THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Successor Circuit Court Judge

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

Appellate Case No. 2015-001821

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

WCC Case No. 0506205

Alexander Guice, Employee, Appellant,

v.

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

REPLY TO RETURN TO MOTION FOR SANCTIONS AGAINST RESPONDENTS' FOR REPEATED VIOLATIONS OF RULES 241(a) AND 269 OF THE SOUTH CAROLINA APPELLATE COURT RULES

Pursuant to Rule 240(f), SCACR, *pro se* Appellant Alexander Guice presents this pleading in *propria persona*, wherein pleadings are to be considered without regard to technicalities. Conley v. Gibson, 355 U.S. 41 at 48 (Sup. Ct.1957). Specifically, Appellant submits this Reply to "Respondents' Return In Opposition To Appellant's Motion For Sanctions" ("Return") dated December 7, 2016 which was received by Appellant via US Postal Service Regular Mail on December 12, 2016. In reply to Respondents' Return, Appellant would

allege as follows:

ARGUMENT

Appellant contends it is now apparent that US Foodservice, Inc., and ACE American Insurance Company, c/o Gallagher Bassett Services, Inc.(Collectively, "Respondents'"), through counsel, are making a direct attack, challenge and affront to this Court's authority and integrity, in the instant appeal, and this Court must take appropriate action to restrain Respondents' willful disobedience, bad faith, and willful disregard to the rule of law, wherein the imposition of severe sanctions against Respondents' is now more warranted than ever before.

1. Appellant denies all arguments and contentions raised and set forth in Respondents' Return.

In reply, Appellant contends every argument and contention raised and set forth in 'Respondents' Return in Opposition to Appellant's Motion for Sanctions' dated December 7, 2016 (Return), which is not hereafter specifically admitted to by Appellant is hereby denied and strict and absolute proof demanded thereof.

2. On Return, issues and arguments raised in Appellant's Motion for Sanctions, which were not denied or objected to in 'Respondents' Return in Opposition to Appellant's Motion for Sanctions', should be deemed admitted by the Court.

In reply, Appellant contends all arguments and evidence raised in Appellant's Motion for Sanctions, which were not expressly denied or objected to by Respondents' in their 'Respondents' Return in Opposition to Appellant's Motion for Sanctions' should be deemed admitted by the Court pursuant to this Court's holding in McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 344, 479 S.E.2d 67, 75 (Ct. App. 1996) (holding "Failure to object when the evidence is offered constitutes a waiver of the right to have the issue considered on appeal."). Id.

As such, Appellant's arguments and evidence contained within the Motion for Sanctions,

related to; (**A**) the "Brief Factual Background", specifically, in terms that **a**) Respondents' never filed a timely post-trial Motion seeking to alter or amend the July 17, 2015 Circuit Court Order appeal in terms of either (**i**) obtaining a separate judgment on the award of attorney fees or (**ii**) obtaining an Order from the Circuit Court lifting the automatic stay respective to the award of attorney fees contained within the July 17, 2015 Circuit Court Order; **b**) Respondents' never applied to this Court for an Order lifting the automatic stay imposed on the July 17, 2015 Circuit Court Order on appeal as to the award of attorney fees; **c**) neither the lower court nor this Court ever issued an Order lifting the automatic stay on any matters decided in the July 17, 2015 Circuit Court Order on appeal; (**B**) the jurisdiction of this Court over the subject matter of instant appeal and the parties; (**C**) this Court's authority to impose sanctions; (**D**) that in three (3) identified Returns (Motion for Sanctions, Att. A-C), Respondents' advanced arguments and evidence from the July 17, 2015 Circuit Court Order currently on appeal); (**E**) that in 3 identified Returns filed by Respondents' (Motion for Sanctions, Att. A-C), Respondents' relied upon arguments and evidence from the July 17, 2015 Circuit Court Order on appeal in support of Respondents' request(s) that the Court impose sanctions upon Appellant; and (**F**) that in 3 identified Returns filed by Respondents' (Motion for Sanctions, Att. A-C), Respondents' requested and/or moved the Court to impose sanctions upon Appellant per Rule 269, wherein pursuant to McKissick, the above-cited arguments evidenced by Appellant should be deemed admitted by the Court. Id. Motion for Sanctions, previously submitted. Respondents' Return.

3. On Return, short, conclusory arguments contained within 'Respondents' Return in Opposition to Appellant's Motion for Sanctions', which did not favor the Court with support from proper citation to authority, should be deemed abandoned and rejected by the Court.

In reply, Appellant contends it is well settled law that "short, conclusory arguments unsupported by authority are deemed abandoned". First Sav. Bank v. McLean, 314 S.C. 361,

363, 444 S.E.2d 513, 514 (1994); *also see* Glasscock, Inc. v. United States Fid. & Guar. Co., 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001) (stating short, conclusory arguments unsupported by authority are deemed abandoned). As such, Appellant contends every argument, defense and/or contention set forth in 'Respondents' Return in Opposition to Appellant's Motion for Sanctions' (Return), which was short, conclusory and not favored with the Court by supported citation to authority, should be deemed abandoned and categorically rejected by the Court, to include, but not limited to;

a) Respondents' contention "As was the case with Appellant's prior meritless motions, his current Motion for Sanctions is nothing more than an attempt to circumvent the appellate process and force or coerce a ruling in his favor on the merits" (Return, p. 1); **b**) It is Appellant, not Respondents, who is "clog[ging] the courts with frivolous motions or appeals" (Return, p.1 (although Respondents' cite authority, Respondents' fail to cite evidentiary support)); **c**) "There is nothing sanctionable about referencing the underlying orders which, although on appeal, have not been overturned" (Return, p.2);

d) "Respondents cited to prior orders of the Circuit Court as evidence of where this case stands and to demonstrate the frustrations of both counsel and court with Appellant's vexatious litigation tactics. There is no appellate rule that would prohibit such reference to the record below." (Return, p. 3); **e**) "the fact that Respondents have requested in their Returns that this Court sanction and/or warn Appellant about his continued filing of frivolous motions does not constitute a sanctionable violation of Rule 269, SCACR." (Return, p. 4); **f**) "Even if, for sake of argument but without conceding, Respondents failed to comply in all respects with Rule 269 in their request that this Court impose some reasonable parameters on Appellant's abuse of the civil judicial system, the proper response would be for this Court to simply deny Respondents' request

for a warning or sanctions" (Return, p. 4);

g) "Appellant's basis for recovery is not supported by statute, case law or any other rule of law" (Return, p. 4); and **h)** "Appellant, on the other hand, has filed and continues to file repeated motions and petitions in an attempt to both delay and circumvent the appellate process" (Return, p. 5). Id.

4. On Return, Respondents' failed to meet their burden of proving they did not violate Rule 241(a), SCACR, on three separate instances in their filed Returns.

In reply, Appellant contends Respondents' position that they were not precluded from advancing and evidencing the July 17, 2015 Circuit Court Order on appeal, and specifically relying upon the award of attorney fees and costs in the amount of $32,933.13, is categorically without merit, on grounds that the Circuit Court violated Appellant's protected due process rights to reasonable notice and the opportunity to be heard respective to the award of attorney's fees; the Circuit Court lacked subject matter jurisdiction over the action of awarding attorney's fees or over the parties at the time it awarded attorney's fees; the Circuit Court, by way of presiding judicial officer Hon. William Paul Keesley and Respondents' counsel, Erin Leigh Hantske, engaged in extrinsic 'Fraud Upon the Court' respective to the award of $32,933.13 in attorney's fees and costs; and the Circuit Court or Respondents' counsel failed to ensure the unlawful award of attorney's fees were placed in a separate judgment, wherein both the dismissal of the appeal and the award of attorney's fees decided in the July 17, 2015 Circuit Court Order were properly stayed when Appellant filed the Notice of Appeal on or around August 16, 2015.

