

THE STATE OF SOUTH CAROLINA  
*IN THE COURT OF APPEALS*

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

*W. Jeffrey Young, Circuit Court Judge*

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**Case No. 08-CP-43-4422943**

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Shenandoah Life Insurance Company,

*Respondent,*

vs.

Lakeisha E. Smallwood,

*Appellant,*

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**RESPONDENT'S PETITION FOR REHEARING**

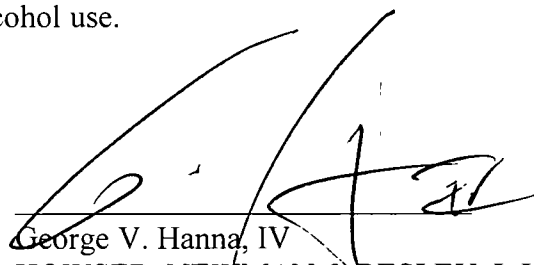
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The Respondent respectfully petitions this Court for a rehearing on its January 23, 2013 Order, which reversed the Honorable W. Jeffrey Young's Order directing a verdict in favor of Respondent.

There are two grounds for this petition. First, the Court erred in reversing the Trial Court on the basis that there was a question of fact as to Lorenzo's intent because Respondent failed to present evidence that Lorenzo associated his alcohol and cocaine use with any increased medical risk. As stated by the dissent, the association of a prospective insured's drug and alcohol abuse to an increased medical risk is patently apparent. Particularly use of a drug, such as cocaine, that carries criminal penalties for simple possession.

Second, the Court erred in relying upon irrelevant and speculative evidence in order to determine that Respondent failed to prove by clear and convincing evidence that Lorenzo intended to defraud the Respondent. In its Opinion, the Court specifically holds that Respondent presented evidence from which a jury could reasonably find, based on the clear and convincing standard, the requisite intent to defraud. Thereafter, the Court finds that a jury could reasonably have also concluded that Lorenzo did not lie to defraud the Respondent, but rather to hide his drug and alcohol use from his wife and aunt. However, there is no evidence outside of pure speculation upon which to base this finding. In addition, whether Lorenzo wanted to hide his drug and alcohol abuse from his wife and aunt is irrelevant as to whether he also lied to defraud the Respondent. The two explanations are not mutually exclusive, but rather go hand in hand as he clearly did not want anyone to know about his drug and alcohol use.

Respectfully submitted,



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February 7, 2013

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**PROOF OF SERVICE**

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I, Diane Crutchfield, an employee of Howser, Newman & Besley, L.L.C., that I served one copy of the **Respondent's Petition for Rehearing**, by depositing it in the United States Mail, postage prepaid, on February 7, 2013, addressed to counsel for Appellant, as follows:

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