

5

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

Appellate Panel, S.C. Workers' Compensation Commission

WCC FILE NO. 1408826

Gennette Sowell,

Claimant/Respondent,

v.

RECEIVED

Piggly Wiggly,

Employer,

FEB 07 2018

SC Court of Appeals

And

Auto Owners Insurance Inc.,

Carrier/Appellants.

APPELLANTS' MOTION TO INCLUDE
DESIGNATION OF MATTER WITH APPELLANTS' INITIAL BRIEF

YOU WILL PLEASE TAKE NOTICE that pursuant to provisions of South Carolina Court of Appeals Rule 240, the Appellants hereby moves for an Order allowing Appellants to include a designation of matter with Appellants' initial brief as timely filed with the Court on February 1, 2018. Said Motion is based upon the Memorandum attached hereto and incorporated herein by reference.

I SO MOVE

RESPECTFULLY SUBMITTED,



Kenya C. Miller, Esq. (SC Bar No: 73426)
Kristian C. Bell, Esq. (SC Bar No: 76578)
DICKIE, McCAMEY & CHILCOTE, P.C.
P.O. Box 2046
Lancaster, South Carolina 29721
(803)285-0004
kmiller@dmclaw.com
kbell@dmclaw.com
Attorneys for Appellants

February 7, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

Appellate Panel, S.C. Workers' Compensation Commission

WCC FILE NO. 1408826

Gennette Sowell,

Claimant/Respondent,

v.

Piggly Wiggly,

Employer,

And

Auto Owners Insurance Inc.,

Carrier/Appellants.

RECEIVED

FEB 07 2018

SC Court of Appeals

MEMORANDUM IN SUPPORT OF APPELLANTS' MOTION TO INCLUDE
DESIGNATION OF MATTER WITH APPELLANTS' INITIAL BRIEF

The Appellants would respectfully show unto the Court:

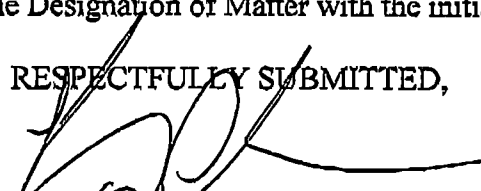
1. That the Appellants timely filed a Notice of Appeal with regards to this matter on November 16, 2017. (See Exhibit A).
2. That the Appellants duly requested the Hearing Transcript from the court reporter on November 7, 2017. (See Exhibit B).
3. That upon receipt of the hearing transcript, the Appellants notified the Court and confirmed that the Appellants' Brief was due on or before February 2, 2018. (See Exhibit C).
4. That the Appellants' Brief was timely filed with the Court on

February 1, 2018.

5. That the Designation of Matter was inadvertently excluded from Appellants brief.
6. That the Designation of Matter was immediately filed with the Court on February 6, 2018 when the issue was identified. (See Exhibit D).
7. That the Respondents would not be not be prejudiced by an Order of the Court allowing the Designation of Matter to be included with Appellant's brief since Respondents have not filed a reply brief and is not precluded from including a Designation of Matter with the Respondents brief.
8. That the Court has discretion to allow Appellants to include the Designation of Matter with the initial brief. *See Henning v. Kaye*, 415 S.E.2d 794 (1992).

WHEREFORE, the Appellants would move for an Order of the Court allowing the Appellants to include the Designation of Matter with the initial brief.

RESPECTFULLY SUBMITTED,



Kenya C. Miller, Esq. (SC Bar No: 73426)
Kristian C. Bell, Esq. (SC Bar No: 76578)
DICKIE, McCAMEY & CHILCOTE, P.C.
P.O. Box 2046
Lancaster, South Carolina 29721
(803)285-0004
kmiller@dmclaw.com
kbell@dmclaw.com
Attorneys for Appellants

February 7, 2018



Kenya C. Miller
Attorney at Law
Admitted in SC

803-285-0034
Fax: 888-811-7144
kmiller@dmclaw.com

November 16, 2017

VIA REGULAR U.S. MAIL

Amy Bracy, Judicial Director
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202

RE: Genette Sowell v. Piggly Wiggly
Date of Accident: 01/06/2014
WCC File No.: 1408826
Our File No.: 0056461.0349337
Claim No.: 36-1835-2014

Dear Ms. Bracy:

Enclosed for filing please find a Notice of Appeal which has been submitted to the South Carolina Court of Appeals in regards to the above-referenced matter. By copy of this letter, we are notifying the Claimant's Attorney, Preston McDaniel, Esquire, of this submission. Please feel free to contact me should you have any questions or concerns.

