (3) there was no reference that the employer terminated Petitioner's employment on Nov. 2, 2005; (4) Petitioner never expressly waived any right to an evidentiary Temporary Total Compensation/Disability (TTC/TTD) stop payment hearing to be convened before the Commission; (5) the parties did not agree that the sum of \$20,000.00 served as final payment for entitled TTC/TTD compensation payments; and (6) there was no reference or mention ("meeting of the minds") of Dr. Tamadon's assigned compensable impairment of "permanent lifting restrictions" upon Petitioner on October 27, 2005 as a material fact at issue being resolved by way of said Agreement.

Lower Court, via Respondent; a) Find that the Commission lacked jurisdiction over the subject matter of Petitioner's claim, or the parties, to include vacating the Agreement (Att. K) and ordering the prompt reinstatement and release of TTC/TTD payments, because at the time the Commission approved the Agreement on January 5, 2006 the employment relationship between Petitioner and US Foodservice had previously *ceased to exist* on November 2, 2005 (Att. H, I); and the fact that US Foodservice's sole defense against payment of entitled TTC/TTD benefit payments to Petitioner is the aforementioned Agreement, wherein Petitioner relied upon numerous holding authorities, to include, but not limited to; Glass v. Dow Chem. Co., 325 S.C. 198, 201-02, 482 S.E.2d 49, 51 (1997); Vines v. Champion Bldg. Prods., 315 S.C. 13, 16, 431 S.E.2d 585, 586 (1993); Givens v. Steel Structures, Inc., 279 S.C. 12, 13, 301 S.E.2d 545, 546 (1983); Cooper v. McDevitt & St. Co., 260 S.C. 463, 466, 196 S.E.2d 833, 834 (1973); Chavis v. Watkins, 256 S.C. 30, 32, 180 S.E.2d 648, 649 (1971); Hon. Jean Hoefer Toal, et al., Appellate Practice in South Carolina, 170 (2d ed.2002); and McCreery v. Covenant Pres. Church, 299 S.C. 218, 383 S.E.2d 264 (Ct. App. 1989). Id. Att. D.;

b) Finding that US Foodservice unlawfully terminated entitled TTC/TTD disability payments, after employer's termination of Petitioner's employment, to include ordering the reinstatement and release of entitled TTC/TTD payments, because Petitioner never refused any offer of employment from US Foodservice; Petitioner has never recovered from the "permanent lifting restrictions" assigned by treating physician Dr. Tamadon (Att. F) which is *compensable*; Petitioner has not been employed since US Foodservice terminated Petitioner on November 2, 2005 (Att. M); and neither the employer's former nor current representatives has ever sought and received the mandatory permission from the Commission to terminate or suspend entitled TTC/TTD payments to Petitioner pursuant to the requirements set forth in § 42-9-260(F) and

Reg. 67-506(D) & (E) of the Act, as Petitioner received temporary compensation for approximately 174 consecutive days, including the First 150 Days, at the time Dr. Tamadon opined MMI and assigned the permanent lifting restrictions upon Petitioner (Att. F & G) (Att. D at 10 (Petitioner's reliance upon Grayson v. Carter Rhoad Furniture, 317 S.C. 306, 310, 454 S.E.2d 320, 322 (1995));

c) Finding that Petitioner was subjected to a Retaliatory Discharge, to include ordering the reinstatement of Petitioner's employment, on grounds that "permanent lifting restrictions" and "no position available" were not suitable affirmative defenses to support termination of Petitioner's employment as set forth in § 41-1-80, and the fact that Employer has never provided a legal theory or any evidentiary documentation as to *how* or *when* Petitioner incurred the 'permanent lifting restrictions' (Att. F, H, I) if Petitioner did not incur the impairment from the injuries sustained in the admitted work-related accident which occurred on May 5, 2005 (Att. E) or the *previous work-related injury sustained to Petitioner's Back* while Petitioner was performing his official duties for US Foodservice on May 27, 2004 *which the employer never reported to the Commission* (Att. D at 34-42); and

d) Finding the Settlement Agreement null and void on grounds that Attorney Barefoot and Attorney Bacon engaged in a "conspiracy to commit insurance fraud"; "fraud"; "intentional false statements"; and "intentional misrepresentation" in obtaining the agreement from Petitioner, wherein Petitioner relied upon settled holding authorities, and specifically, Regions Bank v. Schmauch, 354 S.C. 648, 672, 582 S.E.2d 432, 444 (Ct. App. 2003) (Att. D at 10-34)⁵.

With respect to Petitioner's retaliatory discharge claim, Petitioner relied upon § 41-1-

⁵ Petitioner further pointed out that the Lower Court should apply a "liberal construction" of the Act in favor of coverage for the injured Petitioner, relying upon Hutson v. S.C. State Ports Auth., 399 S.C. 381, 387, 732 S.E.2d 500, 503 (2012) (Att. D at 22).

80; evidenced copies of WCC Form 12 dated May 21, 2005 (Att. E); the October 27, 2005 Medical Report (Att. F); the Employer's Discharge Notice dated November 2, 2005 (Att. H); the Correspondence from Employer to Petitioner dated 03/09/2006 (Att. I); the settled authorities of Crosby v. Prysmian Communications, Opinion No. 4876 (Ct. App. 2012); Hinton v. Designer Ensembles, Inc., 343 S.C. 236, 242, 540 S.E.2d 94, 97 (2000) (citing Hines v. United Parcel Serv., Inc., 736 F. Supp. 675, 677 (D.S.C. 1990)); and Case v. Hermitage Cotton Mills, 236 S.C. 285, 113 S.E.3d 794 (1960) (holding that the one year statute of limitations to bring a § 41-1-80 action regarding retaliatory discharge may be waived if the employer misled or deceived the employee in support of the discharge whether intentionally or not). Id. Att. D at 34-42.

On March 17, 2016 US Foodservice, Inc., et al, by way of Employer's current Representative, Erin L. Hantske, Esquire and McAngus Goudelock & Courie, LLC ("Attorney Hantske"), filed and served a "Respondents' Return In Opposition to Appellant's Motion to Strike Respondents' Initial Brief and Leave to Stay" ("Return to Motion to Strike"). Return to Motion to Strike, Appellate Case No. 2015-001821, dated 03/17/2016 (Attachment to Return excluded), Att. N⁶.

In the Return to Motion to Strike, Attorney Hantske alleged that "Appellant [Petitioner] provides no grounds that would justify such action" (Att. N, p. 1); disputed the AWW amount of "\$1,161.00" as being "\$1,154.00" (Id. at p. 2), and averred that "The circumstances under which Appellant [Petitioner] ceased working for US Foods [US Foodservice] have not been stipulated and, moreover, are irrelevant to this appeal". Id. at 2. Att. H, I.

Still further, Attorney Hantske issued a "general denial" as to "all of Appellant's

⁶ The only attachment advanced by Attorney Hantske in support of the 'Return to Motion to Strike' was a true copy of the Circuit Court Order dated July 17, 2015 currently pending appeal before the Lower Court, which is evidenced herein as Attachment B.

arguments that the Settlement Agreement is not a valid and enforceable order of the Workers' Compensation Commission"; "that Respondents and/or their counsel [US Foodservice and their former and current representatives] have engaged in any sanctionable behavior in this case". Att. N at 3.

As to Petitioner's reliance upon McCreery v. Covenant Pres. Church, 299 S.C. 218, 383 S.E.2d 264 (Ct. App. 1989), for the proposition that the Commission lacked jurisdiction over the subject matter of the parties or Petitioner's claim at the time it approved the settlement agreement, Attorney Hantske relied upon this Court's holding in McCreery v. Covenant Pres. Church, 303 S.C. 271, 400 S.E.2d 130 (1990), which overruled the Lower Court's McCreery opinion, where this Court opined, "once the Commission approves a compensation agreement, the factual issue of liability under the act is finally adjudicated and cannot be retried on collateral attack." Id. at p. 3. Moreover, Attorney Hantske cited and relied upon Shatto v. McLeod Reg. Med. Ctr., 406 S.C. 470, 475, 753 S.E.2d 416, 419 (2013); Alewine v. Tobin Quarries, Inc., 206 S.C. 103, 109, 33 S.E.2d 81, 83 (1945); and McLeod v. Piggly Wiggly Carolina Co., 280 S.C. 466, 469, 313 S.E.2d 38, 39 (Ct. App. 1984), for the proposition that the Commission had proper jurisdiction over Petitioner's Claim No. 0506205 and the parties at the time the Commission approved the settlement agreement on January 5, 2006 because the "employer-employee relationship existed at the time of the alleged injury". Att. N at 4.

US Foodservice, via Attorney Hantske, further alleged that "Even if it [the Commission] did not [have jurisdiction], which Respondents [US Foodservice, Inc., et al] do not concede, the holding in [this Court's] McCreery confirms that the Settlement Agreement is final and binding and cannot be "retried on collateral attack" 303 S.C. at 273, 400 S.E.2d at 131.'" Att. N at 4.

With respect to Petitioner's argument regarding "Retaliatory Discharge", Attorney

Hantske averred, "Respondents [US Foodservice, Inc. et al] continue to maintain their position that Appellant's [Petitioner's] employment retaliation/reinstatement claims are completely without basis, that the Commission has no jurisdiction to consider such claims and, on this appeal from the Commission, neither does this [Lower] Court." Att. N at 3.

With respect to the evidentiary documentation submitted in Petitioner's Motion to Strike establishing Petitioner's previous *May 27, 2004 work-related injury sustained to Petitioner's Back* (Exhibit "U" to Petitioner's Motion to Strike, not evidenced here), and Petitioner's 'Social Security Administration Security Statement' dated September 21, 2015 establishing that Petitioner has not been employed since being terminated by US Foodservice on November 2, 2005 (Exhibit "R" to Petitioner's Motion to Strike, evidenced herein as Attachment "M"), *while the validity of the aforementioned evidentiary documents was neither challenged nor denied by Attorney Hantske*, Attorney Hantske nevertheless averred, "Appellant's [Petitioner's] Exhibit "R," dated September 21, 2015, and Exhibit "U" are improperly before this Court, as they were not submitted to the Commission in the underlying proceeding. Furthermore, Appellant's arguments based on "Exhibit U," found on pages 38-39 of his Motion to Strike, have never been presented to any tribunal below and, therefore, are not preserved for appeal." Att. N at 6.

Finally, Attorney Hantske moved the Lower Court, pursuant to Rule 269, SCACR, and evidenced the July 17, 2015 Circuit Court Order *currently on appeal and pending review* before the Lower Court, to impose sanctions upon Petitioner "for repeatedly filing frivolous motions", to include citing portions from the pending Circuit Court Order (Att. B) in support of imposition of sanctions upon Petitioner by the Lower Court. Att. N at 6.

On March 26, 2016 Petitioner filed a "Reply to Return to Motion to Strike Respondents' Initial Brief and Leave to Stay" ("Reply to Motion to Strike"). Reply to Motion to Strike, dated

March 26, 2016, Appellate Case No. 2015-001821 (Exhibits to motion excluded), Att. O.

In the Reply to the Return to Motion to Strike, Petitioner advanced the rebuttal argument that because US Foodservice never challenged the October 27, 2005 Medical Report, and specifically, the assignment of 'permanent lifting restrictions', opined and assigned by their own selected authorized health care provider, Dr. Tamadon, that the Law of the Case Doctrine applied as to the 'permanent lifting restrictions' being a compensable impairment causally related to the May 5, 2005 admitted work-related injury, wherein Petitioner relied upon Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) (Att. O at 3).

