

Turner | Padget

Carmelo B. Sammataro

E-mail: SSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

Writer's Direct Fax: (803) 400-1532

December 28, 2017

Seeahray Brailsford
322 Rice Road
Newberry, SC 29108

Re: Seeahray Brailsford v. Piggly Wiggly Carolina Company, Inc. and Constitution
State Service Company as TPA for Greenbax Enterprise Inc.
Appellate Case No.: 2017-001027
W.C.C. File No.: 1019167
File No.: 5881.130

RECEIVED
DEC 29 2017
SC Court of Appeals

Dear Ms. Brailsford:

We are in receipt of your packet postmarked December 22, 2017, containing what we understand to be the Record on Appeal in this matter. After reviewing the materials, I write to bring your attention to several issues that require the preparation and service of an Amended Record on Appeal that complies with Rules 210 and 267 of the South Carolina Appellate Court Rules ("SCACR"). I have enclosed a copy of these Rules for your ready reference. In addition, I have attempted to summarize the deficiencies noted in the current Record on Appeal as follows:

1. The cover sheet for the Record on Appeal is incorrect;
2. The Record on Appeal is not indexed or paginated;
3. Appellant's Designation of Matter should not be included in the Record on Appeal;
4. The new 2-page material titled "Statement of Issue on Appeals" appears to be a *modified* version of a portion of Appellant's Amended Initial Brief, and it should not be included the Record on Appeal;
5. The Full Commission order appears to be a *proposed* order that is missing page 2, as well as all signatures on the final page, and it should not be included in the Record on Appeal;
6. Documents identified in Respondents' Designation of Matter as numbers 1-10 and 12 were not included in the Record on Appeal;
7. The packet did not include a Certificate of Appellant certifying that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material; and
8. The packet did not include a Proof of Service.

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In addition, Respondents respectfully object to your inclusion of the following documents in the Record on Appeal on the basis that these materials were not previously submitted to or considered by the single commissioner or the Full Commission. Rule 210(c), SCACR, provides that “[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal.” In our review, the following materials were not presented to either the single commission or the Full Commission and, therefore, must be removed from the Record on Appeal:


1. Article titled “What is Primary Biliary Cirrhosis (PBC)” [2 pages];
2. Article titled “Primary Biliary Cirrhosis (PBC)-Diagnosis” [1 page];
3. Article titled “Autoimmune Diseases: Overview” [12 pages];
4. Article titled “Osteoporosis in primary biliary cirrhosis of the liver” [7 pages];
5. Article titled “Patient education: Rotator cuff tendinitis and tear (Beyond the Basics)” [5 pages];
6. Article titled “OrthoInfo - Rotator Cuff Tears” [5 pages]; and
7. Article titled “Depression – older adults” [4 pages].

We ask that you serve an Amended Record on Appeal that includes materials designated by Respondents and that omits the materials to which we object within 14 days of the date of this letter. Barring timely receipt of an Amended Record on Appeal, we will file the appropriate motion with the South Carolina Court of Appeals. Thank you for your attention to this matter.

With kind regards, I am

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Carmelo B. Sammataro

CBS/tj

Enclosures

cc: The Honorable Jenny Abbott Kitchings, Clerk of Court (w/enc.)

sponse shall be made promptly and shall be similarly limited.

(8) *Form.* All briefs shall comply with the requirements of Rule 267, except that the cover of initial briefs may be made of white paper of not less than twenty pound weight and the initial briefs shall not be bound but shall be securely stapled or fastened on the top left hand corner.

[Adopted effective September 1, 1990. Amended effective July 1, 1993. Renumbered and amended effective June 1, 1999. Amended effective May 3, 2007; April 29, 2009.]

RULE 209. DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

(a) *Time to Serve and File.* At the same time a party serves his initial brief(s) under Rule 208, to include a reply brief, he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal. One copy of this Designation with proof of service shall immediately be filed with the clerk of the appellate court.

(b) *Content.* The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]. A party shall not include any matter in his Designation which is not relevant to the appeal.

(c) *Certification.* The Designation shall be accompanied by a certificate signed by the party's counsel of record that the Designation contains no matter which is irrelevant to the appeal.

[Adopted effective September 1, 1990. Renumbered and amended effective June 1, 1999. Amended effective July 1, 2000.]

RULE 210. RECORD ON APPEAL

(a) *Time for Service.* Within thirty (30) days after service of the last brief, the appellant shall serve a copy of the Record on Appeal on each party who has served a brief. Proof of service of the Record shall be immediately filed with the clerk of the appellate court.

(b) *Time for Filing.* The appellant must file with the clerk of the appellate court fifteen (15) copies of the Record on Appeal no later than the date his brief(s) are due under Rule 211. As provided by Rule 267(d), one copy filed with the appellate court shall be filed unbound. The appellate court may require an appellant to file additional copies of the Record on Appeal.

