

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

**RECEIVED**

AUG 16 2019

WCC File No. 1116698  
Appellate Case No. 2018-001294

**SC Court of Appeals**

Ex Parte: Robert Horne, as Personal  
Representative of the Estate of Gus A. King,  
and Laura King ..... Appellants,

In Re: Gus A. King, Claimant, ..... Appellant,

v.

Pierside Boatworks, Employer,  
and PA Manufacturers Assn. Ins. Co., Carrier, ..... Respondents.

**INITIAL BRIEF OF APPELLANTS**

J. Gary Christmas # 13467  
Reese M. Stidham, IV # 74996  
HOWELL AND CHRISTMAS, LLC  
P.O. Box 1896  
Mt. Pleasant, SC 29465  
(843) 849-2800

Blake A. Hewitt # 73674  
Allison P. Sullivan # 73754  
BLUESTEIN THOMPSON SULLIVAN, LLC  
P.O. Box 7965  
Columbia, SC 29202  
(803) 779-7599

Paul Doolittle # 66490  
JEKEL-DOOLITTLE, LLC  
P.O. Box 2579  
Mt. Pleasant, SC 29465  
(843) 834-4712

Attorneys for Appellants  
Robert Horne and Laura King

Attorneys for Appellant Gus A. King

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## STATEMENT OF ISSUE ON APPEAL

Whether basic contract law applies in workers' compensation cases such that a signed agreement to settle a case is enforceable even though the claimant died before the formal document that would officially end litigation could be signed and filed with the commission.

### INTRODUCTION

This is an attempt to enforce a written agreement to settle a workers' compensation case. The agreement was signed at the conclusion of a successful mediation. The claimant died seven days after mediation in an unrelated car wreck.

After the claimant's death, the employer and its insurance carrier argued they had the right to back out of the agreement because the formal document that would officially end the litigation had not been signed and filed with the commission. The commission agreed with that argument, though the exact scope of the commission's holding is partly unclear.

The claimant's widow and his estate believe the agreement is enforceable for three basic reasons. First, nothing in the Workers' Compensation Act displaces basic contract law under which the agreement would plainly be enforceable. Second, the reasons the commission gave for not enforcing the agreement are legally incorrect and do not make sense. Third, persuasive authority supports enforcement. Though there is a split of authority, enforcement is the better view.

All of this ultimately boils down to promoting certainty. A key reason—if not *the* key reason—people go to the mediation table is to trade the unpredictability of litigation for the confidence of a deal. Giving parties the right to walk away after they signed on the dotted line has no sound basis in law and is bad for everyone. This Court should reverse.

## STATEMENT OF THE CASE

This case arises out of an injury that occurred back in November of 2011. (Clmt. APA 1, p.22). Gus King was working on a large forklift when the engine unexpectedly engaged and the forklift ran over him. (Id.p.2). He miraculously survived, but he suffered horrific injuries. His list of injuries spans a full page of the order awarding him permanent and total disability benefits. (Id.p.22).

The commission made the permanent and total disability award in May of 2014. (Id.pp.1-30). In addition to total and permanent disability benefits, which were paid in a lump sum, the award included extensive ongoing medical benefits to which Mr. King was entitled for the rest of his life. (Id.pp.25-26, ¶¶12 & 13).

Two years later, in June of 2016, the parties participated in mediation to see whether they could settle all remaining parts of the claim. (Clmt. 3/29/18 PHB pp.3-4, ¶6). If successful, a settlement would end the employer and carrier's ongoing obligation to provide Mr. King with medical benefits. *Id.* The case would be closed completely.

The mediation *was* successful. The parties and the mediator signed an "agreement following mediation conference" requiring the employer and carrier to pay Mr. King \$1,000,000. (Clmt. APA 2). The agreement explained "this case has been fully and finally settled," that Mr. King's employer-provided medical coverage would remain in place until the settlement check was delivered to Mr. King's attorney, and that the employer and carrier would prepare a formal "Agreement and Release" for Mr. King and his lawyer to sign. *Id.*

Mr. King died in an unrelated motor vehicle wreck seven days after mediation. The mediation was June 2, 2016. *Id.* He died June 9th. (5/1/18 Or.pp.5 & 6, ¶¶3 & 5).

