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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2014-002416

William Lee Turner, Employee, ... Appellant,

v.

SAIIA Construction, Employer, and
Old Republic General Insurance Corporation
c/o Gallagher Bassett Services, Inc.,
Carrier, ... Respondents.

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, the Appellant hereby petitions the Court for rehearing as to the Opinion issued in the above-referenced matter filed on December 7, 2016, and on the following points that the Appellant would respectfully submit to the Court that the Court overlooked or misapprehended in its decision in this matter as set forth hereinafter:

1. That in its holding that the unexplained death or

injury presumption does not apply where the employee survives the injury but has no memory of the events leading up to the injury, the Court misapprehended or overlooked several decisions of the Supreme Court; several principles established by several lines of cases of the Supreme Court differentiating the presumption in different fact situations; and the application of several fundamental principles applicable to review in workers' compensation claims in injury by accident claims in South Carolina cases that is antithetical to North Carolina Law. If this decision is allowed to stand as is, not only will this result in a denial of benefits to Mr. Turner but it will be applied to deny benefits to hundreds of workers suffering very common unwitnessed injuries such as third shift police officers found injured in a lonely part of the police station or alone while responding to a potential crime; the night shift nurse found injured in the parking lot or in a lonely part of the hospital; the teacher found after a parent/teacher conference in the evening at school or the hallway or auditorium stage during class; the one car or truck accident; the electrician found on the concrete floor next to a three, six or twelve foot ladder; the fireman injured alone at the back of a house or in the fire station; a night watchman; a third shift plant worker or a construction worker last seen on the third floor, second floor or the first floor or beside scaffolding or found at the base of stairs, etc., etc. Their only crime being they were doing their jobs alone and their injuries resulted in even a brief period of memory loss resulting from even a minor

head injury and their injuries were unwitnessed.

First, in reference to all of the opinions of the Supreme Court referred to by the Court applying the unwitnessed injury or death presumption, the Court will, like the Court's quote, find in every one of those decisions that the Supreme Court refers to the presumption as:

> ". . . that one charged with the performance of a duty and **injured** while performing that duty, or found **injured** where his duty required him to be, is **injured** . . ."

In no case does the Supreme Court limit the presumption only to cases where the Claimant died from his injuries. It is simply speculation on behalf of the Court that the Supreme Court would not extend or apply the presumption to cases where the Claimant was simply injured in the course of employment but had no memory of what occurred. Also, in refusing to apply the presumption to non-death injury cases, the Court criticizes the Appellant for his failure to cite to,

> "any South Carolina Case Law extending the presumption, heretofore applied only in death cases, to cases to where the employee survives but has no memory of the injury".

In that regard and based on a clear reading of the presumption since its establishment by our Supreme Court and this Court's responsibility to liberally apply those decisions especially where our Supreme Court has clearly spoken which it has in the area of injury by accident wherein South Carolina does not follow and specifically rejects North Carolina law, Counsel for the Appellant

did not think that he had to submit such a case to the Court for its consideration. With that said, the Court in its analysis specifically not only misapprehended but overlooked the decisions of the Supreme Court wherein the Supreme Court has specifically ruled that it would apply the death and injury presumption to cases where the Claimant did not die from his injuries. Specifically, in the case of Fowler v. Abbott Motor Company, 236 S.C. 226, 113 S.E.2d 737 (1960), the following are the facts presented to the Court in pertinent part:

> "The automobile owned by Abbott Motor Company and driven by the Employee was in a collision with a tree ... the Respondent is now mentally and physically disabled and is a patient in a hospital in Columbia, South Carolina."

In Fowler, the Court clearly stated that it would apply the presumption in an injury situation:

> "It is true that at the time the Claimant was injured, the direct evidence shows that he was driving an automobile owned by the Employer and furnished to the Employee as part of his contract of employment. Counsel for the Respondent asserts that the other evidence, which is circumstantial, is sufficient to justify the inference **and the presumption** that Claimant's injury arose out of and in the course of employment."