Furthermore, with respect to Attorney Hantske's reliance upon this Court's holding in McCreery to challenge Petitioner's argument that the Commission lacked jurisdiction at the time it approved the Agreement on Jan. 5, 2006 (Att. K) because US Foodservice terminated Petitioner, and the employment relationship, on Nov. 2, 2005 (Att. H, I), Petitioner averred that this Court's holding in McCreery was misapplied in the instant appeal by Attorney Hantske; and that McCreery was *inapposite* to the instant appeal, on grounds that this Court's holding that "once the Commission approves a compensation agreement, the factual issue of liability under the act is finally adjudicated and cannot be retried on collateral attack" (McCreery, 303 S.C. at 273, 400 S.E.2d at 131), was *specifically* directed at the Employer/Carrier, and not the injured employee, wherein further in this Court's McCreery Opinion, you held,

"It is settled law that an **employer** wishing to raise the exclusivity of the Commission's jurisdiction as a defense to an action in circuit court must plead facts raising it as an affirmative defense or it is waived. *Googe v. Speaks*, 194 S.C. 206, 9 S.E.2d 439 (1940); *Ammons v. Hood*, 288 S.C. 278, 341 S.E.2d 816 (Ct. App. 1986). Similarly, an **employer** must raise to the Commission the factual issue whether the Act confers jurisdiction. Failure to do so constitutes a waiver of the issue." (Emphasis added). *Id.*"

Attachment O at 7-8⁴.

Furthermore, Petitioner advanced and relied upon City of North Myrtle Beach, 397 S.C.

at 503, 725 S.E.2d at 679 (“The determinative factor is the intent of the court, as gathered, not from an isolated part thereof, but from all the parts of judgment itself”), for the proposition that Attorney Hantske’s reliance on an isolated part of this Court’s holding in McCreery was an improper application of McCreery, and therefore should be rejected by the Lower Court. Att. O at 8-9.

Moreover, Petitioner relied upon the Sup. Ct. of North Carolina’s holding authority in Hart v. Thomasville Motors, Inc., 244 N.C. 84, 92 S.E. (2d) 673 (1956), for the proposition that even after the approved and execution of the Agreement (Att. K), said agreement must be deemed void if the employment relationship ceased to exist prior to the parties entrance into and subsequent approval of the settlement agreement (Att. H, I) because the Commission lacked jurisdiction over the subject matter of the claim or the parties. Att. O at 16-17.

Specifically, in Hart, Employee Hart entered into a settlement agreement with Employer Thomasville, which was approved and executed by the N. C. Industrial Commission. Hart, supra. After approval and execution of the agreement, Hart alleged that the agreement should be void on grounds that Hart was not an employee of Thomasville at the time they entered into the agreement or at the time the agreement was approved and executed by the N.C. Commission. Hart, supra. Counsel for Thomasville argued that even if Hart was not an employee of Thomasville at the time they entered into the agreement, which was subsequently approved by the Commission, that the agreement was final and binding, even if the Commission lacked jurisdiction at the time it approved the agreement (which is a similar argument/defense advanced by Attorney Hantske, Att. N at 4-5). Hart, supra.

In regards to Hart, supra, the Sup. Ct. of North Carolina held,

The North Carolina Industrial Commission has a special or limited jurisdiction created by statute, and confined to its terms. Viewed as a court, it is one of limited jurisdiction,

*and it is a universal rule of law that parties cannot, by consent, give a court, as such, jurisdiction over subject matter of which it would otherwise not have jurisdiction. Jurisdiction in this sense cannot be obtained by consent of the parties, waiver, or estoppel... However, the doctrine has been announced that one who procures or gives consent to a decree, even though it is void as beyond the powers of the court to pronounce, is estopped to question its validity, at least where he has obtained a benefit from the act of the court. *Dean v. Dean*, 136 Or. 694, 300 P. 1027, 86 A.L.R. 79; 19 *Am.Jur.*, Estoppel, sec. 77. The basis of this doctrine is that whether the court had jurisdiction either of the subject matter of the action or of the parties is not important, but that such practice **will not be tolerated**... **A decision of the Industrial Commission is only conclusive when it is acting within its jurisdiction**... **The Commission cannot enlarge its jurisdiction, or prevent a challenge to its jurisdiction over the subject matter, by one of its rules. Its limited jurisdiction is fixed by the Act...Id.** (Emphasis added)⁷.*

Att. O at 17.

Still further, Petitioner rebutted that Attorney Hantske's reliance upon Shatto; Alewine and McLeod were inapposite to the instant appeal, and should be rejected by the Lower Court, because none of the cited cases established that the Commission retained jurisdiction of the subject matter of workers' compensation claim *after the prior termination of the injured worker's employment, for cause, by the employer.* Att. O at 17-18.

With respect to the 'permanent lifting restrictions' not being explicitly stated within the Agreement as a "material fact at issue" to be resolved in the Agreement (Att. K), Petitioner relied upon Reg. 67-803(A)(2)(2005) of the Act; Airco, Inc. v. Hollington, 269, S.C. 152, 160, 236 S.E.2d 804, 808 (1977); Aperm Of South Carolina v. Alvin R. Roof, 290 S.C. 442, 351 S.E.2d 171 (Ct. App. 1986); Patricia Grand Hotel, 372 S.C. at 638-39; and Ozyagcilar v. Davis, 701 F.3d 306 (4th Cir. 1989), for the proposition that the Lower Court had no choice but to deem the

⁷ In the Appellate Panel's July 17, 2013 Order (Att. A), the full Commission relied upon R. 67-801 (their own promulgated rule or regulation), in support of affirming the single commissioner's *sua sponte* cancellation of Petitioner's previously scheduled Form 50 Hearing and *sua sponte* denial of any and all motions filed by Petitioner, based on the alleged finality of the Agreement, which prevented Petitioner's challenge of whether the Commission, "the fourth branch of government", had jurisdiction at the time it approved the agreement (Att. K), or not, which was improper. Hart, supra.

aforementioned Agreement (Att. K) “null and void” as there was no “meeting of the minds” regarding the *compensable* injury of “permanent lifting restrictions” (Att. F), and the Agreement, regardless of the intent of the parties, must be deemed “unenforceable” because the compensable injury of ‘permanent lifting restrictions’ remains an “open material term”. Att. O at 8-10.

As it also related to the assigned permanent lifting restrictions being a compensable injury, Petitioner relied upon Whitfield v. Daniel Constr. Co., 226 S.C. 37, 83 S.E.2d 460 (1954), and Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (Ct.App.1995) (“Our courts have clearly held the natural consequences flowing from a compensable injury, absent an independent intervening cause, are compensable.”), for the proposition that because US Foodservice never provided an “independent intervening cause” to establish *how* Petitioner incurred the ‘permanent lifting restrictions’ if not causally related to the May 5, 2005 admitted work-related accident, that the ‘permanent lifting restrictions’ were compensable. Id. Att. O at 24-25.

With respect to Attorney Hantske’s arguments in relation to Petitioner’s claims for; **a)** Retaliatory Discharge; **b)** inclusion and consideration of the evidentiary documents regarding the unreported 05/27/04 admitted work-related injury sustained to Petitioner’s Back; **c)** the Social Security Administration Social Security Statement of Petitioner dated September 21, 2015(Att. M); and **d)** allegations of fraud, conspiracy to commit insurance fraud, intentional false statements and intentional misrepresentation against Attorney Bacon and Attorney Barefoot, Petitioner relied upon 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), and 100A C.J.S. Workers’ Compensation § 1029 (2013), for the proposition that the aforementioned conclusory and

unsupported defenses/contentions and “general denial” raised and relied upon by Attorney Hantske should be rejected or deemed abandoned by the Lower Court. Att. O.

Furthermore, with respect to the issue of retaliatory discharge, Petitioner established that the issue was properly raised before the Circuit Court, as set forth in Petitioner’s Rule 59(a) “Motion for New Trial” as an additional claim to Petitioner’s appeal of the Commission’s July 17, 2013 Order, wherein the Circuit Court, via former presiding Circuit Judge Brian M. Gibbons, issued an Order **granting** all particulars set forth in Petitioner’s Rule 59(a) motion. Order Granting Appellant/Claimant’s Motion For New Trial And Order For Recusal, C.A. # 2014-CP-32-399/13-CP-32-1272 dated 09/25/2014, issued by **Circuit** Judge Gibbons (vacated *sua-sponte* with no grounds provided on July 17, 2015 via Successor **Circuit** Judge Keesley)⁸, Att. P.

Moreover, as cited in Petitioner’s Motion to Strike (Att. D, p. 41), US Foodservice, via Attorney Hantske, **confirmed** that Petitioner had in fact raised the § 41-1-80 retaliatory discharge claim before the Circuit Court, in their *pending* Rule 59(e), SCRPC Motion to Alter or Amend the September 25, 2014 Order⁹, filed with the Circuit Court, wherein on page 2-3 Attorney Hantske alleged, “Furthermore, he [Petitioner] asserts that Judge Gibbons granted the relief he requested including “reinstate[ment of] Appellant’s employment...” *Id.* Defendants’

⁸ On page 23 of the July 17, 2015 Circuit Court Order on appeal, Circuit Judge Keesley opined, “The Respondents agree that any motion concerning Judge Gibbons’ order is moot as that order was subsequently vacated.” Att. B at 23. However, neither Petitioner nor Attorney Hantske for US Foodservice, ever filed or moved under Rule 60, SCRPC to seek relief from the judgment of the September 25, 2014 Order issued by Circuit Judge Gibbons. Medlock v. Love Shop, Ltd., 286 S.C. 486, 487, 334 S.E.2d 528, 529 (Ct. App. 1985) (holding that one circuit judge does not have the power to review, modify, affirm, or reverse findings of another circuit court judge).

⁹ On page 20 of the July 17, 2015 Circuit Court Order, Judge Keesley opined, “The court had evaluated the situation and determined that it should not decide the Respondents’ pending motion to alter or amend Judge Gibbons’ [Sept. 25, 2014] order.” Att. B at 20. “A judge **shall** hear and decide matters assigned to the judge except those in which disqualification is required.” (Emphasis added). Canon 3(B)(1), CJC, Rule 501, SCACR.

Motion to Alter/Amend Circuit Court Order dated September 25, 2014, filed by Attorney Hantske¹⁰ for US Foodservice, C.A. # 2014-CP-32-399/2013-CP-32-1272 dated Oct. 16, 2014, Att. Q.

As it specifically related to Attorney Hantske's argument seeking the Lower Court to impose sanctions upon Petitioner based on Attorney Hantske's reliance on the evidenced copy of the July 17, 2015 Circuit Court Order on appeal, Petitioner *inter alia* relied upon Rule 241(a), SCACR, for the rebuttal that it was improper for Attorney Hantske to utilize and rely upon aforementioned Circuit Court Order because the Order is under an 'automatic stay', to include the fact that because the Order is pending review, the stay remains in effect throughout the pendency of the appeal. Att. O at 20-22.

On June 24, 2016 the Lower Court, via Respondent, issued a nine word, one sentence Order, "After careful consideration, the Motion to Strike is denied", denying Petitioner's Motion to Strike. Order, Appellate Case No. 2015-001821, dated June 24, 2016, Att. R.

II.

STATEMENT IN SUPPORT FOR A WRIT OF PROHIBITION AND/OR MANDAMUS

Petitioner respectfully appears before this Court as a "Blue Collar" worker with a long family tradition of military service to our country; a devout belief in the Christian faith; a strong belief in integrity, fairness and justice; and a strong work ethic, wherein Petitioner was continuously employed, without a break from employment, from 1987 (at the age of 16) until Petitioner was terminated, for cause, by US Foodservice, on November 2, 2005 (Att. H, M).

While the undersigned African American Petitioner remains honored to have "answered

¹⁰ S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) (holding only a Plaintiff or Appellant can file a Rule 59(e) Motion to alter or amend).

the call” to protect and defend our Country and Constitution for seven years while on active duty service in the all-volunteer U.S. Armed Forces, Petitioner feels “disenfranchised” and “excluded”, as it would appear that the very Constitution and “rule of law” Petitioner protected and defended does not apply to the Petitioner as it relates to the Lower Court and Respondent.