Five days after Mr. King died, the lawyer for the employer and carrier wrote Mr. King's lawyer explaining the employer and carrier were evaluating how Mr. King's death affected "the settlement reached at mediation." (Clmt. APA 8, p.47). The check had already been sent to Mr. King's lawyer. (APA 9, p.48-49). The mediator had already filed his report with the commission noting the case was "settled." (APA 3, p.32). The employer and carrier had not yet sent the "Agreement and Release" for Mr. King's signature or his lawyer's signature. (Id.p.49). They placed a stop payment order on the settlement check. (Id.p.47).

Some time after that, Mr. King's lawyer filed a motion asking the commission's permission to file the written agreement from mediation. (Clmt. 3/29/18 PHB p.4, ¶6). In July of 2017 Mr. King's lawyer filed a formal hearing request with the commission at the commission's direction. *Id.*; see also (Clmt. 7/11/17 Form 50).

The personal representative of Mr. King's estate began participating in the litigation three months later, in October of 2017. (Mot. to Intervene & Postpone). The estate was not formally added to the case as a party until the appellate panel granted the estate's motion to intervene in April of 2019, (4/23/19 Or.), but the estate took part in the case throughout the proceedings at the commission, as did Mr. King's widow. See, e.g., (Our single comm. brief); (Our Form 30 and attachment); (Our appellants' brief).

The case ultimately went to a single commissioner for a hearing in March of 2018. (3/29/18 Tr.p.1). There were no witnesses. The hearing consisted of the lawyers stating their positions and answering the single commissioner's questions. (Id.pp.3-23).

Two months later, in May of 2018, the single commissioner issued an order finding the signed agreement from mediation was not enforceable. (5/1/18 Or.p.1).

Later that month, Mr. King's estate and his widow filed a timely request for the appellate panel to review the single commissioner's decision. (Our Form 30 and attachment). Mr. King's lawyer filed an identical request as well. (Gary's Form 30 and attachment). As they have done in this Court, the participants on Mr. King's side filed a joint brief supporting their position. (Our appellants' brief).

An appellate panel of commissioners heard the case in December of 2018. (12/17/18 Tr.p.1). The panel first issued an order April 23, 2019 fully affirming the single commissioner's decision; however, the order was re-issued with a small change on April 30, 2019 that is not relevant to the appeal. (4/30/19 Or.p.1 n.1). The change concerned the estate's status as a party. The estate was added by a prior, separate order. (4/23/19 Or.)

As noted above, the appellate panel fully affirmed the single commissioner's decision that the written agreement from mediation was not enforceable. (4/30/19 Or.p.12). The panel adopted the single commissioner's reasoning entirely. *Id.* The single commissioner, and the panel, held parties are free to "back out" and "rescind" any agreement to settle a case until a formal "Agreement and Release" is signed and filed with the commission. (Id.p.5, ¶7, p.7, ¶12, and p.9, ¶20). The commission also said there was nothing in its mediation regulations stating a written agreement from mediation would bind the parties. (Id.p.6, ¶9). And the commission further said it lacked the authority to enforce the agreement, stating administrative agencies have limited powers. (Id.p.6, ¶11).

The commission noted South Carolina has one (1) published appellate case involving this issue and mentioned that the case was decided before the legislature changed the statute on workers' compensation settlements. (Id.p.8, ¶16). In spite of that statutory change, the

commission held the prior case controlled this one and that the parties have “the right to withdraw” from a signed agreement until it is filed with the commission. *Id.*

### STANDARD OF REVIEW

The standard of review is found in section 1-23-380(5) of the South Carolina Code. See also *Lark v. Bi-Lo*, 276 S.C. 130, 134, 276 S.E.2d 304, 306 (1981) (commission is an “agency” and subject to the Administrative Procedures Act). Per the statute, this Court may not substitute its judgment for the commission’s as to the weight of the evidence but may reverse when the decision is affected by an error of law, clearly erroneous, or arbitrary.

This case presents pure questions of law. Those issues are reviewed de novo. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

### ARGUMENT

As noted at the beginning, there are three basic reasons this Court should reverse the commission. First, nothing in the Workers’ Compensation Act displaces basic contract law under which the agreement the parties signed at mediation would plainly be enforceable. Second, the reasons the commission gave for not enforcing the agreement are legally incorrect and do not make sense. Third, persuasive authority supports enforcement. Though there is a split of authority, enforcement is the better view.