With kind regards,

Very truly yours,

Kenya C. Miller, Esquire

KCM/snw
Enclosures

cc: Ryan Hall, Auto Owners Insurance (via email)
Stephanie Wilson, Auto Owners Insurance (via email)
Preston McDaniel, Esquire (via regular mail)

NOTICE OF APPEAL FROM ADMINISTRATIVE AGENCY

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION**

Appellate Panel, Workers' Compensation Commission

WCC FILE NO. 1408826

Gennette Sowell, Claimant/Respondent,

v.

Piggly Wiggly, Employer,

and

Auto Owners Insurance Inc., Carrier/Appellants.

NOTICE OF APPEAL

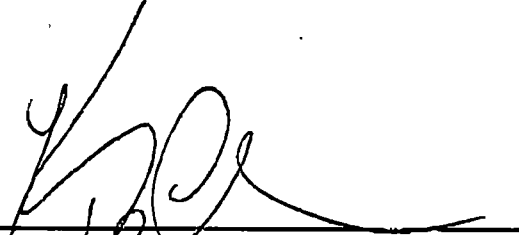
Employer/Carrier appeals the decision of the Appellate Panel of the South Carolina Workers' Compensation Commission dated October 17, 2017. Appellant received a copy of this decision on October 17, 2017.

The grounds for this appeal are as follows:

1. The Appellate Panel erred in concluding that there was no indication of an acute incident.
2. The Appellate Panel erred in concluding as a matter of law that the Claimant sustained a compensable repetitive trauma injury that arose out of and within the course and scope of her employment.
3. The Appellate Panel erred in concluding as a matter of law that the preponderance of the evidence establishes that the Claimant's condition, specifically work-related asthma/occupational asthma is related to her work.

4. The Appellate Panel erred in concluding as a matter of law that the Claimant's condition qualifies as an occupational disease.
5. The Appellate Panel erred in concluding as a matter of law that the Claimant is entitled to weekly compensation for total disability and for total and permanent disability.
6. The Appellate Panel erred in concluding as a matter of law that the Claimant is entitled to lifetime medical care.
7. The Appellate Panel erred in concluding as a matter of law that the Claimant is entitled to be paid in a lump sum.
8. The Appellate Panel erred in concluding as a matter of law that the Claimant is entitled to any and all medical treatment causally related to her occupational asthma which will provide relief or effect a cure of the Claimant's disabling symptoms and which is reasonable and necessary medical care for the remainder of her life.
9. The Appellate Panel erred in concluding as a matter of law that the Claimant is entitled to an award of total and permanent disability for her occupational asthma.

November 16, 2017



Kenya C. Miller, Esq. (SC Bar No: 3426)
Kristian C. Bell, Esq. (SC Bar No: 76578)
DICKIE, McCAMEY & CHILCOTE, P.C.
P.O. Box 2046
Lancaster, South Carolina 29721
(803)285-0004
kmiller@dmclaw.com
kbell@dmclaw.com
Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

Appellate Panel, S.C. Workers' Compensation Commission

WCC FILE NO. 1408826

Gennette Sowell,

Claimant/Respondent,

v.

Piggly Wiggly,

Employer,

And

Auto Owners Insurance Inc.,

Carrier/Appellants.

CERTIFICATE OF SERVICE

The undersigned certifies that she is an employee Dickie, McCarney & Chilcote, P.C. and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, as well as Rule 203 and Rule 262 of the SCACR, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Amy Bracy
South Carolina Workers' Compensation Commission
PO Box 1715
Columbia, SC 29202-1715

Preston F. McDaniel, Esquire
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201

DOCUMENT: NOTICE OF APPEAL TO THE S.C. COURT OF APPEALS

DATE OF MAILING: November 16, 2017



Sade N. Williams
Legal Assistant to Kenya C. Miller, Esquire



Carver, Tamra

From: Hollmon, Eugenia <EHollmon@wcc.sc.gov>
Sent: Tuesday, November 7, 2017 9:05 AM
To: Carver, Tamra
Subject: RE: Full Commission Order - WCC#:1408826 - SOWELL

This message originated from outside your organization

Sonia Wallace with Creel Court Reporting. The contact number is 803-252-3445.

