THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-8296
Appellate Case No. 2016-001031

Alvin L. Menie,

Appellant,

v.

State Accident Fund,

Respondent.

FINAL BRIEF OF RESPONDENT

Andrew E. Haselden
Howser, Newman & Besley, LLC
Post Office Box 12009
Columbia, South Carolina 29211
Phone: (803) 758-6000
Fax: (803) 758-4445
ahaselden@hnblaw.com
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-8296
Appellate Case No. 2016-001031

Alvin L. Menie,

Appellant,

v.

State Accident Fund,

Respondent.

FINAL BRIEF OF RESPONDENT

Andrew E. Haselden
Howser, Newman & Besley, LLC
Post Office Box 12009
Columbia, South Carolina 29211
Phone: (803) 758-6000
Fax: (803) 758-4445
ahaselden@hnblaw.com
Attorney for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES

STATUTES

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

I. THE CIRCUIT COURT PROPERLY AFFIRMED THE SCWCC'S DETERMINATION THAT MENIE DID NOT SUFFER A COMPENSABLE ON THE JOB INJURY.

II. THE CIRCUIT COURT PROPERLY DETERMINED THAT CONSIDERATION OF CERTAIN TESTIMONY BY THE SCWCC REGARDING THE AUDITOR POSITION DID NOT IMPACT THE ULTIMATE DETERMINATION AS TO COMPENSABILITY.

III. THE CIRCUIT COURT PROPERLY AFFIRMED THE SCWCC'S DETERMINATION THAT CERTAIN WORK CONDITIONS ARE NOT UNUSUAL AND EXTRAORDINARY.

IV. THE CIRCUIT COURT PROPERLY DETERMINED THAT THE OPINIONS OF DR. ZILE OFFERED INTO EVIDENCE BY THE RESPONDENT CONSTITUTED SUBSTANTIAL EVIDENCE TO SUPPORT THE DETERMINATION OF THE SCWCC.

STATEMENT OF THE CASE

This is a denied claim of a cardiac injury and/or condition, which the Appellant Al Menie ("Menie") alleges to have resulted from unusual and extraordinary conditions of employment. More specifically, Menie alleges that he was required to do the work of three premium auditors by the State Accident Fund ("SAF") for a period of time. The SAF denies that Menie's work conditions during that period were unusual and/or extraordinary and, consequently, the SAF denies that Menie is entitled to any benefits whatsoever under the South Carolina Workers' Compensation Act ("Act").

This matter came before Commissioner G. Bryan Lyndon ("Hearing Commissioner") in Columbia, South Carolina, on January 30, 2012, pursuant to Menie's Form 50 and the SAF's Form 51. After considering the testimony of the witnesses, observing the witnesses during their testimony, reviewing the APA Submissions submitted by the parties, and considering applicable law, the Hearing Commissioner issued a Decision and Order dated April 11, 2012, in which he determined that Menie had failed to prove that his heart condition was the result of unusual and extraordinary conditions of employment. Therefore, the Hearing Commissioner determined that Menie was not entitled to any benefits of any kind under the Act.

Menie appealed that Order to the Full Commission ("SCWCC"), which heard oral arguments on August 28, 2012, and subsequently issued an Order dated November 29, 2012, unanimously affirming the determination of the Hearing Commissioner. Menie appealed that Order to the Circuit Court.

On June 20, 2014, the Honorable Alison Renee Lee ("Circuit Court") heard oral arguments and, on November 3, 2015, the Circuit Court issued an Order affirming the SCWCC's determination that Menie had not sustained any compensable accidental injury. Following consideration of Menie's Motion to Reconsider pursuant to Rules 59 and 60, *SCRCP*, the Circuit Court issued a second Order that upheld, despite a harmless error, the SCWCC's conclusion as to compensability. Menie now appeals that determination to this Court.

STATEMENT OF THE FACTS

Menie worked by himself as an auditor for the SAF for a grand total of 25 days in 2003. Menie claims that because of his increased workload during that period he suffered an acute onset of atrial fibrillation on March 3, 2003, and that the SCWCC incorrectly determined that his condition is not compensable. In doing so, Menie conveniently ignores the following, among other pertinent facts:

- Menie neither worked longer than normal business hours nor more than 40 hours per week during that period;
- Menie did not work any overtime during that period;
- Several other SAF premium auditors have worked by themselves for substantially longer periods without complaint;
- The majority of the policyholders who were affected by a 24.7% premium increase had paid their premiums by January 10, 2003;
- Menie did not assert to any treating physician that the atrial fibrillation was allegedly caused by on the job stress until over a year after it's onset;
- Menie's treating physician stated on September 7, 2010, that the "atrial fibrillation part of [Menie's] problem is clearly related to Agent Orange as far as I could discern . . .";
- Menie applied to the United States Department of Veterans Affairs for disability benefits related to his coronary condition;
- The SAFs' medical expert, Dr. Michael Zile, stated "to a reasonable degree of medical certainty that [Menie's] atrial fibrillation was caused by pre-existing and underlying cardiovascular disease processes including but not limited to morbid obesity, sleep apnea, hypertension, sick sinus node syndrome, and diabetes. . . . [He does] not believe that stress, anxiety or physical work load related to his job contributed to the development of atrial fibrillation. Therefore, [he believes] that it is more probable than not that the cause of his atrial fibrillation was preexisting cardiovascular and cardiovascular related diseases and not changes in his work environment which resulted in him developing a clinical syndrome of atrial fibrillation."; and

- Menie continued to work and perform his job without restriction or issue ***for over six (6) years*** until his voluntary retirement in May of 2009.

