THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Successor Circuit Court Judge

Case No. 2013-CP-32-01272
Case No. 2014-CP-32-00399

Appellate Case No. 2015-001821

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

W.C.C. Case No. 0506205

Alexander Guice, Employee, Appellant,

v.

US Foodservice, Inc., Employer, and
Ace American Insurance Company, c/o
Gallagher Bassett Services, Inc., Respondents.

REPLY TO RETURN TO MOTION TO DISMISS APPEAL FOR WANT OF SUBJECT MATTER JURISDICTION

Pursuant to Rule 240(f), SCACR, ALEXANDER GUICE, the undersigned *pro se* Appellant, the Employee, Claimant, and Injured Worker (hereinafter, "Undersigned" or "Claimant", or "Employee" or "Injured Worker" or "Appellant"), presents this 'Reply to Return to Motion to Dismiss Appeal for Want of Subject Matter Jurisdiction' ("Reply"), to Respondents' "Return to Appellant's Declaration and Motion" ("Return"), dated 02/23/2017 and received by Appellant via USPS regular mail on 02/28/2017, in *propria persona* wherein

pleadings filed by *pro se* litigants are to be considered without regard to technicalities. Conley v. Gibson, 355 U.S. 41 at 48 (U.S. Sup. Ct. 1957). In Reply to Respondents' Return, Appellant would allege as follows:

As an initial matter, Appellant points out that Respondents', through counsel, were duly served with a true copy of the Motion to Dismiss Appeal for Want of Subject Matter Jurisdiction ("Motion to Dismiss"); the Sworn Affidavit of Alexander Guice ("Sworn Affidavit"); the Memorandum In Support of Motion to Dismiss ("Memorandum"); the Declaration of Alexander Guice Voiding Settlement Agreement and Release ("Declaration"); and all attachments to the Memorandum, in the above-entitled action, on 02/18/2017, with confirmed USPS Priority Mail delivery to Respondents' counsel's address of record, on 02/21/2017. *See* Court-stamped Certificate of Service and USPS Priority Mail Confirmation Receipt. Att. **T**.

This is pertinent to this matter, when considering that while Respondents' were afforded ten (**10**) days to file their Return pursuant to Rule 240(e), SCACR ("Any party opposing a motion or petition shall have ten (10) days from the date of service thereof to file an original and six (6) copies of his return with the clerk and serve on all parties a copy of the return"), Respondents' filed their Return approximately forty-eight (**48**) hours, or two (**2**) days later, on 02/23/2017, thus *implicitly* and *voluntarily waiving* their additional eight (8) days afforded to file their Return. Rule 240(e), SCACR. *See* Respondents' Return, p.1-2 ("Respondents are not responding point-by-point to the 89 pages of legal argument set forth in Appellant's Declaration and Motion other than to deny that he is entitled to any of the relief he seeks and to deny that this Court lacks subject matter jurisdiction to hear this case").

Further, and in good faith, *if* Respondents' counsel would have filed a Motion for an extension of time with this Court to file their Return as to Appellant's 86-page Memorandum,

Appellant would have certainly agreed to Respondents' extension request; however, Respondents' did not file a request for an extension of time to file and serve their Return. Record.

Thus, any and all well pled argument(s) as asserted and contained within Appellant's Memorandum, which was not specifically thereafter challenged by Respondents in their Return, should be accepted by this *neutral* Court, in light of Greenlaw v. United States, 554 U.S. 237, 243-44 (U.S. Sup. Ct. 2008) (holding "In our system, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present."), and 100A C.J.S. Workers' Compensation § 1029 (2013) ("Because a fact must be proved with substantial evidence in a workers' compensation proceeding, a rebuttable presumption **must** be met with substantial evidence.") (Emphasis added), on grounds that Respondents' voluntarily waived their rights, by their own acts and conduct, from failing to challenge all jurisdictional and related issues set forth in Appellant's Memorandum, wherein the length of Appellant's Memorandum is now irrelevant. Id. Memorandum. Return. *See* Lyles v. BMI, Inc., 292 S.C. 153, 158–59, 355 S.E.2d 282, 285 (Ct. App. 1987) ("An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable.").

Second, Appellant points out to the Court that there are several contentions set forth in Respondents' five (5) page Return (*e.g.*, *See* footnote 1, p. 4 (moving the Court to strike Appellant's Sworn Affidavit); p. 4-5 (urging the Court to reject evidentiary attachments advanced with Appellant's Memorandum)), which are not supported by any citation to authority, wherein this Court should reject Respondents' 'completely unsupported' assertions as addressed above, and all unsupported assertions, throughout Respondents' 5 page Return, in light of First

Savings Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (failure to provide legal support for argument is deemed an abandoned of the issue). Id. Respondents' Return. *See* State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) (finding that when a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue); Bryson v. Bryson, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008) ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority."); Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

I. Respondents' failed to meet their burden to establish that the 12/22/2005 Settlement Agreement and Release and subsequent 01/05/2006 Commission Order and Award did not contravene S.C. Code Ann. § 42-9-260(B)(1) (Supp. 1996).

Respondents' Return declined to challenge the validity of the evidentiary attachments or findings of facts relative to W.C.C. Case No. 0506205 as advanced and relied upon and set forth in Appellant's Memorandum on pages 5-8 of same, upon review of Respondents' 5 page Return. Memorandum, p. 5-8. Respondents' Return.

Further, Respondents' unsupported contention that "a number of the attachments to his memorandum in support of his Motion were never submitted to the Commission and should be stricken, including but not limited to Att. E, F, N, O, P, R, S, and portions of Att. J" (Respondents' Return, p. 5), should be patently rejected by this Court in light of McLean, *et al*, as well as Appellant's previous reliance upon Baird v. Charleston County (*See* Memorandum, p. 4-5, Standard of Review), which vests this Court with jurisdictional authority, when determining whether to dismiss an action based on lack of jurisdiction, to consider "affidavits and other

evidence outside the pleadings" or record filed in lower courts or tribunals. Id.

Further still, Respondents' Return fails to contest Appellant's assertions that the 'permanent lifting restrictions' assigned by treating physician Dr. Tamadon are compensable and causally related to the admitted accident/injury which occurred on 05/05/2005; that Respondent Employer fired Appellant due to a light duty job assignment expiration only on 11/02/2005; that Appellant's compensable permanent lifting restrictions to date remains unresolved; that Appellant received entitled temporary compensation payments for approximately 226 consecutive days, including after the expiration of the one-hundred-fifty-day period after Appellant's notice of injury to Respondents (except TTD payments for the entitled periods of 11/03/2005 to 11/06/2005); or that to date, Appellant has and remains unemployed since Appellant was fired by Respondent Employer. Memorandum. Respondents' Return.

Still further, Respondents' Return declined to challenge Appellant's reliance upon Carolina Power & Light Co. v. City of Bennettsville; Hodges v. Rainey; or Hitachi Data Sys. Corp. v. Leatherman, for Appellant's proposition, that, under the rules of statutory construction and interpretation, that; **1**) section 42-9-260 (B)(1) governs and controls W.C.C. Case No. 0506205; and **2**) section 42-9-260 (B)(1) neither affords nor allows Appellant's, Respondents' or the Commission the requisite power to resolve Respondents' obligation to continue payment of entitled workers' compensation benefit payments to Appellant by way of settlement agreement and release of the parties or approval of same by the Commission. Id. Respondents' Return.

Next, a review of Respondents' Return indicates they declined to challenge or contest Appellant's reliance and assertions of Poston by Poston v. Barnes, 294 S.C. 261, 264, 363 S.E.2d 888, 890 (1987) (quoting Hudson v. Lancaster Convalescent Center, Appellate Case No. 2011-194189, Opinion No. 27348 (Sup. Ct. 2014); 73 C.J.S., Public Administrative Bodies and

Procedure, § 59 (2005); Harvey v. Care Initiatives, Inc.; or Valley v. Northern Fire & Marine Ins. Co., 254 U.S. 348, 41 S.Ct. 116 (U.S. Sup. Ct. 1920) (quoting Elliott v. Lessee of Piersol, 26 U.S. 328 (U.S. Sup. Ct. 1828) (Memorandum, p. 13), for the proposition that parties, to include the above-entitled parties, are free to devise settlement agreements in any manner that **does not** contravene public policy or the law, or that a contract or agreement that is devised in a manner which contravenes public policy or the law is void. Id. Respondents' Return.

Appellant contends *additional* authorities establishing that contracts which contravene public policy or the law are void, from our Supreme Court, is most persuasive. In White v. J.M. Brown Amusement Co., our Supreme Court held:

> "The general rule, well established in South Carolina, is that courts **will not** enforce a contract when the subject matter of the contract or an act required for performance **violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions.**"

(Emphasis added). Id. at 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004).

Moreover, other holding authorities from our Supreme Court, and specifically, Berkebile v. Outen, 311 S.C. 50, 53-54, 426 S.E.2d 760, 762 (1993) (stating "[a]n illegal contract has **always been unenforceable**") (Emphasis added), and Batchelor v. American Health Ins. Co., 234 S.C. 103, 107 S.E.2d 36 (1959) (noting that contracts violating public policy as expressed in constitutional provisions, statutes, or judicial decisions are **void**) (Emphasis added), expressly and unambiguously establishes the void and unenforceable effect a settlement agreement and release has on person(s) and property when it contravenes the law. Id.

While Respondents' rely on Skinner v. Westinghouse Elec. Corp. for the proposition that "Subject matter jurisdiction is 'the power to hear and determine cases of the general class to which the proceedings in question belong'" (Respondents' Return, p. 2), Appellant contends this contention and authority is misplaced here. Appellant does not allege that the Commission, a

creature of statute, lacks jurisdiction to hear and decide matters regarding workers' compensation proceedings (*See* S.C. Code Ann. § 42-3-10 (Supp. 1986)); rather, Appellant contends that the Commission lacked and exceeded its subject matter jurisdiction when it issued its Order and Award approving the settlement agreement and release between the parties, where the agreement contravened section 42-9-260(B)(1), *among other well-settled authorities, laws and Constitutional provisions*, in light of Poston; Harvey; Triska and many other holding state and federal authorities. Id. Memorandum. Respondents' Return.