I. Violation of Appellant's Due Process Rights.

Appellant contends the Circuit Court violated Appellant's Due Process Rights to reasonable notice and the opportunity to be heard at the time it issued the July 17, 2015 Circuit

Court Order on appeal awarding Respondents' the sum of $32,933.13 in attorney's fees and costs.

As it specifically relates to a violation of a party's Due Process Rights and the affect such a violation has respective to a Court's jurisdiction over the subject matter of the action and the parties, in Webster v. Clanton, our supreme court stated the general rule:

> *It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that* ***without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on.***

(Emphasis added). Id. at 259 S.C. 387, 391, 192 S.E.2d 214, 216 (1972). Daniels v. City of Goose Creek, 314 S.C. 494, 501, 431 S.E.2d 256, 260 (Ct. App. 1993) (holding where the law is unmistakably clear, the Court of Appeals is bound by decisions of the Supreme Court).

Here, because Respondents' have "presented" and "relied on" the Circuit Court's award of attorney fees, from the July 17, 2015 Circuit Court Order on appeal, and as set forth in Respondents' Return (Return, p. 2-3 ("The July 17, 2015 Order directed Appellant to pay Respondents "the sum of $32,933.13" as a sanction because "the relief sought by the Appellant was unsupported by law or procedure," and because 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.""")), this issue of the Circuit Court's award of attorney's fees and costs to Respondents' is *now* actionable pursuant to Webster ("A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and **must** be so treated by the courts **whenever** and **for whatever purpose** it is **presented** and **relied on**"). Id.

The facts establishing the Circuit Court's violation of Appellant's Due Process Rights to

'reasonable notice' and the 'opportunity to be heard' respective to the award of $32,933.13 in attorney's fees and costs to Respondents' respective to the July 17, 2015 Circuit Court Order on appeal are unmistakable and indefensible.

First, the July 17, 2015 Circuit Court Order opines that Respondents' request for sanctions was sought "by way of a Reply to Appellant's "Motion for Entry of Clerk's Default" dated May 10, 2013", respective of Appellate Case No. 2013-CP-32-01272. July 17, 2015 Circuit Court Order. Respondents' Return, Att. A (p. 26).

However, the Circuit Court's reliance upon Respondents' Reply brief from May 10, 2013 to impose sanctions upon Appellant was unlawful on grounds that; **a**) the March 5, 2015 Administrative Order setting the March 27, 2015 appellate hearing failed to "Notice" the parties that at the March 27, 2015 appellate hearing, the Circuit Court would be considering Respondents' Reply to Appellant's "Motion for Entry of Clerk's Default"; **b**) a review of the Transcript from the March 27, 2015 Appellate Hearing confirms that at no time did the Circuit Court consider Respondents' "Reply to Appellant's Motion for Entry of Clerks Default"; **c**) a party seeking relief in the form of a sanction must file a motion to afford the alleged offending party due process of reasonable notice and the opportunity to be heard regarding the alleged sanctionable conduct prior to imposition of sanctions; and **d**) the Circuit Court should have denied Respondents' May 10, 2013 Reply improperly requesting an order of sanctions, as this Court has done on three (3) previous occasions, and as advanced by Respondents' in their own Return ("Even if...Respondents failed to comply in all respects with Rule 269 in the request that this Court impose some reasonable parameters on Appellant's abuse of the civil judicial system, **the proper response** would be for this Court [and the Circuit Court] to simply deny Respondents' request for a warning or sanctions") (Emphasis added). Respondents' Return.

Rule 11, SCRCP. Rule 269, SCACR. March 5, 2015 Administrative Order, Att. **1** (ROA) (previously submitted as Att. "F" to Motion for Summary Judgment). Transcript, March 27, 2015 Appellate Hearing, ROA (previously submitted as Att. "K" to Motion for Summary Judgment)[1].

"Due process is flexible and calls for such procedural protections as the particular situation demands." Ogburn-Matthews v. Loblolly Partners, 332 S.C. 551, 561, 505 S.E.2d 598, 603 (Ct. App. 1998) (quoting Stono River Envtl. Prot. Ass'n v. S.C. Dep't of Health & Envtl. Control, 305 S.C. 90, 94, 406 S.E.2d 340, 341 (1991)). "The requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." Id. In fact, Respondents did not include their "Defendants' Reply to Claimant's Motion for Entry of Clerk's Default" in their Designation of Matter to be considered by the Court in the Record on Appeal. Respondents' Designation of Matter, previously filed.

Appellant has attached for this Court's review and consideration, a true copy of "Defendants' Reply To Claimant's Motion For Entry of Clerk's Default", dated May 10, 2013 in regards to Appellate Case No. 2013-CP-32-01272, as Attachment "**2**" herein, where the Court can confirm the unlawful and fraudulent instrument relied upon by the Circuit Court and Respondents' to support fraudulently imposing sanctions upon Appellant in the July 17, 2015 Circuit Court Order on appeal, wherein there is no reference to any factors for the Circuit Court's consideration or reference to Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750, 759 (1997); there is no request for the sum of $32,933.13 in attorney's fees and costs; there is no actual dollar

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1 Appellant respectfully request this Court's indulgence, as this comment is purely "technical" and based in part from Appellant's nearly fifteen (15) years as a former resident of our Palmetto State and the years Appellant served on active duty as a U.S. Army Sergeant. As it specifically relates to the Circuit Court's underlying basis (Respondents' Reply to Appellant's Motion for Entry of Clerk's Default) to support the Circuit Court's award of attorney's fees and costs, "that dog won't hunt".

amount requested; and the Reply "requests an order for sanctions, fees, and costs, including reasonable attorney's fees" "pursuant to rule 11(a)" "as a result of Claimant's [Appellant's] multiple motions and complaint". Reply to Clerks Default. Respondents' Return, Att. A.

Second, a review of the Circuit Court's Administrative Order dated March 5, 2015 setting the Appellate Hearing for March 27, 2015, establishes that at no time did the Circuit Court provide "notice" to the parties', and specifically, to the undersigned Appellant, that at the March 27, 2015 appellate hearing, the Circuit Court would be considering a "Motion for Attorney's Fees and Costs" or a "Motion for Sanctions" filed by Respondents' counsel. March 5, 2015 Administrative Order. Abbott v. Gore, 304 S.C. 116, 119, 403 S.E.2d 154, 156 (Ct.App.1991) (holding Due Process requires that a litigant be placed on notice of the issues which the court will consider to afford the litigant an opportunity to be heard.).

Third, at no time did Respondents', through Attorney Hantske, ever file or serve a 'Motion for Sanctions' seeking an award of attorney fees, or ever file or serve a 'Motion for Attorney Fees and Costs' with the Circuit Court, or upon the undersigned pro se Appellant, as confirmed and established upon this Court's review of Respondents' 'Designation of Matter'. Respondents' Designation of Matter.

Fourth, a review of the Transcript from the March 27, 2015 Appellate Hearing convened before the Circuit Court, where Appellant did not appear, clearly establishes that whether or not Respondents' counsel filed and served a *Motion for Sanctions* or a *Motion for Attorney Fees and Costs* (which was never filed), it would have been nothing more than a mere *formality*, as it was the Circuit Court, via Judge Keesley – not Respondents' counsel Attorney Hantske – who *initially* raised the issue of attorney fees and costs, *sua sponte*, and who had already made a **pre-judgment** that Respondents' would be awarded *any* amount in attorney's fees and costs Attorney

Hantske presented and requested, pursuant to this *shocking* exchange between Judge Keesley, speaking for the Circuit Court, and Respondents' counsel Attorney Erin Leigh Hantske:

THE COURT: And the attorney's fees -- I don't know if you [Attorney Hantske] have anything to submit today. If you want to submit affidavits.

MS. HANTSKE: Yes sir. I will certainly do that.