**A. Nothing in the Workers’ Compensation Act displaces basic contract law under which the agreement signed at mediation would plainly be enforceable.**

The Workers’ Compensation Act has a statute on settlements. That statute says:

Nothing contained in this chapter may be construed so as to prevent settlements made by and between an employee and employer as long as the amount of compensation and the time and manner of payment are in

accordance with the provisions of this title. The employer must file a copy of the settlement agreement with the commission if each party is represented by an attorney. If the employee is not represented by an attorney, a copy of the settlement agreement must be filed by the employer with the commission and approved by one member of the commission.

S.C. Code Ann. § 42-9-390 (Supp. \_\_\_\_).

This statute was revised by Act 111 of 2007. The statute previously required commission approval for all settlements. That statute had basically the same first sentence as the present statute, but then said “ A copy of any such settlement shall be filed by the employer with and approved by the Commission.” § 42-9-390 (1976). As noted above, the current statute says a settlement is simply *filed* with the commission if the injured worker has a lawyer. The commission does not evaluate settlement agreements for approval or disapproval unless the injured worker is pro se.

Nothing in this statute displaces basic contract law. In fact, the statute’s first sentence suggests settlements are encouraged since it instructs that “nothing” in the Workers’ Compensation Act may be construed as preventing settlements. The only statutory caveat is that the amount of compensation and the method of payment must conform to the Workers’ Compensation Act. Nothing in that caveat suggests there is any basis for invalidating a signed agreement that follows the Act’s requirements on compensation and payment. Indeed, focusing exclusively on the statute’s first sentence, the plain language means that so long as a written agreement does not conflict with the Act’s requirements on compensation and payment, the written agreement to settle is binding.

Moving past the first sentence, it seems evident that the 2007 amendment can only bolster the view that a written agreement would bind the parties in a case where the injured

worker was represented by counsel. As noted above, the pre-2007 statute required the commission to scrutinize settlements for approval. Now, the commission only “approves” agreements in cases where the injured worker does not have a lawyer.

The commission also has a series of regulations on settlements. S.C. Code Ann. Regs. 67-801 to -805 (Supp. \_\_\_\_). The key regulation here is 67-803 involving settlements by an “Agreement and Final Release”—the document the agreement from mediation required these parties to execute. Subsection A of that regulation explains an “Agreement and Final Release” must contain the case’s caption, the facts at issue, the date of the injury, the amount of payment, and signatures. Subsection B(2), like the statute, explains the executed agreement is filed with the commission’s claims department. There is no “approval” process in such a case. The parties are bound by their signatures.

Nothing in the regulations displaces basic contract law. It is certainly possible to read the regulations to say a case is not technically “settled” until the “Agreement and Final Release” is signed and filed, but that is a different question than whether a signed agreement *to* settle like the agreement the parties executed here is enforceable. The “Agreement and Final Release” is the formal document that officially brings litigation to a close. Here, the parties signed a written agreement requiring them to execute that formal document. The regulations do not contain any legal justification for holding that agreement invalid.

This signed agreement would plainly be enforceable under basic contract law. The respondents promised to pay Mr. King a lump sum of money in exchange for a release from any claims he might have against them. That agreement complies with Rule 43(k), SCRPC, because it was signed by the parties and their counsel. Though Rule 43(k) does not

technically apply—the rules of civil procedure apply to depositions in administrative cases but do not apply more broadly, see S.C. Code Ann. § 1-23-320(C) (Supp.\_\_\_\_)—it ought to say *something* that this agreement would plainly be enforceable in civil court. It also ought to say something that the Workers’ Compensation Act does not have a specific requirement like Rule 43(k); nothing in the Act says an agreement between the parties is not binding unless additional requirements are met. This is, after all, why people sign written agreements at the conclusion of a successful mediation. See *Galloway v. Regis Corp.*, 325 S.C. 541, 547, 481 S.E.2d 714, 717 (Ct. App. 1997) (refusing to enforce an alleged oral agreement to settle from mediation). If a written agreement like this is not enforceable, it is worthless.

Again, a straightforward reading of the statute and regulations is that so long as a written agreement to settle does not conflict with the Act’s requirements on compensation and payment, the written agreement is binding. Nothing in the Workers’ Compensation Act displaces basic contract law under which the agreement the parties signed here would plainly be enforceable.

**B. The reasons the commission gave for not enforcing the agreement are legally incorrect and do not make sense.**

The commission gave several reasons for not enforcing the agreement the parties signed at mediation. Those reasons are legally incorrect and do not make sense.