Put in another way, suppose, in a purely "hypothetical scenario", that the settlement agreement and release was actually signed by Appellant; Appellant's Counsel; and Respondents' Counsel in accordance with S.C. Code Reg. § 67-803(B)(2) (Supp. 2005) (which it was not) (Memorandum, Att. B), and the agreement actually and *facially* cited S.C. Code Ann. § 42-17-10 as the specific code of authority relied upon by the parties vesting subject matter jurisdiction with the Commission to consider and approve the agreement (which it did not). Id.

Because the circumstances and conditions present in W.C.C. Case No. 0506205 (Memorandum) mandates that termination and suspension of entitled temporary total disability (TTD) benefit payments are governed by section 42-9-260(B)(1), and not by way of settlement agreement and release of the parties, per § 42-17-10, wherein section 42-9-260(B)(1) is a *specific* and *definite* statute in comparison and consideration to the *general* statute of section 42-17-10 (or if Respondents' prefer, section 42-9-390), the Commission *still would have lacked subject matter jurisdiction* to approve the settlement agreement in the first instance. Id. *See* Capco of Summerville, Inc. v. J.H. Gayle Constr. Co., Inc., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (S.C. Sup. Ct. 2006) ("Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific

statute **will be considered an exception to, or a qualifier of**, the general statute and **given such effect**.") (Emphasis added); *see also* Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp., 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995) (general rule of statutory construction is that a specific statute prevails over a more general one).

Finally, Respondents' Return declined to challenge or contest Appellant's assertion(s) that in *addition* to the so-called agreement and release contravening section 42-9-260(B)(1), that said agreement also contravened section 42-9-260(F); S.C. Reg. 67-505(A); and S.C. Reg. 67-506(D) & (E). Id. Memorandum, p. 5-19. Respondents' Return. Respondents' failed to meet their burden in terms of shifting the preponderance of evidence back to their side with respect to failing to establish that the aforementioned agreement or the Commission's order and award approving the agreement (Memorandum, Att. B, Att. A4) *did not* contravene section 42-9-260(B)(1), *et al.* Id. Memorandum. Respondents' Return.

Accordingly, this Court should deem the agreement unenforceable, to include dismissing this matter for lack of subject matter jurisdiction, to include remanding this matter to the Commission with a directive to vacate the 01/05/2006 Commission Order and Award on the ground of lack of subject matter jurisdiction, as a matter of law, in light of Hart; Voehl; Triska and the many other holding state and federal authorities relied upon by Appellant. Id. Memorandum. Respondents' Return.

II. Respondents' failed to meet their burden to establish that the 12/22/2005 Agreement and 01/05/2006 Commission Order and Award did not violate Appellant's constitutional rights under the Due Process Clause and the Equal Protection Clause of the United States and South Carolina Constitutions.

A review of Respondents' Return indicates that Respondents' failed to establish that requisite constitutional protections under the Due Process Clause and the Equal Protection Clause of the U.S. and South Carolina Constitutions, respectively, were satisfied and adhered to

by the parties and the Commission relative to the so-called agreement and Commission Order and Award approving the so-called agreement. Memorandum, p. 19-29. Respondents' Return.

Specifically, with respect to Due Process Clause requisites, Respondents' Return failed to establish that; **1**) when Appellant signed the so-called agreement on 12/22/2005 that Appellant was reasonably noticed that the sum of $20,000.00, once approved and executed by the Commission, served as final payment for Appellant's entitled TTD workers' compensation benefit payments;

2) the face of the so-called agreement *expressly* and *unambiguously* states that the sum of $20,000.00, once approved and executed by the Commission, served as final payment for Appellant's entitled TTD workers' compensation benefit payments; **3**) Appellant was *reasonably noticed* that Appellant had a continuing legal right to receipt of TTD workers' compensation benefit payments on 12/22/2005;

4) Appellant *knowingly* and *voluntarily* relinquished Appellant's constitutional and section 42-9-260(F) statutory rights to a hearing before the Commission regarding Appellant's property rights to entitled TTD workers' compensation benefits, by signing the so-called agreement on 12/22/2005; **5**) Appellant was aware of the *existence* of the Commission on or prior to 12/22/2005; or **6**) the Commission convened the mandatory § 42-9-260(F) hearing with the parties prior to issuing the 01/05/2006 Order and Award approving the so-called agreement and release. Id. Memorandum, p. 19-29. Respondents' Return.

Further, with respect to Equal Protection Clause requisites, Respondents' Return fails to contest or challenge Appellant's well pled assertions that; **a**) Appellant's posture in W.C.C. Case No. 0506205 as of 12/22/2005 was similarly situated to that of injured workers Davis, Grayson and Cranford in the analogous matters of Susan Davis v. UniHealth Post Acute Care, 402 S.C.

541, 741, S.E.2d 770 (Ct. App. 2013); Grayson v. Carter Rhoad Furniture, 317 S.C. 306, 310, 454 S.E.2d 320, 322 (1995); and Cranford v. Hutchinson Constr., 399 S.C. 65, 76, 731 S.E.2d 303, 309 (Ct. App. 2012); **b)** Appellant was treated in a disparate manner in comparison to other injured workers Davis, Grayson and Cranford; and **c)** there is no rational basis for the difference in Appellant's treatment in W.C.C. Case No. 0506205 relative to the prior treatment of Davis, Grayson and Cranford. Id. Memorandum, p. 19-29. Respondents' Return.

Moreover, as it specifically related to the Commission, and in particular, Commissioner David W. Huffstetler's obligation to ensure that the so-called agreement signed by *Appellant and Appellant's then attorney only* passed Due Process Clause and Equal Protection Clause muster prior to issuing the 01/05/2006 Commissioner Order and Award approving the so-called agreement and release, Appellant is a African American, an inherently suspect classification as a member of a race in South Carolina whose faced a long history of discrimination, wherein Appellant's race is that of a discrete and insular minority who would otherwise be *unheard* by the political process. Memorandum, p. 19-29. Respondents' Return. *See* Dunes W. Golf Club, LLC, 401 S.C. at 293, 737 S.E.2d at 608; *also see* Palmore v. Sidoti, 466 U.S. 429, 432 (1984); *see also* United States v. Carolene Products Co., 304 U.S. 144, 152 n. 4 (1938); *also see* United States v. Charleston County, 316 F. Supp. 2d 268 (D.S.C. 2003) (holding *inter alia* Charleston County's at-large election system "unlawfully exacerbates the disadvantaged political posture inherited by generations of African-Americans through centuries of institutional discrimination.")[1].

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1 It appears this type of discriminatory and dismissive conduct towards the health and well-being of African Americans is apparently **still active** in terms of Respondents' Counsel's *disparaging* remarks as to the true events leading to Appellant's entrance into the alleged agreement on 12/22/2005. Specifically, without providing this Court **any** evidentiary documentation to refute or rebut **one word** contained within

Finally, this Court's recent opinion in Spur at Williams Brice Owners v. Lalla, 415 S.C. 72, 781 S.E.2d 115 (Ct. App. 2015), as it specifically relates to a judicial officer's requirement, and in W.C.C. Case No. 0506205, Commissioner Huffstetler's judicial obligation[2], to ensure Equal Protection Clause requisites were adhered to prior to issuing the 01/05/2006 Order and Award approving the so-called agreement between the parties, is most persuasive, as you opined:

> "While the private acts and agreements of individuals do not implicate the Equal Protection Clause, "the action of state courts and of **judicial officers** in **their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment.**" *Shelley v. Kraemer*, 334 U.S. 1, 14 (1948) (holding the states denied petitioners the equal protection of the laws in granting judicial enforcement of certain restrictive **agreements**). Therefore, for a restrictive covenant [agreement] to be judicially enforceable, **it must not discriminate on the basis of a classification that, if applied by the state, would contravene either the state or federal Equal Protection Clause.**"

Id. (Emphasis added).

Respondents' failed to meet their burden in terms of shifting the preponderance of evidence back to their side with respect to failing to establish that the aforementioned agreement or the Commission's order and award approving the agreement (Memorandum, Att. B, Att. A4) *did not* contravene Appellant's protected constitutional rights under the Due Process Clause and the Equal Protection Clause as contained within the U.S. and South Carolina Constitutions,

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Appellant's Sworn Affidavit, Respondents' Counsel describes and attacks Appellant's Affidavit as "his own **self-serving** rendition of events that occurred in 2004-2006". Respondents' Return, p. 4 (Emphasis added). To the contrary, Appellant was humiliated, profoundly ashamed and embarrassed to provide intimate details to this Court, and to any Citizen who can easily *access* this information on C-Track, in terms of what Appellant, a U.S. Citizen and Honorable Disabled Veteran, was intentionally subjected to, and *continues* to endure at the hands of the Employer and Carrier; the Appellant's own former Attorney; the alleged Employer's former Representative; and the Commission, by way of Commissioner Huffstetler, in this matter. Sworn Affidavit, previously provided. Respondents' Return.

2 Appellant respectfully reminds the Court that Commissioners appointed to the Commission by the Governor, with Senate approval, are bound by the Code of Judicial Conduct as set forth in Rule 501, SCACR, in terms of performance of their quasi-judicial activities. § 42-3-250 (Supp. 2005).

respectively. Id. Memorandum, p. 19-29. Respondents' Return. *See* South Carolina Farm Bureau Mutual Ins. Co v. Mumford, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989) ("Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy.").

Accordingly, this Court should deem the agreement unenforceable, to include dismissing this matter for lack of subject matter jurisdiction, to include remanding this matter to the Commission with a directive to vacate the 01/05/2006 Commission Order and Award on the ground of lack of subject matter jurisdiction, as a matter of law, in light of Webster; Ross; Ex parte Hart; Triska; Voehl; Hart; Poston; Valley; Elliot, and the many other holding state and federal authorities relied upon by Appellant. Id. Memorandum, p. 19-29. Respondents' Return.