THE COURT: You'll have to send those to him [Appellant] to give him at least ten days to respond after he gets them, but go ahead and send that stuff to me.

MS. HANTSKE: So is that -- and I apologize, Your Honor. Is that granting the attorney's fees, or is that just me submitting the affidavit, and then you'll rule on that later?

THE COURT: Well at this point, I'm inclined to grant the attorney's fees. Of course until I issue a written order --

MS. HANTSKE: Okay.

THE COURT: -- it's not a ruling anyway.

MS. HANTSKE: Yes, sir.

THE COURT: But I intend to grant your request for attorney's fees. I think it's -- all one has to do is to read the Supreme Court's recent opinion on this matter to -- to know how frustrating this whole ordeal must have been for the respondent...

MS. HANTSKE: Do you want an affidavit of fees going back just for this proceeding?

THE COURT: Whatever you think you're entitled to and whatever --

MS. HANTSKE: Yes sir.

THE COURT: -- and give me authority for whatever you feel you're entitled to.

MS. HANTSKE: Yes sir. I will do so.

THE COURT: There has to be something where you have requested it, and -- so I guess it would be founded on whatever you requested, whatever you may have moved for. If there's an issue, you can write me. I'll try to respond to it.

See Transcript, March 27, 2015 Appellate Hearing (p. 26-28)(Att. K, Motion for Summary Judgment).

However, without affording reasonable notice to Appellant; affording Appellant the opportunity to be heard; or Respondents' counsel ever filing and serving a proper application for either sanctions or for attorney's fees and costs with the Circuit Court, the Circuit Court issued its July 17, 2015 Order awarding Respondents', in attorney fees and costs, and as a sanction, the sum of **$32,933.13** (as presented and relied on by Respondents' in their Return), violating Appellant's protected Due Process Rights to 'reasonable notice' and the 'opportunity to be heard' as set forth in U.S. Const. amend. XIV, § 1; and S.C. Const. art. I, § 22, wherein this Court must immediately (not after final briefing has completed) treat the July 17, 2015 Circuit Court Order on appeal as a "nullity" pursuant to Webster and Daniels as a matter of law. Id. Respondents' Return, Att. A. March 5, 2015 Administrative Order. Respondents' Designation of Matter (confirming Respondents' never filed a Motion for Sanctions or for attorney's fees with Circuit Court). Appellant's Amended Designation of Matter (confirming Respondents' never filed a Motion for Sanctions with Circuit Court).

II. Lack of Subject Matter Jurisdiction.

Appellant contends the Circuit Court lacked subject matter jurisdiction at the time it

issued the July 17, 2015 Circuit Court Order on appeal awarding Respondents' the sum of $32,933.13 in attorney's fees and costs, and as such, the July 17, 2015 Circuit Court Order on appeal must immediately, not after final briefing has been completed, be deemed null and void.

"Subject matter jurisdiction refers to the court's 'power to hear and determine cases of the general class to which the proceedings in question belong.'" Watson v. Watson, 319 S.C. 92, 93, 460 S.E.2d 394, 395 (1995) (quoting Dove v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994)). The subject matter jurisdiction of a court is fundamental. "Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court. It is well-settled that issues related to subject matter jurisdiction may be raised at any time, **including for the first time on appeal in this Court.**" (Emphasis added). Brown v. State, 343 S.C. 342, 346, 540 S.E.2d 846, 84849 (2001) (citation omitted). 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).

Here, the evidence referenced or submitted (*i.e.* Defendants' Reply to Claimant's Motion for Entry of Clerk's Default; Respondents' Return dated December 7, 2016 (arguing and evidencing the July 17, 2015 Circuit Court Order on appeal awarding Respondents' $32,933.13 in attorney's fees and costs); the March 5, 2015 Administrative Order setting the March 27, 2015 appellate hearing; both parties' previously-filed Designations of Matter; and the Transcript from the March 27, 2015 appellate hearing)) establishes that the Circuit Court violated Appellant's Due Process Rights to reasonable 'notice' and the 'opportunity to be heard' when the Circuit Court awarded Respondents' $32,933.13 in attorney's fees and costs, due to Respondents' never filing a motion for sanctions or for attorney's fees and costs, and the Circuit Court never affording Appellant reasonable notice or the opportunity to be heard, in violation of U.S Const.

amend. XIV, § 1; S.C. Const. art. I, § 22; and settled law set forth in Webster and Abbott. Id. Gainey v. Gainey, 279 S.C. 68, 70, 301 S.E.2d 763, 764 (1983) (holding a party may not ordinarily receive relief not contemplated in the pleadings.).

Pursuant to Webster, where the Circuit Court violated Appellant's Due Process Rights to reasonable 'notice' and the 'opportunity to be heard' at the time it awarded Respondents' $32,933.13 in attorney's fees and costs in the July 17, 2015 Circuit Court Order on appeal, due to the fact that Respondents' never duly filed a Motion for Sanctions or otherwise prayer seeking relief for an award of attorney's fees and costs, which affected Appellant's personal rights, the Circuit Court lacked subject matter jurisdiction, over the action of awarding attorney's fees and costs, or over the parties, at the time it issued the July 17, 2015 Circuit Court Order awarding Respondents' $32,933.13 in attorney's fees and costs. Webster. Abbott. Gainey. Watson. U.S Const. amend. XIV, § 1. S.C. Const. art. I, § 22. Respondents' Return. Administrative Order. Transcript. Respondents' Designation of Matter.

Because the Circuit Court lacked jurisdiction at the time it issued the July 17, 2015 Circuit Court Order on appeal, this Court must deem the July 17, 2015 Circuit Court Order on appeal "void" and a "nullity", not after final briefing has completed, *but now*, pursuant to the Supreme Court's holding in Webster ("A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and **must** be so treated by the courts **whenever** and **for whatever purpose** it is **presented** and **relied on**"), and this Court's bound duty, pursuant to Daniels, to comply with the unmistakably clear decision of the Supreme Court in Webster. Id. Funderburk.

III. Extrinsic Fraud Upon the Court Committed by Hon. William Paul Keesley, Esquire, S.C. Bar No. 3323 and Erin Leigh Hantske, Esquire, S.C. Bar No. 76313.

Appellant contends pursuant to the unlawful award of approximately $32,933.13 in

attorney's fees and costs awarded to Respondents', in the July 17, 2015 Circuit Court Order on Appeal, as presented and relied on by Respondents' (Respondents' Return, p.2), where Respondents' counsel never filed a Motion for any such relief; where the Circuit Court violated and deprived Appellant's constitutionally-protected Due Process Right to reasonable notice and the opportunity to be heard on the issue of attorney's fees and costs; and where the Circuit Court was prohibited from granting relief for attorney's fees and costs which was not contemplated in any of Respondents' previously filed motions with the Circuit Court, Appellant was subjected to extrinsic 'fraud upon the court' by officers of the Court Hon. William P. Keesley, the presiding successor circuit judge, and Erin L. Hantske, Esq., Respondents' counsel of record.

A. Fraud upon the court and 'extrinsic' fraud upon the court defined.

As an initial matter, "Fraud upon the court is a narrow and invidious species of fraud that "subvert[s] the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication."" Chewning v. Ford Motor Co., 354 S.C. 72, 78, 579 S.E.2d 605, 608 (Sup.Ct. 2003). "A verdict may be set aside for fraud on the court if an attorney and a witness have conspired to present perjured testimony." Cleveland Demolition Co. v. Azcon Scrap Corp., 827 F.2d 984, 986 (4th Cir. 1987)(quoting Chewing). "Involvement of an attorney, as an officer of the court, in a scheme to suborn perjury would certainly be considered fraud on the court." Great Coastal Express, Inc. v. Int'l Bhd. of Teamsters, 675 F.2d 1349, 1357 (4th Cir. 1982) (quoting Chewing).