Petitioner would never in good faith knowingly advance a statement, allegation, or prayer to a court of law or tribunal that he has an entitlement to relief, when in fact, law, and/or equity, is neither accurate nor true. To that end, neither the Commission; the Circuit Court; nor the Lower Court has ever had proper jurisdiction over the subject matter of Petitioner’s Workers’ Compensation Claim No. 0506205, because the Commission lacked jurisdiction over the claim or the parties at the time it approved the Agreement on January 5, 2006 on grounds that; a) the prerequisite “employment relationship” for the Act to govern Petitioner’s claim ceased to exist, effective Nov. 2, 2005, when US Foodservice terminated Petitioner’s employment for cause; b) the Commission lacked jurisdiction to approve an agreement between Petitioner and US Foodservice without first granting US Foodservice permission to terminate temporary total compensation (TTC/TTD) payments pursuant to the obligatory procedures set forth in § 42-9-260(F) and corresponding Reg. 67-506(D) & (E) of the Act, wherein Petitioner received temporary compensation after and including the first 150 days; c) the agreement failed to resolve the open material term or condition of Petitioner’s compensable impairment of ‘permanent lifting restrictions’; d) Petitioner was terminated by U.S. Foodservice after the assignment of “permanent lifting restrictions”, which has never resolved and Petitioner has never refused an offer of employment from U.S. Foodservice; and e) the fraud; conspiracy to commit insurance fraud; intentional false statements; and intentional misrepresentation, committed by Attorney Barefoot for U.S. Foodservice and Attorney Bacon for Petitioner mandates that the agreement

approved by the Commission be deemed “unenforceable”, “null” and “void”.

The Lower Court does have proper subject matter jurisdiction over Petitioner’s “Retaliatory Discharge” claim, as Petitioner properly raised the § 41-1-80 claim as an additional action before the Circuit Court in Petitioner’s Rule 59(a) Motion for New Trial, which is confirmed by the Rule 59(e) Motion filed by US Foodservice (Att. Q), through counsel. However, based on Petitioner facially establishing the required three (3) elements to succeed on the merits for a retaliatory discharge ruling, the Lower Court should have granted reinstatement of Petitioner’s employment for retaliatory discharge, in the June 24, 2016 Order, which should have effectively disposed of the appeal before the lower court, in Petitioner’s favor.

Both Respondent and the Lower Court had an “imperative duty created or imposed by law” to perform on June 24, 2016: grant Petitioner’s Motion to Strike; to include reversing the circuit court and the commission; vacating the agreement; ordering the immediate reinstatement and release of entitled TTC/TTD compensation payments to Petitioner; and ordering the reinstatement of Petitioner’s employment with US Foodservice, which Respondent and the Lower Court failed to perform.

Finally, while Attorney Hantske argued on behalf of US Foodservice that several of the issues raised in Petitioner’s Motion to Strike were also cited in Petitioner’s Initial Brief, under the presumed theory that the Lower Court should deny Petitioner’s Motion and allow the proceedings to move forward to final briefing and subsequent issuance of an Order or Opinion by the Lower Court on appeal, Petitioner has no confidence in the integrity, fairness or impartiality of the Lower Court, or Respondent, that after final briefing is completed, the Lower Court would issue a fair and impartial Order/Opinion, in light of the legally insufficient June 24, 2016 Order issued by Respondent for the Lower Court; the Lower Court’s highly improper

conduct and actions in Alexander Guice v. Pamela Lee, Appellate Case No. 2013-000593, Opinion No. 2015-UP-055 (Filed Jan. 28, 2015)¹¹; as well as the fact that a final order issued by

11 In Guice v. Lee, Petitioner appeared before the Lower Court pro se, as is the case in the instant appeal against US Foodservice. In Guice v. Lee, after timely filing of the Notice of appeal; the Initial Brief and Designation of Matter, and after numerous delays and extensions, without Respondent Pamela Lee, who was formerly represented by **disbarred** attorney **Robert Paul Taylor**, and Ryan Alan Stampfle, Esquire, and The Stampfle Law Firm, LLC (“Attorney Stampfle”), failing to brief the Lower Court, the Lower Court, by way of the Clerk, instructed Guice to proceed with the filing and service of the Final Brief and Record on Appeal. Correspondence from Clerk, Appellate Case No. 2013-000593, dated 10/17/2013 and 12/02/2013, Att. S.

After timely filing and service of Appellant Guice’s Final Brief and Record on Appeal, Attorney Stampfle issued correspondence to the Lower Court and Appellant Guice, dated February 19, 2014 alleging that Attorney Stampfle was not the attorney of record for Respondent Lee; that Attorney Stampfle’s representation of Respondent Lee ended at the Family Court.

The Lower Court, by way of Clerk of Court Jenny A. Kitchings, issued correspondence to Attorney Stampfle, which was copied to Appellant Guice, advising Attorney Stampfle that pursuant to Rule 264, SCACR, Attorney Stampfle was the attorney of record for Respondent Lee in regards to Appellate Case No. 2013-000593, and that if Attorney Stampfle wished to be relieved as Respondent Lee’s attorney of record, Attorney Stampfle must file an appropriate motion with the Lower Court in accordance with Rules 240 and 264, SCACR. Correspondence from Clerk of Court Jenny A. Kitchings to Attorney Stampfle, Appellate Case No. 2013-000593, dated February 27, 2014, Att. T.

Attorney Stampfle filed a Motion to be Relieved as Counsel for Respondent Lee, citing a lack of payment for legal services from Respondent Lee, which was verified by Respondent Lee. On April 22, 2014, the Lower Court, by way of then Chief Justice John C. Few, issued an Order granting Attorney Stampfle’s Motion to be relieved as counsel to Respondent Lee *and dismissing Appellate Case No. 2013-000593 on grounds Appellant Guice failed to timely file and serve the Final Brief and Record on Appeal*. April 24, 2014 Order, Appellate Case No. 2013-000593, Att. U. After Appellant Guice timely filed a Rule 221 Petition for Rehearing or Reinstatement establishing that Appellant Guice did timely file the Final Brief and Record on Appeal, the Lower Court issued an Order granting the Motion and reinstating the appeal. Order, Appellate Case No. 13-000593, dated 06/18/2014, Att.V.

Respondent Pamela Lee, either while represented by Attorney Stampfle, or proceeding pro se, *never briefed the Lower Court in defense of the Family Court Order on appeal or challenged any of the facts and issues raised and set forth in Appellant’s Final Brief respective of Appellate Case No. 2013-000593.*

Case No. 2013-000593.

On Jan. 28, 2015 the Lower Court, via the Appellate Panel consisting of Appellate Associate Justices *Harris B. Williams*; *John D. Geathers*; and *Stephanie P. McDonald* ("Appellate Panel"), AFFIRMED the Family Court Order on appeal, to include raising and relying upon the grounds and authorities to affirm the Family Court Order on appeal *Sua Sponte*. Appellate Court Order, Appellate Case No. 2013-000593, dated Jan. 28, 2015, Att. W.

The Appellate Panel's Order issued in *Guice v. Lee* misled and misrepresented the record in terms of; 1) Failing to reference or mention that Respondent Lee failed to brief the Lower Court; 2) Failing to reference or mention that Attorney Stampfle was the second former counsel for Respondent Lee, but was relieved *after* final briefing was completed, but *prior* to the issuance of the Lower Court's Order; and 3) Failing to specifically cite any of the fifteen (15) plus issues in writing raised in Appellant's Final Brief. Rule 220(b), SCACR. Att. W.

Appellant Guice timely filed a Rule 221(a) Petition for Rehearing, raising several issues, to include violations of Appellant Guice's constitutional Due Process rights under the Due Process Clause; however, the Appellate Panel issued a conclusory, ambiguous and unsupported Order denying Appellant Guice's Rule 221(a) Motion, stating, "...the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied". Appellate Court Order, Appellate Case 2013-000593, dated February 19, 2015, Att. X.

Appellant Guice timely filed a Rule 242 Petition for a writ of certiorari with this Court; however, it was denied, without reason, *which was proper*, within the *discretion* of this Court by way of former Chief Justice Jean H. Toal. Order, Appellate Case No. 2015-000576, dated July 23, 2015, Att. Y. Because of Appellant Guice's lack of resources, a petition for a writ of certiorari was never filed with the U.S. Supreme Court.

The effect of the Lower Court's affirmance of the Family Court Order on appeal was *inter alia*; 1) affirming the Family Court's conclusory finding that Respondent Lee's minor child (son) was born as the product of a lawful marriage between the parties (although the parties *was not* lawfully wedded at the time Respondent Lee gave birth to her son); 2) affirming the Family Court's finding that Appellant Guice was in Civil Contempt of Family Court (Count I) for filing a frivolous pleading, to include affirming the Family Court sentence of Appellant to **incarceration** for one (1) year, which can only be purged if Appellant pays Attorney Stampfle's Attorney Fees in the amount of **\$3,575.00** (although Attorney Stampfle never filed an Affidavit of Attorney Fees); and 3) Finding Appellant in Civil Contempt of Family Court (Count II) for failing to pay Respondent Lee's credit card debt, to include sentencing Appellant to a second one year **incarceration** sentence (to be served concurrently), which can only be purged if Appellant pays Respondent Lee's credit card debt in the amount of **\$6,319.70**, which includes interest added by the Family Court (although Appellant Guice has been unemployed since November 2, 2005, nearly two years before the parties were divorced (Att. M)), which probably explains why Attorney Stampfle declined to defend such an erroneous Family Court Order before the Lower Court in the first place.

the Lower Court would reflect administrative exhaustion of Petitioner's entitled remedies for judicial review in civil proceedings under the Constitution and South Carolina Appellate Court Rules, respectively, wherein Petitioner would then be solely reliant upon the **discretion** of this Court, or the U.S. Supreme Court, to grant a petition for a writ of certiorari, which Petitioner believes to be highly unlikely.

As such, a writ of prohibition and/or mandamus is warranted in this matter because; 1) The Lower Court lacks jurisdiction over the subject matter of the action and the parties subsequent the June 24, 2016 Order; 2) Respondent Chief Judge Lockemy had a ministerial duty to respect and comply with the law, which Petitioner alleges Respondent failed to do; 3) Petitioner's legal right to be heard pursuant to the Due Process Clause of both the U.S. and South Carolina Constitutions, respectively, have been violated by Respondent and the Lower Court;

4) Petitioner's legal right to equal protection of laws pursuant to the Equal Protection Clause of both the U.S. and South Carolina Constitutions, respectively, has been violated by Respondent and the Lower Court;

5) This Court must intervene to prevent and bring to a swift end a great outrage upon the settled principles of law and procedure, namely, the continued unlawful withholding of entitled

Indeed, in light of the Lower Court's actions in Guice v. Lee, it would certainly appear that US Foodservice, although a corporation and a fictitious entity, *does not* require legal representation or the legal services of Attorney Hantske and McAngus, Goudelock & Courie, LLC, in order to prevail in the instant appeal before the Lower Court, as it would appear that neither the 'rule of law' nor the Constitution applies when an Appellant appearing before the Lower Court is either self-represented; indigent; an African American; or any combination thereof.

Pursuant to section 6(c)(1)(d) of this Court's Administrative Order regarding "Access to Justice Commission" dated August 16, 2016 ("address any other matters related to the delivery of equal access to justice in civil matters to all South Carolinians"), perhaps the Access to Justice Commission may consider the actions and conduct of Commissioners, Judges and other Referees in terms of the manner with which they perform their duties in delivering "equal access to justice in civil matters" when a party to the matter is indigent, self-represented or African American.

TTC/TTD disability payments to Petitioner, by US Foodservice, wherein the Commission has never granted US Foodservice permission to terminate entitled TTC/TTD compensation payments pursuant to § 42-9-260(F); (6) US Foodservice, through counsel, has never lawfully sought the required and mandatory permission from the Commission to terminate entitled TTC/TTD compensation payments to Petitioner in the obligatory manner as set forth in § 42-9-260(F) and corresponding Regulation 67-506(D) & (E) of the Act;

(7) § 42-9-390 and corresponding R. 67-801 of the Act are subservient to and controlled by § 42-9-260(F) and corresponding R. 67-506(D) & (E) of the Act; and (8) Petitioner has the legal right to prompt and swift adjudication of the instant workers' compensation appeal and subsequent payment of entitled TTC/TTD compensation payments.