III. Respondents' failed to meet their burden to establish that the 12/22/2005 Agreement and 01/05/2006 Commission Order and Award approving the agreement should not be vacated and deemed void for lack of subject matter jurisdiction because the Agreement fails to cite the requisite authority by which the parties vested subject matter jurisdiction upon the Commission to consider and approve the agreement in the first instance.

Respondents' allege that the so-called agreement signed by Appellant is valid and enforceable; however, Respondents' Return fails to direct this Court; its Jurors; or the undersigned Appellant, as to where, on the *face* of the so-called agreement, that the proper jurisdictional code of authority appears to have properly vested the Commission with subject matter jurisdiction to consider and approve a settlement agreement and release between the parties. Memorandum, p. 29-31. Respondents' Return.

Instead, without ever *facially* establishing the Commission's required jurisdictionally-cited-authority which vested the Commission with the power to approve the so-called agreement (Memorandum, Att. A4, B), Respondents' instead cite inapposite authorities to allege the validity of the aforementioned agreement and subsequent Order and Award approving the agreement,

which are clearly distinguishable from instant workers' compensation claim no. 0506205, based on relevant factors.

First, Respondents' reliance on McCreery v. Covenant Presbyterian Church, 303 S.C. 271, 273, 400 S.E.2d 130, 131 (S.C. Sup. Ct. 1990), is inapposite to W.C.C. Case No. 0506205 on grounds that; **i)** In McCreery, it was the Employer and Carrier, not Employee McCreery, who raised the issue of lack of subject matter jurisdiction, whereas here, it is the undersigned injured Appellant challenging the Commission's subject matter jurisdiction;

ii) In McCreery, our Supreme Court held that "It is settled law that an **employer** wishing to raise the exclusivity of the Commission's jurisdiction as a defense to an action in circuit court **must** plead facts raising it as an affirmative defense **or it is waived**. *Googe v. Speaks*, 194 S.C. 206, 9 S.E.2d 439 (1940); *Ammons v. Hood*, 288 S.C. 278, 341 S.E.2d 816 (Ct. App. 1986). Similarly, **an employer must raise** to the Commission the **factual issue whether the Act confers jurisdiction. Failure to do so constitutes a waiver of the issue**" (Emphasis added); whereas, here, Googe; Ammons and McCreery do not apply to *injured workers'* challenges to the Commission's subject matter jurisdiction;

iii) McCreery, as relied upon by Respondents' here, is **controlled** by Voehl; Poston; Ecclesiastes Prod. Ministries; Harvey; Turner; Webster; Triska; White; Hagans; Berkebile; Batchelor; Hart; Maxfield; Rescue Army; Earle; Renaud; Ross; Hudson; 73 C.J.S., Public Administrative Bodies and Procedure, § 59 (2005); Valley; Elliott; Ex parte Hart; S.C. Const. art. I, § 22; S.C. Const. art. I, § 3; U.S. Const. amend. XIV, § 1; Mooney; § 42-9-260(B)(1) & (F); S.C. Code Reg. § 67-505(A); S.C. Code Reg. § 67-506(D)-(E); S.C. Code Reg. § 67-803(B)(2); Benya; Patricia Grand Hotel, LLC; 17A Am. Jur. 2d – Contracts, § 29 (2005); Player; S.C. Code Ann. § 40-5-320(A)(1-4) (Supp. 2005); Rule 5.5(a), RPC, Rule 407, SCACR; S.C. Code Ann. §

40-5-310 (Supp. 2005); Buyers Serv. Co.; McDonald; and other holding authorities; and

iv) In McCreery, the Employer and Carrier did not allege fraud, whereas here, Appellant has alleged extrinsic fraud upon the court against Appellant committed by **Robert G. Bacon, Esq.**; **Walter H. Barefoot, Esq.**; and **Commissioner David W. Huffstetler**, wherein McCreery is clearly *inapposite* to the instant case. Id. Memorandum. Respondents' Return.

Second, Respondents' reliance upon Singleton v. Young Lumber Co., 236 S.C. 454, 463, 114 S.E.2d 837, 841 (1960), for the proposition that an agreement between a claimant and employer to pay compensation "when approved by the Commission, was as binding on the parties as an order, decision or award of the Commission unappealed from, or an award of the Commission affirmed upon appeal" is **inapposite** to the instant case on grounds that; **1**) the Commission issued an *unlawful* Order and Award approving the so-called agreement (Memorandum, Att. A4), without ever convening the jurisdictionally-mandated hearing with the parties (Memorandum, Att. G; Sworn Affidavit) in the first instance, which contravened many of the previously cited holding authorities, as well as the Commission Order and Award contravening S.C. Code 42-17-40(A) (Supp. 2005); and **2**) there was no citation to specific code of authority appearing on the *face* of the so-called agreement vesting the Commission with subject matter jurisdiction to take *any* action in W.C.C. Case No. 0506205, rendering Singleton *inapposite* to W.C.C. Case No. 0506205. Memorandum. Respondents' Return.

Third, Respondents' reliance on Atkins v. Charleston Shipbuilding & Drydock Co., 206 S.C. 63, 67-68, 33 S.E.2d 46, 47-48 (1945), for the proposition that the Commission has the power to approve "a lump sum settlement to once and for all time settle the rights of the parties..." and that "a settlement fairly entered into and approved by the Commission, including a release of future claims and demands, ... [is] valid and enforceable" is *inapposite* to this matter

on grounds that; **a**) the Commission lacked to the requisite power to approve ANYTHING in W.C.C. Case No. 0506205 because the so-called agreement failed to expressly cite the appropriate code of authority (*i.e.* section 42-17-10; 42-9-390, *etc.*) which was mandatory to vest the Commission with subject matter jurisdiction to take action in this matter in the first instance;

b) section 42-9-260(B)(1), which governs W.C.C. Case No. 0506205, **does not** vest the Commission with jurisdiction to award a "lump sum settlement to once and for all time settle the rights of the parties" with respect to *entitled* Temporary Total Disability payments; and

c) Appellant has alleged that the so-called settlement agreement **was not** fairly made **or** entered into by both parties, and contravened constitutional provisions, statutes, regulations, and well-settled authorities, rendering Atkins *inapposite* to W.C.C. Case No. 0506205. Id. Memorandum. *Supra*. Respondents' Return.

Fourth, Respondents' reliance on Lloyd v. AT&T Nassau Metals Corp., 299 S.C. 207, 209, 383 S.E.2d 257, 259 (Ct. App. 1989), for the proposition that the Court rejected an attempt to correct error in an approved settlement agreement where the party failed to timely appeal the error, in order to prevent parties "from reopening the amount of compensation long after the initial agreement has been settled" is **inapposite** to W.C.C. Case No. 0506205 on grounds that; **1**) Appellant is not "appealing" the 01/05/2006 Commission Order and Award, Appellant has alleged that the Commission lacked subject matter jurisdiction at the time it issued its Order and Award, based on *numerous* jurisdictional grounds; **2**) Appellant has alleged *extrinsic fraud upon the court*, at the time it issued same, wherein said Commission Order and Award must be treated as a nullity and vacated for lack of subject matter jurisdiction, thus having no legal or binding effect on the parties or Appellant's property rights to TTD benefits, rendering Lloyd *inapposite* to W.C.C. Case No. 0506205. Id. Memorandum. Respondents' Return.

Finally, Respondents' assertions, and specifically, "His unilateral attempt to undo the Settlement Agreement that he signed and from which he accepted the benefit is perhaps novel but completely misguided. He signed a full and final settlement and release of his workers' compensation claim, cashed the check, and said nothing for almost six years. He cannot disavow or declare the settlement agreement void now" (Respondents' Return, p. 2), which is akin to an alleged *waiver of jurisdiction by consent of Appellant*, should be rejected by the Court.

Specifically, *in addition* to the holding authorities previously advanced and relied upon by Appellant establishing that the Commission cannot acquire subject matter jurisdiction by waiver, estoppel, consent, conduct or agreement of the parties (*See* Memorandum where Appellant relies upon Carter; LaRue; Langford and Berry), Hart, is even more persuasive here.

In particular, Employer Thomasville Motors alleged that Employee Hart was estopped from challenging the jurisdiction of the Commission at the time it approved and executed the agreement of the parties, because Hart had already received benefits. Hart, *supra*. In its Hart opinion, the N.C. Sup. Ct. opined:

> "... However, the doctrine has been announced that one who procures or gives consent to a decree, even though it is **void** as beyond the powers of the court to pronounce, is estopped to question its validity, at least where **he has obtained a benefit from the act of the court**. Dean v. Dean, 136 Or. 694, 300 P. 1027, 86 A.L.R. 79; 19 Am. Jur., Estoppel, sec. 77. The basis of this doctrine is that whether the court had jurisdiction either of the subject matter of the action or of the parties is not important, but that such practice **will not be tolerated**."

(Emphasis added). Id. at 92 S.E.2d 673, 244 N.C. 84 (1956).

Further in Hart, after the Court cited the analogous case of Reaves v. Earle-Chesterfield Mill Co., *supra*, as to the issue of waivers of jurisdiction after payment of workers' compensation benefits have been made based on a *void* Commission Order and Award approving an *invalid* and *unenforceable agreement* in the first instance, the Hart Court opined:

> "...the Industrial Commission **did not** have jurisdiction over the original claim, and the parties **could not** confer jurisdiction by **consent** or **agreement**, because the Commission's jurisdiction over **contracts for the settlement of claims is limited to those made under and within the purview of the Workmen's Compensation Act**. This Court in its opinion said [Reaves v. Earle-Chesterfield Mill Co. 216 N.C. 462, 5 S.E.2d 306]: "We think it is clear that **neither the agreement entered into by the plaintiff and the defendants nor the subsequent payments of the defendant thereupon amounted to a waiver of jurisdiction**.""

Id. (Emphasis added).