First, the commission seemed to send a bit of a mixed message. At one point it found parties are free to “back out” until the formal agreement and final release “is signed.” (4/30/19 Or.p.5, ¶7). Later, however, it found signing *and filing* were required before an agreement would be binding. (Id.p.6, ¶12 & p.9, ¶20).

It is difficult to understand why there would be a meaningful difference between a signed agreement and release that is not filed and a signed agreement and release that *is* filed. Filing is just the step that formally ends the case. There is no basis in law for holding that filing the agreement is what makes the agreement binding. The law normally binds people to an agreement once the agreement is signed.

It is also difficult to understand what the sensible basis could be for meaningfully distinguishing between the signed agreement the parties have here and a signed “Agreement and Final Release.” Again, the signed agreement and release will formally end the case, but that is a different question than whether parties can make an enforceable promise to sign such a document.

Second, the commission said there was nothing in its mediation regulations stating a written agreement from mediation would bind the parties. (Id.p.6, ¶9). That is not remarkable; nothing in the general ADR rules says anything about a signed agreement from mediation being binding. The reason signed agreements like this are binding is that basic law enforces such agreements. And though not dispositive, it is worth mentioning that the official form the commission developed and published for mediators to use when reporting the result of mediation has a place for the mediator to mark where “[t]he following issues mediated and are settled or contested as indicated below[.]” (Clmt. APA 3, p.32). The only options for the mediator to mark are “settled” or “contested.” *Id.* At a minimum, this is some support for the argument that agreements at mediation can be binding.

Third, the commission found it lacked the authority to enforce the agreement, stating administrative agencies have limited powers. (Id.p.6, ¶11). This is a mis-statement of the

law. The commission has limited jurisdiction, but this Court and the Supreme Court have observed that all tribunals are vested with the inherent power to administer matters coming within the scope of the tribunal's jurisdiction. *Spivey ex rel. Spivey v. Carolina Crawler*, 367 S.C. 154, 160 n.1, 624 S.E.2d 435, 438 n.1 (Ct. App. 2005); *In re Crawford*, 205 S.C. 72, 95, 30 S.E.2d 841, 850 (1944) (concurring opinion joined by majority of the court). The commission has exclusive original jurisdiction over workers' compensation cases. S.C. Code Ann. § 42-3-180 (2015). For that power to mean anything, it must include the power to enforce an agreement to settle a case if the parties enter into such an agreement.

Finally, the commission held South Carolina's one (1) published appellate case involving this issue controlled even though that case dealt with the prior version of the relevant statute. (4/30/19 Or.p.8, ¶16).

While there would be no argument to enforce the agreement here if the statute had not changed in 2007, it is difficult to understand how the commission could reasonably conclude a case based on the old statute controlled a case based on the revised statute. This Court's 1984 decision *Mackey v. Kerr-McGee Chemical Co.* relied heavily on the fact that the commission was required to review settlement agreements for approval. 280 S.C. 265, 312 S.E.2d 565 (Ct. App. 1984). This Court noted two justifications for the approval requirement: a neutral official (the commissioner) would consider the injured worker's interest and the agreement would be elevated to the status of a judicial decree. *Id.* at 268-269, 312 at 567. Then, this Court quoted a Rhode Island case, explaining:

Until it has received the express approval of the administrative officer, who is charged with the enforcement of the [worker's] compensation act, and who is vested with a substantial portion of judicial power in the disposition of

cases arising under it, the agreement is totally lacking in contractual force even though the parties thereto have done all that would be necessary to constitute a binding contract between them under the law of contracts.

*Id.* at 269, 312 at 567.

That process does not exist anymore. There is no review by an objective official. When the injured worker has a lawyer, nobody is vested with a substantial portion of judicial power in disposing of a proposed settlement. The parties sign an agreement, file it with the commission, and the commission provides the employer's attorney with an official copy of the agreement. Reg. 67-803 B(2)(b). That is all there is to it.

*Mackey* is also different from this case in another important respect. The opinion explains those parties never signed a written agreement to settle. The parties allegedly reached an oral settlement immediately before a hearing and the lawyers told the hearing officer that the case had settled, but when the agreement was reduced to writing the claimant refused to sign. *Id.* at 267, 312 S.E.2d at 566. The opinion's concluding paragraph explains that the commission's regulations contemplate a settlement agreement being in writing, that such a requirement "anticipates" the agreement will be signed, and that such an agreement will not be binding until it is signed. *Id.* at 271, 312 S.E.2d at 568.