The Court in making that specific holding in Fowler, cited to the case of Owens v. Ocean Forest Club, Inc., 196 S.C. 97, 12 S.E.2d 839 (1947) in regards to the presumption. However, the Court did not apply the presumption not on the basis that his injury did not arise out of the employment but on the basis that the evidence did not establish that his injury occurred during the course of his

employment and again cited to the presumption and to the facts as follows:

> "Again, **we cannot apply the presumption** asserted by the Respondent **for the reason that** he has failed to show that he was using the automobile of his employer **at a place and a time where his duty as an employee required him to be**. There is no evidence in the Record that the Respondent, at the time of his injury **was performing any duty** for his employer."

Also, in Fowler, the Court cited to and reaffirmed the holding in another death or injury presumption case as to the application of the presumption and the two prongs of the presumption, the one being, "arising out of" the employment and the other being, "in the course of" the employment in determining that the injury to Mr. Fowler did not occur, "in the course of" his employment. The Court cited to the unexplained, unwitnessed death or injury presumption as applied in the case of Eargle v. South Carolina Electric & Gas, 205 S.C. 423, 32 S.E.2d 240, wherein the Court specifically cited to and re-cited the long time accepted definition of, "arising out of" the employment. Quoting from Eargle, a case in which Mr. Eargle's death was unwitnessed on his way to work where he had been called in due to an emergency at the plant:

> "It **(the injury) arises 'out of the employment' when there is** apparent to the rational mind upon consideration of all the circumstances, **a causal connection between the conditions under which the work is required to be performed and the resulting injury**. Under this test, if the injury can be seen to have **followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a**

result of the exposure occasioned by the nature of the employment, then it arises out of the employment." (Emp. add.)

Therefore, the Supreme Court has specifically stated that it would apply the unexplained death and injury presumption to a situation where the injured worker lived but had no memory of or due to his injuries could not tell anyone what happened and where the injury was unwitnessed.

Next, in the Opinion the Court misapprehends the two distinct lines of cases involving two different types of injuries that establish a difference in the application of the presumption depending on the type of injury that occurred. There is one line of cases that holds that where the type of injury involved is accidental in nature such as in this case, a fall or slip and fall, "arising out of" is established by the accidental nature of the injury versus the other line wherein the injury results from a natural condition such as a heart attack, seizure or aneurysm which requires additional proof of a causal connection to the work activities such as under the heart attack standard that the Claimant was exposed to unexpected strain or overexertion or to unusual or extraordinary conditions in the employment resulting in the heart attack or natural condition; such as was found sufficient in Buff v. Columbia Baking Company, 215 S.C. 412, 53 S.E.2d 879 (1949) (electrocution) versus Jennings v. Chambers Development Corporation, 335 S.C. 249, 516 S.E.2d 453 (SC App. 1999) (in sufficient evidence of overexertion or exposure to

unusual or extraordinary conditions of employment).

Next, the Court misapprehended or overlooked that as a matter of law whether injury by accident occurred as defined under South Carolina Law is the key and is the basis for the application of the, "arising out of" prong of the presumption and that since 1939 that definition has been exactly and specifically opposite to the definition applied in North Carolina. In 1939, as will be further discussed in the, "Arising Out Of" section of this Petition as set forth hereinafter, our Supreme Court specifically rejected the North Carolina definition of injury by accident and its opinions in this area. As cited in Eargle, South Carolina only requires that there be an unexpected or unintended "result" from the work activity to constitute injury by accident under South Carolina Law. When the worker is at a time and place (in the course of) and sustains an unexpected result from the work activities, the "arising out of" prong is met. This Court reiterated that definition in its decision in Jennings, supra.