A Hearing was held before Commissioner G. Bryan Lyndon ("Hearing Commissioner") of the SCWCC on January 30, 2012, in Columbia, South Carolina, pursuant to Menie's Form 50 and the SAFs' Form 51. At the Hearing, Menie took the position that he sustained a work-related onset of atrial fibrillation on or about March 3, 2003, and that the condition was compensable under §42-1-160 of the South Carolina Workers' Compensation Act ("Act") and common law jurisprudence interpreting the compensability of heart attacks and other cardiac conditions resulting from unusual and extraordinary conditions of employment. Menie further maintained, represented and stipulated that he was not making any claim for past or ongoing temporary total disability benefits, nor was he making any claim that he was permanently and totally disabled in accordance with §42-9-10 of the Act as a result of his cardiac contention. Rather, Menie sought payment of all past causally related medical expenses, as well as all future causally related and compensable medical expenses pursuant to §42-15-60 of the Act and/or *Dodge v. Bruccoli, Clark, Layman, Inc.*, 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999). With regard to permanency, Menie maintained, represented, and stipulated that he was only seeking an award of scheduled permanent partial disability benefits of up to 250 weeks pursuant to R.67-1101 of the South Carolina Code of Regulations. Finally, Menie maintained he had an expert medical opinion to support his contentions as to the causality and compensability of his cardiac injury and/or condition.

The SAF took the position that the alleged events occurring during the period from January 1, 2003, to on or about March 3, 2003, did not in any way constitute unusual and extraordinary circumstances and/or conditions of employment. The SAF further indicated Menie's personnel records reflected that Menie never worked more than a forty hour work week during the period in question. In addition, the SAF maintained Menie had previously attempted to allege his cardiac condition was related to his military service during the Vietnam War when Menie submitted an application for Veterans Disability Benefits to the United States Department of Veterans Affairs (hereinafter referred to as "the V.A.").

In light of these contentions, the SAF further maintained Menie could not meet his burden of proof under §42-1-160 of the Act and/or common law jurisprudence interpreting the compensability of heart attacks and other cardiac conditions resulting from unusual and extraordinary conditions of employment. The SAF's' denial of compensability was also based upon the testimony of Menie's former co-workers and/or supervisors regarding Menie's work conditions and work responsibilities during the period in question.

ARGUMENT

I. THE CIRCUIT COURT PROPERLY AFFIRMED THE SCWCC'S DETERMINATION THAT MENIE DID NOT SUFFER A COMPENSABLE ON THE JOB INJURY.

A. STANDARD OF REVIEW

The Administrative Procedures Act establishes the standard of review of decisions by the SCWCC. A reviewing court can reverse or modify the SCWCC's decision only if the appellant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. S.C. Code Ann. § 1-23-380(5) (Supp. 2008); *Shealy v. Aiken County*, 341 S.C. 448, 454, 535 S.E.2d 438, 442 (2000). "Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the [Appellate Panel] reached." *Shealy*, 341 S.C. at 455, 535 S.E.2d at 442. The possibility of drawing two inconsistent conclusions does not prevent the Appellate Panel's conclusions from being supported by substantial evidence. *Tiller v. Nat'l Health Care Ctr.*, 334 S.C. 333, 513 S.E.2d 843 (1999). The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel. *Shealy*, 341 S.C. at 455, 535 S.E.2d at 442.

Appellate courts may not decide an issue neither presented below nor raised by proper exception on appeal. *Connolly v. People's Life Ins. Co. of South Carolina*, 299 S.C. 348, 384 S.E.2d 738 (1989). "Issue preservation requires a party to preserve an issue both at trial and in presentation of the issue on appeal." *Beverly S.*

v. Kayla R., 395 S.C. 399, 401, 718 S.E.2d 224, 225 (Ct. App. 2011) (citing *S.C. Dep't of Transp. v. M & T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 659, 667 S.E.2d 7, 15 (Ct. App. 2008)). Nevertheless, a respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000); *see also* Rule 220(c), *SCACR.*

B. SOUTH CAROLINA CASES ADDRESSING INJURIES OCCURRING DUE TO UNUSUAL AND EXTRAORDINARY CONDITIONS OF EMPLOYMENT DO NOT SUPPORT MENIE'S ALLEGATION THAT HIS ATRIAL FIBRILLATION IS COMPENSABLE.

The case law regarding a claimant's burden of proof pursuant to S.C. Code Ann. §42-1-160 is clear and well-settled. A claimant has the burden of proving that he suffered a compensable injury by accident arising out of and in the course of his employment pursuant to S.C. Code Ann. §42-1-160. The SCWCC's and the Circuit Court's conclusion that Menie failed to establish that his work environment at the SAF during the relevant time period rose to the level of unusual and extraordinary conditions of employment is correct as there is ***more*** than substantial evidence in the record to support that determination. In fact, the whole of the evidence presented establishes that Menie was essentially a 'walking time bomb' with respect to atrial fibrillation in light of the fact that he had numerous other risk factors on March 3, 2003.

A review of South Carolina cases involving alleged on-the-job heart attacks/strokes/mental injuries arising from "unusual and extraordinary" conditions of employment supports the SAF's position. In *Kearse v. SC Wildlife*

Resources Department, 236 S.C. 540, 115 S.E.2d 183 (1960), a 63 year old wildlife officer for a period of two to three weeks worked from before sunrise until 8:00 – 10:00 P.M. trying to apprehend people trapping fish illegally along the Salkehatchie River. In addition to extreme hours, the evidence in the record indicated that Kearse was required to endure considerable physical exertion to get his vehicles into position to apprehend/pursue suspects, including push starting an automobile and dragging a boat through a swamp. Kearse had a stroke resulting in partial paralysis and was awarded permanent and total disability.

In *McWhorter v. SC Department of Insurance*, 252 S.C. 90, 165 S.E.2d 365 (1969), an investigator for the SC Department of Insurance's job typically required him to be at work from 9:00 to 5:00. However, a lunch hour and other guaranteed breaks resulted in a typical work week of 36 hours of actual time performing his duties. In the ten or so days before he ultimately died of a heart attack, McWhorter worked 121 hours and drove 1,500 miles in anticipation of an upcoming trial in Greenville County. He worked a total of 23 hours on the Saturday and Sunday immediately prior to the trial. On the Monday the trial commenced, McWhorter awoke at 3:00 A.M. and picked up a witness. He then assisted with trial preparation from 7:00 – 9:00 A.M. During the lunch recess on the first day of the trial, McWhorter carried several large files over to the Solicitor's Office, walked down three flights of stairs, and dropped dead of a heart attack. The claim was deemed compensable.