Extrinsic fraud is "fraud that induces a person not to present a case or **deprives a person of the opportunity to be heard**. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the **subject matter of the action**." (Emphasis added). Hilton Head

Ctr. of South Carolina v. Public Serv. Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987).

Like all other types of fraud, proving fraud upon the court requires showing that the perpetrator(s) acted with the intent to defraud, for there is no such thing as accidental fraud. See Chewning, 354 S.C. at 78, 579 S.E.2d at 608 ("'Fraud upon the court," whatever else it embodies, requires a showing that one has acted with an intent to deceive or defraud the court."). Because fraud upon the court is an affront to the administration of justice, a litigant who has been defrauded need not establish prejudice. Chewing, *supra.*

B. Establishing extrinsic fraud upon the court committed by Judge Keesley and Attorney Hantske.

Appellant contends the facts of the case and evidence submitted or referenced by the undersigned clearly establishes not only the act(s) of extrinsic fraud upon the court by Judge Keesley and Attorney Hantske, but that the extrinsic fraud upon the court committed by Judge Keesley and Attorney Hantske was intentional.

With respect to Judge Keesley, Appellant contends Judge Keesley is an attorney, a judge, and a judicial member of the South Carolina Bar (Bar No. 3323); therefore, an 'officer of the court'; and was the presiding successor judicial officer in regards to Appellate Case Nos. 2013-CP-32-01272 / 2014-CP-32-00399. Respondents' Return, Att. A. Chewing, *supra.*

Next, the evidence of record, and specifically, **i**) the March 5, 2015 Administrative Order (Att. 1); **ii**) the May 10, 2013 "Reply to Claimant's Motion for Entry of Clerk's Default" (Att. 2); **iii**) the Transcript from the March 27, 2015 appellate hearing (Att. K, Motion for Summary Judgment); **iv**) Respondents' Designation of Matter and Appellant's Amended Designation of Matter; and **v**) the July 17, 2015 Circuit Court Order on appeal, establishes that;

a) Judge Keesley never afforded Appellant reasonable notice or 'the opportunity to be heard' that at the March 27, 2015 appellate hearing Judge Keesley, acting for the Circuit Court,

would be considering imposing sanctions upon Appellant as an award to Respondents' in attorney's fees and costs;

b) Judge Keesley deprived Appellant of reasonable 'notice' and the 'opportunity to be heard' prior to awarding Respondents' $32,933.13 in attorney's fees and costs in the July 17, 2015 Order because Respondent's never filed a proper pre-requisite post trial motion for such relief, and therefore, were never entitled to an award of attorney's fees and costs; and

c) during the March 27, 2015 appellate hearing, and without Respondents' ever filing a mandatory and pre-requisite motion or application for relief for sanctions or attorney's fees and costs, Judge Keesley stated, **"I intend to grant your request for attorney's fees"**; and **d)** in the July 17, 2015 Circuit Court Order, Judge Keesley, acting for the Circuit Court, awarded Respondents' $32,933.13 in attorney's fees, which establishes that Judge Keesley

1) deprived Appellant of the 'opportunity to be heard' respective to any award to Respondents' for attorney's fees or costs;

2) defrauded Appellant out of $32,933.13;

3) committed "extrinsic fraud upon the court"; and that

4) the extrinsic fraud upon the court committed by Judge Keesley was 'intentional' in nature. Chewing, *supra.* Hilton Head Ctr. of South Carolina, *supra.* July 17, 2015 Circuit Court Order. Transcript. Reply to Claimant's Motion for Entry of Clerk's Default. Respondents' Return. Respondents' Designation of Matter. Appellant's Amended Designation of Matter. *See* In the Matter of Goodwin, 279 S.C. 274, 305 S.E.2d 578 (1983) (attorney has an ethical duty not to perpetrate a fraud upon the court by knowingly presenting perjured testimony).

With respect to Attorney Hantske, Appellant contends Attorney Hantske is an attorney and member of the South Carolina Bar (Bar No. 76313); therefore, an 'officer of the court'; and

was/is the attorney of record for Respondents' in regards to Appellate Case Nos. 2013-CP-32-01272 / 2014-CP-32-00399 and the attorney of record for Respondents' in the instant appeal. Respondents' Return, Att. A. Chewing, *supra.*

Next, the evidence of record, and specifically, **i**) the May 10, 2013 "Reply to Claimant's Motion for Entry of Clerk's Default"; **ii**) the Transcript from the March 27, 2015 appellate hearing; **iii**) Respondents' Designation of Matter; **iv**) the three identified previous Returns filed in the instant appeal (Motion for Sanctions, Att. A-C); **v**) the July 17, 2015 Circuit Court Order; and **vi**) Respondent's Dec. 7, 2016 Return, establishes that;

a) Attorney Hantske knew, or certainly should have known, as a practitioner and member of the Bar, that because she never filed a motion for sanctions or a motion for attorney's fees and costs with the Circuit Court, Attorney Hantske's client(s) were never entitled to a Circuit Court money judgment for attorney's fees and costs (*See* Gainey (holding a party may not ordinarily receive relief not contemplated in the pleadings.));

b) Attorney Hantske failed to take ethically-mandated actions, in terms of reporting Judge Keesley's prejudicial and unlawful intentions ("**I intend to grant your request for attorney's fees**") at the March 27, 2015 appellate hearing, or reporting Judge Keesley's subsequent unlawful and fraudulent award of $32,933.13 in attorney's fees and costs to her clients, in violation of Rule 8.3(d), RPC, Rule 407, SCACR ("A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's **honesty**, **trustworthiness**, or fitness for office in other respects **shall** inform the appropriate authority") (Emphasis added);

c) Attorney Hantske was both complicit of, and participated in, the fraudulent award of $32,933.13 in attorney's fees and costs to her client(s), by "asking" Judge Keesley, during the

March 27 appellate hearing, and without ever filing a prayer for relief, what she could submit for an award of attorney's fees and costs ("**Do you want an affidavit of fees going back just for this proceeding?**"); and supplying Judge Keesley with the May 10, 2013 "Reply to Claimant's Motion for Entry of Clerk's Default" to unlawfully and fraudulently support Judge Keesley's fraudulent award of attorney's fees, wherein Attorney Hantske knew, or certainly should have known, that the May 10, 2013 "Reply" was an insufficient and problematic instrument to support any award of sanctions or attorney's fees against Appellant;

d) Attorney Hantske submitted perjured testimony, **to this Court**, on four (4) separate occasions, and specifically, in the three previously identified Returns (Motion for Sanctions, Att. A-C), and Attorney Hantske's most recent Return, where Attorney Hantske advanced false arguments and relied upon the July 17, 2015 Circuit Court Order on appeal containing the unlawful and fraudulent award of attorney's fees and costs, although Attorney Hantske knew, or certainly should have known, that the $32,933.13 in attorney's fees and costs awarded by Judge Keesley, acting for the Circuit Court, was unlawfully and fraudulently awarded; and

e) Attorney Hantske submitted perjured testimony, to this Court, on three (3) separate occasions, and specifically, in the three previously identified Returns (Motion for Sanctions, Att. A-C), to support requesting this Court to impose sanctions upon Appellant, although Attorney Hantske knew, or certainly should have known, that the $32,933.13 in attorney's fees and costs awarded by Judge Keesley, acting for the Circuit Court, *to include the supporting reasons for the award of attorney fees*, as set forth in the July 17, 2015 Circuit Court Order, was unlawfully and fraudulently decided, because Attorney Hantske never filed a pre-requisite post trial motion, and Judge Keesley's findings were never contemplated in any pleadings filed by Attorney Hantske (Gainey, supra), which establishes that Attorney Hantske;

1) deprived Appellant of the 'opportunity to be heard' respective to any award to Respondents' for attorney's fees or costs;

2) defrauded Appellant out of $32,933.13;

3) committed "extrinsic fraud upon the court"; and that

4) the extrinsic fraud upon the court committed by Attorney Hantske was 'intentional' in nature. Chewing, *supra*. Hilton Head Ctr. of South Carolina, *supra*. *See* In the Matter of Goodwin, 279 S.C. 274, 305 S.E.2d 578 (1983) (attorney has an ethical duty not to perpetrate a fraud upon the court by knowingly presenting perjured testimony). Gainey. July 17, 2015 Circuit Court Order. Transcript. Reply to Claimant's Motion for Entry of Clerk's Default. Respondents' Return. Respondents' Designation of Matter. Motion for Sanctions, Att. A-C.