The Court also misapprehends that South Carolina has or would recognize the "inequity of information" concept as applied by North Carolina. Our Appellate Courts have always been committed to a liberal construction of the language of the Act in their decisions and in the application of its guiding principles in favor of benefits to the worker to achieve its "beneficent purposes" with its "presumptions" and its interpretations aimed at avoiding any "harsh or incongruous" results and providing coverage versus non-coverage. (Webster, "incongruous" defined - not

harmonious; incompatible). Cokely v. Robert Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941). The concept of an "inequality of information" is totally contrary to those guiding principles and in fact it smacks in the face the entire body of our South Carolina workers' compensation jurisprudence. It is also totally illogical. There is no logical or legal difference between a dead worker or a brain dead worker or a worker in a coma and their ability to testify.

Finally, the Court states that even if it were to apply, the unexplained death or injury presumption, that there was substantial evidence upon which the Commission could rely to rebut the presumption. The Court at great length discusses all of the evidence prior to the date of the event and relates none of the specific evidence that applied to the specific day of the event; i.e., the time and place of the accident. All of the witnesses, and the Appellant would reiterate all of the witnesses, including the Appellant's supervisor, all testified that on the date of the accident (as defined in South Carolina, Layton, supra) he was in top notch shape, there was absolutely nothing wrong with him and he was in the best shape that they had seen. Quoting his supervisor, Mr. James Speegle:

> "Q: Did he seem to be okay the Thursday that he fell?
>
> A: **Oh absolutely.** Thursday he was -- he was like himself, better than he had been, than he had been all week. I mean he was just -- he was lively and from what I understand he was blowing his horn and having fun, cutting

> up, you know . . . no signs of -- not that I know of that anything was wrong with him prior to that. (Emp. add.) (Tr., p. 330, ll. 3-10).

There is absolutely **no** contrary evidence in that regard and plus there is absolutely no evidence and the Appellant would reiterate, no evidence, that the Court can cite to or cites to in its opinion or in any way from the Record that the Claimant was suffering from any natural condition that could have resulted in his injury by accident; again, as defined under South Carolina law, not North Carolina law.

2. That as to section **II. Findings of Fact** of the decision the Court misapprehended the argument being made. The Appellant did not to his knowledge, challenge any of the six (6) Findings of Fact (4, 5, 6, 9, 10 and 11) listed in his argument and specifically agrees with those Findings of Fact and would agree that all of those Findings of Fact as set out in the decision are supported by substantial evidence. However, the argument being made was and is, after the conjunctive word, "and", in the argument that the Commission then erred by failing to apply the law as set out under Conclusions of Law #9 and #10 to those Findings; and under Conclusion of Law #10 by trying to "factually" distinguish the legal presumption.

The Appellant agrees that the Court cannot and should not substitute its decision on the weight of the evidence on questions of fact where the Commission is the ultimate fact finder. However, with all of that said, on any, "essential issue" before the

Commission for the decision, the Commission's decision cannot be based on surmise, speculation or innuendo and must be specifically based on substantial evidence in the Record on that specific, "essential" issue for decision and the law applicable to that decision. The essential issue for a finding by the Commission both factually and legally and on which there is absolutely no contrary evidence to that as cited above is the Claimant's condition on the date and time of the accident and whether there is any substantial evidence of any natural occurring condition such as an illness, seizure, etc. from which the Claimant was suffering on the date of injury by accident; if any. It is not an essential issue as to what his condition was the day before and it is not a question of what it was the day after. The evidence in the Record is that he was in top notch shape, feeling wonderful, the best he had been on the date of the accident and there is absolutely no evidence of any seizure, illness, medication or other condition that could have caused (or again that constitutes, "substantial evidence") the injury by accident. The argument was and is that based under the Findings of Fact and applying the presumption and the definition of injury by accident to those facts and the undisputed circumstantial evidence of accidental injury unless there was evidence of a natural condition at that date and time, the Commission erred in the application of the presumption and injury by accident to those facts. The Claimant fell and under the definition of injury by accident in South Carolina, he does not have to prove the cause of the fall, at

least not since 1939 in the case of Layton v. Hammonds-Brown-Jennings Co., 190 S.C. 425, 3 S.E.2d 492 (1939), wherein again the Supreme Court of South Carolina specifically broke with the North Carolina and held under South Carolina law that simply the, "unexpected" result from the work activity constitutes injury by accident under our law. (The Appellant would also note that two (2) members of the Court Panel are former Circuit Court Judges and would submit that the Appellant would be entitled to a directed verdict based on the evidence in the Record.)