In *Cline v. Nosredna Corporation, Inc.*, 291 S.C. 75, 352 S.E.2d 291 (Ct. App. 1986), the claimant had preexisting congestive heart failure and was a food service

manager for a restaurant in Myrtle Beach, a position he held and worked without incident until 1982. In 1982, his employer opened a second restaurant and the claimant was made food service manager of the second restaurant as well. This doubled his responsibilities and required him to work with many new vendors. In addition, the two restaurants were 150 feet apart and the claimant had to traverse the distance between them each day continuously. Within 4–6 weeks of the second restaurant opening, the claimant had a heart attack and was diagnosed with atrial fibrillation. His claim was deemed compensable.

In *Stokes v. First National Bank*, 306 S.C. 46, 410 S.E.2d 248 (1991), a bank vice-president was required to work 15 additional hours a week due to an upcoming merger with another bank. That later increased to 16 to 18 hours a day. Not surprisingly, Stokes suffered a mental breakdown found to be due to unusual and extraordinary conditions of employment.

In *Smith v. NCCI*, 369 S.C. 236, 631 S.E.2d 268 (Ct. App. 2006), an auditor's work duties were found to be unusual and extraordinary because: (1) experts in the auditing industry opined that his actual job responsibilities were extraordinary and unusual; (2) claimant had production goals to meet notwithstanding the fact he was being asked to implement a pilot program, which the evidence showed was more difficult than what his co-employees were asked to do; (3) he had to perform "test audits" almost exclusively, which are more difficult than standard audits; (4) he had to travel 2 to 3 times more miles a week than what the written job description for auditors indicated would be required; and (5) he was under unusual and unrelenting pressure to be more productive from his superiors.

The facts of this case, when compared to the facts of the cases cited above, simply do not bear out a compensable injury in that the facts fail to satisfy the "unusual and extraordinary" standard. In reality, the facts establish that the most Menie was asked to do during the 25 days he worked by himself was answer the phone a bit more than normal[1]. In fact, each of the claimants in *Sims v. SC State Commission of Forestry*, 235 S.C. 1, 109 S.E.2d 701 (1959)[2]; *West v. City of Spartanburg*, 236 S.C. 553, 115 S.E.2d 295 (1960)[3]; *Tennant v. Beaufort County School District*, 381 S.C. 617, 674 S.E.2d 488 (2009)[4]; and *Jordan v. Kelly Co.*, 381 S.C. 483, 674 S.E.2d 166 (2009)[5], presented better factual arguments for compensability

---

[1] Menie failed to produce any evidence corroborating his claim of a heavy call load.

[2] In *Sims* the claimant was a fire tower watchman who died of a heart attack after climbing a fire tower while on duty. The case states that there must be evidence of ". . . a sudden, unusual exertion, violence or strain" in order for an aggravation of heart trouble to be compensable.

[3] In *West* the claimant was the city jailer who collapsed and died on a particularly busy Saturday night with an inordinate number of "boisterous, loud, cursing drunks." The Supreme Court denied the claim (and in so doing specifically distinguished this case from *Kearse*) because there was no evidence of any increased physical exertion on the part of the claimant. *West* also stands for the proposition that there is a distinction at law in between being inordinately busy and being worked so hard that you literally suffer a sudden, unusual exertion, violence, or strain.

[4] In *Tennant* the claimant was employed as a teacher and had an acute psychological episode and resulting issues following an argument with one of her teacher's aides. The argument was the culmination of ongoing issues the claimant and her aides had prior to the claimant's acute episode, which required hospitalization. The case is critical because it stands for the proposition that a job can be stressful without that stress necessarily being "unusual and extraordinary."

[5] In *Jordan*, the claimant was a truck driver who suffered a heart attack following a long haul route from Virginia to Texas. The claimant contended that his heart attack was proximately caused by unusual and extraordinary duties of the long haul, which included: (1) a seven hour departure delay, (2) having to leave without the necessary permits until he could pick up faxed copies at a truck stop, and (3) not being able to take the exit his permit

than Menie and each of those claimant's claims were deemed not compensable. Consequently, South Carolina's appellate court decisions do not support Menie's position that the conditions of his employment rose to the level of unusual and extraordinary such that his atrial fibrillation should be deemed compensable.

C. THE FACTS OF THIS CASE DO NOT SUPPORT A FINDING AND CONCLUSION THAT MENIE FACED UNUSUAL AND EXTRAORDINARY CONDITIONS OF EMPLOYMENT.

It is undisputed that from January 3, 2003, until February 10, 2003 (when another auditor, Carla Johnson, returned from medical leave), Menie worked as the lone premium auditor for the SAF. It is also undisputed that another auditor left on December 31, 2002. It is further undisputed that in December 2002, the SAF informed its insureds that a 24.7% increase in base premiums was going into effect on January 1, 2003. Lastly, it is undisputed that on March 3, 2003, Menie presented to the Lexington Medical Center and was eventually diagnosed with atrial fibrillation. ***However, virtually every other assertion in Menie's Brief is disputed.*** *See Jordan v. Kelly Co.*, 381 S.C. 483, 674 S.E.2d 166 (2009) (holding that where there is a conflict in the evidence, either by different witnesses or in the testimony of the same witness, the findings of fact of the SCWCC are conclusive).

---

required him to take and therefore having to drive through downtown Houston, barely making the extended deadline. The Supreme Court noted that while the claimant testified the haul was very stressful, his boss and co-worker testified that the employer did not impose deadlines and it was not unusual for employees to deviate from their routes due to construction. The claimant admitted that he had left without permits on prior deliveries and then picked up faxed copies at the nearest truck stop. In addition, the employee had several risk factors for heart attacks: he smoked cigarettes, abused alcohol, suffered from high blood pressure, and had a family history of heart disease. *Id.* at 486-87, 674 S.E.2d at 168-69.

