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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1204039

William Lee Turner, Employee,Appellant,

v.

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

**MOTION FOR LEAVE TO FILE
A RETURN IN OPPOSITION TO
PETITIONER'S REQUEST FOR ORAL ARGUMENT**

Pursuant to Rules 221(a) and 240, SCACR, Respondents SAIIA Construction and Old Republic General Insurance Corporation c/o Gallagher Bassett Services, Inc. hereby move for leave to file a limited return in opposition to Petitioner William Lee Turner's ("Petitioner") request for oral argument, contained in his Reply to Return in Opposition to Petition for Rehearing ("Reply"). Although additional responses typically are not allowed to a moving party's Reply, for the reasons set forth below, Respondents' request should be granted in this instance. Petitioner did not request oral argument in his Petition for Rehearing ("Petition") and has presented no valid reason why oral argument should be granted.

First, for the same reasons new issues or arguments cannot be raised for the first time in a reply brief, a request for oral argument is not proper where it is raised for the

first time in a reply. *E.g.*, Emerson Elec. Co. v. South Carolina Dept. of Rev., 395 S.C. 481, 489 n.6, 719 S.E.2d 650, 654 n.6 (2011) (declining to consider argument raised for the first time in a reply brief); Simmons v. SC Strong, 402 S.C. 166, 173 n.2, 739 S.E.2d 631, 634 n.2 (Ct. App. 2013) (argument not preserved for appellate review where it was raised for the first time in a reply brief). The reasons Petitioner puts forth to justify his request for argument existed at the time he filed his Petition and, in all fairness, should have been raised there. It is patently unfair to the opposing side to withhold a request for oral argument until a reply.

Second, Petitioner's proffered justifications for his request, *i.e.*, that certain "nuances" were not addressed during the first oral argument, and that "there [were] no questions asked about whether the Supreme Court would apply the presumption to an injury situation," (Reply, p. 5), do not support his request. In any given case, there are always "nuances" that are not fully explored in the limited time allowed for oral argument. And, as noted in Respondents' Return, Petitioner's opposition to this Court's statement regarding how the Supreme Court might resolve this issue is meritless. There is nothing novel about an intermediate appellate court resolving appeals in accordance with precedent set by a higher court and, where an issue may be novel, in reaching a resolution that it believes the higher court would reach. As a result, Petitioner's argument is no more than a red herring and should be rejected. Petitioner has had his chance to argue his case before this Court and should be denied any further oral argument.

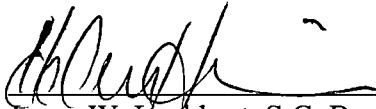
CONCLUSION

For all the reasons stated herein, this Court should deny Petitioner's request for oral argument and, particularly, for argument *en banc*.

Respectfully submitted,

MCANGUS GOUDELOCK & COURIE

January 13, 2017



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*Attorneys for Respondents SAIIA
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Insurance Corporation c/o Gallagher
Bassett Services, Inc.*

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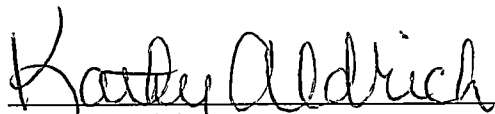
v.

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

PROOF OF SERVICE

I certify that on the 13th day of January 2017, I served the Respondents' **Motion for Leave to file a Return In Opposition to Petitioner's Request for Oral Argument** on William Lee Turner by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

Preston F. McDaniel, Esq.
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Columbia, SC 29201


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Legal Assistant to Helen F. Hiser
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*Attorneys for Respondents SAIIA Construction and
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Reply To

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Direct Dial: (843) 576-2930
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January 13, 2017

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: William Lee Turner v. SAIIA Construction and Old Republic General
Insurance Corporation c/o Gallagher Bassett Services, Inc.
Date of Accident: April 19, 2012
WCC File No.: 1204039
Our File No.: 2098.12265
Claim No.: 002979-030511-WC-01
Appeal No.: 2014-002416

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Motion for Leave to File a Return in Opposition to Petitioner's Request for Oral Argument, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the self-addressed, stamped envelope. Also enclosed is our firm's check in the amount of \$25 for filing the motion.

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

Yours truly,

McAngus Goudelock & Courie, LLC



Helen F. Hiser


Enclosures

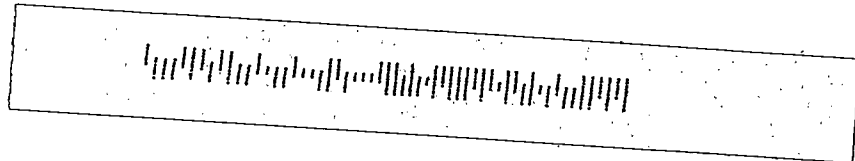
cc: Preston F. McDaniel, Esq.

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