Genia

Eugenia Hollmon
SC Workers' Compensation Commission
Judicial Docketing Director
803-737-5737
ehollmon@wcc.sc.gov

-----Original Message-----

From: Carver, Tamra [<mailto:tcarver@dmclaw.com>]
Sent: Monday, November 06, 2017 3:48 PM
To: Hollmon, Eugenia <EHollmon@wcc.sc.gov>
Subject: FW: Full Commission Order - WCC#:1408826 - SOWELL

Hi Genia,

Happy Monday! Will you please send me the court reporter's information from the 8/22/17 Appellate Hearing? I need to request a copy of the hearing transcript. Thanks!

Tamra Carver
Paralegal
803-285-0004 Office
803-285-0042 Fax
tcarver@dmclaw.com

NOTICE: You have received an e-mail from <mailto:tcarver@dmclaw.com>. The e-mail message and all attachments transmitted with it are intended solely for the use of the intended recipient and may contain legally privileged and confidential information. If you are not the intended recipient, or an employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of the message or its attachments is strictly prohibited. If you have received a message in error, please notify the sender immediately by replying to the message and delete the message from your computer.

-----Original Message-----

From: appeals@wcc.sc.gov [mailto:appeals@wcc.sc.gov]

Sent: Tuesday, October 17, 2017 1:57 PM

To: AHAM@PFMCDLAW.COM; CRYSTAL@PFMCDLAW.COM; KIM@PFMCDLAW.COM; Miller, Kenya; Steele, Lakeisha; PRESTON@PFMCDLAW.COM; ROSE@PFMCDLAW.COM; SABRINA@PFMCDLAW.COM; Carver, Tamra; APPEALS@WCC.SC.GOV

Subject: Full Commission Order - WCC#:1408826 - SOWELL

This message originated from outside your organization

Attached is the Full Commission Order for WCC#: 1408826

R08 ORD - Full Commission Order - 10/17/2017 - ORDER#: 69238 - WCC #: 1408826


Dickie McCamey

Kenya C. Miller
Attorney at Law
Admitted in SC

803-285-0034
Fax: 888-811-7144
kmliller@dmclaw.com

January 11, 2018

VIA REGULAR MAIL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Genette Sowell v. Piggly Wiggly
Appellate Case No. 2017-002396
Date of Accident: 1/6/2014
WCC File No.: 1408826
Our File No.: 0056461.0349337
Claim No.: 36-1835-2014

Dear Ms. Kitchings:

The purpose of this correspondence is to inform that pursuant to Rule 207, the Appellants received the hearing transcript with regards to the above-referenced matter on January 3, 2018. Therefore, by my calculation, the Appellants' Brief is due to the Court by February 2, 2018. By copy of this letter we are notifying opposing counsel as well as the South Carolina Workers' Compensation Commission of same. Please feel free to contact my office should you have any questions or concerns.

Very truly yours,

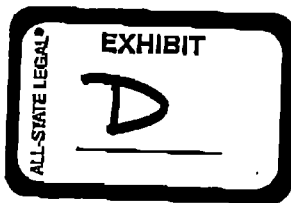

Kenya C. Miller

KCM:snw

cc: Preston McDaniel, Esquire (via regular mail)
Gerald Malloy, Esquire (via regular mail)
Amy Bracy, SC Workers' Compensation Commission (via regular mail)
Ryan Hall, Auto-Owners Insurance (via email)
Stephanie Wilson, Auto-Owners Insurance (via email)

DICKIE, McCAMEY & CHILCOTE, P.C. | ATTORNEYS AT LAW
MAIN: 412-281-7272 FAX: 888-811-7144
TWO PPG PLACE, SUITE 400 | PITTSBURGH, PA 15222-5402 | WWW.DMCLAW.COM

CALIFORNIA | COLORADO | DELAWARE
NEW JERSEY | NEW YORK | NORTH CAROLINA | OHIO
PENNSYLVANIA | SOUTH CAROLINA | WEST VIRGINIA



Kristian C. Bell
Attorney at Law
Admitted in SC

803-285-0004
Fax: 888-811-7144
kbell@dmclaw.com

February 6, 2018

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
FEB 06 2018
SC Court of Appeals

RE: Genette Sowell v. Piggly Wiggly
Appellate Case No. 2017-002396
Date of Accident: 1/6/2014
WCC File No.: 1408826
Our File No.: 0056461.0349337
Claim No.: 36-1835-2014

Dear Ms. Kitchings:

Enclosed for filing please find one (1) original and two (2) copies of the Designation of Matter to be Included in the Record on Appeal in the above-referenced matter. By copy of this letter, we are serving the Designation of Matter via hand delivery to Respondent's attorneys, Preston McDaniel, Esquire and Gerald Malloy, Esquire. Enclosed please find a certificate of service verifying same. Please feel free to contact me should you have any questions or concerns regarding this submission.