The facts of this case are substantially similar to those in *Watt v. Piedmont Automotive*, 384 S.C. 203, 681 S.E.2d 615 (Ct. App. 2009). In *Watt*, the claimant contended that he had suffered a stress related heart attack as a result of unusual and extraordinary conditions of employment. Watt suffered from gastroesophageal reflux, anxiety, depression, obesity, hyperlipidemia, and hypertension, all risk factors for cardiac issues. Watt contended that Piedmont Honda's implementation of the Net Profit system in January of 2000 placed extraordinary stress on him. He further claimed that the system redesigned the whole service process resulting in double the paper work and much longer hours for him. He testified that he went to work before daylight and would work until 8:00 or 9:00 at night. The claimant related that the new system also angered both the technicians and the customers, whose complaints he would have to handle. Watt also presented the testimony of Sean Parkhurst, a former employee of Piedmont Honda, who testified that the implementation of the Net Profit system doubled Watt's work, that Watt always appeared tired, and that Watt worked late every night.

By contrast, Piedmont presented the testimony of Gary Billy Vinson, the shop foreman and assistant service manager, who testified that the Net Profit system merely changed the way customers were greeted and the way repair orders were written. He testified that the new system did not change the amount of work required or cause Watt to work extra hours, other than a 45 minute meeting once a week. Vinson, who handled customer complaints when Watt was not there, testified that the system did not upset the customers. He stated that, while not all of the employees liked the new system, some did.

Similarly, Jeff Searcy, the general manager of Piedmont Automotive, testified that the Net Profit system did not change anything other than the way customers were greeted and the way repair orders were written. He stated that the implementation of Net Profit would not have necessitated Watt having to stay and work until 9:00 at night. He also denied threatening to fire Watt if he did not implement the new system. William Dial, Piedmont Honda's Chief Financial Officer, testified that his office looked directly into Watt's office. He usually left the office between 7:00 and 8:00 at night and rarely saw Watt still in his office when he left. He claimed that the implementation of Net Profit would not have necessitated Watt's having to stay late at night and he denied that it created problems or made customers unhappy.

In finding that Watt had not sustained his burden of proving unusual or extraordinary conditions of employment, this Court held as follows:

> Although . . . the record contains conflicting evidence, this court may not weigh the evidence. [*Jordan v. Kelly Co.*] 381 S.C. at 487, 674 S.E.2d at 169 (holding "that the final determination of witness credibility and the weight to be accorded evidence is reserved to the [Appellate Panel], and it is not the task of an appellate court to weigh the evidence as found by the [Appellate Panel]"). There is substantial evidence in the record that Watt was accustomed to working 55 and 60 hour weeks in the years preceding the implementation. In addition, there is substantial evidence to support the Appellate Panel's conclusion that the implementation of Net Profit did not result in unusual or extraordinary conditions of employment for Watt or that Watt was subject to unusual or extraordinary conditions of employment in comparison to the normal conditions of his employment. Accordingly, the circuit court erred in reversing the order of the Appellate Panel.

384 S.C. at 211, 681 S.E.2d at 619.

In this case, Menie called Shawn Holman as a witness on his behalf. Holman was the auditor who left the SAF on December 31, 2002. *Record on Appeal ("R.")* at p. 625. She testified that the volume and intensity of the premium auditors' workloads would vary and that their work would sometime come in fits and starts. *R.* at pp. 647-650. She also testified that it was typical for the premium auditors to assist one another when circumstances warranted. *Id.* (*see also R.* pp. 641-642). Although Holman stated that one auditor working with all of the approximately 600 insureds' accounts for a period would require that auditor to neglect his normal amount of premium audits, she admitted that it was possible and she was unaware of any auditor ever being punished for not timely completing his/her premium audits. *R.* at pp. 650-654. Holman also confirmed that meetings between premium auditors and angry representatives from the individual insureds "went on all of the time," and not just after the base premium increase instituted at the beginning of 2003. *R.* at p. 658. Holman further conceded that insureds were almost never happy when they received notification of any premium increase, that there had been previous double-digit premium increases, and that premium auditors have up to 180 days to perform a premium audit following the close of a policy period. *R.* at pp. 658-660. Likewise, Holman could not dispute the 'new' computer system she alluded to on her direct examinations had actually come online by May 25, 1999 (almost 4 years prior to Menie's alleged injury), and acknowledged that other employees of the SAF could answer phone calls during times of high call volume. *R.* at pp. 660-661; 662.

When asked why he felt the need to devote so much time to the duties of the other auditors, Menie testified that ". . . **with [his] ego [he] thought [he] could handle everything that came forth in [January and February of 2003] . . .**" *R.* at p. 688 ***(emphasis** added).* He further admitted that he could not present any tangible/documentary evidence of his allegedly excessive and/or increased work duties from January 1, 2003, to March 3, 2003. *R.* at pp. 714-717. Although Menie contends that 1/6 of his audits were supposed to be done by the end of January each year, he could point to no specific instance where he was punished or demoted for failing to do so. *R.* at pp. 717-719. Under examination by the SCWCC, Menie testified as follows:

> Q. Did you ever tell anybody you couldn't handle the job? Because you actually did handle it. You got a pay raise and you got good reviews; is that fair to say?
>
> A. Yes, sir. Yes, sir. But my good review was before. That was in October before my—my thing.
>
> Q. So, as I understood it from you, the stress that you say you were suffering was really self-imposed, as I understand it, from ego, I believe, was the quote. Is that right?
>
> A. Well, it was—no, it was—
>
> Q. Well, were there any consequences if you hadn't done those—what you're saying—three jobs?
>
> A. No. It wasn't really a volunteer. It was more trying to help the customer with his problems with the 25 percent approximately across the board increase in rates, which means that if your premium was 10,000 it's gonna go to, you know, 12,500 and that type of thing.

