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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM  
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Full Commission Decision

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Case No. 2017-000122

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Stanley H. Starnes.....Claimant, Respondent,

v.

Senn Freight Lines, Employer and Guarantee Insurance Company, Carrier.....Appellants.

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MOTION TO HOLD APPEAL IN ABEYANCE

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David Hill Keller  
Post Office Box 1509  
Greenville, SC 29202  
(864) 552-4622  
Attorney for Appellants

Other Counsel of Record:

Thomas P. Bellinger  
119 East Main Street  
Lexington, SC 29072  
Attorney for Respondent  
(803) 359-5523

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FEB 06 2017

SC Court of Appeals

Pursuant to SCACR Rule 240, the appellants, Senn Freight Lines and Guarantee Insurance Company request the court to stay and/or hold this appeal in abeyance upon the following grounds:

- 1) That the claimant was involved in a truck accident in the State of West Virginia occurring on or about August 7, 2013;
- 2) That the claimant subsequently suffered various conditions which were denied as being work-related by appellants;
- 3) That the matter was tried before a single Commissioner of the South Carolina Workers' Compensation Commission who found portions of the claimant's condition to be injuries by accident under Title 42 by Order dated July 13, 2016;
- 4) That the Order of the single Commissioner was affirmed by a three member panel of the full South Carolina Workers' Compensation Commission on December 21, 2016;
- 5) That the appellants timely appealed to the Court of Appeals on January 20, 2017;
- 6) That while the parties were waiting for the Order of the Full South Carolina Workers' Compensation Commission to be issued it came to the attention of the parties that the claimant/respondent, Stanley H. Starnes, died of causes unrelated to his workers' compensation claim on November 25, 2016;
- 7) That pursuant to South Carolina Code of Laws Annotated Section 42-9-280 in the event a workers' compensation claimant dies of causes unrelated to his workers' compensation claim any benefits to which he would have been entitled "shall be made to his next of kin dependent upon him support in lieu of the compensation the employee would have been entitled to had he lived";

- 8) That if a workers' compensation claimant dies of unrelated causes and does not leave "next of kin dependent upon him for support" the claim abates. Estate of Covington v. AT&T Nassau Metals Corp., 304 S.C. 436, 405 SE2d 393 (1991);
- 9) That in order to determine questions of dependency a hearing is required before the South Carolina Workers' Compensation Commission. South Carolina Code of Laws Annotated Section 42-17-40;
- 10) That the South Carolina Workers' Compensation Commission maintains exclusive jurisdiction over the terms and provisions of Title 42, and, therefore, a determination of dependency, if any, must be made by the South Carolina Workers' Compensation Commission. Estate of Covington; Owens v. Herndon, 252 S.C. 166, 165 SE2d, 696 (1969);
- 11) That in the event the respondent died without next of kin dependent upon him for support, the claim will have abated, but the Commission must make this determination. Id.;
- 12) Therefore, whether the appeal needs to go forward on the merits cannot be finally determined until a determination is made by the Commission concerning next of kin dependent for support under Section 42-9-280;
- 13) That the court has allowed appeals to be held in abeyance for purposes of judicial economy previously. Talley v. John-Mansville Sales Corp., 285 S.C 117, 328 SE2d 621 (1980); Lightner v. Hampton Hall Club, Inc., et. al., (Opinion No. 27700 filed February 1, 2017).

**It is therefore respectfully submitted** that the Court issue an Order holding the appeal in this case in abeyance until such time as a hearing can be held and an Order can be issued from

the South Carolina Workers' Compensation Commission determining whether the claimant/respondent, Stanley H. Starnes, had next of kin dependent upon him for support to which benefits would be payable or whether he had no such dependents, and the claim therefore has abated.

**It is further requested** that the Court issue an Order to the South Carolina Workers' Compensation Commission allowing them to set a hearing on the issue of next of kin dependent for support as soon as a dependency investigation can be completed and as soon as the Commission's schedule will allow thereafter.

February 2, 2017

Respectfully Submitted,



David Hill Keller  
Post Office Box 1509  
Greenville, SC 29202  
(864) 552-4622  
Attorney for Appellants

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PROOF OF SERVICE

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I certify that I have served the Motion to Hold Appeal in Abeyance on Stanley H. Starnes by depositing a copy of it in the United States Mail, postage prepaid, on February 2, 2017, addressed to his attorney of record, Thomas P. Bellinger, 119 East Main Street, Lexington, South Carolina 29072 and on the South Carolina Workers' Compensation Commission, addressed to Amy Bracy, Judicial Director, P.O. Box 1715, Columbia, South Carolina 29202.