As such, Respondents' assertion that Appellant's entrance into the agreement on 12/22/2005 and when Appellant subsequently "cashed the check" of the Commission-approved and executed agreement amounted to waiver of Appellant's right to challenge the validity of the agreement and the Commission's subject matter jurisdiction at the time it approved the agreement, should be rejected by this Court as meritless, in light of Hart, *et al.* Id.

Respondents' failed to meet their burden in terms of shifting the preponderance of evidence back to their side with respect to failing to establish that the aforementioned agreement or the Commission's order and award approving the agreement (Memorandum, Att. B, Att. A4) expressly cited an appropriate statutory code or regulation which vested subject matter jurisdiction upon the Commission in the first instance to approve the so-called agreement. Id. at 29-31. Respondents' Return.

Accordingly, this Court should deem the agreement unenforceable, to include dismissing this matter for lack of subject matter jurisdiction, to include remanding this matter to the Commission with a directive to vacate the 01/05/2006 Commission Order and Award on the ground of lack of subject matter jurisdiction, as a matter of law, in light of Webster; Ross; Ex parte Hart; Triska; Voehl; Hart; Poston; Valley; Elliot and the many other holding state and federal authorities relied upon by Appellant. Id. Memorandum, p. 29-31. Respondents' Return.

IV. Respondents' failed to meet their burden to establish that Respondents' alleged

former Representative, Walter H. Barefoot, Esquire, signed the so-called agreement in accordance with S.C. Code Reg. § 67-803(B)(2) and Player v. Chandler, *et al.*

A review of Respondents' Return indicates that Respondents declined to challenge, rebut, or advance any evidence as to Appellant's well pled assertions that the Settlement Agreement and Release (*See* Memo, Att. B) should be deemed invalid and unenforceable and the subsequent Commission Order and Award (See Memo, Att. A4) deemed a void judgment, on grounds that; **a**) Respondents' were never expressly identified on the *face* of the so-called agreement as being a party to the agreement;

b) Walter H. Barefoot, Esq. ('Attorney Barefoot'), Respondents' alleged former Representative, failed to sign the agreement; **c**) the failure of Respondents' to be expressly identified as a party to the agreement rendered the contractual agreement unenforceable in light of Player, *et al*; **d**) the failure of Attorney Barefoot to sign the so-called agreement contravened S.C. Code Reg. 67-803(B)(2); and

e) the Commission exceeded and lacked subject matter jurisdiction by issuing an Order and Award approving the agreement which neither expressly identified Respondents' as a party tot e agreement nor was signed by an attorney on behalf Respondents based on authorities and evidentiary documentation relied upon by Appellant as set forth in Argument "IV" of the Memorandum, pages 31-37. Id. Memorandum, p. 31-37. Respondents' Return.

Further, Appellant has previously established above (*supra*) that Respondents' reliance upon Skinner; McCreery; Singleton; Atkins; and Lloyd are misplaced, misguided, inapposite and meritless to instant W.C.C. Case No. 0506205. *Supra*. Respondents' Return.

Respondents' failed to meet their burden in terms of shifting the preponderance of evidence back to their side with respect to failing to establish that there was 'meeting of minds' due to Respondents' failing to be expressly identified as a party to the agreement or that alleged

former Representative Attorney Barefoot actually signed the agreement. Respondents' Return.

Accordingly, this Court should deem the agreement unenforceable, to include dismissing this matter for lack of subject matter jurisdiction, to include remanding this matter to the Commission with a directive to vacate the 01/05/2006 Commission Order and Award on the ground of lack of subject matter jurisdiction, and prior to reaching the merits or reversal, pursuant to Webster; Ross; Ex parte Hart; Triska; Voehl; Hart; Valley; Elliot; and other holding state and federal authorities, by operation of law, as a matter of law. Id. Memorandum, p. 31-37. Respondents' Return.

V. Respondents' failed to meet their burden to establish that Attorney Barefoot and Larry Grant, Claims Administrator for Respondents', did not engage in the Unauthorized Practice of Law in contravention of Rule 5.5(a), RPC, Rule 407, SCACR; S.C. Code Reg. § 67-1202(A) (Supp. 2005); S.C. Code Ann. § 40-5-310(Supp. 2005); and S.C. Code Reg. § 67-803(B)(2) (Supp. 2005).

In response to Appellant's well pled assertions that Attorney Barefoot and Larry Grant engage in the Unauthorized Practice of Law (UPL), Respondents fail to rebut the allegation; failed to advance any evidence for this Court to consider as to the serious allegations of UPL, and instead, irrelevantly stated, "Appellant attacks Respondent's former counsel of, among other things, engaging in the unauthorized practice of law and other...actions" (Respondents' Return, p. 4), which was legally insufficient to rebut the assertions of UPL, per 100A C.J.S. Workers' Compensation § 1029 (2013)[3]. Id.

Further, Appellant has previously established above (*supra*) that Respondents' reliance upon Skinner; McCreery; Singleton; Atkins; and Lloyd are misplaced, misguided, inapposite and

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3 Respondents' Counsel declined to challenge *any* of the authorities cited in Appellant's Motion and Memorandum or challenge any of the evidentiary attachments advanced by Appellant, wherein all cited and relied upon authorities and evidentiary attachments as set forth in Appellant's Memorandum should be accepted for consideration by this Court. McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 344, 479 S.E.2d 67, 75 (Ct. App. 1996) ("Failure to object when the evidence is offered constitutes a waiver of the right to have the issue considered on appeal.").

meritless to instant W.C.C. Case No. 0506205. *Supra.* Respondents' Return.

Based on Respondents' failure to defend against the allegations of UPL regarding Attorney Barefoot and Larry Grant, this Court should accept Appellant's contentions and uncontested evidentiary documents set forth on pages 37-44 of Appellant's Memorandum, to include dismissing this matter and remanding this action to the Commission with a directive to vacate the 01/05/2006 Order and Award, by operation of law, based on the previously cited authorities contained within same. Memorandum, p. 37-44. Respondents' Return.

VI. Respondents' failed to meet their burden to establish that the Medical Reports were ever filed with and considered by the Commission in accordance with the terms and conditions of the so-called agreement.

Appellant established that one of the expressed terms and conditions of the so-called agreement was that "full and complete medical reports are on file with the South Carolina Workers' Compensation Commission and these are duly considered by it in approving this Settlement Agreement and Release"[4]. *See* Memo, p. 44-46; Att. A4, B. Appellant also established, by submission of the contents of the Commission's file as of 12/07/2012, which was not contested by Respondents' as to its validity, that no medical reports were contained within the Commission's copy of W.C.C. File No. 0506205. Memorandum, Att. A.

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4 Appellant points out that Respondents' reference to Appellant "...sa[ying] nothing for almost six years" (Respondents' Return, p. 2), in terms of termination of entitled TTD payments by Respondents is misplaced. The tolling of time **is not** measured from the date when TTD benefit payments are suspended or terminated by the Employer; the time is measured from the date an Employee files for a hearing before the Commission, as confirmed by Commission Agent Eugenia Hollmon (*See* Memo, Att. G); S.C. Code Ann. § 42-9-260(C) (Supp. 2003) ("An employee whose disability payments have been terminated or suspended pursuant to this section may request a hearing to have the payments reinstituted. The hearing must be held within sixty days of the date of the employee's request for a hearing.") (Emphasis added); and 73 C.J.S. Public Administrative Law and Procedure § 39 n.80, at 459 (1983) ("Exhaustion of remedies does not refer to reapplication to the same council or board for an alternative form of relief from an already promulgated adverse and final decision, especially when such suggested action would be futile or useless."). Memorandum, Att. C (confirming Appellant filed a Form 50 hearing request with the Commission for reinstatement of TTD benefit payments, which was cancelled *sua sponte* **prior** to Appellant's requested Form 50 Hearing being convened by Single Commissioner Susan S. Barden).

In Respondents' Return, there was no reference or mention of the medical reports, and Respondents' declined to advance any evidentiary attachments to this Court to rebut the presumption that the medical reports *were never* filed with the Commission. Respondents' Return. 100A C.J.S. Workers' Compensation § 1029 (2013).

Further, Appellant has previously established above (*supra*) that Respondents' reliance upon Skinner; McCreery; Singleton; Atkins; and Lloyd are misplaced, misguided, inapposite and meritless to instant W.C.C. Case No. 0506205. *Supra.* Respondents' Return.

Finally, Appellant would point out that Appellant's Declaration duly served upon Respondents', through their Counsel, which was filed with this Court as a courtesy, did not "declare he [Appellant] has won his case", as alleged by Respondents' (Respondents' Return, p. 2); Appellant simply exercised his entitled rights under section 42-17-10, which clearly affords an injured employee or his dependents the legal right to declare a settlement agreement and release, previously signed by an injured employee, **void** if the medical reports are not filed with the Commission within fourteen (14) days after the employee signs the settlement agreement and release, among other justifications, which has been established here, by review of the Respondent-uncontested contents of the Commission's copy of File No. 0506205 as of 12/07/2012 (*See* Memo, Att. A; Respondents' Return), and a facial review of Respondents' Return, wherein Respondents' failed to provide any evidence to this Court establishing that the medical reports were *ever* filed with the Commission, at any time, to date. Id. Declaration, previously filed. S.C. Code Ann. § 42-17-10. Memorandum. Respondents' Return.

Respondents' failed to meet their burden in terms of shifting the preponderance of evidence back to their side with respect to failing to establish that the medical reports were ever filed with and duly considered by the Commission prior to its issuance of the Order and Award

approving the agreement, which were binding terms and conditions for approval of the agreement. Accordingly, this Court should deem the agreement unenforceable due to the factually-established *contractual breach*, and dismiss this matter for want of subject matter jurisdiction, and remand to the Commission, with a directive to vacate the 01/05/2006 order and award for lack of subject matter jurisdiction, and prior to reaching the merits or reversal, pursuant to Ross; Ex parte Hart; Triska; Voehl; Hart; Valley; Elliot; Turner; McDonald; and 73 C.J.S. Public Administrative Bodies and Procedure § 59 (2005), by operation of law, as a matter of law. Id. Memorandum, p. 44-46. Respondents' Return.