Q. I understand.

A. And whatever your experience modifier, if it increased, then that increased it by 200 percent or 300 percent or—

Q. Did you ever get behind?

A. Oh, I was behind from day one, from January 2nd. I was behind that day.

Q. It was announced on January 1st, right? So all of the calls came—well, I don't know when it was announced prior to that, but the letter is not dated, but it says effective January 1st.

A. It was sent out—it was sent out with the estimated premium, tried to be by December the 1st so, like I say, that they would have that month to relocate with their insurance company if they so desired to leave the State Accident Fund.

Q. Were you under the impression that this was a temporary thing and you were going to get a trainee?

A. Oh, I was under the impression that I was going to get two more auditors as quickly as they could provide them.

Q. And the trainee was to become an auditor, is that right? Was the trainee to become an auditor, the one you were training, the individual you were training?

A. Oh, yeah. On March the 3rd? Yes.

Q. So that would have been one of the two other—

A. Right.

Q. And you say you've had four episodes in nine years? Did I hear you say that?

A. Yes, sir.

Q. And of this military pension you are—the disability benefits you're getting, is any of that for hypertension?

A. No, sir.

Q. Is renal failure brought on by hypertension? You have some kidney disease, do you not?

A. Yes. Oh, I'm sorry.

Q. Is that brought on by hypertension, by high blood pressure?

A. No, it's brought on by diabetes through that agent orange.

Q. . . . And how long have you been getting V.A. benefits?

A. I got diabetes within 90 days after I submitted a claim on July the 28th, 2009, and then I—and that was like a 20 percent rating. And then I went to a kidney specialist that my G.P. sent me to, a kidney specialist, and then he found that I had chronic kidney disease in the stage of—third stage. And then the creative organ. That's the three that I was getting—receiving at that time. Since then I have had tinnitus added to that.

Q. How much money are you getting a month?

A. Nine Hundred and Forty-one dollars, I think it is.

Q. And you voluntarily retired for what reason, sir?

A. Well, I volunteered because my—what was that system we had?

Q. Teri.

A. Teri plan, Yes. Teri plan, yes. It's terrible to be 68 and memory—you can't pick up things, you know. Yeah, the Teri plan, right. It ended and, therefore, I chose to retire.

R. at pp. 723-726.

At the hearing, the SAF presented the testimony of Gerald Murphy and Kirk Adair.[6] Murphy has been employed by the SAF since March 1995 and is presently the SAF's Manager of Administrative Services. *R.* at p. 730. Murphy testified that the SAF utilized a program known as "Locator" to track, monitor, and compile employee attendance. Murphy testified he used this program to compare and contrast Menie's work hours in January and February of 2002 with Menie's work hours in January and February 2003. This study of the Locator data established that Menie worked an average of sixteen (16) extra minutes per day in January and February 2003 than during the same two months of the prior year. *R.* at pp. 730-732.

Murphy also indicated that the Locator data reflected that Menie worked as the lone premium auditor for a sum total of twenty-five (25) business days during the period in question and that the other premium auditor returned from medical leave on February 10, 2003. *R.* at pp. 732-733. Additionally, Warren Farray (who had in excess of twenty years of premium auditing and underwriting experience) started on March 3, 2003. *R.* at p. 733. Murphy also testified that (a) Menie never complained about needing help or that the stress was too much, and (b) the Deputy

---

[6] In its April 7, 2016 Order, the Circuit Court determined that the SCWCC had erred in allowing Adair's testimony into consideration. Adair, who is presently employed by the SAF as a premium auditor, testified that he came to the SAF after many years working for various private sector insurers as a premium auditor. Adair testified he worked as the lone premium auditor from January 14, 2011, through March 14, 2011, without virtually any tangible difficulty, and he described his current position as being noticeably less stressful than similar positions in the private sector. Adair also confirmed he continues to perform premium audits for all of the SAF's insureds with the assistance of only one additional premium auditor. The SAF declined to appeal the Circuit Court's determination that Adair's testimony should not have been considered.

Director offered to let a SAF employee named Vicky Looter assist Menie if necessary. *R.* at pp. 734-736. Murphy further testified that by January 10, 2003, ***318 out of 522 accounts that included the 24.7% increase had paid their premium.*** *R.* at p. 737.

With regard to whether the SAF could function with one premium auditor, Murphy testified that the SAF did so from November 2009 until January 2010 and again from February 2010 until September 2010 ***without issue or complaint.*** The SAF has never returned to three premium auditors at any point following Menie's retirement in 2009. *R.* at pp. 733-734.

Murphy did not dispute the fact that Menie was a well-liked and gregarious employee during his tenure with the SAF. *R.* at p. 735. However, he did not agree with Menie's testimony about having to have 1/6 of his audits done by the end of January. In fact, Murphy explained that January is typically a month where the total number of audits performed is very low due to the lack of the requisite information needed from the insureds to do the audit. In fact, Murphy testified that his review of various data and documents in the SAF's possession indicated there were no premium audits done in January 2002. Although Menie's medical opinion(s) /questionnaire(s) from the authorized treating physician are premised on a contention/allegation that the number of audits Menie was asked to do increased "threefold during the time of January through March of 2003," Murphy disputed it would have been possible for such an increase in audits to have occurred since the requisite data would not have been available to do the audits. *R.* at pp. 736-739.

Finally, Murphy addressed the basis and rationale for Menie receiving a pay increase which is memorialized and summarized in a letter issued to Menie on April 15, 2003. Murphy explained the SAF was obligated to have objective reasons for the pay increase or it otherwise could not have given it to Menie. When posed with a question from the Hearing Commissioner regarding efforts to keep similarly situated employees at similar salaries, Murphy confirmed that the SAF does try to do so as State salaries are public. *R.* at pp. 738-743.