3. Under section III **Arising Out of Employment** holding that Mr. Turner did not establish that his injury arose out of the employment, the Court misapprehended and/or overlooked the holdings of the Supreme Court as to: what constitutes arising out of; and the application of and the definition of injury by accident; and failed to apply the Supreme Court's holdings specifically in the cases of Barnes v. Charter One Realty, 411 S.C. 391, 768 S.E.2d 651 (2015) and Nicholson v. South Carolina Department of Social Services, 411 S.C. 381, 769 S.E.2d 1 (2015).

First the Court in this section of the Opinion concerning the, "arising out of" the employment prong of the definition of injury by accident requires, based on a witnessed but, "unexplained fall" situation, that it is not compensable unless the employment contributed to, "either the **cause** or the effect of the fall", citing Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955). Cause is not and has never been a part of

the definition of compensable injury by accident under our law. Beginning before but specifically in 1939, the Supreme Court defined injury by accident in the case of Layton v. Hammonds-Brown-Jennings, Co., 190 S.C. 425, 3 S.E.2d 492 (1939). In Layton, and very importantly to the reliance on North Carolina Law by the Court, the Supreme Court was faced with the two competing definitions of injury by accident and again specifically chose not to follow and specifically rejected the definition adopted by North Carolina. Because that case has and still serves as the basis for and sets out the definition of injury by accident which was applied even in Barnes and Nicholson, the Supreme Court's decision in Layton as to the two competing definitions and the one chosen by South Carolina is set out in pertinent part:

> "Even so, we have such respect for the North Carolina Court and its Chief Justice, author of the Slade opinion, that we consider the holding therein as highly persuasive and entitled to great weight, **but find that we are circumscribed by the Rule as stated by our own Court** in Goethe v. New York Life Insurance Company, 183 S.C. 199, 217, 190 S.E. 451, 458, as follows:
>
> The Rule clearly deductible from the overwhelming weight of authority is that, **when injury or death follows or results from a voluntary act of the insured, and the act is one which is not manifestly dangerous, but which is ordinarily done or performed without serious consequences to the doer, such result is caused by accidental means.**
>
> This is nowhere better stated than by Sandburn, J. in Western Commercial Travelers Association v. Smith, 85 F. 401, 405, 29 C.C.A. 223, 56 US App. 393, 40 L.R.A. 653, where he says:
>
> **'An effect which does not ordinarily follow and cannot be reasonably anticipated from the use of**

> **those means an effect which the actor did not intend to produce and *** cannot be charged with the design of producing, *** is produced by accidental means'** ... one of the purposes of the Workmen's Compensation Act is to protect and partially compensate employees who are injured while engaged in the regular course of their employment **irrespective of mishap independent of the injury itself**, and/or negligence on the part of either the employee or the actor." (Emp. add.). 3 S.E.2d 492, at 496.

Then in the case of Hiers v. Brunson Construction Company, 221 S.C. 212, 70 S.E.2d 211 (1952) **as restated ever since** and as restated in Stokes v. First National Bank, 306 S.C. 46, 410 S.E.2d 248 (1991) the "unexpected" result from the work activity constitutes injury by accident. Quoting in pertinent part from Stokes quoting Hiers:

> "No slip, fall or other fortuitous event or accident **in the cause of the injury is required; the unexpected result** or industrial injury itself considered the compensable accident." (Emp. add.).
>
> This is the exact same definition that is referred to and cited as part of the actual holding, not the dissent in Nicholson which is as quoted by the Court in pertinent part:
>
> "The circumstances of her employment required her to walk down the hallway to perform her responsibilities and in the course of those duties, she sustained an injury. We hold these facts, establish a causal connection between her employment and her injuries - **the law requires nothing more** because Nicholson's fall happened at work **and was not caused by a condition peculiar to her**, it was causally connected to her employment. Therefore, her injuries **arose out of her employment as a matter of law** and she is entitled to workers' compensation." (Emp. add.).