VII. Respondents' failed to meet their burden to establish that the Commission convened the mandatory hearing, and other requisites, prior to issuing the Order and Award approving the so-called agreement.

A review of Respondents' Return indicates Respondents failed to establish that; **1**) neither S.C. Code Ann. § 42-17-10 nor § 42-17-40(A) were the authorities on the *face* of the so-called agreement relied upon by the parties to vest subject matter jurisdiction upon the Commission to approve the agreement; **2**) a hearing was convened before the Commission prior to the Commission's issuance of the Order and Award; **3**) the Commission lacked the requisite evidence upon which to base its findings of facts and conclusions of law to establish jurisdiction and determine if an award was proper because no hearing was ever convened; **4**) the Commission Order and Award contains no findings of facts or conclusions of law establishing its jurisdiction to issue the award in the first instance;

5) in issuing an Order and Award, without convening the mandatory hearing, the Commission violated Appellant's constitutional rights to "reasonable notice" and the "opportunity to heard" pursuant to both the U.S. and South Carolina Constitutions, respectively; **6**) the parties' conduct could not serve to waive, consent or confer subject matter jurisdiction

upon the Commission to issue an Order and Award in W.C.C. Case No. 0506205, without convening the mandatory hearing; and 7) this Court has an obligation to protect Appellant's constitutional rights, and Appellant's entitled property rights to workers' compensation benefits, secured under both the U.S. and South Carolina Constitutions, respectively, and under Section 42-9-260(B)(1) & (F) of the Act. Id. Memorandum, p. 46-50. Respondents' Return.

Further, Appellant has previously established above (*supra*) that Respondents' reliance upon Skinner; McCreery; Singleton; Atkins; and Lloyd are misplaced, misguided, inapposite and meritless to instant W.C.C. Case No. 0506205. *Supra.* Respondents' Return.

Respondents' failed to meet their burden in terms of shifting the preponderance of evidence back to their side with respect to failing to establish that the Commission convened the mandatory hearing, among other jurisdictional requisites, prior to its issuance of the Order and Award approving the agreement, which in fact and law, ceased being an agreement of the parties and became an Order and Award of the Commission. Accordingly, this Court should deem the agreement unenforceable, and dismiss this matter for want of subject matter jurisdiction, and remand to the Commission, with a directive to vacate the 01/05/2006 order and award for lack of subject matter jurisdiction, and prior to reaching the merits or reversal, pursuant to Webster; Ross; Ex parte Hart; Triska; Voehl; Hart; Valley; Elliot; Turner; McDonald; Mooney; Orszula and 73 C.J.S. Public Administrative Bodies and Procedure § 59 (2005), by operation of law, as a matter of law. Id. Memorandum, p. 46-50. Respondents' Return.

VIII. Respondents' failed to meet their burden to establish that Commission Huffstetler; Attorney Barefoot; and Attorney Bacon did not engage in extrinsic fraud upon the court in W.C.C. Case No. 0506205.

While a party is precluded from arguing to the Court as to the effect of the extrinsic fraud upon court on the adverse party (Chewning, *supra*), nothing prevents or precludes a party from

defending against the allegation in the first instance, or advancing evidentiary attachments to a court to rebut the allegations. Id. A review of Respondents' Return indicates that in defense against Appellant's allegations of extrinsic fraud upon the court against Commission Huffstetler; Attorney Barefoot; and Attorney Bacon, Respondents' states, "He [Appellant] also accuses Respondent's former counsel, his own prior counsel, and Commissioner Huffstetler of a host of unethical and illegal behavior, (Memorandum pp. 50-60), all of which is unwarranted and unproven." Respondents' Return, p. 4. Memorandum , p. 50-60.

However, Respondents' declined to establish, by citation to applicable authority; submission of evidentiary attachments; or reference to previously submitted evidentiary attachments by Appellant, *how* or *why* Appellant's accusations of extrinsic fraud upon the court against Commissioner Huffstetler, Attorney Bacon, and Attorney Barefoot are "unwarranted and unproven". Id. Respondents' defense against allegations of extrinsic fraud upon the court was short, conclusory and not supported by any citation of authority, wherein Respondents' defense should be deemed abandoned by this Court, in light of McLean; Bryson, Lindsey and Glasscock. Id. Respondents' Return.

Finally, Appellant has previously established above (*supra*) that Respondents' reliance upon Skinner; McCreery; Singleton; Atkins; and Lloyd are misplaced, misguided, inapposite and meritless to instant W.C.C. Case No. 0506205. *Supra.* Respondents' Return.

Respondents' failed to meet their burden to shift the preponderance of evidence back to their side with respect to failing to establish that Commissioner Huffstetler, Attorney Barefoot, and Attorney Bacon *did not* engage in extrinsic fraud upon the Court in W.C.C. Case No. 0506205. Accordingly, this Court should deem the agreement unenforceable, and dismiss this matter for want of subject matter jurisdiction, and remand to the Commission, with a directive to

vacate the 01/05/2006 order and award, and prior to reaching the merits or reversal, pursuant to Chewning; Webster; Hilton Head Ctr. of South Carolina; and Hazel-Atlas Glass Co., by operation of law, as a matter of law. Id. Memorandum, p. 50-60. Respondents' Return.

IX. Respondents' failed to meet their burden to establish that the so-called agreement and subsequent Commission Order and Award should not be deemed null and void pursuant to the Doctrine of Specific Performance.

A review of Respondents' Return indicates Respondents' failed to defend against Appellant's well pled arguments establishing that this Court should deem the so-called agreement and subsequent 01/05/2006 Commission order and award (*See* Memo, Att. A4, B) null and void pursuant to the Doctrine of Specific Performance. Memorandum, p. 60-72. Respondents' Return.

Further, Appellant has previously established above (*supra*) that Respondents' reliance upon Skinner; McCreery; Singleton; Atkins; and Lloyd are misplaced, misguided, inapposite and meritless to instant W.C.C. Case No. 0506205. *Supra.* Respondents' Return.

Respondents' failed to meet their burden in terms of shifting the preponderance of evidence back to their side with respect to failing to establish that this Court should not deem the so-called agreement and subsequent 01/05/2006 Commission Order and Award null and void pursuant to the Doctrine of Specific Performance. Accordingly, this Court should exercise its sound discretion and deem the so-called agreement (Memo, Att. B) "unjust", "inequitable"; and unenforceable, *axiomatically* rendering the 01/05/2006 Commission Order and Award a void judgment, thus divesting the Commission; the Circuit Court and this Court of subject matter jurisdiction over W.C.C. Case No. 0506205 and the parties, in accordance with Bishop; McCoy; Anthony; Amick and other holding authorities, by operation of law, as a matter of law. Id. Memorandum, p. 60-72. Respondents' Return.

X. Respondents' failed to meet their burden to establish that all subsequent proceedings relying or founded upon the so-called agreement and subsequent Commission Order and Award must be regarded as invalid.

A review of Respondents' Return indicates that Respondents' declined to defend against Appellant's contentions that; **1**) Appellant had a legal right to challenge this Court's subject matter jurisdiction over the parties and W.C.C. Case No. 0506205; **2**) Both the 07/17/2015 Circuit Order currently pending review before this Court and the 07/17/2013 Appellate Panel Decision and Order constitutes unlawful *defacto nunc pro tunc* orders;

3) Pursuant to Old Wayne Mut. L. Assoc. and 49 C.J.S. Judgments, § 19, that neither the Commission, the Circuit Court nor this Court can confer jurisdiction where none existed and cannot make a void proceeding valid; and **4**) Pursuant to 30A Am. Jur. Judgments § 44, 45, that all proceedings founded on a void judgment are to be regarded as invalid. Id. Memorandum, p. 72-74. Respondents' Return.

Further, Appellant has previously established above (*supra*) that Respondents' reliance upon Skinner; McCreery; Singleton; Atkins; and Lloyd are misplaced, misguided, inapposite and meritless to instant W.C.C. Case No. 0506205. *Supra.* Respondents' Return. Respondents' failed to meet their burden in terms of shifting the preponderance of evidence back to their side with respect to failing to establish that if this Court deems the so-called agreement unenforceable, to include deeming the subsequent 01/05/2006 Commission Order and Award a nullity, that all subsequent proceedings, to include this proceeding, must be regarded as invalid.

Accordingly, in deeming the so-called agreement and subsequent Commission Order and Award voids, based on the evidence, well settled authorities and contentions set forth in Appellant's Memorandum, and in dismissing this action for lack of subject matter jurisdiction, this Court should also deem all subsequent proceedings founded upon the void 01/05/2006 Order

and Award invalid by operation of law, as matter of law. Memorandum. Respondents' Return.

XI. Respondents' failed to meet their burden to establish that this Court has proper subject matter jurisdiction to hear and decide this case.

Appellant's Memorandum, from page 5 to 60, to include Appellant's uncontested Sworn Affidavit and evidentiary attachments (and Appellant's Declaration), provided numerous jurisdictional issues and constitutional provisions, statutes, regulations and well-settled law(s) establishing that this Court; the Circuit Court; and the Commission lacks subject matter jurisdiction over the parties and W.C.C. Case No. 0506205. Memorandum. In light of Appellant's reliance upon McNutt; Maxfield; Rescue Army; and Kirksey, among other holding authorities, Respondents were obligated to establish, by citation to proper authority or authorities, how subject matter jurisdiction was vested upon this Court to hear and decide this case on the merits. Id.

While a review of Respondents' Return indicates that Respondents are of the position that this Court has subject matter jurisdiction to hear and decide this case (*See* Respondents' Return, p. 4 ("...while Respondents do not agree or concede that this Court lacks jurisdiction to hear this appeal")), Respondents' 5 page Return fails to cite a *single authority* establishing this Court's vested subject matter jurisdiction to hear and decide this case. Respondents' Return.