Very truly yours,

Kristian C. Bell

KCM:KCB

cc: Preston McDaniel, Esquire (via hand delivery)
Gerald Malloy, Esquire (via hand delivery)
Ryan Hall, Auto-Owners Insurance (via hand delivery)
Stephanie Wilson, Auto-Owners Insurance (via hand delivery)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2017-002396
W.C.C. File No. 1408826

Gennette Sowell,

Respondent,

v.

Piggly Wiggly,

and

Auto Owners Insurance Inc.,

Appellants.

RECEIVED
FEB 06 2018
SC Court of Appeals

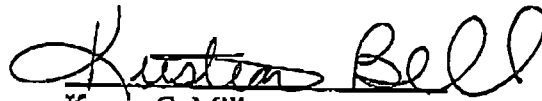
DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Decision and Order of Appellate Panel December 17, 2017;
2. Form 50 July 17, 2014;
3. Amended Form 50 November 11, 2014;
4. Form 51 December 1, 2014;
5. Claimant's Pre-Hearing Brief and APA submissions March 8, 2016
6. Defendants' Pre-Hearing Brief and APA submissions April 18, 2016
7. Defendants' Supplemental Pre-Hearing Brief and APA submissions April 20, 2016
8. Defendants' APA submissions August 4, 2016
9. Single Commission Hearing Transcript June 22, 2016;
10. Single Commission Hearing Transcript July 21, 2016;

I certify that this designation contains no matter which is irrelevant to this appeal.

February 6, 2018



Kenya C. Miller

Kristian C. Bell

Dickie, McCamey & Chilcote, PA

Post Office Box 2046

Lancaster, South Carolina 29721

(803) 285-0004

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2017-002396
W.C.C. File No. 1408826

Gennette Sowell,

Respondent,

v.

Piggly Wiggly,

and

Auto Owners Insurance Inc.,

Appellants.

RECEIVED
FEB 06 2018
SC Court of Appeals

CERTIFICATE OF SERVICE

The undersigned certifies that she is an employee Dickie, McCamey & Chilcote, P.C. and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, as well as Rule 203 and Rule 262 of the SCACR, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: VIA HAND DELIVERY
Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

VIA HAND DELIVERY
Preston F. McDaniel, Esquire
McDaniel Law Firm

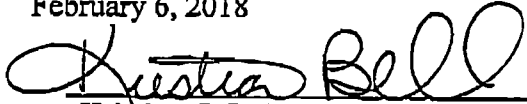
1315 Elmwood Ave
Columbia, SC 29201

VIA HAND DELIVERY

Gerald Malloy, Esquire
Malloy Law Firm
108 Cargill Way
Hartsville, SC 29551

DOCUMENT: DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

DATE OF DELIVERY: February 6, 2018



Kristian C. Bell, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

Appellate Panel, S.C. Workers' Compensation Commission

WCC FILE NO. 1408826

Gennette Sowell, Claimant/Respondent,

v.

Piggly Wiggly, Employer,

And

Auto Owners Insurance Inc., Carrier/Appellants.

AFFIDAVIT OF KRISTIAN C. BELL

I, Kristian C. Bell, having been duly and properly sworn do depose and state that I am co-counsel along with Kenya C. Miller representing the Appellants in the above-referenced matter in which a Notice of Appeal was filed with the Court on November 16, 2017. Upon receipt of the hearing transcript, the Appellants' timely filed the initial brief with the Court on February 1, 2018. Although the Designation of Matter was inadvertently excluded from the Appellants Brief, the Designation of Matter was immediately filed with Court and served on the Respondents on February 6, 2018. The Designation of Matter only includes information pertinent to the Appeal.

RESPECTFULLY SUBMITTED,

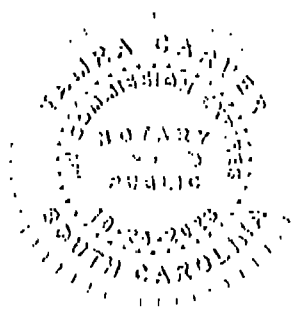
Kristian Bell

Kenya C. Miller, Esq. (SC Bar No: 73426)
Kristian C. Bell, Esq. (SC Bar No: 76578)
DICKIE, McCAMEY & CHILCOTE, P.C.
P.O. Box 2046
Lancaster, South Carolina 29721
(803)285-0004
kmiller@dmclaw.com
kbell@dmclaw.com
Attorneys for Appellants

SWORN before me this
7 day of February, 2018

James Cannon
Notary Public for South Carolina

My Commission Expires: 10/24/23



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2017-002396
W.C.C. File No. 1408826

Gennette Sowell,

Respondent,

RECEIVED

v.