(c) *Content.* The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements

of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal. Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate by appellant. Each page of the Record on Appeal shall be numbered consecutively beginning with the index. Where a portion of a page of the trial transcript, or a page of an exhibit or document, is to be included in the Record on Appeal, the entire page shall be included. When a portion of an order, judgment, decision or pleading is to be included in the Record on Appeal, the entire order, judgment, decision or pleading shall be included in the Record, to include the caption and signature(s); provided, however, that the portion of a pleading showing verification or service shall not be included unless relevant to the appeal. If the original court reporter's numbering has been deleted, the Record on Appeal shall contain ellipses or other notation indicating when pages of the court reporter's transcript have been omitted.

Where witness testimony is included in the Record on Appeal, the first page of each witness's direct, cross, redirect and recross examination must show the name of the witness, the phase of examination and the name of the counsel conducting the examination. If this information is not already reflected on the page, the top of the page shall be annotated with the required information in the following form: John H. Doe—Direct (Cross) (Redirect) (Recross) Examination by Mr. Smith.

(d) *Title.* The title page shall contain the caption as set forth in Rule 267. Nothing shall be printed on the title page except the caption.

(e) *Index.* Every Record on Appeal shall contain an index to the principal matters therein to include orders, judgments, decisions, pleadings, pretrial matters, opening statements, testimony, motions, closing arguments, jury charges, post-trial motions and exhibits. For witness testimony, the index shall show the pages on which direct, cross, redirect and recross examination begins.

(f) *Exhibits.* Photographs, plats and diagrams, and other paper exhibits shall be inserted in the Record on Appeal where they can reasonably be reduced or drawn to a size which permits them to be printed and inserted in the Record on Appeal, without folding more than one time. Where they are larger, or do not reasonably lend themselves to accurate reproduction, they need not be included in the Record on Appeal, but shall be filed separately. All exhibits other than paper exhibits must be retained in the trial court and delivered to the appellate court only upon receipt of an order from the clerk of the appellate court.

(g) *Certificate of Counsel.* Appellant or his counsel shall certify that the Record on Appeal contains all

material proposed to be included by any of the parties and not any other material.

(h) **Review Limited to Record on Appeal.** Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal.

[Adopted effective September 1, 1990. Amended effective July 1, 1993. Renumbered and amended effective June 1, 1999. Amended effective May 3, 2007; May 1, 2008; April 29, 2009.]

RULE 211. FINAL BRIEFS

(a) **Time to Serve and File.** Within twenty (20) days after the service of the Record on Appeal, each party shall serve a copy of his final brief(s) on every other party to the appeal, and file fifteen (15) copies of the final brief(s) with the clerk of the appellate court. As provided by Rule 267(d), one copy filed with the appellate court shall be filed unbound. The party must also file with the clerk proof that the final brief(s) has been served, and a certificate that his final brief(s) complies with Rule 211(b). The appellate court may require a party to file additional copies of its brief(s).

(b) **Content.** The final brief(s) shall be identical to the brief(s) previously served under Rule 208, except for the following:

(1) *References to the Record.* The references in the initial brief shall be revised to indicate where the material appears in the Record on Appeal. These revised references may be in place of or in addition to the initial references, and shall be in the form indicated by the following examples: (R. p. 15, line 4) (R. p. 75, lines 8-20) (R. p. 90, line 1-p. 101, line 14) (R. pp. 29-31).

(2) *Correction of Typographical Errors and Misspellings.* The party may correct obvious typographical errors and misspellings which were contained in the initial brief. No other changes may be made.

[Adopted effective September 1, 1990. Amended effective July 1, 1993. Renumbered and amended effective June 1, 1999. Amended effective May 3, 2007; May 1, 2008; April 29, 2009.]

RULE 212. SUPPLEMENTAL RECORD

(a) **By the Court.** The appellate court may require copies of all or any part of the transcript of proceedings or other matter which was before the lower court or administrative tribunal to be sent up for its inspection and consideration. It may likewise require a report of the trial or hearing, or of any matter relative thereto, to be made by the trial judge or administrative tribunal. These matters shall become part of the Record on Appeal.

(b) **By a Party.** With the written consent of all attorneys of record, a party may supplement the Record on Appeal at any time before argument commences. Without such consent or after argument

commences, a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so. In response to that motion, the other party(s) shall designate any supplemental materials which that party desires to add if the Court grants the motion.

(c) **Appendix.** Supplemental materials filed under Rule 212(b) shall be included in an Appendix to the Record on Appeal. Unless otherwise agreed by the parties or ordered by the Court, the Appendix shall be compiled, served and filed by the party initially proposing it.