Specifically, Respondents' Return fails to cite The South Carolina Administrative Procedures Act (APA); provide a reference to S.C. Code Ann. § 1-23-360 thru 390 (Supp. 2005); or cite any well-settled authorities (*e.g.* Bass v. Kenco Group, 366 S.C. 450, 456-57, 622 S.E.2d 577, 580 (Ct. App. 2005)) establishing the standard and subject matter jurisdiction for this Court's power to review decisions of the Workers' Compensation Commission respective to W.C.C. Case No. 0506205. Id. Respondents' Return.

Furthermore, a *facial* review of the **28-page** 07/17/2015 Circuit Court Order, currently

pending review by this Court, establishes that the Order fails to cite a *single authority* vesting the Circuit Court with subject matter jurisdiction to issue the Order *in the first instance*. 07/17/2015 Circuit Court Order, previously filed.

Specifically, while the Circuit Court Order improperly makes an unlawful *de facto nunc pro tunc* finding, *re-writing history*, in terms that the so-called Settlement Agreement and Release was approved by the Commission pursuant to "S.C. Code Ann. § 42-9-390", which **did not** vest the Circuit Court with subject matter jurisdiction, the order fails to cite the APA; fails to cite the appropriate Court Rule relied upon by Respondents' to vest the Circuit Court with jurisdiction to allegedly *reconsider* Respondents' Motion to Dismiss (**previously filed by Respondents' Counsel back in 2013**); fails to cite any well-settled authorities establishing the Circuit Court's power to review decisions from the Commission; and the Circuit Court Order's citation to "Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750, 759 (1997)", and "S.C. Code Ann. § 34-31-20(B)" (no date provided), were cited as to the Circuit Court unlawfully awarding Respondents', as a sanction against Appellant, the "sum of $32,933.13" in attorney's fees, which again, **did not** vest subject matter jurisdiction upon the Circuit Court to issue the order. Id. 07/17/2015 Circuit Court Order. Respondents' Return. *See* Stanard v. Olesen, 74 S.Ct. 768, 98 L.Ed. 1151 (U.S. Sup. Ct. 1954) ("No sanction can be imposed absent proof of jurisdiction").

Finally, Appellant has previously established above (*supra*) that Respondents' reliance upon Skinner; McCreery; Singleton; Atkins; and Lloyd are misplaced, misguided, inapposite and meritless to instant W.C.C. Case No. 0506205. *Supra*. Respondents' Return. Respondents' failed to meet their burden in terms of shifting the preponderance of evidence back to their side with respect to failing to establish, by citation to proper authority, how subject matter jurisdiction is vested upon this Court to hear and decide this matter on the merits.

Accordingly, this Court should deem the agreement unenforceable, and dismiss this matter for want of subject matter jurisdiction, and remand to the Commission, with a directive to vacate the 01/05/2006 order and award for lack of subject matter jurisdiction, and prior to reaching the merits or reversal, pursuant to Webster; Ross; Ex parte Hart; Triska; Voehl; Hart; Valley; Elliot; Turner; McDonald; Mooney; Orszula and 73 C.J.S. Public Administrative Bodies and Procedure § 59 (2005), *et al*, by operation of law, as a matter of law. Id. Memorandum. Respondents' Return.

XII. Respondents' failed to meet their burden to establish that this Court should not take notice to Appellant's allegations challenging subject matter jurisdiction.

Appellant **agrees** with Respondents' apparent co-Counsel, **Helen F. Hiser, Esquire**, that Appellant has "suggest[ed] that this Court may be **guilty** of "**treason and lawless violence**" if it rules on the merits of his appeal, all the while acknowledging that his prior filings with the Supreme Court concerning this matter were "patently erroneous."" (Emphasis added). Respondents' Return, p. 4.

Specifically, in all the pleadings filed by Appellant with this Court in this matter, Appellant **has never** alleged that this Court's Jurors were wanting of Knowledge, Skills, Abilities or Education as to being *either* unqualified to comprehend the facts of this case to properly decide this matter *or* insufficiently Learned of the Law. *See* Record (and please review each and every filing by the *pro se* Appellant in THIS matter, even if it means that Appellant has to wait longer to receive the workers' compensation benefits Appellant is constitutionally, statutorily and regulatorily entitled to receive, because THIS matters).

Further, Appellant has had the *sincere privilege* of reviewing, not years, but *decades* of precedent opinions issued by this Court, both in civil and criminal matters, wherein every Juror of this previous and current Court (except for Appellate Associate Justice Hon. D. Garrison Hill,

who was elected to this Court on or around 02/17/2017), has always provided an expert and intricately-detailed rationale, with supported citation to authorities, to support this Court's opinion(s).

Thus, where; **A**) The Jurors of this Court are "deemed to know the law" in light of Scheuer and Owen; **B**) Appellant has advanced well pled arguments, proper citations to numerous controlling authorities, and submission of uncontested and incontrovertible evidence establishing that this Court; the Circuit Court; and the Commission lacks subject matter *and* personal jurisdiction over the parties and W.C.C. Case No. 0506205 (*See* Memorandum and Sworn Affidavit); **C**) Respondents' Return not only fails to rebut any of Appellant's jurisdictional issues, it also fails to cite any authority relied upon by Respondents' to prove that this Court has proper subject matter jurisdiction to hear and decide this case on the merits (*See* Respondents' Return); and

D) This Court "cannot fix the bounds of its own jurisdiction according to its own discretion"; "cannot confer jurisdiction where none existed and cannot make a void proceeding valid", in light of Maxfield and Old Wayne Mut. L. Assoc., this Court *must* dismiss this matter for lack of jurisdiction and remand to the Commission with directions to vacate the 01/05/2006 Commission Order and Award based on the foregoing (Memorandum), and if the assigned Juror(s) to decide Appellant's Motion to dismiss fails to relinquish jurisdiction and proceed to reaching the merits in this matter, at a minimum, an investigation would certainly be warranted in light of U.S. v. Will; Cohens; Ableman; Cooper; the U.S. Constitution and the South Carolina Constitution, among other holding authorities. Id. Memorandum. Respondents' Return.

Accordingly, Respondents' failed to meet their burden in terms of establishing that this Court is not required to take notice to Appellant's well-pled arguments challenging this Court's,

the Circuit Court, and the Commission's subject matter jurisdiction respective to W.C.C. Case No. 0506205. Memorandum. Respondents' Return. *See Judicial Writing Manual - Federal Judicial Center*. 4th Ed., p. 18-19. (1991). Rubin, A., *et al.* ("If the losing side has raised substantial contentions, the opinion should explain why they were rejected").

XIII. Respondents' failed to meet their burden to establish that Appellant does not have a legal right, *by operation of law*, to reinstatement and release of entitled TTD payments and receipt of the twenty five percent penalty on the withheld TTC/TTD payments pursuant to section 42-9-260 of the Act.

Respondents' reliance upon Fields v. Regional Med. Ctr., 363 S.C. 19, 609 S.E.2d 506 (2005) (the substance of relief sought in a pleading, rather than its form or caption, is controlling), for the proposition that "...the substance of his Motion, which clearly seeks a substantive ruling from this Court instead of a straight dismissal of his appeal, should control" (Respondents' Return, p. 3-4), is misguided, misplaced and *inapposite* to this matter on grounds that Respondents' Counsel(s) apparently misunderstands the phrase and meaning of '**by operation of law**'. Id.

Specifically, The Business Dictionary (2017), defines "By Operation of Law" as: "**Automatic legal process** by which an effect or result, or liability or right, is created or extinguished **whether the affected party intended it or not**". Id. (Emphasis added). Furthermore, The Free Dictionary by Farlex (2008), defines "By Operation of Law" as: "The manner in which an individual **acquires certain rights or liabilities through no act or cooperation of his or her own, but merely by the application of the established legal rules to the particular transaction; a change or transfer which occurs automatically due to existing laws and not an agreement or court order**". Id. (Emphasis added).

In other words, if this Court agrees with Appellant that the so-called agreement (Memo, Att. B) is unenforceable and invalid, and the Commission's 01/05/2006 Order and Award

approving the so-called agreement (Memo, Att. A4) must be deemed null and void *ab initio* based on any one or all of the overwhelming established jurisdictional defects as set forth herein as well as Appellant's Memorandum, in granting a "straight dismissal" and remanding this action to the Commission with a directive that it vacate its 01/05/2006 Order and Award approving the so-called agreement for lack of subject matter jurisdiction, this Court **would not** be required to **also** Order Respondents' to immediately reinstate and release all withheld entitled TTD disability benefit payments to Appellant, because the parties would **automatically** be bound by the Act, wherein Respondents' would have a *continuing obligation* to pay Appellant entitled TTD disability benefits in accordance with **current existing** section 42-9-260(B)(1), which would include the mandatory and **automatic** obligation of Respondents to pay the twenty five percent penalty on the withheld TTD payments, pursuant to section 42-9-260(G) of the Act, "**by operation of law**". Id. Memorandum. Respondents' Return. The Business Dictionary (2017). The Free Dictionary by Farlex (2008).

However, as established by Respondents' Return, Appellant *has no confidence* in the integrity of the Employer and Carrier, and certainly *has no confidence* in the Employer's alleged *former representative* or *current representative*, that if this Court issues a "straight dismissal" and remands this matter to the Commission with a directive to vacate the 01/05/2006 Order and Award for want of subject matter jurisdiction, that Respondents' would *voluntarily* comply with section 42-9-260 (B)(1) and (G) of the Act, wherein Appellant believes it is both necessary and appropriate for this Court, in granting Appellant's Motion to Dismiss **and** remanding this matter to the Commission with a directive to vacate the 01/05/2006 Order and Award for want of subject matter jurisdiction, to also ORDER Respondents', **BY OPERATION OF LAW**, to immediately reinstate and release all unlawfully withheld TTD disability payments and the

twenty five percent penalty payments (which Respondents' Return **does not** deny as to the calculations provided by Appellant as to the amount of TTD disability payments and penalty payments due to Appellant as of **11/03/2005 to 02/17/2017**) to Appellant. Id. Memorandum. Respondents' Return.