III.

STANDARD

"With regard to the function and scope of the writ [of prohibition], it has been settled in this state from an early period that it will only lie to prevent an encroachment, excess, usurpation, or improper assumption of jurisdiction on the part of an inferior court or tribunal, or to prevent some great outrage upon the settled principles of law and procedure..." New South Life Ins. Co. v. Lindsay, 258 S.C.187, 198, 200 S.E.2d 794 (1972).

Mandamus is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive duty to be performed, and no other specific remedy. Littlefield v. Williams, 343 S.C. 212, 540 S.E.2d 81 (2000); Willimon v. Greenville, 243 S.C. 82, 132 S.E.2d 169 (1963). A writ of mandamus is a coercive writ that orders a public official to perform a ministerial duty. Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999). Mandamus will issue only to compel a public official to perform a mandatory legal duty.

Redmond v. Lexington County School Dist. No. Four, 314 S.C. 431, 445 S.E.2d 441 (1994).

The primary purpose of a writ of mandamus is to enforce an established right and a corresponding imperative duty created or imposed by law. Littlefield, supra. In order to obtain a writ of mandamus, a party must show: (1) a duty of the Defendant (Respondent) to act; (2) the ministerial nature of the act; (3) a specific legal right for which discharge of the duty is necessary; and (4) the lack of any other legal remedy. Anderson Co. School District 1 v. Anderson Co. Bd. of Education, 296 S.C. 260, 371 S.E.2d 807 (Ct. App. 1998), *cert. dismissed*, 300 S.C. 493, 388 S.E.2d 815. A “ministerial duty” is one which a person performs in obedience to a mandate of legal authority without regard to the exercise of his own judgment upon the propriety of the act to be done. In Interest of Tyson, 282 S.C. 212, 318 S.E.2d 279 (Ct. App. 1984).

IV.

ARGUMENT

1. **Petitioner has a legal right to petition the original jurisdiction of the Supreme Court for issuance of a writ of prohibition and/or mandamus.**

Rule 245(b), SCACR, provides in part: “A party seeking the issuance of an extraordinary writ in the original jurisdiction of the Supreme Court shall serve and file a petition. The petition and any return shall comply with the requirements of Rule 240.” Id.

2. **This Court has vested authority to issue an extraordinary writ of prohibition and/or mandamus.**

S.C. Const. art. V, § 5, provides in part: “The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs.” S.C. Const. art. V, §5. Further, this Court has not hesitated to do so previously. New S. Life Ins. Co., 258 S.C. at 205, 187 S.E.2d at 799 (issuing

writ of prohibition regarding case pending before the Richland County Court); Woodworth v. Gallman, 195 S.C. 157, 164-65, 10 S.E.2d 316, 319 (1940) (issuing writ of prohibition regarding case pending in circuit court); State ex rel. Zimmerman v. Gibbes, 171 S.C. 209, 215-16, 172 S.E. 130, 133 (1933) (issuing writ of prohibition regarding case pending in circuit court).

3. Petitioner has met the burden to justify the issuance of a writ of prohibition.

In applying the grounds required to justify issuance of a writ of prohibition upon the Lower Court, as cited in New South Life Ins. Co. to the instant appeal, an extraordinary writ of prohibition should be issued by this Court based on the following factors; (A) *improper assumption of jurisdiction on the part of an inferior (Lower) Court or tribunal (Commission)*; and (B) *to prevent some great outrage upon the settled principles of law and procedure.* Id.

A. Improper assumption of jurisdiction on the part of an inferior court or tribunal

Petitioner has clearly established that the Commission (tribunal) lacked jurisdiction over the subject matter of Petitioner's worker's compensation claim or the parties at the time it approved the Agreement (Att. J) on January 5, 2006, and as such, the Lower Court lacks jurisdiction over the subject matter of the action or the parties. Parties cannot by consent confer jurisdiction upon a court. Cox v. Lunsford, 272 S.C. 527, 252 S.E. (2d) 918 (1979); Petroleum Transportation Inc. v. Public Service Comm., 255 S.C. 419, 179 S.E. (2d) 326 (1971). This principle also applies to the Workers' Compensation Commission. Carter v. Associated Petroleum Carriers, 235 S.C. 80, 110 S.E. (2d) 8 (1959) (Industrial Commission cannot acquire jurisdiction by estoppel, agreement, waiver, or conduct). Motion to Strike, (Att. D at 6-7.

“[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.'" Langford, 223 S.C. at 27, 73 S.E.2d at 857 (quoting City of Florence v. Berry, 61 S.C. 237, 240, 39 S.E. 389, 390 (1901)). The action of a court, regarding a matter as to which it has no jurisdiction, is void. State v. Funderburk, 259 S.C. 256, 261, 191 S.E.2d 520, 522 (1972).

Petitioner established before the Lower Court that the Commission lacked jurisdiction over the subject matter of Petitioner's Workers' Compensation Claim No. 0506205 at the time it approved the Agreement between the parties based on several meritorious grounds, to include:

a. **Lack of the existence of the employer-employee relationship**

The 'Employee Status Notice' (Att. H) clearly establishes, via substantive evidence, that US Foodservice terminated Petitioner's employment, for cause, and specifically, for 'permanent lifting restrictions', and 'no position available' on November 2, 2005. Further, the Correspondence from the Employer dated 03/09/2006 also constitutes substantive evidence (Att. I) that the employment relationship ceased to exist on Nov. 2, 2005. This evidentiary documentation has never been challenged or disputed by US Foodservice as to its validity, and US Foodservice has never advanced any evidence establishing that the employment relationship existed after November 2, 2005. Return to Motion to Strike, Att. N.

Because "The existence of an employment relationship is a **jurisdictional issue** for purposes of **workers' compensation benefits** reviewable under the preponderance of the evidence standard of review" (Emphasis added) (Chavis v. Watkins, 256 S.C. 30, 32, 180 S.E.2d 648, 649 (1971); (et al.)), and because Hart v. Thomasville, supra, established that even after the approval and executed agreement by the Commission, when it is established that the employment relationship did not exist when the parties entered into the agreement and at the time the Commission approved and executed the agreement, that said agreement **must** be deemed void

because “A decision of the Industrial Commission is only conclusive when it is acting within its jurisdiction” (Hart, supra), the ‘Employee Status Notice’ and March 9, 2006 Correspondence from the Employer met the “preponderance of evidence standard of review” that the Commission lacked jurisdiction over Petitioner’s workers’ compensation claim, or the parties, at the time it approved the agreement on January 5, 2006, because the employment relationship did not exist, wherein said agreement must be deemed “null and void”. Id. Hart, supra; Chavis, supra; Carter, supra. Att. D, H, I, K, N, O, R. New South Life Ins. Co., supra.

b. Failure of the Agreement to resolve the compensable impairment of ‘permanent lifting restrictions’

The October 27, 2005 Medical Report issued by authorized health care provider for worker’s compensation claim no. 0506205 (date of injury 05/05/2005), and namely, Dr. Tamadon, opined that Petitioner reached MMI; assigned a five percent impairment rating to the whole person of the Petitioner; assigned the impairment of ‘permanent lifting restrictions’ to Petitioner; and reported to US Foodservice that Petitioner could no longer perform the duties of the previously hired position of Delivery Driver. Medical Report dated 10/27/2005, Att. F.

US Foodservice, through counsel, never challenged the medical findings and opinion of Dr. Tamadon, by directing Petitioner to a second opinion examination, and thus, the October 27, 2005 Medical Report, and all medical findings contained therein, became the law of case.

Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013). US Foodservice terminated Petitioner on November 2, 2005, five (5) days later, on the grounds of “permanent lifting restrictions” and “no position available” (Att. H).

Because US Foodservice never provided an “independent intervening cause” to explain how Petitioner’s assignment of ‘permanent lifting restrictions’ occurred, if not causally related to the admitted work-related injury which occurred on May 5, 2005 (Att. E) (Return to Motion to

Strike, Att. N), the assignment of the “permanent lifting restrictions” impairment to Petitioner, by authorized health care provider Dr. Tamadon on October 27, 2005 (Att. F), must be deemed a “compensable” impairment. Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (Ct.App.1995). Whitfield v. Daniel Constr. Co., 226 S.C. 37, 83 S.E.2d 460 (1954).

There has never been any discussion, or the mandatory “meeting of the minds” regarding the compensable impairment of ‘permanent lifting restrictions’ between Petitioner and US Foodservice, due to the fact that US Foodservice terminated Petitioner on grounds of ‘permanent lifting restrictions’ on November 2, 2005 (Att. H); Petitioner never agreed that the sum of \$20,000.00 would serve as final payment for the compensable impairment of “permanent lifting restrictions”; the permanent lifting restrictions remains an open material term, or compensable impairment unresolved between the parties (Att. F); and the Agreement, on its face, makes no reference or mention of “permanent lifting restrictions” as an *essential material fact at issue* to be resolved by the parties in the approved Agreement (Att. K). Reg. 67-803(A)(2005).

Because the parties never had a meeting a minds regarding the material factual issue of the ‘permanent lifting restrictions’; because the ‘permanent lifting restrictions’ remains an open material term; and because the ‘permanent lifting restrictions’ was not resolved in the Agreement dated January 5, 2006 (Att. K), the Commission lacked jurisdiction over the subject matter of the claim or the parties at the time it approved the Agreement, and said agreement must deemed null, void, and unenforceable. Airco, Inc. v. Hollington, 269 S.C. 152, 160, 236 S.E.2d 804, 808 (1977) (finding that the commission has a statutory duty to make a finding of fact for all “essential factual issues.”). Aperm Of South Carolina v. Alvin R. Roof, 290 S.C.442 351 S.E.2d 171 (Ct. App. 1986)(“regardless of intent, an agreement which leaves open material terms is unenforceable.”). Patricia Grand Hotel, LLC v. MacGuire Enters, 372 S.C. 634, 638, 643 S.E.2d

692, 694 (Ct. App. 2007) (holding “A valid and enforceable contract requires a meeting of the minds between the parties with regard to all essential and material terms of the agreement”).

Ozyagcilar, 701 F.3d 306 (4th Cir. 1989). New South Life Ins. Co. Att. D-F, H, N, O, R.

c. Failure of Commission to grant US Foodservice permission to terminate entitled TTC/TTD compensation payments pursuant to §42-9-260(F)

Petitioner established, by way of substantive evidence, that the Commission lacked jurisdiction at the time it approved the Agreement on January 5, 2006 (Att. J) under either § 42-9-390 or Reg. 67-801 of the Act, which are not cited or referenced in the agreement (Att. K), because when Dr. Tamadon opined MMI on October 27, 2005 (Att. F), Petitioner had already received temporary compensation for approximately 174 days, including the first 150 days (Att. G), wherein US Foodservice failed to seek and obtain the required permission to terminate entitled TTC/TTD disability payments to Petitioner, and the Commission failed to grant permission under the requisite manner set forth in § 42-9-260(F) and corresponding Reg. 67-506(D) & (E) of the Act, wherein § 42-9-260(F) controls § 42-9-390. Id.

“The cardinal rule of statutory interpretation is to ascertain the intent of the legislature.”

Strother v. Lexington County Recreation Comm’n, 332 S.C. 54, 62, 504 S.E.2d 117, 121 (1998).

“All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be

construed in the light of the intended purpose of the statute.” Id. “The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose.”

Hitachi Data Sys., 309 S.C. at 178, 420 S.E.2d at 846 (citations omitted). “[E]very word, clause, and sentence must be given some meaning, force, and effect, if it can be done by any reasonable construction.” Nexsen v. Ward, 96 S.C. 313, 80 S.E. 599 (1914).

Moreover, “[w]here the terms of the statute are clear, [this Court] must apply those terms

according to their literal meaning.” Brown v. S.C. Dep’t of Health & Env’tl Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002). “Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below.” CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

"Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo." Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008). "It is well settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result." Joiner ex rel. Rivas v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000). "In construing a statute, this Court will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature." Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Defense, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008).