In fact, this is the same exact definition quoted in Jennings citing Stokes and in fact this Court in Jennings quotes the same

definition of "arising out of" that is set out in Eargle v. South Carolina Electric & Gas, supra. [On a side note the Court will find based on a search of precedents/research stream that both Eargle and Jennings and all of the decisions in between trace to the Supreme Court decision in Thompson v. J.A. Jones Constr. Co., 199 S.C. 304, 19 S.E.2d 276 (1942).] The definition of "injury by accident" and the prong "arising out of" have not changed since the inception of the Act.

An injured worker has never had to prove cause. He has only ever had to prove an unexpected result from the work activity. Mr. Turner was at a time and place where his job required him to be and all of circumstantial evidence is that he was involved in his work activities when he sustained injury and there is absolutely no evidence in the Record that that injury was caused, "by a condition peculiar to" him or by anything other than it was simply the "unexpected result" of the work activity and therefore causally connected to his employment.

Also, because the Court quotes from the North Carolina Court concerning the, "inequality of information" available to the employer versus the employee and because our Supreme Court has already stated in reference to accidental injury that we do not follow North Carolina precedent in that regard, a further quotation from the Layton v. Hammond-Brown-Jennings Company, supra, decision, is appropriate. After quoting the fundamental construction principle that is to be applied to workers' compensation wherein the Act is to be given a liberal

interpretation in favor of benefits to the injured worker, the Court addresses its opinion in reference to the North Carolina concept of, "inequality of information", quoting:

> "One of the purposes of the Workers' Compensation Act is to protect and partially compensate employees who are injured while engaged in the regular course of their employment **irrespective of mishap independent of the injury itself.**"

It is a fundamental principle that the Act is to be liberally construed as the Supreme Court and this Court have always held. This principle is in no way a reference to what the Court referred to as a, "liberal construction of the evidence". This is in reference to a liberal construction of the law that applies and the Court simply misapprehended or overlooked the definition of injury by accident by requiring the need by an injured worker to prove a cause versus the unexpected result being the accident itself.

Further, the Court actually misapprehended and misapplied its own decision in Crosby v. Wal-Mart Store, Inc., 330 S.C. 489, 499 S.E.2d 253 (SC App. 1998) which was specifically reversed, or at least limited to the facts in that case, by the Barnes v. Charter One Realty, supra, and the Nicholson v. South Carolina Department of Social Services, supra, decisions. In Crosby, this Court, contrary to its current decision, in discussing the two lines of cases involving unexplained falls, clearly indicated that it would apply the unexplained injury or death presumption and the, "arising out of" the employment presumption in an unwitnessed fall

situation where the claimant lived. Quoting from the Court's decision in Crosby:

> "Unexplained fall cases may be classified into to two main categories: (1) those in which the fall was unwitnessed or purely unexplained; and (2) those in which the evidence establishes that the fall while unexplained, had an apparent lack of work connection, the implication arising that the fall resulted from some pre-existing physical condition ...". (Emp. add.)