Furthermore, Respondents' *request* that this Court dismiss Appellant's appeal "with prejudice pursuant to Rules 260(a) & 269, SCACR" (Respondents' Return, p. 4), should be patently rejected by this Court on grounds that a duly filed and served Motion to Dismiss automatically stays the time limits to perfect an appeal pursuant to Rule 240(b), SCACR. Id.

Accordingly, Respondents' reliance upon Fields is inapposite to this matter and must be deemed meritless by this Court, and Respondents' failed to meet their burden in terms of establishing that Appellant *is not* entitled immediate reinstatement of TTD payments and the twenty five percent penalty payment on the withheld TTD payments *by operation of law*, as a matter of law. Id. Memorandum, p. 80-84. Respondents' Return.

Finally, Appellant humbly takes this opportunity, on behalf of past, current and future injured workers in South Carolina, to allege that, although **S.C. Code Ann. § 42-17-10**; **S.C. Code Ann. § 42-9-390**; or **S.C. Code Regs. § 67-801 thru 803** *were not* the authorities relied upon by the parties to vest the Commission with requisite subject matter jurisdiction to consider and approve the so-called settlement agreement and release in W.C.C. Case No. 0506205 (Memo, Att. A4, B), in their current forms, **S.C. Code Ann. § 42-17-10**; **S.C. Code Ann. § 42-9-390**; and **S.C. Code Regs. § 67-801 thru 803** are in fact, **UNCONSTITUTIONAL**, as the aforementioned authorities;

1) Fails to **expressly mandate** that the Commission guard, enforce and ensure that all settlement agreements and releases 'comports with constitutional requirements' under the Due

Process Clause and Equal Protection Clause prongs of the U.S. and S.C. Constitutions, respectively;

2) Fails to expressly mandate that the Commission ensure that all applicable pre-requisite statutes under the Act and Commission promulgated and Legislature-approved regulations applicable to the respective workers' compensation claim(s) are complied with **prior** to the Commission's approval of any settlement agreement and releases;

3) S.C. Code Reg. § 67-803(C) ("The Commission shall not approve an Agreement and Final Release that is not fairly made and in accordance with the Act."), fails to adequately mandate and require that the Commission ensure all constitutional, statutory and regulatory provisions applicable to respective workers' compensation claims are initially complied with **prior** to approval of a settlement agreement and release; and

4) Currently, the Commission is allowed to rely **solely** upon the word of an injured workers' Attorney that the injured worker has been duly informed and made aware of his or her constitutional and statutory rights under the Act prior to Commission approval of a settlement agreement and release between the parties. Id. *See* In the Matter of the Care and Treatment of Jeffrey Allen Chapman, Appellate Case No. 2014-001181, Opinion No. 27705 (S.C. Sup. Ct. 2017), n.11 ("A necessary part of this duty is **ensuring that the law comports with all constitutional requirements**. Accordingly, **we must avoid any application of law that does not pass constitutional muster**.") (Emphasis added); *See also* Spur at Williams Brice Owners.

Furthermore, in their current forms, **section 42-17-10**; **section 42-9-390**; and **S.C. Regs. 67-801 thru 803, OPENS THE DOOR** to the type of hidden *extrinsic fraud* Appellant has been subjected to, because the only individuals informed and aware that an injured workers' constitutional, statutory and regulatory rights may have been violated in terms of the injured

workers' entrance into a patently erroneous and invalid settlement agreement and release are; **a**) the Director for the Claims Department within the Commission; **b**) the Employer's Representative; **c**) the injured workers' Attorney; and **d**) the Single Commissioner who issues the unlawful approval of the agreement and release in the first instance, wherein there is a *high potential for this type of fraud to be repeated*; and wherein there **currently exist** a serious and undeniable threat and impact on the public's interests. Id. *See* Singleton v. Stokes Motors, Inc., 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004) (citing Crary v. Djebelli, 329 S.C. 385, 387, 496 S.E.2d 21, 23 (1998)) ("An impact on the public interest may be shown if the acts or practices have the potential for repetition.").

Still further, while Appellant respectfully believes he has met his burden to secure reinstatement and release of all unlawfully withheld TTD disability payments (Memorandum, Respondents' Return), *by operation of law*, it has taken the undersigned disabled *pro se* Appellant more than **four (4) years of litigation**, wherein Appellant is and has been unemployed throughout this litigation, yet still required to pay all fees and costs associated with maintaining this action, from the Commission to this Court (*See* Memo, Att. M (SSA Income Statement)), wherein in most cases, an injured worker who has been subjected to this type of hidden extrinsic fraud and lawlessness, may never have the ability or needed financial resources to establish and prove that he or she has been the victim of this type of fraud, misconduct and deprivation of protected constitutional and statutory rights by officers of the court in the performance of their official capacities.

Moreover, where a settlement agreement and release would normally be in the best interest of the Employer and Carrier, as a lawfully Commission approved and both-party-signed settlement agreement and release, which is fairly made, and in accordance with the Act, serves to

forever release the employer and carrier from further liabilities resulting from an admitted work-related injury, **section 42-17-10**; **section 42-9-390**; and **S.C. Regs. 67-801 thru 803**, in their current forms, DO NOT meet or comport with the intended purpose of the enactment of workers' compensation laws, in terms of serving the "beneficent purposes of injured workers and their families", particularly when the established type of *extrinsic fraud*, as noted above (Memorandum, *supra*); and/or willful noncompliance with constitutional, statutory and regulatory provisions; and intentional negligence, by officers of the court, can be easily committed and *apparently with impunity*. Id. *See* Cokely v. Robert Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941); Marchbanks v. Duke Power Co., 190 S.C. 336. 2 S.E.2d 825 (1938); Phillips v. Dixie Stores, Inc., 186 S.C. 374, 195 S.E.2d 646 (1938); Kennerly v. Ocmulgee Lumber Co., 206 S.C. 481, 34 S.E.2d 792 (1945); Baldwin v. Pepsi-Cola Bottling Co., 234 S.C. 320, 108 S.E.2d 509 (1959); Carver v. Bill Pridemore and Co., 278 S.C. 235, 294 S.E.2d 419 (1982); Stokes v. First National Bank, 298 S.C. 13, 377 S.E.2d 922 (Ct. App. 1988) ("Compensation laws constitute a form a social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents; and such laws should be construed liberally in favor of the employees and their dependents, in the furtherance of the beneficent purposes for which they were enacted and to avoid any incongruous or harsh results.").

Further still, the **door is open** for bribery, special payoffs, and the like, between Commissioners who knowingly and intentionally approve invalid and unenforceable agreements while in the performance of their official capacities, and attorneys representing injured workers, who intentionally advise their injured clients to sign patently invalid and unenforceable agreements. While Appellant **is not** accusing Commissioner Huffstetler; Attorney Bacon; or Attorney Barefoot of engaging in bribery to support the *extrinsic fraud* Appellant has alleged

they committed against Appellant respective to W.C.C. Case No. 0506205 (Memorandum, *supra*), Respondents' **did not deny** Appellant's calculations that as of **12/22/2005** that the total value of W.C.C. Claim No. 0506205 was in fact **$2,385,297.72** (*See* Memo, p. 69; Respondents' Return), wherein to obtain a release from future liability, for the **minute** sum of **$20,000.00**, wherein Appellant only received **$13,333.34** of the **$20,000.00**, it would not be unreasonable to have the financials, and the like, of Commissioner Huffstetler; Attorney Bacon; and then Commission Claims Director, **Greg Line**, examined and scrutinized to ascertain and determine whether either or both of the aforementioned officers of the court or Director Line received any type of unreported income during the periods of **December 2005 thru January 2006**[5]. Id.

Accordingly, Appellant has submitted correspondence to the Honorable Henry Dargan McMaster, requesting that, in light of the facts of W.C.C. Case No. 0506205 (Memorandum, *supra*), which were *uncontested* by Respondents' (Respondents' Return), that the Governor consider taking the *extraordinary measure* of issuing an **Executive Order** mandating that the Commission convene a MANDATORY HEARING (not an formal or informal conference), prior to Commission approval of ALL future Settlement Agreements and Releases, to protect and ensure that injured workers' are not subjected to the similar type of fraud and constitutional deprivations and infringements the undersigned *pro se* Appellant *was* and *remains* to be

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5 Appellant reminds the Court that after the Commission Claims Department apparently notified Attorney Barefoot, in April 2006, that the Form 19 unlawfully and previously prepared and signed under "Employers Representative", by **Claims Administrator Larry Grant** was improper, instead of issuing any warnings or fines, the Claims Department apparently allowed Attorney Barefoot to simply re-file a so-called "Revised Form 19", to include the Claims Department allowing Attorney Barefoot the ability to simply sign over Larry Grant's unlawful signature, with the term "for", although Appellant was never notified and never re-signed the so-called Revised Form 19. *See* Memorandum, Att. A2, A3. It would certainly appear, in W.C.C. Case No. 0506205, that US Foods; Ace American Insurance Company, Inc.; and alleged Employer Representative Attorney Barefoot, were afforded an *extremely* liberal construction of the Act; not-so-mandatory requirements to comply with Commission promulgated regulations, or the Rule of Law, by the Workers' Compensation Commission.

subjected to, in W.C.C. Case No. 0506205, until such time as the Legislature has had the opportunity to amend section 42-17-10 and section 42-9-390, and until such time as the Commission has revised S.C. Regs. 67-801 thru 803.

Consequently, Appellant requests that this Court, in light of its duty to guard and protect the entitled constitutional rights guaranteed and secured to all citizens, which includes injured/disabled S.C. Workers, as well as fictitious citizen-corporations, declare **section 42-17-10**; **section 42-9-390**; and **S.C. Regs. 67-801 thru 803** UNCONSTITUTIONAL, to include immediately implementing safeguards and rules for the Commission's future approvals of settlement agreements and releases based on the foregoing, and in accordance with In the Matter of the Care and Treatment of Jeffrey Allen Chapman; Spur at Williams Brice Owners; U.S. Const. amend. XIV; S.C. Const. art. I, § 3; and S.C. Const. art. I, § 22. Id. *Supra.* Memorandum. Respondents' Return.