"The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose. In applying the rule of strict construction the courts may not give to particular words a significance clearly repugnant to the meaning of the statute as a whole, or destructive of its obvious intent." Laurens Cnty. Sch. Dists. 55 & 56 v. Cox, 308 S.C. 171, 174, 417 S.E.2d 560, 561 (1992). "Because we must presume that the General Assembly is familiar with existing legislation, statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative." Hodges v. Rainey, 341 S.C. 79, 88, 533 S.E.2d 578, 583 (2000) (citations omitted).

"Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language." City of Camden v.

Brassell, 326 S.C. at 561, 486 S.E.2d at 495 (Ct. App. 1997). "Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy." South Carolina Farm Bureau Mut. Ins. Co. v. Mumford, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989). "Under the rules of statutory interpretation, use of words such as "shall" or "must" indicates the legislature's intent to enact a mandatory requirement." South Carolina Police Officers Retirement Sys. v. Spartanburg, 301 S.C. 188, 391 S.E.2d 239 (1990). "The general rule of statutory construction is that a specific statute prevails over a more general one." Atlas Food Sys. and Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp., 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995).

In terms of applying the rules of statutory construction and interpretation to § 42-9-260(F)(1996) ("After the one-hundred-fifty-day period has expired, the commission **shall** provide by regulation the method and procedure by which benefits may be suspended or terminated for any cause, but the regulation **must** provide for an **evidentiary hearing** and commission approval prior to termination or suspension unless such prior hearing is expressly waived in writing by the recipient or the circumstances identified in Section 42-9-260(B)(1) or (B)(2) are present. Further, the commission may not entertain any application to terminate or suspend benefits unless and until the employer or carrier is current with all payments due."), with § 42-9-390 (2005) ("Nothing contained in this chapter may be construed so as to prevent settlements made by and between an employee and employer so long as the amount of compensation and the time and manner of payment are in accordance with the provisions of this title. A copy of the settlement agreement must be filed by the employer with and approved by only one member of the commission if the employee is represented by an attorney. If the employee is not represented by an attorney, a copy of the settlement agreement must be filed by

the employer with and approved by four members of the commission.”), § 42-9-260(F) clearly controls § 42-9-390 (Emphasis added).

The legislative intent is clear. Under § 42-9-260(F), once an injured worker has received temporary compensation from the employer for 150 days or more, the Commission **must** provide for an evidentiary hearing and **must** grant approval prior to termination or suspension of compensation payments. Further, corresponding Regulation 67-506 (D) & (E) (1997) of the Act provides in relevant part:

“D. After the one hundred fifty day period, when the claimant is receiving temporary compensation and the authorized health care provider assigns an impairment rating and reports the claimant is unable to return to work at the same or other suitable job, the employer’s representative **must** continue payment of temporary compensation until the Commission finds the employer’s representative may terminate temporary compensation.

E. To request a hearing for **permission to terminate temporary compensation**, the employer’s representative **shall** file a Form 21 with the Judicial Department.

(1) The employer’s representative **shall** serve a copy of the Form 21 on the claimant according to R.67-211.

(2) The employer’s representative **shall** certify temporary compensation is current or no hearing will be set.” (Emphasis added). *Id.*

Nowhere in §42-9-260(F) (or corresponding R. 67-506(D) & (E)) does the Act allow or afford the parties to resolve entitled TTC/TTD benefit compensation payments by way of agreement. § 42-9-260(F). Reg. 67-506(D) & (E). Furthermore, § 42-1-620 (1962) – *Agreements of employee to waive rights invalid* – provides in pertinent part: “**No agreement** by an employee to waive his rights to compensation under this title **shall** be valid.” (Emphasis added). *Id.*

In other words, even if an injured worker *wanted* to resolve entitled TTC/TTD compensation payments with the employer via agreement, if the circumstances and conditions under § 42-9-260(F) and corresponding Reg. 67-506(D) are present, § 42-1-620, and well settled law would prohibit the injured worker from waiving his/her right to entitled TTC/TTD

compensation payments via agreement, and prohibit the Commission's jurisdictional authority to approve an agreement under those circumstances and conditions. Id. Carter, supra (Industrial Commission cannot acquire jurisdiction by estoppel, **agreement, waiver**, or conduct).

In applying the rules of statutory construction to § 42-9-260(F) and § 42-9-390, not only does § 42-9-260(F) (a specific statute) control § 42-9-390 (a general statute) pursuant to Atlas Food Sys. and Servs., Inc., supra, but if the employer and injured employee could resolve entitled TTC/TTD compensation payments via agreement, even if the conditions and circumstances under § 42-9-260(F) were present, then §42-9-260(F) & (G); §42-1-620; and corresponding Reg. 67-506(D) & (E) of the Act would become silent and have no force, meaning, effect or operation.

An employer's representative would need only to *unilaterally* suspend or terminate entitled temporary compensation; wait for the injured worker to be subjected to harsh and incongruous circumstances; and then "offer" to "settle" or "resolve" the injured worker's compensation claim by way of agreement, to include making payments to the injured worker of back "TTC/TTD" benefit payments **after** securing the erroneous release agreement (Att. J), which was not the intent or purpose of § 42-9-260(F) or § 42-1-620 when the statutes were enacted by the Legislature. Id. Mumford, supra. Brassell, supra. Cox, supra.

However, both §42-9-260(F) and §42-9-390 (and §42-1-620) can be harmonious, operative and have full force, meaning and effect, so long as the Commission, a creature of statute, performs its required and mandatory duties under §42-9-260(F) prior to considering any proposed § 42-9-390 agreements between the employer and injured employee. Rainey, supra. Med. Soc'y of S.C. v. Med. Univ. of S.C., 334 S.C. 270, 275, 513 S.E.2d 352, 355 (1999) ("An agency created by statute has only the authority granted to it by the legislature.").

Here, a review of WCC Form 18 dated 12/01/2005 filed by US Foodservice with the Commission, which was stamped received by the Commission on 12/05/2005 (Att. G), and advanced before the Lower Court, which has never been contested as to its validity by US Foodservice, via Attorney Hantske (Att. D, N), establishes that on October 27, 2005 when authorized health care provider Dr. Tamadon opined MMI; assigned the five percent impairment rating; assigned the *permanent lifting restrictions*; and reported to US Foodservice that Petitioner could no longer perform the duties of a Delivery Driver (Att. F), Petitioner had received temporary compensation payments for approximately 174 days, including the first 150 days. WCC Form 18, Att. G. October 27, 2005 Medical Report, Att. F. Return to Motion to Strike, Att. N.

When US Foodservice terminated Petitioner on November 2, 2005, for 'permanent lifting restrictions', Petitioner had not recovered from the compensable impairment of "permanent lifting restrictions". Employee Status Notice, Att. H. October 27, 2005 Medical Report, Att. F. To date, Petitioner has never refused any offer of employment from US Foodservice, and to date, Petitioner has been unemployed. SSA Social Security Statement dated 09/21/2015, Att. M.

§ 42-9-260(F) and Reg. 67-506(D) & (E) of the Act governs the instant claim (appeal) as to payment, termination, or suspension of entitled TTC/TTD compensation payments, not an agreement by the parties. *Id.* Carter, supra. Further, at no time has Petitioner ever advanced written notice to US Foodservice or the Commission that Petitioner has waived his right to an evidentiary stop payment hearing per § 42-9-260(F). *Id.* Motion to Strike, Att. D. US Foodservice, to date, through either Attorney Barefoot or Attorney Hantske, has *never* filed a WCC Form 21 with the Commission or Petitioner seeking *permission* to terminate or suspend entitled TTC/TTD compensation payments to Petitioner. Att. D, N. To date, no hearing of any

kind, to include a mandatory evidentiary stop payment hearing, has ever been convened before the Commission. E-Mail Correspondence from Commission Agent Eugenia Hollmon, dated November, 14, 2012, Att. L.

The Commission never issued an Order on an evidentiary Form 21 hearing granting US Foodservice permission to terminate or suspend TTC/TTD payments to Petitioner. Still further, the Agreement, approved by the Commission, *makes no reference* to § 42-9-390 or Reg. 67-801 as the grounds or jurisdiction the agreement was approved under by the Commission.

Agreement, Att. K. Because the Commission failed to perform its mandatory obligation under § 42-9-260(F) and corresponding Reg. 67-506(D) & (E) of the Act in terms of lawfully granting US Foodservice permission to terminate Petitioner's entitled TTC/TTD compensation payments, the Commission lacked jurisdiction over the subject matter of Petitioner's claim, or the parties, at the time it approved the Agreement on January 5, 2006, and as such, said agreement must be deemed "null and void". *Id.* Mumford, supra. Brassell, supra. Cox, supra. Att. D-F, K-O, R. New South Life Ins. Co., supra.

B. Prevention of great outrage upon the settled principles of law and procedure

The outrage upon settled principles of law and procedure which justify the issuance of a writ of prohibition (New South Life Ins. Co., supra) are; a) Continued unlawful withholding of entitled TTC/TTD compensation payments from Petitioner by US Foodservice; b) Violation of Petitioner's due process right to be heard pursuant to the Due Process Clause; c) Violation of Petitioner's due process right to equal protection of laws pursuant to the Equal Protection Clause; and d) Violation of Petitioner's entitlement to a Prompt and Swift adjudication of the workers' comp. appeal and access to entitled TTC payments. *Id.*

a. Continued unlawful withholding of entitled TTC/TTD compensation payments by US Foodservice

US Foodservice, through counsel Attorney Hantske, solely relies upon the Agreement (Att. K) as grounds for terminating and the continued withholding of TTC/TTD compensation payments from Petitioner. Att. N. However, as Petitioner clearly established before the Lower Court in his Motion to Strike (Att. D), this argument is categorically erroneous on grounds that 1) US Foodservice cannot unilaterally suspend or terminate TTC/TTD compensation payments without seeking and obtaining permission from the Commission in the mandatory procedural manner when the circumstances set forth in § 42-9-260(F) are present;

2) the Commission lacked jurisdiction to grant the agreement in the first instance, because the employment relationship ceased to exist, for cause, on November 2, 2005 at the time it approved the agreement on January 5, 2006 (Hart, supra); 3) the Commission lacks jurisdiction to terminate entitled TTC/TTD payments by way of agreement pursuant §42-9-260(F);

4) at the time US Foodservice terminated Petitioner on November 2, 2005 (Att. H, I), Petitioner had received TTC compensation payments for approximately 179 days, including the first 150 days; Petitioner had not recovered from the compensable impairment of 'permanent lifting restrictions' (Att. E, F); Petitioner has never refused any offer of employment from US Foodservice; and to date, Petitioner has been unemployed since US Foodservice terminated Petitioner on November 2, 2005 (Att.); and 5) Petitioner could not waive, resolve, or agree to end entitled TTC payments by way of agreement. Id. Att. D. Grayson v. Carter Rhoad Furniture, supra. Carter, supra. § 42-9-260(F). Reg. 67-506(D).

Petitioner has an entitled right to TTC compensation payments from US Foodservice, and therefore a writ of prohibition is justified due to the failure of the Lower Court to take appropriate action to order US Foodservice to comply with the law, and specifically, § 42-9-260(F) and corresponding Reg. 67-506(D) of the Act. Id. New South Life Ins. Co., supra

b. Violation of the Due Process Clause

A writ of prohibition is warranted because the Petitioner's due process right to be heard, pursuant to U.S. Const. amend. XIV, § 1 ("All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."), and S.C. Const. art. I, § 22 ("No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review."), respectively, was violated upon review of the Lower Court's June 24, 2016 Order. Id. June 24, 2016 Order, Att. R.

"[T]he decisionmaker's conclusion . . . must rest solely on the legal rules and evidence adduced at the hearing. . . . To demonstrate compliance with this elementary [due process] requirement, the decisionmaker should state the reasons for his determination and indicate the evidence he relied on. . . ." Goldberg v. Kelly, 397 U.S. 254, 271 (U.S. Sup. Ct. 1970). "The requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." Stono River Env'tl. Prot. Ass'n v. S.C. Dep't of Health & Env'tl. Control, 305 S.C. 90, 94, 406 S.E.2d 340, 341 (S.C. Sup. Ct. 1991).