C. Effect of extrinsic fraud upon court on the instant appeal.

Appellant contends the effect of the established extrinsic fraud upon the court committed by Judge Keesley and Attorney Hantske, in the instant appeal, and at a minimum, should be the *immediate* setting aside and remanding of the July 17, 2015 Circuit Court Order currently on appeal, so that Appellant may be afforded a fair and impartial review of the Appellate Panel's July 17, 2013 Order, as Appellant contends his opportunity to be heard was violated; the Circuit Court lacked jurisdiction over the subject matter of attorney's fees and costs and over the person of the Appellant at the time the attorney's fees and costs were granted, and there has never been a real or fair review of the same before the Circuit Court. *See* Hilton Head Ctr. Of South Carolina ("Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action." Id. at 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987).

D. Respondents' are precluded from disputing the effectiveness of the fraud after the fact and prejudice is not required to be established.

Appellant contends the undersigned is not required to establish prejudice to recover for a claim of extrinsic fraud upon the court, and Respondents' should not be allowed to respond to the allegations of fraud upon the court committed by Judge Keesley and Attorney Hantske in an attempt to either deny the allegations or challenge the effectiveness of the fraud Appellant has been subjected to after the fact. *See* Chewing, *supra* ("because fraud upon the court is an affront to the administration of justice, a litigant who has been defrauded need not establish prejudice. Hazel-Atlas Glass Co. v. Hartford-Empire Co., supra; Dixon v. Comm'n of Internal Revenue, 2003 WL 1216290 (9th Cir. 2003) ("...the perpetrator of the fraud [upon the court] should not be allowed to dispute the effectiveness of the fraud after the fact.")").

Moreover, contrary to Respondents' contention that "although Appellant has variously argued that the Circuit Court lacked jurisdiction to issue the July 17, 2015 Order...he has not challenged the Circuit Court's award of attorney's fees as a sanction for his abuse of the legal process. Therefore, that issue is not preserved for appellate review and cannot be challenged by Appellant at this point" (Respondents' Return, p. 3), our Supreme Court's holdings in Webster and Chewing, and this Court's bound duty pursuant to Daniels has made it expressly clear that "A judgment by a court without jurisdiction of both the parties **and** the subject matter is a **nullity** and **must be so treated by the courts whenever** and for **whatever purpose** it is **presented and relied on**" (Webster, *supra*), wherein Webster and Chewing, in terms of addressing fundamental due process rights violation(s); fraud upon the court; and the subsequent affects a court's lack of subject matter jurisdiction has on a judgment rendered, which would certainly apply to the July 17, 2015 Circuit Court Order on appeal, explicitly controls Respondents' contention, as well as , their reliance upon the July 17, 2015 Circuit Court Order and the authorities under Emerson Elec. Co. v. South Carolina Dept. of Rev. and Simmons v. SC Strong. Id.

Furthermore, Appellant points out that because Appellant did not raise the 'extrinsic fraud upon the court' issue (*supra*) in Appellant's Motion for Sanctions, it would be improper for this Court to consider the extrinsic fraud upon the court allegation as to imposing sanctions against Respondents'. Rule 269, SCACR.

However, because Appellant properly raised the issue of extrinsic fraud upon the Court, and specifically, against Judge Keesley and Attorney Hantske, and as a direct reply to Respondents' defense and reliance upon the unlawful and patently fraudulent award of $32,933.13 in attorney's fees and costs, as set forth in Respondents' Return, nothing would preclude this Court, pursuant to Chewing, Webster, and Daniels, and only if the Court denies Appellant's Motion for Sanctions, from taking immediate action, *and not as a sanction*, in terms of dispensing with further briefing; vacating the July 17, 2015 Circuit Court Order; and remanding this matter back to the Circuit Court, if the Court finds and concludes that Appellant met the threshold of establishing extrinsic fraud upon Court, either before this Court (by Attorney Hantske), or before the Circuit Court (by Judge Keesley and/or Attorney Hantske), respective either of the instant appeal or the July 17, 2015 Circuit Court Order. Id. *supra*.

Finally, Appellant points out the fact that the July 17, 2015 Circuit Court Order on appeal containing the patently *unlawful* and *fraudulent* award of attorney's fees and costs is under the automatic stay imposed per Rule 241(a), SCACR, due to the fact Respondents' counsel never filed a pre-requisite motion, and in fact, a "post-trial motion" for sanctions or attorney's fees and cost at the conclusion of the Circuit Court's dismissal of the appeal, in accordance with Pitman v. Republic Leasing Co., 351 S.C. 429, 432–33, 570 S.E.2d 187, 189–90 (Ct. App. 2002)(holding "Absent specific statutory language vesting the trial judge with continuing jurisdiction, we refuse to hold that a trial judge retains jurisdiction to consider a motion for sanctions beyond ten days

after entry of the judgment. Such an interpretation would run counter to our established case law that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed."). Id. *also see* Rutland v. Holler, Dennis, Corbett, Ormond & Garner (Law Firm), 371 S.C. 91, 96, 637 S.E.2d 316, 319 (Ct. App. 2006) (holding "[B]ecause a trial judge retains jurisdiction pursuant to Rule 59(e), SCRCP, to alter or amend a judgment within ten days of its issuance, a motion for sanctions would be timely if filed within ten days of judgment." (alteration in original)).

In fact, this Court frowns upon considering issues on appeal in a 'piecemeal' fashion, and instead favors having all ancillary matters before the lower court resolved prior to an appellate court assuming jurisdiction, so the appellate court can resolve all pending issues in an efficient and wholesale manner (*See, e.g.*, Holmes v. East Cooper Community Hospital, Inc., Opinion No. 27370 (Sup. Ct. March 26, 2014) (quoting Hudson v. Hudson, 290 S.C. 215, 215, 349 S.E.2d 341, 341 (1986)) (holding "This way, all ancillary matters can be timely heard, and appealed, if necessary, in an efficient and wholesale manner, and not, as [Respondents'] suggests, in a piecemeal fashion."))). Id.

Therefore, it was the error of the Circuit Court, and Respondents' counsel, not the Appellant, to ensure that the patently unlawful and fraudulent award of attorney's fees and cost was issued under separate judgment, and within ten days after the Circuit Court issued the July 17, 2015 Order, wherein the Circuit Court's dismissal of the appeal, and *simultaneous* unlawful and fraudulent award of attorney's fees and costs to Respondents', which are both contained within July 17, 2015 Circuit Court Order, were automatically stayed under Rule 241(a), SCACR, pursuant to Appellant's properly filed 'Notice of Appeal' with this Court, on or around August 16, 2015, and after the ten (10) days had expired for Respondents' to file a pre-requisite post trial

motion for sanctions and/or attorney's fees and costs with the Circuit Court. Id. Pitman. Rutland. Holmes. Hudson.

5. On Return, Respondents' failed to meet their burden to resist imposition of sanctions for filing "Returns" requesting and moving the Court to impose sanctions upon Appellant "pursuant to Rule 269, SCACR".

In reply, Appellant contends the Court must categorically reject Respondents' defense that the Court's "proper response" to improper requests made by Respondents' to the Court to impose sanctions upon Appellant is for the "Court to simply deny Respondents' request for a warning or sanctions" (Respondents' Return, p. 4), based on several factors.