The agreement here was in writing and signed by everyone; even the mediator. It is in all material respects indistinguishable from the agreement and final release defined by the regulations. The only thing the agreement lacks that the regulation requires is a statement of the facts at issue as well as the date and nature of the injury. See Reg. 67-803 A.

Again, none of the reasons the commission gave for declining to enforce the parties' written agreement withstand scrutiny. This is a signed agreement. It ought to be enforceable.

**C. The better-reasoned persuasive authorities support enforcement.**

Jurisdictions are split on whether and when parties have the right to back out of settlements in workers' compensation cases.

Some cases hold that settlement agreements are not binding until they have been approved by the appropriate authority. These cases are typically grounded in statutory language instructing that settlements must be presented to the authority for approval.

Other cases hold that parties are bound by the documents they sign and that events like the injured worker's unexpected death do not provide grounds for rescinding an enforceable agreement. Appellants (perhaps not surprisingly) believe these cases are right.

A sample of the cases that do not enforce agreements unless approved includes cases from Alabama, Arkansas, Kansas, and Louisiana. In Alabama, a statute says a settlement agreement is not valid "for any purpose" unless a judge determines it is in the best interest of the employee or the employee's dependent. *Tate v. Liberty Mut. Ins. Co.*, 185 So. 3d 468, 471 (Ala. Civ. App. 2015). In Arkansas, a statute requires a joint petition from the parties and explains the commission should conduct a hearing and take testimony. *Odom v. Tosco Corp.*, 672 S.W.2d 915, 917 (Ark. Ct. App. 1984).

In Kansas, a statute requires approval of every agreement or release from liability. *Barncord v. State*, 606 P.2d 501, 504 (Kan. Ct. App. 1980). In Louisiana, the relevant statute requires a settlement agreement be presented for court approval via a petition verified by both parties. *Pepitone v. State Farm*, 346 So. 2d 266, 267 (La. Ct. App. 1977).

There are no such requirements in South Carolina when the injured worker has a lawyer. This set of cases basically follows the same reasoning this Court employed in

*Mackey*. That reasoning was grounded in a statute, and of course, a key component to the argument here is that South Carolina's statute has changed. The legislature is presumed to have knowledge of judicial decisions and when the legislature amends a statute, courts presume that the legislature intended to accomplish some sort of change rather than a futile, meaningless act. *Centex Int'l, Inc. v. S.C. Dep't of Rev.*, 406 S.C. 132, 145, 750 S.E.2d 65, 72 (2013). Following this first set of foreign cases would be continuing to follow *Mackey* and would give no effect to the 2007 statutory amendment.

A sample of the cases that support enforcing a settlement agreement notwithstanding the injured worker's unexpected death includes cases from Arizona, Delaware, Maryland, Massachusetts, Mississippi, and New Mexico.

Arizona and Delaware are two of the states that have gone the farthest and enforced settlement agreements on behalf of deceased claimants in spite of the fact that statutes required commission approval. The Arizona court explained the fact that the statute required approval did not mean the settlement was invalid until it was approved and that the court was not aware of anything permitting parties to withdraw from a signed agreement. *Schuck & Sons Const. v. Indus. Comm'n of Ariz.*, 963 P.2d 310, 313 (Ariz. Ct. App. 1998). The court in Delaware explained it did not serve the purposes of workers' compensation "to allow parties to avoid their commitments based on the fortuity" of the claimant's death. *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 158-159 (Del. 1998).

The decisions in Maryland, Massachusetts, Mississippi, and New Mexico follow the same general reasoning, explaining that a claimant's death does not provide grounds to rescind an agreement since an unexpected death is not mutual mistake, fraud, failure to

express the agreement of the parties, or material breach. *B. Frank Joy Co. v. Isaac*, 636 A.2d 1016, 1023 (Md. 1994) (settlement agreement was bilateral contract and was enforceable between the parties absent fraud, undue influence, or mistake); *Ferreira v. Arrow Mut. Liab. Ins. Co.*, 447 N.E.2d 1258, 1259 (Mass. App. Ct. 1983) (similar reasoning); *Taylor v. Reliance Well Serv.*, 220 So. 3d 260, 265 (Miss. Ct. App. 2017) (same); and *Rojo v. Loeper Landscaping*, 759 P.2d 194, 197 (N.M. 1988) (same).