"In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court

must be stated in writing and **must**, with the reason for the court's decision, be preserved in the record of the case.” Rule 220(b), SCACR. (Emphasis added). South Carolina Police Officers Retirement Sys., supra (“Under the rules of statutory interpretation, use of words such as “shall” or “must” indicates the legislature’s intent to enact a mandatory requirement.”).

Here, a review of the nine-word-one-sentence Order issued by the Lower Court denying Petitioner’s Motion to Strike (Att. D), and specifically, “After careful consideration, the motion to strike is denied” (Att. R), clearly reflects a violation of Petitioner’s due process right to be heard based on several axiomatic factors.

First, the Order fails to state any of the distinct issues, evidence submitted, or authorities fairly raised and relied upon by Petitioner or Attorney Hantske for US Foodservice, which violates Rule 220(b), SCACR; U.S. Const. amend XIV, § 1; S.C. Const. art. I, § 22; and holding authorities set forth in both Goldberg and Stono River Env’tl. Prot. Ass’n. Id. Att. D, N, O, R. Specifically, the Order failed to make any reference to Petitioner’s properly raised issues regarding the Commission’s, and subsequently, the Lower Court’s lack of jurisdiction, wherein it is well settled that the Lower Court has a responsibility to take notice of jurisdictional defects. Amisub of S.C., Inc. v. Passmore, 316 S.C. 112, 114, 447 S.E.2d 207, 208 (1994)(holding “Lack of subject matter jurisdiction may not be waived and should be taken notice of by this Court.”).

Second, the Order fails to provide any evidentiary support, to include the holding authority or authorities relied upon by the Lower Court, to provide the required reason(s) behind the Lower Court’s decision to deny the Motion to Strike, which also violates Rule 220(b), SCACR; U.S. Const. amend XIV, § 1; S.C. Const. art. I, § 22; holding authorities set forth in both Goldberg and Stono River Env’tl. Prot. Ass’n; and this Court’s holding in Hamm v. Southern Bell Tel. and Tel. Co., 302 S.C. 132, 136, 394 S.E.2d 311, 313 (1990), that “mere

opinions unsupported by evidence are [legally] insufficient". Id. Att. R.

Finally, because the Lower Court's June 24, 2016 Order failed to state any of the distinct issues, advanced evidence or relied upon authorities fairly raised in Petitioner's Motion to Strike; or failed to state the evidence and holding authorities relied upon by the Lower Court in support of its decision to deny Petitioner's Motion to Strike, the June 24, 2016 Order has failed to properly preserve the Lower Court's adjudication of Petitioner's Motion to Strike in the record for potential judicial review, which violates Rule 220(b), SCACR; U.S. Const. amend XIV, § 1; S.C. Const. art. I, § 22; and holding authorities set forth in both Goldberg, Stono River Envtl. Prot. Ass'n., and Hamm. Id.

Thus, a writ of prohibition is warranted, as the Lower Court's June 24, 2016 Order violated Petitioner's (and US Foodservice's) due process right to be heard.

c. Violation of the Equal Protection Clause

A writ of prohibition is warranted because the Petitioner's due process right to equal protection of laws, pursuant to U.S. Const. amend. XIV, § 1, and S.C. Const. art. I, § 22, respectively, was violated upon review of the Lower Court's June 24, 2016 Order. Id. June 24, 2016 Order, Att. R.

"Our cases have recognized successful equal protection claims brought by a 'class of one,' where the plaintiff [Petitioner] alleges that she [he] has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." Village of Willowbrook v. Olech, 528 U.S. 562, 564 (U.S. Sup. Ct. 2000). "The sine qua non of an equal protection claim is a showing that similarly situated persons received disparate treatment." Grant v. S.C. Coastal Council, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (S.C. Sup. Ct. 1995).

Here, Petitioner contends his due process right to equal protection of laws have been violated by the Lower Court upon a review of several cases wherein similarly situated persons received disparate treatment, to include, but not limited to; i) Hart v. Thomasville Motors, Inc.; ii) Martin v. Rapid Plumbing and Susan Davis v. UniHealth Post Acute Care; iii) Grayson v. Carter Rhoad Furniture and Beau D. Cranford v. Hutchinson Construction; iv) Crosby v. Prysmian Communications; v) Reid v. Harbison Development Corporation; and vi) Alvarez v. Quality HR Services.

i. **Hart v. Thomasville Motors, Inc.**

With respect to establishing that the Commission lacked subject matter jurisdiction at the time it approved the Agreement on **January 5, 2006** (Att. J) because Petitioner was not an employee of US Foodservice at the time entered into the agreement on December 22, 2005 and the employment relationship did not exist effective November 2, 2005 (Att. G), in Hart, supra, 'Employee Hart' successfully obtained an Order from the Sup. Ct. of N.C. deeming the previously approved and executed Agreement he entered into with Employer Thomasville Motors vacated, because Employee Hart was not an employee at the time the parties entered into the agreement, and as such, the N.C. Industrial Commission lacked jurisdiction over the subject matter of the claim or the parties. Hart, supra ("A decision from the Industrial Commission is only conclusive when it is acting within its jurisdiction"). Att. D. Hines v. Hendricks Canning Co., 263 S.C. 399, 405, 211 S.E.2d 220, 222-23 (1975) ("the opinions of the Supreme Court of North Carolina construing [the Workers' Compensation Act] are entitled to great weight").

Petitioner is similarly situated as Employee Hart was; however, the Lower Court has treated Petitioner in a disparate manner, which has violated Petitioner's due process right to equal protection of law. Att. D, E, G, J, R. Grant, supra. Village of Willowbrook, supra. U.S.

Const. amend. XIV, § 1. S.C. Const. art. I, § 22.

ii. Martin v. Rapid Plumbing, Opinion No. 4114 (2006); and Susan Davis v. UniHealth Post Acute Care, Appellate Case No. 2011-197634

As it relates to Petitioner's receipt of temporary compensation payments for approximately 174 days, to include the first 150 days (Att. F) after reporting the May 5, 2005 work-related accident at the time Dr. Tamadon issued the October 27, 2005 Medical Report assigning the impairment of 'permanent lifting restrictions' and reporting to US Foodservice that Petitioner could no longer perform the duties of delivery driver (Att. E), and the requirement of US Foodservice to lawfully terminate entitled TTC/TTD compensation pursuant to § 42-9-260(F), which US Foodservice to date has failed to perform, in Martin v. Rapid Plumbing, injured 'Employee Ronald E. Martin' was provided reinstated TTC disability benefits, to include the mandatory 25 percent interest penalty, per § 42-9-260(G), because the Lower Court affirmed the Circuit Court in terms of finding Employer Rapid Plumbing wrongfully terminated TTD disability payments in "substantial deviations from statutory procedure" [§ 42-9-260], to include the Lower Court finding, "The circuit court was correct in finding Rapid Plumbing wrongfully terminated temporary benefits." Id. Martin, supra.

Furthermore, in Susan Davis v. UniHealth Post Acute Care, the Lower Court affirmed the Order of the Appellate Panel and opined,

"The necessary consequence of the commission's finding that Davis did not refuse employment, therefore, combined with UniHealth's agreement she was disabled and its refusal to provide her employment was that UniHealth was obligated to provide total disability compensation. The commission simply imposed this necessary consequence, which continues until the commission allows UniHealth to terminate compensation. See S.C. Code Ann. § 42-9-260(F) (Supp. 2012) (requiring the commission to adopt regulations for terminating compensation that "provide for an evidentiary hearing and commission approval prior to termination" except in circumstances not present here); 8 S.C. Code Ann. Regs. 67-506 (2012) (providing procedures for termination more than 150 days after the injury is reported)".

(Emphasis added). Id. Davis, supra.

Petitioner is similarly situated as Employee *Martin* and Employee *Davis* was in terms of US Foodservice “wrongfully terminating temporary benefits” after terminating Petitioner for the compensable injury of ‘permanent lifting restrictions’ (Att. H), and after Petitioner had received temporary compensation after the first 150 days after the injury was reported (Att. G), wherein Petitioner has never refused an offer of employment from US Foodservice; however, the Lower Court has treated Petitioner in a disparate manner, which has violated Petitioner’s due process right to equal protection of law. Att. D, N, O, R. Grant, supra. Village of Willowbrook, supra. U.S. Const. amend. XIV, § 1. S.C. Const. art. I, § 22.

iii. **Grayson v. Carter Rhoad Furniture, 317 S.C. 306, 454 S.E.2d 320 (1996); and Beau D. Cranford v. Hutchinson Construction, Appellate Case No. 2010-157846**

As it relates to US Foodservice terminating Petitioner’s employment on November 2, 2005 (Att. H, I) after Petitioner was released from authorized health care provider Dr. Tamadon with permanent lifting restrictions (Att. F), wherein to date, Petitioner’s period of temporary total disability has never ended and Petitioner remains unemployed since November 2, 2005 to date (Att. M), in Grayson, this Court held that because Employee Grayson was released from the treating physician with work restrictions, there was in reality *no* evidence that Grayson’s period of temporary total disability ever ended prior to his firing. Id. at 310, 454 S.E.2d at 322. Further, because Grayson’s benefits *were never properly terminated in accordance with Regulation 67-504*, this Court determined that Grayson was entitled to have his temporary benefits reinstated. Id. Grayson, supra.

Moreover, in Beau D. Cranford, the Lower Court found that after Employer Hutchinson terminated Employee Cranford that because Cranford’s work-related injury had not resolved,

Hutchinson was *required* to pay Cranford temporary disability benefits from the day after his termination, September 1, 2007, until he achieved MMI and was authorized to return to work without restriction on June 3, 2008. Cranford, supra.

Petitioner is similarly situated as Employees *Grayson* and *Cranford* was in terms of US Foodservice “wrongfully terminating temporary benefits” after terminating Petitioner, although there is no evidence that Petitioner’s period of disability ever ended prior to Petitioner’s firing on November 2, 2005 or to date. Att. E-I, M. However, the Lower Court has treated Petitioner in a disparate manner in comparison to Employee’s *Grayson* and *Cranford*, which has violated Petitioner’s due process right to equal protection of law. Grant, supra. Village of Willowbrook, supra. U.S. Const. amend. XIV, § 1. S.C. Const. art. I, § 22.

iv. Crosby v. Prysmian Communications, Opinion No. 4876 (Ct. App. 2012)

In terms of Petitioner establishing before the Lower Court the he was subjected to a ‘Retaliatory Discharge’ by US Foodservice, in Crosby, the Lower Court determined that ‘Employee Melissa Crosby’ prevailed in terms of meeting the three elements establishing a retaliatory discharge under § 41-1-80, to include the Lower Court finding that “Section 41-1-80 lists the affirmative defenses available to an employer. Each one focuses on the conduct of the employee, and none relates in any way to whether the employer acted in good faith or without retaliatory motive.” Id. Att. D at 34-42.

Here, Petitioner facially met the three (3) elements before the Lower Court to establish that US Foodservice subjected Petitioner to a retaliatory discharge, in terms of; (1) *Initiation of Workers’ Compensation proceedings* (WCC Form 12A, Att. E); (2) *Demotion or Discharge* (Employee Status Notice, Att. H; Correspondence from Employer dated 03/09/06, Att. I); and (3) *a causal relationship between the first two elements* (Medical Report dated October 27, 2005

establishing assignment of *permanent lifting restrictions* causal to the May 5, 2005 work-related accident (Att. E, F), and US Foodservice terminating Petitioner on grounds of *permanent lifting restrictions* and ‘no position available’ wherein Petitioner facially met the three elements to substantiate a ruling favorable to retaliatory discharge. Crosby, supra.

Furthermore, the grounds relied upon to terminate Petitioner by US Foodservice were not related to any misconduct on the part of Petitioner (See Att. I (“...Mr. Guice reported work as scheduled and always responded to any company direction in a professional manner.”)), and whether US Foodservice acted in good faith or without retaliatory motive is not relevant.