As an initial matter, and as previously addressed above, because Respondents' failed to favor the Court with any citation to authority, and specifically, a cited reference where a previous Court has opined that if a party improperly moves for sanctions in a Return or Reply that the proper response is for the Court to simply deny the improperly made request for sanctions, this conclusory, short, and barebones contention must be deemed abandoned and reject by the Court pursuant to First Sav. Bank and Glasscock, Inc. Id.

Moreover, a review of Respondents' Return confirms Respondents' failed to cite a single authority (notwithstanding the patently erroneous July 17, 2015 Circuit Court Order currently pending review) wherein a Court of competent jurisdiction imposed sanctions upon a party based on a request by a charging party which was advanced to the Court in that party's opposition return or reply, as opposed to a proper motion or prayer for relief. Respondents' Return.

Finally, as previously raised in Appellant's Motion for Sanctions, the determinative factors in considering whether the alleged sanctionable acts or omissions committed by Respondents' support imposing sanctions is not whether the Court acted on Respondents' alleged improper requests for the Court to impose sanctions upon Appellant, but rather, the "reasonable"

test, as set forth in the FCSPA. S.C. Code Ann. § 15-36-10 *et. seq.* Motion for Sanctions.

Under the 'reasonableness' test, this Court must determine, if a reasonable attorney, under similar circumstances, would; **a)** on three (3) separate occasions, request a Court to impose sanctions upon a party, and specifically, upon a pro se litigant, under the cover of a Return brief, instead of filing a proper requests for sanctions under cover of Motions in accordance with Rule 269, SCACR; **b)** on three (3) separate occasions, advance inadmissible arguments and evidence in support for a request for a Court to impose sanctions upon an opposing party, and specifically, upon a pro se litigant, under the cover of a Return briefs, instead of filing a proper request for sanctions under cover of Motions in accordance with Rule 269, SCACR; **c)** on three (3) separate occasions, advance arguments and evidence of an unlawful and fraudulent judgment, which is under an automatic stay, without first seeking to have the automatic stay lifted; **d)** consider the three (3) separate requests seeking the Court to impose sanctions upon the opposing party, and specifically, a pro se litigant, and under cover of Returns as opposed to motions, to be considered as filing 'frivolous' documents; and **e)** consider the three (3) separate requests seeking the Court to impose sanctions upon the opposing party, and specifically, a pro se litigant, and under cover of Returns as opposed to motions, to be considered as 'harassing' the opposing pro se litigant. FCSPA. Motion for Sanctions, Att. A-C. Respondents' Return. Rule 269, SCACR.

As such, under the 'reasonable' test, Appellant contends the alleged acts and omissions of Respondents', as set forth in Appellant's *motion* for sanctions, constitutes sanctionable conduct, wherein the Court must reject Respondents' contentions and impose reasonable sanctions against Respondents', by this Court, under Rule 269, SCACR, and the FCSPA, to deter this repeated pattern of frivolous and vexatious conduct from reoccurring again in the future. Id.

6. On Return, Respondents' failed to meet their burden to establish that Respondents' alleged sanctionable conduct did not rise to the requirement of

the imposition of a severe sanction.

In reply, Appellant contends Respondents' failed to meet their burden to establish that not only does the alleged acts and omissions by Respondents', as set forth in the Motion for sanctions, require the imposition of sanctions, but that the Court should impose a servere sanction, based on several relevant factors.

As Appellant properly alleged in the Motion for sanctions, "Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction" (Baughman v. AT & T Co., 306 S.C. 101, 410 S.E.2d 537 (S.C. Sup. Ct.1991)), the alleged acts and omissions by Respondents' met, and in fact, exceed the threshold for imposition of a severe sanction in terms of issuing a dispositional Order in favor of Appellant. Id.

First, a severe sanction is warranted based on the repeated advanced arguments and evidencing of the July 17, 2015 Circuit Court Order currently on appeal, and under an automatic stay, pursuant to Rule 241(a), SCACR, not once, but on three (3) separate instances, in identified Returns filed by Respondents' (Motion for Sanctions, Att. A-C), which clearly establishes **a**) "willful disobedience" to Rule 241(a), SCACR; **b**) "bad faith" conduct; and c) "gross indifference" to Appellant's "rights" in terms of Respondents' failure to restrain advancing arguments and evidencing the July 17, 2015 Circuit Court Order on appeal in its Returns until such time as this Court has rendered a final decision affirming the matters decided in the July 17, 2015 Circuit Court Order. Baughman. Motion for Sanctions. Respondents' Return. Rule 241(a), SCACR. State v. Griffin, *supra* (defining "bad faith"). Bevilacqua, *supra* (defining "willful disobedience"). Rule 269, SCACR. FCSPA.

Second, a severe sanction is warranted based on the repeated advanced arguments and

evidencing of the July 17, 2015 Circuit Court Order currently on appeal, and under an automatic stay, pursuant to Rule 241(a), SCACR, not once, but on three (3) separate instances, in identified Returns filed by Respondents' (Motion for Sanctions, Att. A-C), *inter alia*, which is inadmissible and frivolous, to support Respondents' improper request(s) that the Court impose sanctions upon Appellant, and pursuant to Rule 269, SCACR, which clearly establishes; **a**) "willful disobedience" to Rule 269, SCACR (**counts 1-3**), in terms of failing have a valid or existing theory to base the request for sanctions upon; **b**) "bad faith" conduct, in terms of filing vexatious and frivolous pleadings with intent to harass and injure the pro se Appellant; and **c**) "gross indifference" to Appellant's "rights" in terms of Respondents' failure to ensure Appellant's due process right to reasonable notice and the opportunity to be heard regarding the alleged sanctionable conduct, which is ten (10) days' prior notice, as set by Rule 269, SCACR, to respond and object to the Respondents'-alleged sanctionable acts or omissions. Baughman. Motion for Sanctions. Respondents' Return. Rule 241(a), SCACR. Griffin. Bevilacqua. Rule 269, SCACR. FCSPA.

Third, a severe sanction is warranted based on the repeated requests, by Respondents' not once, but on three (3) separate instances, in identified Returns filed by Respondents' (Motion for Sanctions, Att. A-C), improperly requesting and moving that the Court impose sanctions upon Appellant, and pursuant to Rule 269, SCACR, and in Respondents' Returns instead of moving under required separate cover of a "motion", which clearly establishes; **a**) "willful disobedience" to Rule 269, SCACR (**counts 4-6**), in terms of failing to file proper 'motions' for sanctions instead of Returns for sanctions; **b**) "bad faith" conduct, in terms of filing vexatious and frivolous pleadings (Returns) requesting sanctions against Appellant with intent to harass and injure the pro se Appellant; and **c**) "gross indifference" to Appellant's "rights" in terms of

Respondents' failure to ensure Appellant's due process right to reasonable notice and the opportunity to be heard regarding the alleged sanctionable conduct, which is ten (10) days' prior notice, as set by Rule 269, SCACR, to respond and object to the Respondents'-alleged sanctionable acts or omissions. Baughman. Motion for Sanctions. Respondents' Return. Rule 241(a), SCACR. Griffin. Bevilacqua. Rule 269, SCACR. FCSPA.

Finally, Respondents' contention that "Appellant's argument that the Workers' Compensation Commission is a court of equity is plainly erroneous and barely warrants addressing other than to point out that Respondents deny his spurious allegations of bad faith" (Respondents' Return, p. 8-9), is misleading and inaccurate. Appellant did not allege that the Commission is a 'court of equity'; Appellant stated "because the instant appeal is an appeal from the South Carolina Workers' Compensation Commission, and specifically, is based on a workers' compensation claim, this matter is **rested** in a Court of equity" (Emphasis added) (Motion for Sanctions, p. 22), to establish that the Court of Appeals, not the Commission, in deciding this matter on appeal, is a Court of equity. Spoon v. Newsome Chevrolet Buick, 306 S.C. 438, 440 412 S.E.2d 434, 43435 (Ct. App. 1991).