FEB 07 2018

Piggly Wiggly,

SC Court of Appeals

and

Auto Owners Insurance Inc.,

Appellants.

CERTIFICATE OF SERVICE

The undersigned certifies that she is an employee Dickie, McCamey & Chilcote, P.C. and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, as well as Rule 203 and Rule 262 of the SCACR, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: VIA FAX (803) 734-1839 & U.S. MAIL
Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

VIA FAX (803) 252-0709 & U.S. MAIL

Preston F. McDaniel, Esquire
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201

VIA FAX (843) 332-4646 & U.S. MAIL

Gerald Malloy, Esquire
Malloy Law Firm
108 Cargill Way
Hartsville, SC 29551

DOCUMENT: MOTION TO INCLUDE APPELLANTS'
DESIGNATION OF MATTER

DATE OF MAILING: February 7, 2018



Tamra Carver-McMillan
Paralegal to Kenya C. Miller, Esquire and
Kristian C. Bell, Esquire

Dickie McCamey

Kenya C. Miller
Attorney at Law
Admitted in SC

803-285-0034
Fax: 888-811-7144
kmiller@dmclaw.com

February 7, 2018

VIA FAX - (803) 734-1839 & US MAIL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

FEB 07 2018

SC Court of Appeals

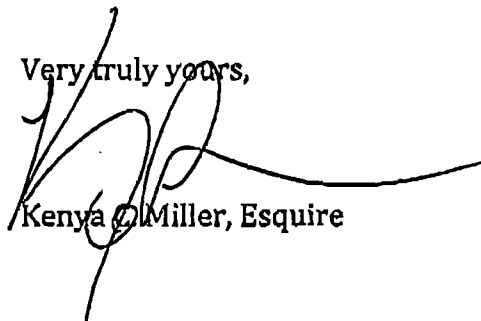
RE: Genette Sowell v. Piggly Wiggly
Appellate Case No. 2017-002396
Date of Accident: 1/6/2014
WCC File No.: 1408826
Our File No.: 0056461.0349337
Claim No.: 36-1835-2014

Dear Ms. Kitchings:

Enclosed for filing please find one (1) original and six (6) copies of a Motion to Include Appellants' Designation of Matter in the above-referenced matter along with the applicable filing fee. Please clock the copies and return them to us in the enclosed self-addressed stamped envelope. By copy of this letter, we are serving the Motion via regular U.S. mail to Respondent's attorneys, Preston McDaniel, Esquire and Gerald Malloy, Esquire. Enclosed please find a certificate of service verifying same. Please feel free to contact me should you have any questions or concerns regarding this submission.

With kindest regards,

Very truly yours,



Kenya C. Miller, Esquire

KCM:tcn
Enclosures

cc: Preston McDaniel, Esquire (via regular mail)
Gerald Malloy, Esquire (via regular mail)
Ryan Hall, Auto-Owners Insurance (via email)
Stephanie Wilson, Auto-Owners Insurance (via email)

FACSIMILE**Dickie McCamey****PLEASE HAND DELIVER, AS SOON AS POSSIBLE, THE FOLLOWING FACSIMILE TRANSMISSION TO:**

NAME:	Honorable Jenny Abbott Kitchings	DATE:	2/7/2018
COMPANY:	SC Court of Appeals	PHONE NO.:	803.285.2273
FAX NO.:	(803) 734-1839	RE:	Appellate Case No: 2017-002396 Gennette Sowell vs. Piggly Wiggly
CC:	Preston McDaniel (803) 252-0709	FROM:	Tamra Caver-McMillan
	Gerald Malloy (843) 332-4646	TOTAL NUMBER OF PAGES (including cover sheet):	22

Please find enclosed Motion to Include Appellants' Designation of Matter that sent regular U.S. Mail along with the applicable filing fee. Thank you.

Please deliver this information immediately upon receipt to the person named above.
If you do not receive all the pages, please call DMC at (803) 285-0004.

RECEIVED

FEB 07 2018

SC Court of Appeals

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.