CONCLUSION

Based on the foregoing reasons, Respondents' contentions and requested relief contained within their Return should be categorically rejected by this Court and Appellant's Motion to Dismiss should be granted, to include granting the relief, as stated within Appellant's Motion to Dismiss, by operation of law, as a matter of law.

Respectfully submitted,

By: _____

Alexander Guice
U.S. Citizen
Honorable Disabled Veteran
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alguice@hotmail.com
Appellant, Pro Se

March 4, 2017

ATT. T

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Successor Circuit Court Judge

Case No. 2013-CP-32-01272
Case No. 2014-CP-32-00399

Appellate Case No. 2015-001821

Alexander Guice, Employee, Appellant,

v.

US Foodservice, Inc., Employer, and
Ace American Insurance Company, c/o
Gallagher Bassett Services, Inc., Respondents.

CERTIFICATE OF SERVICE

Pursuant to Rule 240(c)(1), SCACR, I hereby certify that I provided true copies of a cover letter; a "Motion to Dismiss Appeal for Want of Subject Matter Jurisdiction"; a "Memorandum In Support of Motion to Dismiss Appeal for Want of Subject Matter Jurisdiction" with supporting evidentiary attachments; a "Sworn Affidavit of Alexander Guice"; a "Declaration of Alexander Guice Voiding Settlement Agreement and Release dated 12/22/2005 and Notice of Demand for Entitled Temporary Total Disability Benefits and Payments"; and certificate of service, by depositing the same in the U.S. Postal Service, via priority mail, with sufficient priority postage affixed and mailed to: **Erin L. Hantske, Esquire P.O. Box 650007 Mt. Pleasant, SC 29465** on this 18th day of February 2017.

By: _____

Alexander Guice
P.O. Box 13281
Tampa, FL 33681
(813) 562-0547
alguice@hotmail.com
Appellant, *pro se*

February 18, 2017

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1189440600
02/18/2017 (800)275-8777 12:35 PM

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(Weight:2 Lb 10.90 Oz)		
(Expected Delivery Day)		
(Tuesday 02/21/2017)		
(USPS Tracking #)		
(9505 5146 2899 7049 0936 65)		
Insurance	1	$0.00
(Up to $50.00 included)		
PM 2-Day	1	$30.25
(Domestic)		
(COLUMBIA, SC 29211)		
(Weight:19 Lb 8.6 Oz)		
(Expected Delivery Day)		
(Tuesday 02/21/2017)		
(USPS Tracking #)		
(9505 5146 2899 7049 0936 72)		
Insurance	1	$0.00
(Up to $50.00 included)		
Total		$40.30
Credit Card Remitd		$40.30
(Card Name:		
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DATE & TIME	STATUS OF ITEM	LOCATION
February 21, 2017 , 11:37 am	Delivered, PO Box	MOUNT PLEASANT, SC 29465
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February 21, 2017 , 9:40 am	Available at PO Box	MOUNT PLEASANT, SC 29465
February 21, 2017 , 9:30 am	Sorting Complete	MOUNT PLEASANT, SC 29465
February 21, 2017 , 4:02 am	Arrived at Post Office	MOUNT PLEASANT, SC 29464
February 20, 2017 , 8:20 am	Departed USPS Facility	CHARLESTON, SC 29423
February 19, 2017 , 8:34 pm	Arrived at USPS Facility	CHARLESTON, SC 29423
February 19, 2017 , 5:05 pm	Arrived at USPS Facility	COLUMBIA, SC 29201
February 19, 2017 , 10:47 am	Arrived at USPS Facility	JACKSONVILLE, FL 32203
February 19, 2017 , 6:10 am	Departed USPS Facility	TAMPA, FL 33605
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February 18, 2017 , 12:32 pm	Acceptance	TAMPA, FL 33630

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Successor Circuit Court Judge

Case No. 2013-CP-32-01272
Case No. 2014-CP-32-00399

Appellate Case No. 2015-001821

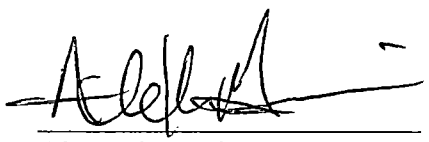
Alexander Guice, Employee, Appellant,

v.

US Foodservice, Inc., Employer, and
Ace American Insurance Company, c/o
Gallagher Bassett Services, Inc., Respondents.

CERTIFICATE OF SERVICE

Pursuant to Rule 240(c)(1), SCACR, I hereby certify that I provided true copies of a cover letter; a "Reply to Return to Motion to Dismiss Appeal for Want of Subject Matter Jurisdiction" with supporting attachments; and certificate of service, by depositing the same in the U.S. Postal Service, via priority mail, with sufficient priority postage affixed and mailed to: **Erin L. Hantske, Esquire P.O. Box 650007 Mt. Pleasant, SC 29465** on this 4th day of March 2017.

By: 

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March 4, 2017

Alexander Guice

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March 4, 2017

Via Priority Mail

The Honorable Jenny A. Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Alexander Guice v. U.S. Foodservice, Inc., *et al*
Appellate Case No. 2015-001821

Dear Ms. Kitchings:

Please find enclosed with this cover letter an original and seven (7) copies of a: "Reply to Return to Motion to Dismiss Appeal for Want of Subject Matter Jurisdiction" with supporting attachments; and a certificate of service in regards to the above-entitled action. Please forward to the appropriate personnel for processing, and please return clocked copies of the same to the undersigned in the pre-paid self-addressed envelope enclosed for your convenience.

By copy of this correspondence, Erin L. Hantske, Esq., the Respondents' Counsel of record, has been provided a copy of the same, via priority mail with enclosures. Should you have any questions, please do not hesitate to contact me. Thank you for your assistance in this matter.

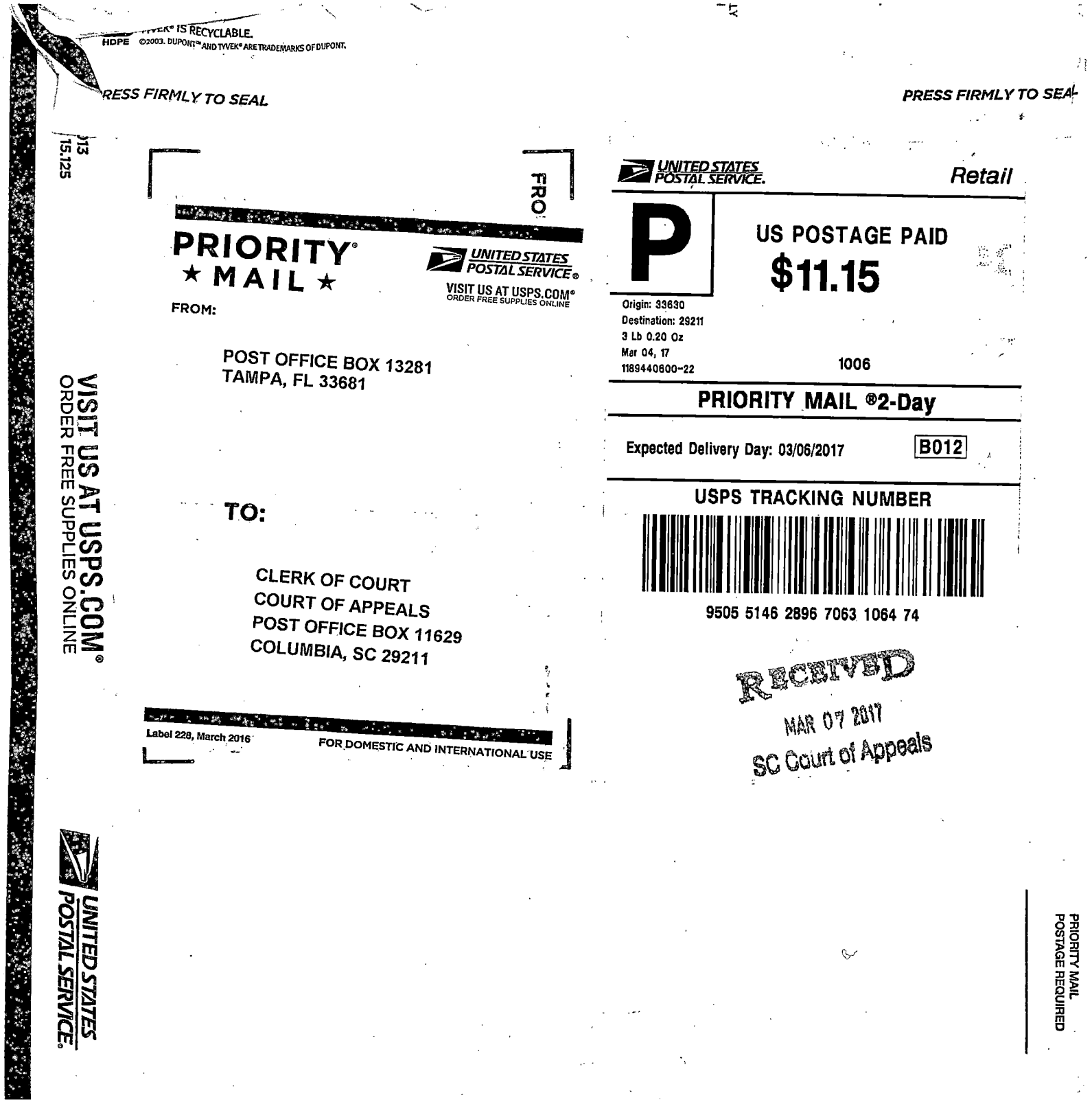
Very truly yours,

Alexander Guice
Appellant/Claimant, *pro se*

/ag

Enclosures: As stated

cc: Erin L. Hantske, Esquire
Hon. Henry McMaster
Hon. Beth Drake
Hon. Alan Wilson
Mark Keel, Chief



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