The Court went on to state that in those situations "where the fall is unwitnessed . . ." the Court has applied the unexplained injury or death presumption citing Jake v. Jones, 240 S.C. 574, 126 S.E.2d 721 (1962). This Court clearly indicated that if Ms. Crosby had died and since her death would have been occasioned by an unwitnessed unexplained injury accidental in nature, i.e., fall, and not the result of some established internal condition such as a seizure disorder, aneurysm or heart attack that it would have been compensable. It is also ironic that the Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955) decision so heavily relied on in both the Crosby Opinion and the current Opinion of the Court on the issue of "arising out of" actually specifically relies on a case applying the unwitnessed, unexplained death or injury presumption for the proposition that that prong may be established by circumstantial evidence surrounding the injury; i.e., Buff v. Columbia Baking Co., 215 S.C. 41, 53 S.E.2d 879.

Further, the Supreme Court decisions in Barnes v. Charter One Realty and in Nicholson v. South Carolina Department of Social

Services are in direct accordance with the definition of injury by accident but are also in direct accord with the application of the unexplained death or injury presumption as applied by the Supreme Court since their injuries were both caused by accidental means, "a fall" in those cases, had they died from their injuries. Even under this Court's Opinion that would be true; See: Crosby quoting Bagwell citing Buff. There was no evidence of an internal condition, "peculiar" to the Appellant causing injury and the arising out of the employment prong would have been filled by the unexplained death or injury presumption based on the undisputed circumstantial evidence at the time and date of injury. See: Buff, supra.

The Appellant would ask the Court to look back at the first part of this argument in reference to police officers, nurses, teachers and all workers for that matter, as to there being no logical difference in the application in reference to death versus no memory. As the Court states in the Opinion, the Commission's decision cannot be based on surmise, speculation or innuendo and it must be based on substantial evidence. There is simply no substantial evidence in the Record of any condition or cause of the fall in reference to the Claimant, Mr. Turner, on the date of the accident other than his work activities. Mr. Turner was at a place and performing duties that were part of his duties as an employee and thus his injury was in the course of his employment and since the unexplained fall was unwitnessed and occurred in the course of employment under our definition of injury by accident,

it is deemed to have arisen out of the employment because it is the, "unexpected result" from the work activity. Again, this has always been the holding by the Supreme Court, and this Court as a matter of fact, throughout the line of cases in reference to internal breakdown and injuries caused by physical conditions such as a heart attack, aneurysm, stroke and the standard applied to those types of conditions versus an injury which is accidental in nature such as a fall.

4. In reference to section IV **"Drafting Order"** of the Court's Opinion, the Appellant would submit that the Court misapprehended the facts and procedure in this case as compared to Brown and the argument made by the Appellant. While the Appellant disagrees and would ask for rehearing on this issue, the Appellant fully understands the Court's reliance on its previous decisions but takes exception not only to the holding but also that the argument that was being made has, "no merit".

There is no question that the law requires the Commission to make Findings of Fact and Conclusions of Law on the, "essential issues" before it for decision under the Administrative Procedures Act, the Workers' Compensation Act and the Commission's own Regulations as cited in the Brief and that the Findings of Fact are binding on appeal subject only to the Substantial Evidence Rule of Review. It is also undisputed, as is set forth in the Brief, that the Decision of the Commission Panel, which meets once a month, is a consensus decision of three members of the

Commission. Therefore, the Appellant would ask the Court to reconsider its decision in this regard in light of the following example. This Court in conjunction with its Law Clerks and Staff Attorneys reaches a consensus opinion and votes on that Opinion. The Court then drafts its Opinion which becomes a consensus opinion of three Judges of this Court. As was argued in the Brief, the opinion of the Full Commission is a consensus opinion and they are required by law to make their own Findings of Fact which are supposed to be set out in the Record. If we were to apply the same procedure that is being followed by the Commission in writing its Full Commission decisions which is being sanctioned by the Court, we could save the State a lot of money in reference to this Court's consensus Opinions if we would simply allow the Court to vote, reach its decision and then ask the prevailing party to fill in the blanks and write the Opinion of the Court for its review. That proposition is probably even more dangerous in this scenario where the Commission's decision on Findings of Fact, like a jury's decision, cannot be invaded unless there is a lack of evidence to sustain the decision.

