

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APPEAL FROM SOUTH CAROLINA
WORKER'S COMPENSATION COMMISSION

APR 19

Supreme Court Opinion No. 27708
(filed March 8, 2017)

S.C. SUPREME COURT

HENTON T. CLEMMONS, JR.,
EMPLOYEE,.....PETITIONER,

v.

LOWE'S HOME CENTERS, INC.-HARBISON, EMPLOYER, AND
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.,
CARRIER,.....RESPONDENTS.

**REPLY TO "RETURN" TO
MOTION FOR LEAVE TO FILE
BRIEF ON BEHALF OF THE *AMICI CURIAE*
IN SUPPORT OF
PETITION FOR REHEARING
AND REQUEST FOR ORAL ARGUMENT**

The undersigned hereby respectfully replies to Clemmons's April 13, 2017 letter regarding the Motion for Leave to File an *Amici Curiae* Brief in the above-referenced matter, pursuant to Rule 240(f), S.C.A.C.R., as follows:

1. In his April 13, 2017 letter captioned "Concerns and Response to Motion," Clemmons makes a number of unfounded allegations regarding the basis for the Respondents' Motion for Extension of Time. The undersigned *Amici Curiae* were not involved in the Respondents' Motion for an Extension of Time to File the Petition for Rehearing whatsoever.

2. In his April 13, 2017 letter, Clemmons further alleges that the undersigned *Amici Curiae* should have filed some sort of additional formal notice of intent to file a Motion for Leave to File an Amici Brief, prior to March 23, 2017 and prior to the filing of the Respondents' Petition for Rehearing. Respectfully, the undersigned *Amici Curiae* are unaware of any requirement that any "notice of intent" be filed at any time, much less prior to the actual filing of the Respondent's Petition for Rehearing in this case. Essentially, unless and until the Respondents actually filed a Petition for Rehearing, there were no issues even pending before the Supreme Court for which the *Amici Curiae* could offer additional argument by way of a Brief. In addition, Rule 213, S.C.A.C.R., does not address any deadlines for a Motion for Leave to File an Amicus Brief and makes no mention of a separate "notice of intent." Therefore, the undersigned respectfully contend that their Motion for Leave to File was timely and properly submitted and that no separate "notice of intent" is required by the Appellate Court Rules.
3. Also in his April 13, 2017, Clemmons suggests that it was somehow improper for the undersigned *Amici Curiae* to conditionally file their brief at the same time as the Motion for Leave to File. While Clemmons argues that the conditional filing of the brief "makes a mockery of the rehearing and Amicus Curiae process," the Appellate Court Rules specifically state that "**The brief may be conditionally filed with the motion for leave to file.**" Rule 213, S.C.A.C.R. (emphasis added). Therefore, the undersigned respectfully submit that the Amici Brief was conditionally

filed in accordance with the Appellate Court Rules and not with any mal-
intent.

4. Clemmons's letter of April 13, 2017 further suggests that the timing of the Motion for Leave to File suggests some sort of "collusion between Respondents and the Amicus [sic] parties." Clemmons offers no foundation for this allegation because there is none. The undersigned *Amici Curiae* respectfully submit that the Appellate Court Rules require that their conditionally-filed Brief "shall be limited to argument of the issues on appeal as presented by the parties..." (Rule 213, S.C.A.C.R.). In accordance with this Rule, neither Motion for Leave to File, nor the Brief itself, could not be drafted or filed prior to the filing of the Respondent's Petition for Rehearing. The undersigned *Amici Curiae* simply filed the Motion and the Brief as soon as practicable following the filing the Respondent's Petition for Rehearing, given the gravity of the issues involved. Respectfully, nothing improper or untoward should be assumed based upon the timing of these events.
5. Rule 240(e), S.C.A.C.R., specifically requires that "[a]ny 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...the provisions of Rule 240(c) shall apply to a return." The undersigned respectfully submit that Clemmons's April 13, 2017 letter is not a proper Return to Motion because it does not comply with Rule 240. Therefore, Clemmons's failure to timely file a proper Return should "be deemed a consent by that party to the relief sought in the motion," in accordance with Rule 240(e) and (g), S.C.A.C.R..

6. Clemmons stipulates that “there is no prohibition against filing an Amicus Brief in support of the Petition for Rehearing.” The undersigned respectfully contend that this admission, and Clemmons’s failure to elucidate any legal or factual basis upon which the Motion for Leave to File should be denied, support granting the Motion.

THEREFORE, the undersigned respectfully request that leave be granted for the filing of a Brief in Support of the Petition for Rehearing on behalf of the aforementioned applicants for *Amici Curiae* status, and that the *Amici Curiae* be granted leave to participate in oral arguments before the Court on said Petition.

Respectfully submitted,



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The Municipal Association of South Carolina;
The South Carolina Municipal Insurance Trust;
The Palmetto Hospital Trust; and
The South Carolina Chamber of Commerce.

April 18, 2017

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CARRIER,.....RESPONDENTS.

PROOF OF SERVICE

The undersigned hereby certifies that the Reply to "Return" to Motion for Leave to File *Amici Curiae* Brief in Support of Petition for Rehearing and Request for Oral Argument, was served this 18th day of April, 2017 by email and depositing same in the United States Mail, first class postage prepaid, addressed to the parties of record, as follows:

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April 18, 2017

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