[Adopted effective September 1, 1990. Renumbered effective June 1, 1999. Amended effective May 3, 2007.]

RULE 213. AMICUS CURIAE BRIEF

A brief of an amicus curiae may be filed only by leave of the appellate court granted on motion, or at the request of the appellate court. The brief may be conditionally filed with the motion for leave to file. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. The brief shall be limited to argument of the issues on appeal as presented by the parties and shall comply with the requirements of Rules 208(b) and 211. If leave to file an amicus curiae brief is granted, the appellate court will specify the period in which a response to the brief may be filed.

[Adopted effective September 1, 1990. Renumbered effective June 1, 1999.]

RULE 214. CONSOLIDATION

Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated.

[Adopted effective September 1, 1990. Renumbered effective June 1, 1999. Amended effective May 3, 2007.]

RULE 215. SUBMISSION WITHOUT ORAL ARGUMENT

Unless otherwise ordered by the appellate court, all appeals in civil cases which do not involve a constitutional question and in which the amount involved is \$1000 or less, and all appeals in civil cases where there has been no final judgment, shall be submitted to the appellate court without oral argument. Further, the appellate court may decide any other case without oral argument if it determines that oral argument would not aid the court in resolving the issues.

[Adopted effective September 1, 1990.]

RULE 216. NOTICE OF ORAL ARGUMENT

(a) Preliminary List.

the court below shall be deemed the attorneys and guardians of the same parties in the appellate court until withdrawal is approved and notice is given as provided in this Rule.

(b) **Withdrawal.** An attorney of record in a matter pending before an appellate court may not withdraw from representation of his client without justifiable cause, or the consent of his client; and then only after proper written notice to his client, on petition to and by written order of the appellate court, and with notice to the adverse party.

[Adopted effective September 1, 1990. Renumbered from Rule 235 effective April 29, 2009.]

RULE 265. SUBSTITUTION OF PARTIES

(a) **Service of Notice in the Event of the Death or Incompetency of a Party.** If a party against whom an appeal may be taken dies or becomes incompetent before a notice of appeal is served, an appellant may serve the party's personal representative, guardian ad litem, committee or his attorney of record. If a party entitled to appeal shall die or become incompetent before serving a notice of appeal, the notice may be served by his personal representative, guardian ad litem, committee or his attorney of record. In either event, if there is no attorney of record, the time for serving the notice shall be tolled until a personal representative, guardian ad litem or committee is properly appointed.

(b) **Substitution Upon Death or Incompetency of a Party.** If a party to an appeal dies or becomes incompetent, the appellate court may, upon motion or on its own initiative, order substitution of the proper parties or remand the case to the trial court for the substitution of the proper parties as provided by Rule 25, SCRPC.

(c) **Other Substitution.** If substitution of a party is desired for any reason other than death or incompetency, substitution shall be by motion to the appellate court.

(d) **Substitution of Official Party.** If a public officer in his official capacity is a party to an action pending in an appellate court and during its pendency he ceases to hold office, his successor in office shall be automatically substituted as a party. Proceedings following substitution shall be in the name of the substituted party. An order of substitution may be entered at any time upon the suggestion of the substituted party or any other party, but the omission to enter such an order shall not affect the substitution.

[Adopted effective September 1, 1990. Amended effective June 30, 1991. Renumbered from Rule 236 effective April 29, 2009.]

RULE 266. SUBSEQUENT APPLICATIONS FOR RELIEF

When any justice or judge of any of the courts of this State has declined to grant any order or writ in any
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case, and thereafter application for the same order or writ, or an order or writ of a similar character, is made to an appellate court or any member thereof, it shall be incumbent upon the party, or his attorney, to show in the application the former refusal and the judge or justice who refused the same, and if the refusal has been reduced to writing, a copy of the order shall be attached to the application.

[Adopted effective September 1, 1990. Renumbered from Rule 237 effective April 29, 2009.]

RULE 267. FORM OF PAPERS

(a) **Captions.** All documents filed in the appellate court shall be headed by a caption. Except as provided below for appeals from administrative tribunals, the caption shall contain the name of the appellate court where the document is to be filed (i.e., Supreme Court or Court of Appeals); if the matter involves review of a lower court decision, the name of the county and judge from which the appeal is taken including the title of the judge (e.g., Circuit Court Judge, Family Court Judge, Master-in-Equity, Probate Judge, Special Referee, Special Circuit Court Judge); the title of the case (the party commencing the action in the lower court shall always appear first in the title regardless of whom is appellant or petitioner); the title of the document (e.g., RECORD ON APPEAL; APPENDIX; BRIEF OF APPELLANT; PETITION FOR WRIT OF CERTIORARI; MOTION TO DISMISS); and the name, address and phone number of the counsel submitting the document, or in the case of a Record on Appeal or Appendix, the names, addresses and phone numbers of all counsel in the case. The caption should be substantially in the form shown by this example:

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Howard S. Barnes, Circuit Court Judge

Paul L. Doe, Appellant (or
Respondent),

v.