However, this potential misunderstanding on the part of Respondents' is of no consequence, as Appellant contends whether the Court determines that Respondents' "hands" are "unclean" or not, willful disobedience; bad faith; and gross indifference to Appellant's substantial rights have been established, by clear and convincing evidence, and proper citation to authority, wherein the imposition of severe sanctions against Respondents' is warranted.

Only one party before this Court, and previously before the Circuit Court, has ever filed a proper "motion" for sanctions, which is the undersigned Appellant.

As such, and *excluding* the alleged extrinsic fraud upon the court (which would certainly

establish 'bad faith' conduct), Appellant contends the Court should impose an appropriate severe sanction upon Respondents' as required by law. Baughman. Motion for Sanctions. Respondents' Return. Rule 241(a), SCACR. Griffin. Bevilacqua. Rule 269, SCACR. FCSPA.

7. On Return, this Court should categorically reject Respondents' arguments and evidentiary submissions respective to Supreme Court Appellate Case No. 2016-002258 on grounds that Respondents' lack standing.

In reply, a review of page 8 of Respondents' Return establishes that Respondents' have advanced arguments, to include evidencing several of Appellant's pleadings (Respondents' Return, Att. C, E) filed before the Supreme Court under Appellate Case No. 2016-002258. Id. Respondents' have also evidenced in this matter a "Response of US Food Service, Inc. and ACE American Insurance Company c/o Gallagher Bassett Services, Inc. in Opposition to Motion for Leave to Reinstate and/or in the Alternative for Relief from Judgment" (Respondents' Return, Att. D). However, the Court must categorically reject the arguments raised and evidence relied upon by Respondents' because they lack standing before the Supreme Court; has never filed a pre-requisite 'Motion to Intervene' regarding Appellate Case No. 2016-002258; the Supreme Court has not issued an Order granting standing and naming Respondents' as a party to Appellate Case No. 2016-002258, and as such, the arguments and evidence are inadmissible.

Specifically, it is well settled law that "Intervention is a procedural device whereby a third party who is not named in an existing lawsuit, but who has an interest in its outcome, may become a party to the action." In re Horry Cnty. State Bank, 361 S.C. 503, 507, 604 S.E.2d 723, 725 (Ct. App. 2004); *also see* Casey Edward and Justin Williams v. State and S.C. Association of School Administrators v. Hon. Mark Sanford, Order No. 2009-05-22-03 (Sup. Ct. 2009)(holding "if any of the parties in either action desire to intervene in the other action, they **must** serve and file a **motion to intervene**") (Emphasis added).

Here, a review of the caption of Appellate Case No. 2016-002258 establishes that the only named "Respondent" to that action is the Honorable James Edward Lockemy. Respondents' Return, Att. C. While Petitioner did provide Attorney Erin L. Hantske with true copies of all pleadings Appellant filed in Appellate Case No. 2016-002258 *as a courtesy*, Petitioner did not name US Foods; ACE American Insurance; Gallagher Bassett Services; or Erin L. Hantske, Esq., and McAngus Goudelock and Courie, LLC as "Co-Respondents". Id.

Furthermore, to date, Attorney Hantske has failed to file a required 'Motion to Intervene' with the Supreme Court, respective to Appellate Case No. 2016-002258, instead, Attorney Hantske has again *circumvented* procedure, and the law, by improperly filing responses to the Supreme Court, to include *improperly* submitting inadmissible evidence in this matter, without ever obtaining proper authority from the Supreme Court to participate in Appellate Case No. 2016-002258. In re Horry Cnty. State Bank. Condon v. State, 354 S.C. 634, 642, 583 S.E.2d 430, 434 (2003) (holding "[T]he Attorney General is required, like everyone else, to formally intervene and become a named party before he can file an appeal.").

Further, in Alexander Guice v. Hon. William P. Keesley, Appellate Case No. 2014-002625, Respondents' did the exact same thing, in terms of filing frivolous responses with the Supreme Court in that case without ever filing a motion to intervene, and without the Supreme Court ever granting Respondents' standing to lawfully participate. In fact, Respondents' have erroneously included documents from Appellate Case No. 2014-002625 in their Designation of Matter to be included in the Record on Appeal if this matter proceeds through final briefing. *See* Respondents' Designation of Matter (Designation Nos. 87-94).

Respondents' respectfully must be restrained from this reckless conduct where they apparently could care less about the rule of law or procedural processes, and it is apparent that

this Court must take appropriate action to restore the highest ethical standards of professional conduct to insure and preserve trust in the integrity of the bar. Latham v. Matthews, Docket No. 6:08-cv-02995, 2011 WL 52609, at *2 (D.S.C. Jan. 6, 2011). As such, and at a minimum, the Court should categorically reject Respondents' inadmissible and vexatious arguments and evidence relative to Appellate Case No. 2016-002258, as set forth in Respondents' Return as a matter of law. Condon. Respondents' Return.

CONCLUSION

Based on the foregoing, this Court should patently reject the contentions set forth in Respondents' Return and grant the relief as stated in Appellant's Motion for Sanctions. If the Court denies the Motion for Sanctions, this Court should take appropriate action to immediately vacate the July 17, 2015 Circuit Court Order and remand this matter back to the Circuit Court based on clear due process violations, lack of subject matter jurisdiction, and established extrinsic fraud upon the court. In addition, Appellant request that the deadline for filing the Record on Appeal be suspended until such time as this Court rules on this Motion.

Respectfully submitted,

By: 

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Appellant, Pro Se

December 17, 2016

ATT. 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	CASE NUMBERS: 2013-CP-32-01272
		2014-CP-32-00399

ALEXANDER GUICE,

Employee,

Appellant,

v.

US FOODSERVICE, INC.,

Employer,

and

ACE AMERICAN INSURANCE COMPANY, c/o GALLAGHER BASSETT SERVICES, INC.,

Carrier,

Respondents.

COPY

SUPPLEMENTAL ADMINISTRATIVE ORDER REGARDING RULE 63, SCRCP, AND DETERMINATION TO HOLD A *DE NOVO* HEARING ON THE PENDING RULE 59 MOTION OF THE EMPLOYER/CARRIER, AND SETTING THE DATE FOR HEARING THE RULE 59 MOTION AND ALL PENDING MOTIONS

LPEC #1

On December 9, 2014, this court issued an administrative order regarding the procedures being followed on the employer's/carrier's pending motion to alter or amend an order issued by The Honorable Brian M. Gibbons.1 The court directs that a *de novo* hearing be held on the motion to dismiss that was originally considered by Judge Gibbons.

Judge Gibbons issued an order, which the appellant challenged. The judge then issued an order to vacate his previous order. The employer/carrier moved to alter or amend so as to have the order to vacate made more specific. However, Judge Gibbons recused himself, and he has indicated, because of the recusal, that he is unavailable to handle the pending

1 The administration of this case has been delayed while the court waited on the disposition of matters filed by the employer with the Supreme Court of South Carolina.

reconsideration motion. Having evaluated the issue under Rule 63, SCRCP, and the February 4, 2011 administrative order of the Chief Justice, the court finds that the procedural result would be the same, whether the court can certify familiarity with the record under Rule 63 or not, because one really does not need to go beyond the face of the order to vacate issued by Judge Gibbons. He vacates his previous order and directs a hearing to be held in conformity with the ruling of the South Carolina Court of Appeals. If the court were not able to certify sufficient familiarity with the record, the result would be the same: a *de novo* hearing.