In his APA submissions, Menie submitted the opinion of Dr. Richard Hendricks, Menie's authorized treating physician[7]. Dr. Hendricks' opinion as to causation was based entirely upon the hypothetical and fictitious recitation of the facts of the case given to him by Menie. *See R.* at pp. 76-83. As such, the SAF contends that Hendricks' opinions have no evidentiary value. *See Brown v. La France Industries*, 286 S.C. 319, 333 S.E.2d 348 (Ct. App. 1985); *Young v. Tide Craft, Inc.*, 270 S.C. 453, 242 S.E.2d 671 (1978) (holding that medical opinion testimony based upon answers to hypothetical questions posited by attorneys are not admissible if the hypothetical questions are not ultimately found to be supported by facts in evidence). By contrast, the Defendants had Menie's medical records and Dr. Hendricks' deposition testimony reviewed by Dr. Michael Zile, a cardiology professor at MUSC. Dr. Zile's professional opinion was that Menie had numerous risk factors for atrial fibrillation, including:

---

[7] Dr. Hendricks, when examining Menie's actual history, stated that, "[t]he atrial fibrillation part of his problem *is clearly related to Agent Orange as far as I could discern . . .*" *R.* at p. 168 (*emphasis* added).

- Morbid obesity (in excess of 300 pounds);
- Sleep apnea;
- Hypertension;
- Sick sinus syndrome; and
- Diabetes.

See R. at p. 292. As Dr. Zile's opinions were based on a review of actual medical evidence, the SCWCC properly afforded it the proper evidentiary value it deserved. *See Tiller v. National Health Center of Sumter*, 334 S.C. 333, 513 S.E.2d 843 (1999); *Potter v. Spartanburg County School District 7*, 395 S.C. 17, 716 S.E.2d 123 (Ct. App. 2011)(addressing the SCWCC's rights and duties to balance conflicting medical testimony with other lay evidence in the record).

Based on the above, the SCWCC correctly determined that Menie failed to meet his burden of proving that the atrial fibrillation was proximately caused by unusual and extraordinary job duties with the SAF. In doing so, the SCWCC relied on the whole of the evidence in the record rather than just the evidence favorable to Menie. The SCWCC did not base its decision on surmise, conjecture, or innuendo, but rather on actual facts. As such, the SAF contends that this Court should uphold the determination of the SCWCC (and the Circuit Court) that Menie's claim is not compensable.

II. THE CIRCUIT COURT PROPERLY DETERMINED THAT CONSIDERATION OF CERTAIN TESTIMONY BY THE SCWCC REGARDING THE AUDITOR POSITION DID NOT IMPACT THE ULTIMATE DETERMINATION AS TO COMPENSABILITY

Menie argues that the SCWCC should not have allowed into evidence the testimony of Adair and Murphy with respect to the question of whether one auditor could handle the job without difficulty. The Circuit Court determined that Adair's testimony should not have been considered by the SCWCC. The SAF declined to appeal that determination even though it strongly disagrees. With respect to Murphy's testimony, which the Circuit Court determined was properly considered by the SCWCC, the SAF contends that Menie did not object to Murphy's testimony regarding the fact that at other times in the past the SAF only had one (1) premium auditor. *See R.* at pp. 733-734. As such, Menie has waived any argument with respect to the admission of that evidence. *See Noisette v. Ismail*, 304 S.C. 56, 403 S.E.2d 122 (1991) (holding that an appellate court may not address an issue where a trial court does not explicitly rule on it and appellant makes no Rule 59(e) motion to obtain a ruling); *Talley v. South Carolina Higher Educ. Tuition Grants Comm.*, 289 S.C. 483, 347 S.E.2d 99 (1986) (holding an issue raised, not ruled upon by trial court, and not subject of Rule 59(e) motion was not preserved on appeal).

If, however, this Court determines that the argument is persevered for appeal, Menie's argument ignores the rule that great liberality is exercised in permitting the introduction of evidence in proceedings under the Act. *See Ham v. Mullins*, 193 S.C. 66, 7 S.E.2d 712 (1940); *see also Smith v. South Carolina Dept. of Mental Health*, 329 S.C. 485, 494 S.E.2d 630 (Ct. App. 1998) (holding that a hearing

commissioner has the discretion under the Administrative Procedures Act to limit or exclude irrelevant testimony). The SAF contends that Murphy's testimony was properly admitted in light of the fact that the whole of the evidence establishes clearly that the premium auditor job is not unusually stressful even if performed by one (1) person.

The Circuit Court determined that although the SCWCC's reliance on Adair's testimony was an error of law, the "error was harmless" in light of the plethora of other evidence that supported the SCWCC's findings. *R.* at pp. 52-58. Harmless errors by the SCWCC do not warrant reversal unless they are prejudicial. *See Eadie v. H.A. Sack Co.*, 322 S.C. 164, 470 S.E.2d 397 (Ct. App. 1996)(holding a purported "industry standard" was not a fact properly subjected to judicial notice, but that the SCWCC's error in considering it was harmless and thus not subject to reversal.); *Triple "F", Inc. v. Gerrard*, 298 S.C. 44, 378 S.E.2d 67 (Ct. App.1989) (holding that even if testimony should have been allowed, the exclusion of it was not prejudicial and, therefore, would amount to harmless error); *JKT, Co. v. Hardwick*, 274 S.C. 413, 265 S.E.2d 510 (1980)(holding an error not shown to be prejudicial does not constitute grounds for reversal). The SAF contends that in light of the ***massive amount*** of evidence that supports the SCWCC's determination that Menie's development of atrial fibrillation was not compensable, the mere consideration of Adair's testimony on a minor issue certainly amounted to nothing more than harmless error and was certainly not prejudicial in the least.

III. THE CIRCUIT COURT PROPERLY AFFIRMED THE SCWCC'S DETERMINATION THAT CERTAIN WORK CONDITIONS ARE NOT UNUSUAL AND EXTRAORDINARY.