Crosby, supra. The Lower Court has treated Petitioner in a disparate manner in comparison to Employee *Crosby*, which has violated Petitioner’s due process right to equal protection of law. Grant, supra. Village of Willowbrook, supra. U.S. Const. amend. XIV, § 1. S.C. Const. art. I, § 22. Att. D, N, O, R.

v. **Reid v. Harbison Development Corporation, 285 S.C. 557, 330 S.E.2d 532 (1985)**

In terms of Petitioner establishing before the Lower Court the he was subjected to “fraud”; “conspiracy to commit insurance fraud”; “intentional false statements”; and “intentional misrepresentation” by former counsel for US Foodservice, namely, Attorney Barefoot, and former counsel for Petitioner, namely, Attorney Bacon (Att. D at 10-24), whereupon the Lower Court should have vacated the agreement dated Jan. 5, 2006 (Att. K) in the June 24, 2016 Order (Att. R), in Harbison Development Corporation, the Lower Court affirmed the Circuit Court’s determination that Paul and Rossie Reid, homeowners, were subjected to fraud and intentional misrepresentation by Harbison when they purchased a lot to build a house on, due to the fact, that although there was last minute language placed in the contract which stipulated for a homeowners association, they were assured by Harbison at the time Reid signed the contract that

the Reid's membership with the homeowners association would be optional. Id. at 330.

Furthermore, in Harbison Development Corporation, the Lower Court opined,

...Where the fact misrepresented or the matters which are concealed are peculiarly within the representor's knowledge and the representee is ignorant thereof, it is generally held that, although the real fact appears on the public records, the representee is under no obligation to examine the records, and his failure to do so does not defeat his right of action. This is especially true where the very representations relied on induced the hearer to refrain an examination of the records, where the employment of an expert would have been required to deduce the truth from an examination of the records, where confidential relations existed, or where the defrauded party was inexperienced. In such cases the doctrine of constructive notice is inapplicable...

Id. at 557.

Here, Petitioner clearly established, facially, the required elements of fraud, intentional misrepresentation, intentional false statements, and conspiracy, committed by Attorney Barefoot and Attorney Bacon, in terms of falsely representing to both Petitioner and the Commission that Workers' Compensation Claim No. 0506205 was in posture for resolution via settlement agreement (Att. K), when in fact, and in law, it was not, because; 1) US Foodservice terminated Petitioner for cause, and thus the requisite employment relationship to be governed under Act, on Nov. 2, 2005, two months prior to approval of the agreement by the Commission (Att. H, I, K);

2) Petitioner was terminated with the compensable impairment of 'permanent lifting restrictions', causally related to the May 5, 2005 work-related accident, which had not resolved at the time US Foodservice terminated Petitioner, or to date, and was not specifically referenced in the agreement as a material fact in issue and therefore was not resolved in the agreement (Att. E-I, K); and

3) Because Petitioner received temporary compensation payments after and including the first 150 days when Dr. Tamadon opined MMI; assigned the compensable impairment of 'permanent lifting restrictions'; and reported to US Foodservice that Petitioner could no longer

perform the duties of a delivery driver, § 42-9-260(F)(1996); § 42-1-620(1996) (Att. F, G); corresponding Reg. 67-506(D) & (E)(2005) of the Act; and settled law governed the statutory and procedural manner with which Petitioner's entitled TTC payments could be suspended or terminated, not an agreement between the parties or by way of Petitioner's waiver of entitled TTC payments. Id. Carter (Industrial Commission cannot acquire jurisdiction by estoppel, **agreement, waiver, or conduct**).

Moreover, similar to Harbison Development Corporation, Petitioner had every right to rely upon the factual misrepresentations of both *Attorney Bacon* and *Attorney Barefoot* that Petitioner's workers' compensation claim was in posture for resolution via agreement, because 1) Attorney Barefoot and Attorney Bacon are attorneys at law and were therefore skilled and knowledgeable in the realm of Workers' Compensation Law and knew, or should have known, that the representations to Petitioner and the Commission that Petitioner's Claim No. 0506205 was in posture for resolution via agreement were false;

2) Petitioner (defrauded party) was inexperienced and ignorant of both worker's compensation law and his entitled rights; 3) a confidential "fiduciary relationship" existed between Petitioner and Attorney Bacon (attorney /client); 4) a confidential "fiduciary relationship" existed between Petitioner and US Foodservice, Inc., and by way of extension, Attorney Barefoot (employer/employee); 5) Petitioner was under no obligation to examine public records to uncover concealed facts; and 6) the very misrepresentations advanced by Attorney Bacon and Attorney Barefoot, relied upon by Petitioner, to include withholding entitled TTC payments (Att. J) and allowing Petitioner to incur harsh and incongruous circumstances (homeless), induced Petitioner to refrain from examining the records and to enter into the erroneous agreement. Harbison Development Corporation.

The Lower Court has treated Petitioner in a disparate manner in comparison to Paul and Rossie *Reid*, who was similarly situated as Petitioner with respect to intentional misrepresentation, which has violated Petitioner's due process right to equal protection of law. Grant, *supra*. Village of Willowbrook, *supra*. U.S. Const. amend. XIV, § 1. S.C. Const. art. I, § 22. Att. D, N, O, R.

vi. **Alvarez v. Quality HR Services, Appellate Case No. 2013-000575, Opinion No. 5290 (2015)**

As it specifically relates to Petitioner's right to a prompt and swift determination as to whether the injured Petitioner is entitled to workers' compensation benefits by the Lower Court, in Alvarez, the Lower Court (wherein then Appellate Associate Justice Lockemy concurred) found "...the commission failed to obey its Legislative mandate to *promptly* determine whether injured workers are entitled to benefits." Id.

Here, substantive and convincing evidentiary documentation has been provided to the Lower Court in Petitioner's Motion to Strike (Att. D) establishing that the Commission lacked jurisdiction over the subject matter of Petitioner's claim at the time it approved the agreement between the parties on Jan. 5, 2006 (Att. F-I, K), and subsequently, at the time it issued the July 17, 2013 Appellate Panel Decision and Order (Att. A).

However, Petitioner's appeal continues before the Lower Court, wherein the Lower Court has failed to render *prompt* and *swift* determinations as to the validity of the agreement; whether entitled TTC compensation payments were lawfully terminated by US Foodservice pursuant to Reg. 67-506(D) & (E) (Att. F-I, K); whether the Commission lawfully granted US Foodservice permission to terminate TTC compensation payments pursuant to § 42-9-260(F), while the injured Petitioner continues to remain unemployed enduring incongruous and harsh circumstances (Att. M); wherein the Lower Court is now acting in a similarly delayed and

protracted manner in terms of failing to promptly determine the merits of Petitioner's workers' compensation appeal as when the Lower Court admonished the Commission for failing to act promptly in Alvarez, particularly where the June 24, 2016 Order failed to provide any evidentiary reasons or authority to support denying the Motion to Strike (Att. R); the fact that the Lower Court *must* take notice to issues involving subject matter jurisdiction; and workers' compensation statutes are to be construed liberally in favor of coverage. *Id.* Mauldin v. Dyna-Color/Jack Rabbit, 308 S.C. 18, 416 S.E.2d 639 (1992). Amisub of S.C., Inc.

Finally, because US Foodservice solely relies upon the agreement to support continued withholding of entitled TTC benefits, finding the agreement "unenforceable", "null and void" and "invalid", by the Lower Court, would *automatically* require the immediate reinstatement and release of all unlawfully withheld TTC compensation payments to Petitioner from US Foodservice. § 42-9-260(F). Reg. 67-506(D).

Thus, Petitioner has met his burden in terms of establishing that the issuance of a writ prohibition upon the Lower Court is warranted because the Lower Court lacks jurisdiction over the instant appeal, as of June 24, 2016 with respect to the appeal of Petitioner's § 41-1-80 Retaliatory Discharge appeal; the fact that the Lower Court has always lacked jurisdiction over Petitioner's workers' compensation appeal; and to prevent the continued great outrage upon the settled principles of law and procedure. Woodworth, supra. New South Life Ins. Co., supra.

4. Petitioner has met the burden to justify the issuance of a writ of mandamus.

In terms of applying the four (4) factor test as set forth in the Anderson Co. School District 1 Court to the instant appeal to justify issuance of a writ of mandamus upon Respondent Chief Judge Lockemy by this Court, in terms of; (1) *a duty of the Defendant (Respondent) to act* – Respondent was the assigned judicial officer to adjudicate Petitioner's Motion to Strike, and

therefore had a mandatory adjudicative duty, pursuant to Canon 3(B)(1), CJC, Rule 501, SCACR (“A judge **shall** hear and decide matters assigned to the judge except those in which disqualification is required”)(Emphasis added), to adjudicate Petitioner’s Motion to Strike;

(2) *the ministerial nature of the act* – Respondent Chief Judge Lockemy had a ministerial duty, pursuant to Canon 2(A), CJC, Rule 501, SCACR (“A judge **shall** respect and comply with the law* and **shall** act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary”), to respect and comply with the Constitution; the rule of law; and well settled principles of law (*stare decisis*) when Respondent adjudicated Petitioner’s Motion to Strike, without regard to the exercise of Respondent’s own judgment upon the propriety of deciding Petitioner’s Motion to Strike;

(3) *a specific legal right for which discharge of the duty is necessary* – here, Petitioner contends a review of the Motion to Strike (Att. D, N, O), in consideration of Respondent’s June 24, 2016 Order (Att. R), deprived Petitioner of several entitled and specific legal rights, pursuant to the Equal Protection Clause; the Due Process Clause; and explicit & unambiguous statutes, regulations and well settled law, to include, but not limited to;

A. Failure to take Notice of the issue of Subject Matter Jurisdiction

Petitioner, and US Foodservice, had a due process right to be heard as to the issue of challenging the Commission’s jurisdiction, or lack thereof, at the time it approved the agreement (Att. K) in Respondent’s Order (Att. R) based on the issue being fairly raised in Petitioner’s Motion to Strike, as well as Attorney Hantske’s response for US Foodservice as set forth in the opposition Return brief. Att. D, N, O. However, the June 24, 2016 Order (Att. R) failed to provide in writing any of the issues fairly raised by Petitioner; failed to include the issue of whether the Commission lacked subject matter jurisdiction; failed to include any reasons or

evidentiary support to provide Respondent's reasons for denying the Motion to Strike; and failed to take notice to the issue of subject matter jurisdiction, which deprived Petitioner of his specific legal right to be heard in a meaningful manner, and in so doing, Respondent violated Rule 220(b), SCACR; U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 22; Goldberg, supra; Stono River Envtl. Prot. Ass'n, supra; and Amisub of S.C., Inc., supra. Id. Hamm v. Southern Bell Tel. and Tel. Co., 302 S.C. 132, 136, 394 S.E.2d 311, 313 (1990)(holding "mere opinions unsupported by evidence are [legally] insufficient"). Anderson Co. School District 1. Att. D, N, O, R.