As is argued in Brief, not only does the law require the Commission to make its own Findings of Fact and Conclusions of Law but the Appellant knows of no other situation wherein the prevailing party is allowed to write a, "consensus" opinion for multiple members of the deciding body. The same principles of due process, the Appellant would submit, applies to the concept of allowing a prevailing party to write the consensus opinion of the

Commission that would apply to allowing the prevailing party to write the opinion of this Court.

The Appellant would simply ask for reconsideration and rehearing on this issue in light of the law and in light of the binding effect of the facts on appeal especially under the facts in this case where without direction numerous Findings of Fact were added. The entire reason for the entire line of cases by the Supreme Court and this Court holding that the Commission must make detailed Findings of Fact and Conclusions of Law to support its decision is that the Commission takes the place of a jury and this Court and the Supreme Court are requiring the Commission to make those detailed Findings of Fact and Conclusions of Law so that the Court can determine the underlying reasoning and basis for the decision by the Commission not the prevailing party. The Appellant would again respectfully point out the danger in this to the Court by allowing a party to put in whatever Findings of Fact it wants to put in the Decision that are not based on any direction from the Commission, and then charge the Commission whose Members three and a half (3 ½) weeks out of every month are reviewing massive records on multiple cases that they are hearing, with having to find the time to go over with a fine tooth comb the decisions that have been written by the prevailing party to insure that Findings of Fact not made by the Commission are not included in that decision.

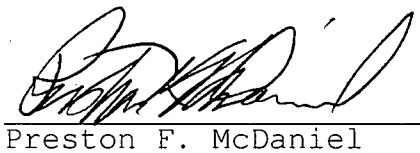
CONCLUSION

For all of the foregoing reasons, the Appellant would respectfully request Rehearing, and in light of the Court's decision finding that the Supreme Court has never applied and would not apply the unexplained death or injury presumption to situations where the injured worker did not die as a result of his injuries but simply has no memory or cannot testify as to what occurred, the Appellant would ask for Rehearing en banc and/or for Certification of the question to our Supreme Court for decision. Further, since the issue was not specifically raised, challenging the application of the unexplained death or injury presumption, under the principle of judicial restraint from deciding issues that need not be decided to reach a conclusion, the Appellant would ask that the opinion be withdrawn or redrawn in light of that Decision.

Further, the Appellant would ask for rehearing on, "arising out of" and the Findings of Fact and the drafting of the order sections for the reasons stated herein and particularly as to "arising out of" in reference to the definition by injury by accident and the definition of arising out of as has been determined by the Supreme Court and this Court of Appeals since the inception of the Act.

Finally, the Appellant would ask for Rehearing or Rehearing en banc or at the citation of precedent for the Court basing its Decision on the dissent in the Supreme Court as opposed to following the decisions of the Supreme Court.

Respectfully submitted by:



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December 21, 2016

THE STATE OF SOUTH CAROLINA
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SAIIA Construction, Employer, and Old Republic General Insurance Corporation c/o Gallagher Bassett Services, Inc., Carrier,.....Respondents.

PROOF OF SERVICE

I certify that I have served the **PETITION FOR REHEARING** by depositing a copy of it in the United States Mail, postage prepaid, on December 21, 2016, addressed to:

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Dated: December 21, 2016

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December 21, 2016

VIA HAND DELIVERY
Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
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RE: William Lee Turner v. SAIIA Construction and Old Republic General Insurance Corporation
Appellate Case No. 2014-002416

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Appellant's **PETITION FOR REHEARING** in the above-referenced matter, along with the required filing fee of $25.00. Please file the original and return a clocked-in copy to me in the enclosed, self-addressed, stamped envelope.

By copy of this letter, I am serving Counsel of Record with a copy of same.

Sincerely yours,

Preston F. McDaniel

PFM/kth
Enclosures

cc: Jason W. Lockhart, Esquire
Helen F. Hiser, Attorney
John Koon, Esquire
Mr. William L. Turner