February 2, 2017



David Hill Keller  
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Attorney for Appellants

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SC Court of Appeals

# Turner | Padget

**David H. Keller**

REPLY TO:

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February 2, 2017

Honorable Jenny Abbott Kitchings  
Clerk of the Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

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SC Court of Appeals

RE: Stanley H. Starnes, Claimant, Respondent v. Senn Freight Lines, Employer and  
Guarantee Insurance Company, Carrier, Appellants  
Case No. 2017-000122  
TPGL File No. 14102.00103

Dear Ms. Kitchings:

Enclosed is an original and six copies of the appellants' Motion to Hold Appeal in Abeyance, pending further proceedings before the South Carolina Workers' Compensation Commission, for the purposes of judicial economy along with our firm's check for the \$25.00 filing fee. **It is our understanding that pursuant to the South Carolina Appellate Court Rules that this Motion will hold the appeal in abeyance pending a determination by the Court of Appeals. Should I be incorrect in this matter I would appreciate your advising me of the same.** By copy of this correspondence, we are serving the same on the respondent and the South Carolina Workers' Compensation Commission.

Yours truly,

TURNER PADGET GRAHAM & LANEY P.A.



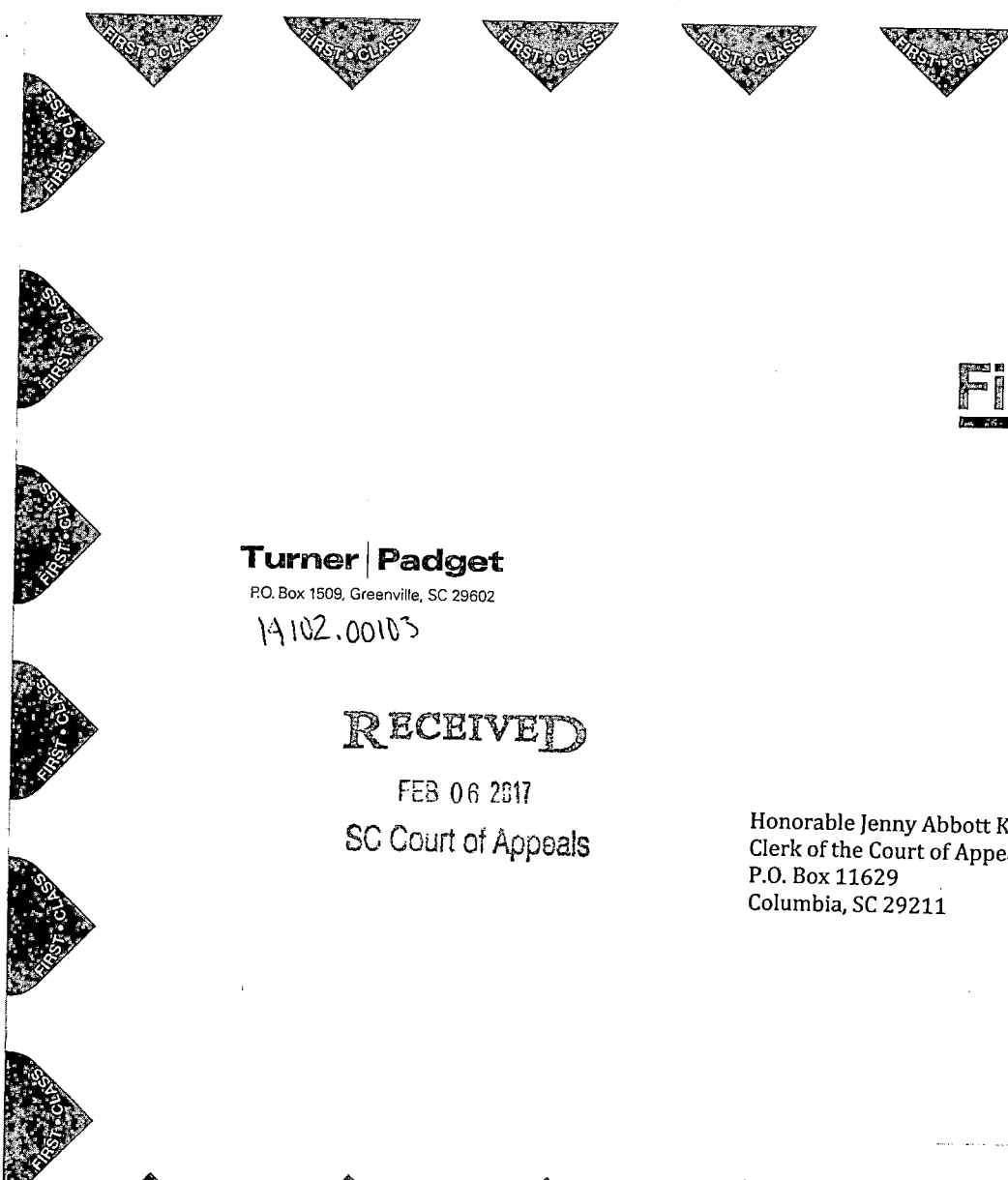
David H. Keller

DHK/sbd

Enclosures

cc: Thomas P. Bellinger

South Carolina Workers' Compensation Commission



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**Turner Padgett**  
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14102.00103

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FEB 06 2017  
SC Court of Appeals

Honorable Jenny Abbott Kitchings  
Clerk of the Court of Appeals  
P.O. Box 11629  
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