If Judge Gibbons did not have the record from the Workers Compensation Commission before him at the time he heard the employer's/carrier's motion to dismiss, and if he only had one of the two files that have been generated in circuit court, he has dealt with any issue of not having necessary files by vacating his order dismissing the case. In addition, it appears that Judge Gibbons considered email correspondence and other objections raised by the appellant that may or may not have been filed. Since those submissions were provided in a non-traditional manner, it is not certain at this point whether the files include all the things that Judge Gibbons considered. Again, if there is an issue about the inability to certify familiarity with the record, the proper action would be a *de novo* hearing.

Judge Gibbons stated in his order to vacate that he had concluded that he had not ruled on all the issues that he deemed to be mandated by the Court of Appeals. The court is aware that the appellant is reading Judge Gibbon's order to vacate as a final order determining that he is entitled to all the relief that he has sought, including back wages and reinstatement to his former employment. In order to avoid prejudice to the parties, and to preserve the record for any review needed, the court directs that a *de novo* hearing be held on the original motion to dismiss filed by the employer/carrier.

The hearing on all pending motions, including but not limited to the *de novo* hearing on

the Rule 59 motion, will be held at the Westbrook/Lexington County Judicial Center on Friday, March 27, 2015, at 10:00 a.m., unless further instructions are given by the court. The court will not entertain submissions by email. Anything that a party wants to submit for any of the motions must be filed in advance of the hearing as provided by the South Carolina Rules of Civil Procedure, unless allowed to be entered into the record at the hearing. Further, the failure to appear may be deemed an abandonment of any claims made in any pending motions. If the motion to dismiss is not granted, the court will plan to schedule a hearing on the merits during the month of May 2015.

AND IT IS SO ORDERED.

COPY

William P. Keesley
Chief Judge for Administrative Purposes

March 3, 2015

#3

ATT. 2

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS
ALEXANDER GUICE, Claimant, v. US FOODSERVICE, INC., Employer, and ACE AMERICAN INSURANCE COMPANY C/O GALLAGHER BASSETT SERVICES, INC., Carrier, Defendants.	)	Civil Action No. 2013-CP-32-01272 **DEFENDANTS' REPLY TO CLAIMANT'S MOTION FOR ENTRY OF CLERK'S DEFAULT**

YOU WILL PLEASE TAKE NOTICE that the above-named Defendants hereby respond and object, to Claimant's motion for entry of clerk's default on the following grounds:

1. According to Claimant's Motion for Entry of Clerk's Default, Defendants were served a copy of Claimant's complaint and summons on April 22, 2013.

2. On May 2, 2013, Defendants filed a motion to dismiss this matter for lack of subject matter jurisdiction to hear Claimant's appeal as Claimant has not exhausted all administrative remedies prior to filing an appeal with the circuit court.

3. The Defendant's motion to dismiss is based upon SCRCP rule 12(b). Specifically, the Defendants motion to dismiss is based upon SCRCP rule 12(b)(1)

lack of jurisdiction over the subject matter, and SCRCP rule 12(b)(6) failure to state facts sufficient to constituted cause of action and SCRCP rule 12(b)(8) another action is pending between the same parties for the same claim.

4. According to rule 12(b) a motion asserting any of these defenses shall be made before pleading if a further pleading is permitted.

5. Moreover, Defendants assert, pursuant to rule 12(a), Defendants shall serve an answer within 30 days after the service of a complaint, rather than the 10 days as alleged by Claimant.

6. Pursuant to rule 12(a) Defendants maintain they may respond timely to Claimant's complaints so long as the answer is served by May 22, 2013.

7. In addition to responding to Claimant's motion for default judgment, Defendants seek an order for sanctions, fees and penalties including reasonable attorney's fees incurred in responding to Claimant's multiple motions and complaint as each motion filed along with Claimant's complaint does not stand on good ground to support it, nor has Claimant communicated orally or in writing, with counsel for Defendants in an effort to attempt in good faith to resolve the matter contained in Claimant's motion.

WHEREFORE, Defendants respectfully request that Claimant's motion for entry of clerk's default be denied as Defendants are well within the 30-day time frame provided by rule 12(a) and further requests an order for sanctions, fees, and costs including reasonable attorney's fees incurred as a result of Claimant's multiple motions and complaint pursuant to rule 11(a).

Respectfully submitted,

ERIN L. HANTSKE
MCANGUS GOUDELOCK & COURIE, L.L.C.
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Mt. Pleasant, South Carolina 29465
(843) 534-0101
Attorneys for the Employer/Carrier

Charleston, South Carolina
May 10, 2013

ALEXANDER GUICE, Employee, Claimant, vs. US FOODSERVICE, INC., Employer, AND ACE AMERICAN INSURANCE COMPANY C/O GALLAGHER BASSETT SERVICES, INC., Carrier, Defendants.	}	IN THE COURT OF COMMON PLEAS Civil Action No. 2013-CP-32-01272 **CERTIFICATE OF SERVICE**

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Alexander Guice
(via U.S. Mail and Certified Mail)
Post Office Box 45062
Tampa, Florida 33677

DOCUMENT: Defendants' Reply to Claimant's Motion for Entry of Clerk's Default

DATE OF MAILING: May 16, 2013

Susan M. Moten

Susan M. Moten
Legal Assistant to Erin L. Hantske

McAngus Goudelock & Courie LLC

ATTORNEYS AT LAW

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

May 16, 2013

The Honorable Beth A. Carrigg
Lexington County Clerk of Court
205 East Main Street, Suite 146
Lexington, South Carolina 29072

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

Dear Ms. Carrigg:

Please find enclosed the original and one (1) copy of Defendants' Reply To Claimant's Motion For Entry Of Clerk's Default in the above-referenced case. Please file the original and return a clocked copy to me in the enclosed self-addressed, stamped envelope. By copy of this letter, I am serving a copy of the same upon Alexander Guice, *pro se* Claimant.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

Erin L. Hantske

ELH/smm
Enclosures
cc: Alexander Guice (w/encl.) (via U.S. Mail & Certified Mail)
Lisa Purvis, US Foods, Inc. (w/encl.) (via e-mail)
Don Merritt, Gallagher Bassett Services, Inc. (w/encl.) (via e-mail)
Cheryl McLaughlin, US Foods, Inc. (w/encl.) (via e-mail)
Virginia L. Crocker, S.C. Workers' Compensation Commission (w/encl.)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Successor Circuit Court Judge

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

Appellate Case No. 2015-001821

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

Alexander Guice, Employee, Appellant,

v.

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

PROOF OF SERVICE

I hereby certify that the Respondents', through Counsel, were provided a true copy of a cover letter to the Clerk; a 'Reply to Return to Motion for Sanctions for Repeated Violations of Rules 241(a) and 269 of the South Carolina Appellate Court Rules'; and a proof of service, by depositing the same in the US Postal Service, via Priority Mail, and addressed to: **Erin L. Hantske, Esq., P.O. Box 650007 Mt. Pleasant, SC 29465** on this 17th day of December, 2016.

By: _____

Alexander Guice
U.S. African American Citizen
P.O. Box 13281
Tampa, FL 33681
(813) 562-0547
alguice@hotmail.com
Appellant, Pro Se

December 17, 2016

Alexander Guice

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

December 17, 2016

Via Priority Mail

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

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

Dear Ms. Kitchings:

Please find enclosed with this cover letter an original and seven (7) copies of a 'Reply to Return to Motion for Sanctions Against Respondents' for Repeated Violations of Rules 241(a) and 269 of the South Carolina Rules of Appellate Procedure'; and an original and a copy of a proof of service in regards to the above-entitled action. Please forward to the appropriate personnel for processing, and please return clocked copies of the same to the undersigned in the pre-paid self-addressed envelope enclosed for your convenience.

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

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

Very truly yours,

Alexander Guice
Appellant, *pro se*

Enclosures: As stated

cc: Erin L. Hantske, Esquire

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