B. Failure to dispose of the instant appeal for lack of subject matter jurisdiction

Petitioner had a specific legal right to secure a dispositional order from Respondent on June 24, 2016 respective of Petitioner's workers' compensation appeal, via Petitioner's Motion to Strike (Att. D), based on Petitioner's submission of substantive evidence which established the Commission lacked subject matter jurisdiction at the time it approved the agreement (Att. K), because;

(i) at the time the Commission approved the Settlement Agreement on Jan. 5, 2006, the requisite employment relationship between the parties *ceased to exist* when US Foodservice terminated Petitioner, for cause, on November 2, 2005 (Att. H, I, K) (Hart, supra; Hon. Jean Hoefer Toal, et al., Appellate Practice in South Carolina 170 (2d ed.2002));

(ii) the Commission failed to comply with its Legislative mandate to lawfully grant permission for US Foodservice to terminate entitled TTC Compensation payments to Petitioner in the obligatory manner as set forth in § 42-9-260(F), wherein § 42-9-260(F) controls § 42-9-390 and Reg. 67-801 (Att. E-G, L) (Atlas Food Sys. and Servs., Inc.; Med. Soc'y of S.C.);

(iii) Petitioner could not **waive or agree** to resolve Petitioner's entitled § 42-9-260(F) and

Reg. 67-506(D) rights to TTC compensation payments by way of agreement, and the Commission could not acquire jurisdiction of Petitioner's Claim No. 0506205 by way of consent, waiver or agreement of the parties (Carter, supra; Att. E-G); (iv) the agreement entered into by the parties and approved by the Commission was procured by way of fraud, conspiracy, intentional misrepresentation, and intentional false statements, by both former counsel for US Foodservice, Attorney Barefoot, and Petitioner's former counsel, Attorney Bacon, wherein Respondent should have deemed the agreement "unenforceable" (Regions Bank, supra; Harbison Development Corporation) (Att. D-H, L, M); and

(v) there was never a "meeting of the minds" between Petitioner and US Foodservice regarding the *compensable* impairment of "permanent lifting restrictions", which was not specifically referenced to as an essential material fact at issue to be resolved in the agreement (and the retaliatory grounds relied upon by US Foodservice to terminate Petitioner's employment), wherein the 'permanent lifting restrictions' remains an *open material term*, wherein Respondent should have deemed the agreement "null" and "void" (Reg. 67-803(A)(2005))(Airco, Inc. v. Hollington; Aperm Of South Carolina v. Alvin R. Roof; Patricia Grand Hotel; Ozyagcilar v. Davis, 701 F.3d 306 (4th Cir. 1989))(Att. D-F, H, I, K);

C. Reinstatement and Release of entitled TTC Compensation Payments

Petitioner had a specific legal right to secure a dispositional order from Respondent directing that Petitioner's entitled TTC compensation payments be reinstated and released, plus the 25 percent interest penalty on the withheld TTC compensation payments, effective November 3, 2005 to date on June 24, 2016 because;

(i) Petitioner met the conditions for payment of TTC compensation payments on October 27, 2005 when authorized health care provider Dr. Tamadon opined MMI; assigned 'permanent

lifting restrictions'; determined Petitioner could no longer perform the duties of a delivery driver; and reported the same to US Foodservice, wherein on October 27, 2005 Petitioner had received temporary compensation for approximately 174 days, including the first 150 days, wherein § 42-9-260(F) and Reg. 67-506(D) controlled the manner and procedures Petitioner's TTC compensation payments could be suspended or terminated (Susan Davis; Martin; Reg. 67-506(D); § 42-9-260(F); Att. E-G);

(ii) When US Foodservice terminated Petitioner on November 2, 2005, Petitioner's 'permanent lifting restrictions' had not resolved; to date, Petitioner's 'permanent lifting restrictions' have never resolved; and Petitioner has never refused any offer of employment from US Foodservice (because US Foodservice has never made any offer of employment to Petitioner), wherein Petitioner has an entitlement to TTC compensation, from November 3, 2005, the day after US Foodservice terminated Petitioner, until Petitioner's compensable impairment of permanent lifting restrictions resolve and Petitioner is able to secure employment without restrictions (Reg. 67-505(A)(1997)("After the one hundred fifty day period, the employer's representative **shall not** suspend or terminate temporary compensation **except** as provided in **this regulation or R.67-506** [no reference to § 42-9-390 or Reg. 67-801].")(Emphasis added)(Grayson, supra; Beau D. Cranford, supra)(Att. D-G, M);

(iii) US Foodservice unlawfully terminated entitled TTC compensation payments to Petitioner, in terms of failing to comply with the mandatory procedures set forth in § 42-9-260(F) and Reg. 67-506(E), in terms of US Foodservice, through Attorney Barefoot, failing to file a WCC Form 21 with the Commission; failing to certify that all entitled TTC payments to Petitioner were current; the parties never appearing before the Commission for the mandatory evidentiary stop payment hearing (Att. L); and no issuance of an appropriate Order on the Form

21 Stop Payment Hearing, from the Commission, granting US Foodservice permission to terminate or suspend TTC compensation payments, wherein Respondent should have applied a *strict construction* of compliance with the Act (§ 42-9-260(F) and Reg. 67-506(D) & (E)) to the Commission and US Foodservice, in favor of coverage for Petitioner (Caughman v. Columbia YMCA, 212 S.C. 337, 47 S.E.2d 788 (1948); Hutson, supra)(Att. D-G, K-O); and

(iv) US Foodservice, by way former counsel of record Attorney Barefoot, intentionally paid to Petitioner a *reduced* amount of TTC compensation payments after US Foodservice terminated Petitioner, but prior to the parties entrance into the erroneous agreement, by paying Petitioner TTC compensation at the *maximum compensation rate* of **\$592,56**, instead of the *mutually agreed upon average weekly wage* of **\$1,161.00** as established on the WCC Form 12A, prepared and filed with the Commission by US Foodservice, which has never been disputed between the parties (Att. E, J);

D. Swift and prompt adjudication of Petitioner's workers' compensation appeal

Petitioner has a specific legal right to swift and prompt adjudication of Petitioner's workers' compensation appeal, because; (i) Our Legislature has mandated that determinations of whether injured workers are entitled to benefits should be decided promptly (Alvarez, supra); (ii) Substantive evidence was provided in Petitioner's Motion to Strike (Att. D) to secure an appropriate dispositional order favorable to coverage for Petitioner from Respondent on June 24, 2016 (Att. R); (iii) Petitioner has been unemployed and unable to obtain gainful employment since being terminated by US Foodservice on **November 2, 2005** (Att. G, M);

(iv) Petitioner established that the Commission, and the Lower Court, lacks subject matter jurisdiction over Petitioner's workers' compensation claim no. 0506205, based on *numerous* grounds (supra), and as such, Petitioner should not be forced to be subjected to

protracted delays until final briefing in the instant appeal has been completed before the Lower Court, when Respondent's June 24, 2016 Order should have *dispensed with further briefing*, among other actions;

(v) Petitioner is in *urgent* need of Petitioner's entitled TTC compensation payments AND Health benefits, wherein; (a) On September 22, 2016 Petitioner was diagnosed with "Diabetes Mellitus" (Type 2 Diabetes), by U.S. Department of Veterans Affairs (VA) treating physician, Pratiksha D. Bhaleeya, MD (redacted VA Medical Report dated 09/22/2016, Att. Z); (b) On September 22, 2016 Petitioner attended a VA consult to the VA Prosthetics Clinic where Petitioner was fitted for and received special Diabetic Shoes and Socks (Att. Z); (c) On October 1, 2016 Petitioner attended a VA Medical Appointment at the VA Eye Clinic, where Petitioner was provided an Eye examination and prescription to treat Petitioner's significantly impaired vision due to complications from Diabetes, wherein on October 26, 2016 Petitioner received his VA prescription eye glasses via US regular mail (Att. Z); and

(4) *the lack of any other legal remedy* – Petitioner has no other legal remedy, because; (i) Respondent is the Chief Justice for the Lower Court, wherein the only Court with sufficient authority and power under our Constitution to consider granting this petition is the Supreme Court (S.C. Const. art. V, § 5); (ii) Petitioner timely filed a Motion with the Lower Court seeking the recusal or disqualification of Respondent, to include the intentions of timely filing an application to the Lower Court to reconsider the Motion to Strike after the recusal/disqualification motion was granted; however, the Lower Court, not by way of Respondent, but by way of *Associate Appellate Justice Stephanie P. McDonald*, denied Petitioner's recusal/disqualification application in an Order dated September 22, 2016 (Att. A1); and

(iii) In light of the Lower Court's and this Court's actions in Guice v. Lee (Att. S - Y); Respondent's June 24, 2016 Order (Att. R); and the Order denying recusal/disqualification of Respondent (Att. A1), Petitioner has no confidence that Respondent or the Lower Court shall respect and comply with the law in terms of promptly relinquishing jurisdiction of Petitioner's workers compensation appeal based on the substantive evidence and authorities advanced in the Motion to Strike justifying the same, but shall instead continue to retain unlawful and erroneous jurisdiction of Workers' Compensation Case No. 0506205 until after such time as Respondent and/or the Lower Court has issued an opinion AFFIRMING the July 17, 2015 circuit court order on appeal; wherein after Petitioner's timely filing of a Motion for Rehearing is denied by the Lower Court in the same prompt, vague, ambiguous and conclusory manner with which it denied the same in Guice v. Lee (Att. X), Petitioner would have exhausted all entitled administrative remedies in terms of Petitioner's constitutional right to civil judicial review, wherein in light of this Court's decision in Guice v. Lee (Att. Y), Petitioner is not confident this Court would exercise its *discretion* in terms of a granting a petition for a writ of certiorari in this matter. Id. Anderson Co. School District 1.

Thus, Petitioner has met the heavy burden, as set forth in Anderson Co. School District 1, to justify the issuance of an appropriate Order granting a petition for a writ of mandamus against Respondent. Id.

V.

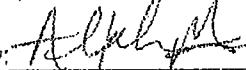
CONCLUSION

US Foodservice wrongfully and unlawfully terminated Petitioner's Employment and Temporary Total Compensation Payments. The Commission never granted US Foodservice permission to terminate Temporary Total Compensation Payments to Petitioner. The

Commission lacked subject matter jurisdiction at the time it approved the Agreement on January 5, 2006. The Lower Court lacks jurisdiction over Workers' Compensation Claim No. 0506205. Respondent had ministerial duties to perform, in respect and compliance with the law, without regard to Respondent's discretion, but failed to do so.

Based on all the foregoing reasons, this Court should consider issuing an appropriate and *prompt* Order granting Petitioner's Petition for a Writ of Prohibition and/or Mandamus, respective of the June 24, 2016 Order issued by Respondent for and by the Lower Court, to include granting the relief as stated in the attached Petition as a matter of fact and law.

Respectfully submitted,

By: 

Alexander Guice
U.S. African American Citizen
Honorable Disabled Veteran
Post Office Box 13281
Tampa, FL 33681
(813) 562-0547
alguice@hotmail.com
Petitioner, Pro Se

November 1, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Honorable William P. Keesley, Circuit Court Judge

RECEIVED

NOV 07 2016

SC Court of Appeals

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

Alexander Guice,Appellant,

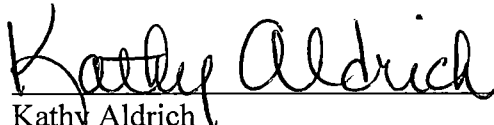
v.

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

PROOF OF SERVICE

I certify that I have served the **Respondents' Return in Opposition to Appellant's Motions for Stay Pending Adjudication of Petition to the Supreme Court and to Proceed In Forma Pauperis, and in Support of Respondents' Request for Sanctions** on Alexander Guice, pro se, by depositing a copy of it in the United States Mail, postage prepaid, on November 4, 2016, addressed as follows:

Alexander Guice
P.O. Box 13281
Tampa, Florida 33681



Kathy Aldrich
Legal Assistant to Erin L. Hantske
McANGUS GOUDELOCK & COURIE LLC
735 Johnnie Dodds Blvd., Suite 200 (29464)
PO Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900
Attorneys for Respondents

mgc

Reply To

ERIN L. HANTSKE
Direct Dial: (843) 576-2946
erin.hantske@mgclaw.com

November 4, 2016

RECEIVED

NOV 07 2016

SC Court of Appeals

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Alexander Guice v. U.S. Food Service, Inc. and ACE American Insurance
Company c/o Gallagher Bassett Services, Inc.
Date of Accident: May 5, 2005
WCC File No.: 0506205
Our File No.: 2098.12550
Claim No.: 004063-032175-wc-01
Appeal No.: 2015-001821

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Return in Opposition to Appellant's Motions for Stay Pending Adjudication of Petition to the Supreme Court and to Proceed In Forma Pauperis, and in Support of Respondents' Request for Sanctions, 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.

If you have any questions, please do not hesitate to contact me.

Yours truly,
McAngus Goudelock & Courie, LLC



Erin L. Hantske

Enclosures

cc: Alexander Guice, *pro se*

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The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate St
Columbia SC 29201-3769

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SC Court of Appeals