Menie argues that the Circuit Court erred in affirming the SCWCC's finding that labor turnover, illness of co-workers, and computer problems are common and are not unusual as our appellate courts have found that these factors can constitute unusual and extraordinary conditions in employment. In support of this contention, Menie cites *Stokes v. First National Bank*, 306 S.C. 46, 410 S.E.2d 248 (1990). However, a reading of that case reveals that the only factors the Court considered were longer work hours.[8] Moreover, in the case of *Lockridge v. Santens of America, Inc.*, 344 S.C. 511, 544 S.E.2d 842 (Ct. App. 2001), the Court denied benefits where one of the alleged "causes" of Lockridge's heart attack was the fact he was doing the work of two (2) people.

In this case, the SCWCC correctly found and the Circuit Court affirmed that labor turnover, illness of co-workers, and computer problems are common and not unusual. When such factors rise to an extreme level, which is clearly not the case with respect to Menie, then they can obviously become factors. However, in and of themselves, labor turnover, illness of co-workers, and computer problems are commonplace in all employment sectors.

---

[8] Although the Court noted that Stokes' longer work hours were in part attributable to the resignation of one of his managers, "labor turnover" in and of itself was not mentioned as a factor constituting an unusual or extraordinary condition of employment.

IV. THE CIRCUIT COURT PROPERLY DETERMINED THAT THE OPINIONS OF DR. ZILE OFFERED INTO EVIDENCE BY THE RESPONDENT CONSTITUTED SUBSTANTIAL EVIDENCE TO SUPPORT THE DETERMINATION OF THE SCWCC.

Menie's last assignment of error concerns the Circuit Court's reliance on the opinion of Dr. Zile for support of its affirmation of the SCWCC's determination that Menie's claim was not compensable. Contrary to an erroneous statement in the Initial Appellant's Brief,[9] there was absolutely no objection on the record to the submission of Dr. Zile's report being submitted into evidence at the hearing on January 30, 2012.[10] Further, Menie never raised any issue with consideration of Dr. Zile's report by any determining body until he submitted his Initial Appellant's Brief. *See Notice of Appeal (May 11, 2016)(and attachments thereto).* Most importantly, although Dr. Zile's opinions were specifically referenced in the Circuit Court's Order dated November 3, 2015, Menie did not address this "perceived error" on the part of the Circuit Court in his Motion to Reconsider, which preceded the Circuit Court issuing a second Order altering its opinion solely about the admissibility of Adair's testimony. *See Memorandum in Support of Motion for a New Trial, Reconsideration, and/or [to] Alter or Amend and/or to Vacate and Remand Pursuant to SCRCP Rule 59(a)(e); Rule 60(b).* As such, the issue is not properly before this Court.

"It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for

---

[9] *Final Brief of Appellant*, pp. 43-44.

[10] Menie objected to an attachment to the report of Dr. Zile (CardioSmart: Atrial Fibrillation, *Defendant's APA Submissions* at p. 34), but not to Dr. Zile's report itself. *See R.* at pp. 618-623; 5.

appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (citing *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997)). In order to preserve an issue for appellate review, "[t]he issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." *S.C. Dept. of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007). "[A]n objection must be sufficiently specific to inform the trial court of the point being urged by the objector." *Id.* (citing *Broom v. Southeastern Highway Contracting Co.*, 291 S.C. 93, 352 S.E.2d 302 (Ct. App. 1986). *See Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 463 S.E.2d 636 (Ct. App. 1995) (holding that issues on which the trial judge never ruled and which were not raised in a post-trial motion are not preserved for appeal); *United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc.*, 307 S.C. 102, 413 S.E.2d 866 (Ct. App. 1992) (holding that where the circuit court sitting on appeal did not address an issue and appealing party made no motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to have it rule on the issue, the allegation was not preserved for further review by the Court of Appeals).

"Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). "Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error." *S.C. Dept. of Transp. v. M & T Enter.*, 379 S.C. 645, 658-59, 667 S.E.2d 7, 15 (Ct. App. 2008) (citing

Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000). Accordingly, "it is a litigant's duty to bring to the court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error." *S.C. Dept. of Transp.*, 372 S.C. at 301, 641 S.E.2d at 907 (citing *Parks v. Morris Homes Corp.*, 245 S.C. 461, 471, 141 S.E.2d 129, 134 (1965). "[E]ven if an issue is preserved at the trial court level, it must still be properly raised and argued to the appellate court." *S.C. Dept. of Transp.*, 379 S.C. at 658-59, 667 S.E.2d at 15. "[I]ssues not argued in the brief are deemed abandoned and will not be considered on appeal." *Fields v. Fields*, 342 S.C. 182, 191 n.8, 536 S.E.2d 684, 689 n.8 (Ct. App. 2000) (citing *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994)); *see also Glasscock, Inc. v. U.S. Fid. and Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("[A] one sentence paragraph raised in an appellant's brief was insufficient to preserve the issue for appeal.").

For all intents and purposes, Menie is attempting to raise this issue at this level, a maneuver that is barred by both the decisions of our appellate courts and the South Carolina Rules of Appellate Procedure. *See* Rule 220, *SCACR*. If, however, this Court ***does*** consider Menie's argument to properly be before it, the SAF submits that it has no real merit. Menie argues that because the SCWCC did not specifically mention Dr. Zile anywhere in either of its Orders, the Circuit Court improperly mentioned Dr. Zile's opinions in its Orders. The Order from the Hearing Commissioner, however, contains the following finding of fact:

> 16. After considering *all of the evidence*, I find Claimant failed to prove his heart condition was a result of unusual and extraordinary conditions of employment.

R. at p. 18 (*emphasis* added). "All of the Evidence" certainly includes the opinions of Dr. Zile, which were not objected to by Menie. "All of the Evidence" also logically includes (1) all matters submitted pursuant to the APA that were not objected to and excluded from evidence, and (2) the admissible testimony of the witnesses at the hearing. Conversely, Menie would have this Court interpret "All of the Evidence" to mean only that which is favorable.