Mary M. Roe, Respondent (or
Appellant).

RECORD ON APPEAL

John T. Smith, Esquire
P.O. Box 123
Columbia, SC 29000
(803) 000-0000
Attorney for Appellant

Wanda D. Jones, Esquire
P.O. Box 456

Columbia, SC 29000
 (803) 000-0000
 Attorney for Respondent

In appeals from administrative tribunals, the caption shall contain the name of the appellate court where the document is to be filed (i.e. Supreme Court or Court of Appeals); the name of the tribunal from which the appeal is taken (e.g., Administrative Law Court, Public Service Commission, etc.); the name of the administrative law judge (if applicable); the title of the case (the title shall remain the same as the title before the tribunal regardless of whom is the appellant); the title of the document (e.g., RECORD ON APPEAL; BRIEF OF APPELLANT; MOTION TO DISMISS); and the name, address and phone number of the counsel submitting the document, or in the case of a Record on Appeal, the names, addresses and phone numbers of all counsel in the case. The caption should be substantially in the form shown by this example:

THE STATE OF SOUTH CAROLINA
 In the Court of Appeals
 [In the Supreme Court]

APPEAL FROM THE ADMINISTRATIVE LAW
 COURT [OR NAME OF AGENCY]

George E. Brown, Administrative Law Judge

Case No. 05-ALJ-00-0000-CC

South Carolina
 Department of Revenue, Respondent,

v.

Jane C. Roe, Appellant.

BRIEF OF APPELLANT

John E. Smith, Esquire
 P.O. Box 123
 Greenville, SC 29000
 (864) 000-0000
 Attorney for Appellant

Wanda D. Jones, Esquire
 P.O. Box 456
 Columbia, SC 29000
 (803) 000-0000
 Attorney for Respondent

On motions or petitions, the name, address and phone number of counsel submitting the document

shall be placed at the end of the document with his signature.

(b) **Signatures.** The original of a document or paper filed by a party or his attorney shall be signed by the party or the attorney. The signature of a party or attorney constitutes a certificate by him that he has read the document or paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.

(c) **Paper and Type Size.** All papers or documents filed with the appellate court shall be typewritten or machine duplicated. Type size shall be standard 12-point or larger and double spaced on white bond paper of not less than twenty pound weight, 8 ½ inches by 11 inches. With the exception of exhibits as provided in Rule 210(f), no photographic reduction of the Record on Appeal, brief or other paper is acceptable which reduces the size of the alphabet below that of pica type. Paper shall be of good quality, opaque and unglazed. Duplication through use of chemically treated paper, commonly referred to as "wet image or process copy", does not comply with this rule. Copy may be typed or reproduced on both sides if type or reproduction does not show through; provided, however, if the Record on Appeal or Appendix exceeds 100 pages, copy must be typed or reproduced on both sides of the paper. All copies must be clean, neat and clearly legible.

(d) **Margins and Bindings.** Typewritten papers or reproductions must have a blank margin of one inch on all sides. If more than two sheets are used, they shall be securely fastened on the left margin. While petitions or motions need not be bound, Records on Appeal, Appendices in post-conviction relief matters and briefs must be bound in volumes not exceeding 250 sheets each. If staples or clasps are used to bind the volumes, the spines of the volumes shall be bound with heavy tape. One copy of every Final Brief, Record on Appeal, Supplemental Record, or Appendix filed with the appellate court shall be filed unbound.

(e) **Covers.** Covers of the Record on Appeal and briefs shall be of a material not less than 50 pound weight and not glassine. The cover of the Record on Appeal shall be white; that of the brief of appellant blue; that of respondent red; that of an intervenor or amicus curiae green; and that of any reply brief gray. The front cover of a brief or Record on Appeal shall contain only the caption.

(f) **Compliance.** The clerk of the appellate court shall insure compliance with this Rule before accepting any papers for filing.

[Adopted effective September 1, 1990. Amended effective July 1, 1993; July 1, 2000; September 1, 2001; May 3, 2007; May 1, 2008. Renumbered from Rule 238 effective April 29, 2009. Amended effective April 27, 2016.]

RULE 268. CITATION OF SOUTH CAROLINA AUTHORITY

To provide guidance on citing South Carolina authority, the following forms of citation are given. Once cited in the form given, the authority may thereafter be cited

Turner | Padget

P.O. Box 1473, Columbia, SC 29202

Hasler

FIRST-CLASS MAIL

12/28/2017

US POSTAGE \$000.67⁰



ZIP 29201
011E11674091

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5881.130

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

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