

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

DEC 30 2016

**SC Court of Appeals**

Case No. 16-ALJ-07-0082-CC

A. O. Smith Corporation .....Appellant,

v.

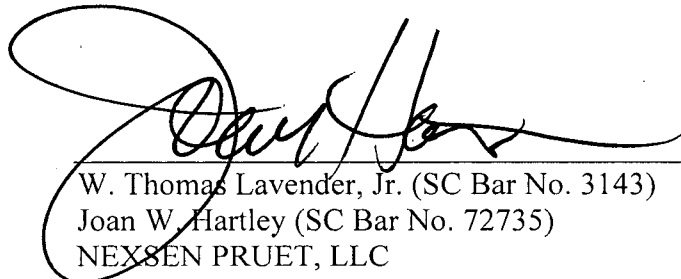
South Carolina Department of Health and Environmental Control  
and Town of McBee ..... Respondents.

**MOTION TO STRIKE PORTION OF RESPONDENT  
TOWN OF MCBEE’S DESIGNATION OF MATTER**

Pursuant to Rules 209(b) and 210(c) of the South Carolina Appellate Court Rules, Appellant A. O. Smith Corporation (“A.O. Smith”) respectfully moves the Court for an order striking Item 2 from Respondent Town of McBee’s Designation of Matter. Item 2 is an Order of the Town of McBee Municipal Election Commission dated September 20, 2016 (“Election Commission Order”). The Election Commission Order has no relevance to the issue before this Court and was not presented to the Administrative Law Court (“ALC”) in this matter. See Rule 209(b), SCACR (“[T]he Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal.”); Rule 210(c), SCACR (“The Record shall not, however, include matter which was not presented to the lower court or tribunal.”). According to the initial brief filed by Respondent

Town of McBee (“Town”), the Election Commission Order relates to an election in which the current mayor was a candidate. (Initial Brief of Respondent Town of McBee, filed December 16, 2016, p. 21, fn. 4). This appeal involves a decision by Respondent South Carolina Department of Health and Environmental Control under the South Carolina Primary Drinking Water Regulation. Moreover, the Election Commission Order was not presented to the ALC in this matter. Indeed, the Election Commission Order could not have been presented to the ALC because it was issued on September 20, 2016, more than a week after the ALC order dismissing A.O. Smith’s appeal. Accordingly, A.O. Smith asks this Court to issue an order striking Item 2 from the Designation of Matter and awarding A.O. Smith fees and costs incurred in filing this Motion.

Respectfully submitted,



December 28, 2016

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PROOF OF SERVICE

I certify that I served Initial Reply Brief of Appellant and Motion to Strike Portion of Respondent Town of McBee's Designation of Matter on counsel of record for Respondents by depositing a copy of them in the United States Mail, postage prepaid, on December 28, 2016, addressed to the following:

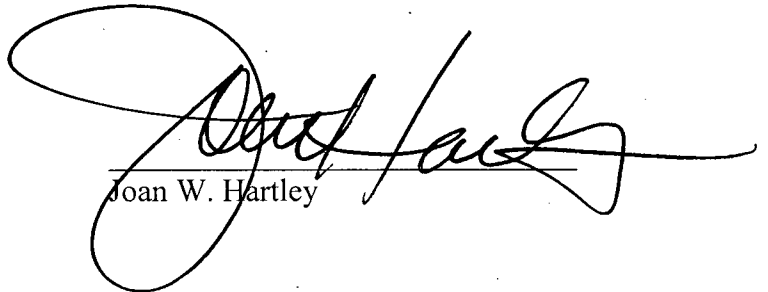
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