Assuming this Court (1) determines that Menie's argument is properly before it and (2) entertains the notion that he has somehow offered an effective objection to consideration of Dr. Zile's opinions almost ***five (5) years after the hearing in this matter***, the SAF asserts that the remaining portion of Menie's argument that Dr. Zile's opinions do not meet the requisite evidentiary standard on this issue is equally without merit. Menie argues that Dr. Zile's report should not be considered because it was (1) merely a record review and because Dr. Zile never saw Menie in person, and (2) that Dr. Zile's opinion is deficient because it does consider the "unusual and extraordinary conditions" of Menie's employment.

First and foremost, the fact that Dr. Zile never saw Menie in person does not render his opinion deficient. "Expert testimony retains its competency unless it is 'palpably absurd,' even when there is a difference of opinion between experts. An expert's opinion does not lose its probative value when the expert has not personally examined the claimant." Beard, Poteat, Lamar, Sumwalt, Bluestein, Sullivan, *The Law of Workers' Compensation Insurance in South Carolina,* 6th Ed. (2012), §XXIII.B at p. 451 (citing Smith v. Southern Builders, 202 S.C. 88, 24 S.E. 109

(1943). In this case the SAF submitted ***without objection*** the written opinion of Dr. Zile. Dr. Zile is a highly qualified expert in cardiology both through his career as a practicing physician and in his role as a professor/researched at MUSC. Dr. Zile notes that he reviewed the following records before issuing his opinion:

1. Deposition of Charles W. Hendricks, M.D.
2. Office visit 2/03/2011 - Dr. Hendricks
3. Office visit 10/07/2010 - Dr. Hendricks
4. Office visit 2/18/2004 - Dr. Hendricks
5. Office visit 2/21/2003 - Dr. Hendricks
6. Hospitalization - Lexington Medical Center 3/04/2003
7. *CardioSmart:* atrial fibrillation article
8. Communication between Preston McDaniel and Dr. Hendricks 11/01/2010
9. JNC7 full report

R. at p. 292. After reviewing that information, Dr. Zile offered the following opinion:

> I was asked to address the causality for the development of atrial fibrillation in Alvin L. Menie beginning March 4, 2003. I believe to a reasonable degree of medical certainty that this patient's atrial fibrillation was caused by pre-existing and underlying cardiovascular disease processes including but not limited to morbid obesity, sleep apnea, hypertension, sick sinus node syndrome, and diabetes. I do not believe that stress, anxiety or physical work load related to his job contributed to the development of atrial fibrillation was preexisting cardiovascular and cardiovascular related diseases and not changes in his work environment which resulted in him developing a clinical syndrome of atrial fibrillation.

Id. As is obvious, Dr. Zile did in fact take into account Menie's claims of unusual and extraordinary conditions of employment. However, after careful analysis of all of the ***facts*** presented to him, Dr. Zile determined that Menie's physical condition and medical history were clearly the root cause of Menie's development of atrial fibrillation. As stated previously, Menie was a walking "time bomb" with respect to

the development of atrial fibrillation and it would have been a wonder if he had not developed it at all.

With respect to Menie's argument that Dr. Zile's report is nothing more than "hearsay within hearsay," the argument appears fallacious in light of the fact that the APA specifically provides for the submission of medical records without the offeror having to provide witness testimony as to their authenticity, etc. Further, Menie's discounting of Dr. Zile's opinion on this basis contradicts his offering of the medical opinions of his treating physician, which are based on hearsay and contrived hypotheticals that are not factual in nature. *See* *R.* at pp. 75-81.

Any challenge to Dr. Zile's report being submitted into evidence has long since been waived. As it comprised part of the record in this matter, it was certainly fair game for any determining body to consider it (whether they did by specific reference or not) in arriving at the conclusion that Menie's claim was not compensable. *See* *Tiller v. National Health Care Center of Sumter*, 334 S.C. 333, 513 S.E.2d 843 (1999) (holding that while medical evidence is entitled to great respect, the fact finder may disregard it if there is other competent evidence in the record); *Ballenger v. Southern Worsted Corp.*, 209 S.C. 463, 40 S.E.2d 681 (1946) (holding that medical testimony should not be held conclusive irrespective of other evidence). Lastly, any challenge to the sufficiency of Dr. Zile's opinion is at best a weak effort to discount what Menie clearly knows is an opinion unfavorable to him.

CONCLUSION

For the reasons discussed above, this Court should fully affirm the Circuit Court's determination that the SCWCC was correct in finding and concluding that Menie did not suffer a compensable work-related accidental injury in the form of atrial fibrillation due to unusual and/or extraordinary conditions of employment.

Respectfully submitted,

Andrew E. Haselden
Howser, Newman & Besley, LLC
1508 Washington Street
Post Office Box 12009
Columbia, South Carolina 29211
(803) 758-6000

Attorney for Respondent
State Accident Fund

February 16, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-8296
Appellate Case No. 2016-001031

Alvin L. Menie,

Appellant,

v.

State Accident Fund,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the *Final Brief of Respondent* complies with Rule 211(b), SCACR.

Andrew E. Haselden
Howser, Newman & Besley, LLC
Post Office Box 12009
Columbia, South Carolina 29211
Phone: (803) 758-6000
Fax: (803) 758-4445
ahaselden@hnblaw.com
Attorney for Respondent

February 16, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alsion Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-8296
Appellate Case No. 2016-001031

Alvin L. Menie,

Appellant,

v.

State Accident Fund,

Respondent.

PROOF OF SERVICE

I, the undersigned employee of Howser Newman & Besley, LLC, hereby certify that pursuant to Rule 211(a), *SCACR*, I have served the *Final Brief of Respondent* in this matter on counsel for the Appellant by depositing a copy of it in the United States Mail, postage prepaid, on February 17, 2017, addressed as follows:

Preston F. McDaniel, Esq.
MCDANIEL LAW FIRM
1315 Elmwood Ave.
Columbia, SC 29201

Andrew E. Haselden
Howser, Newman & Besley, LLC
Post Office Box 12009
Columbia, South Carolina 29211
Phone: (803) 758-6000
Fax: (803) 758-4445
ahaselden@hnblaw.com
Attorneys for Respondent

February 17, 2017