The commission discussed two of these cases—the ones from Maryland and Massachusetts—and distinguished them on the grounds that the settlement agreements in those cases had been signed and filed with the commission before the employers tried to back out. (4/30/18 Or.pp.7-8, ¶¶14 & 15). The commission quoted language from both of those cases suggesting filing the agreement was critical because the act of filing relinquished the parties' control over the case and reflected a joint request for approval. *Id.*

That is not a fair characterization of the reasoning that controlled those cases or of the other cases supporting enforcement of this agreement. It is also difficult to see how that reasoning could hold up to scrutiny. Here, the parties and the mediator signed an agreement to settle. The mediator, no doubt acting on the basis of the parties' written agreement, informed the commission the case had settled.

It would make at least some logical sense for filing to be the act signifying the parties' release of control over the case if the commission had supervisory authority over the settlement agreement, but it makes no sense to give the act of filing any significance under the regime that governs this case. These parties relinquished control over the case the moment they and the mediator signed a written agreement to settle.

Finally, it bears mentioning that this whole dispute is nothing more than an attempt to back out of a bargain that, in hindsight, was not as beneficial to one party as that party anticipated. The Fifth Circuit explained that the approval process exists to protect claimants who “are typically unskilled[,] untutored in actuarial principles [and frequently awed by large amounts of cash.]” *Oceanic Butler, Inc. v. Nordahl*, 842 F.2d 773, 781-782 (5th Cir. 1988). Insurers, however, have “claims representatives and attorneys [who] are experienced negotiators with actuarial principles firmly in mind.” *Id.* There is no need to protect an insurance company from a bargain that turns out not to be as good as originally thought.

Signed settlement agreements are contracts. Parties may not back out of them when the contract turns out to be a worse deal than the parties anticipated. If parties *can* back out of signed agreements like the agreement here, such agreements are not really worth anything. In that world, the value of the mediation process is significantly diminished.

### CONCLUSION

For the foregoing reasons this Court should reverse.

Respectfully submitted,



August 16, 2019

J. Gary Christmas # 13467  
Reese M. Stidham, IV # 74996  
HOWELL AND CHRISTMAS, LLC

Paul Doolittle # 66490  
JEKEL-DOOLITTLE, LLC

Attorneys for Appellant Gus A. King

Blake A. Hewitt # 73674  
Allison P. Sullivan # 73754  
BLUESTEIN THOMPSON SULLIVAN, LLC  
P.O. Box 7965  
Columbia, SC 29202  
(803) 779-7599  
blake@bluesteinattorneys.com  
allison@bluesteinattorneys.com

Attorneys for Appellants  
Robert Horne and Laura King

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In the Court of Appeals

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v.

Pierside Boatworks, Employer,  
and PA Manufacturers Assn. Ins. Co., Carrier, ..... Respondents.

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**PROOF OF SERVICE**

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The undersigned hereby certifies that on the date indicated below she served  
counsel for the Respondents with a copy of the *Initial Brief of Appellants and  
Designation of Matter to be Included in the Record on Appeal* by mailing copies of the  
same by United States Mail with first class postage prepaid to the following address:

R. Daniel Addison  
The Addison Law Group, LLC  
PO Box 7637  
Columbia, SC 29202

  
\_\_\_\_\_  
Erin Bridges

August 16, 2019

August 16, 2019

VIA HAND DELIVERY

The Honorable Jenny Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

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AUG 16 2019  
SC Court of Appeals

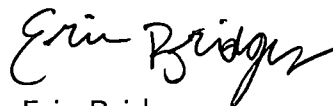
RE: Gus A. King v. Pierside Boatworks  
Appellate Case No.: 2018-001294

Dear Ms. Kitchings:

Please find enclosed for filing the original and one (1) copy of the Initial Brief of Appellants and Designation of Matter to be Included in the Record on Appeal in reference to this matter. I have also enclosed a Proof of Service upon counsel for the Respondents. Please return the additional filed copies to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,



Erin Bridges  
Paralegal to Blake A. Hewitt  
Bluestein Thompson Sullivan, LLC

/emb

cc: J. Gary Christmas, Esquire  
Paul Doolittle, Esquire  
R. Daniel Addison, Esquire