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September 25, 2019

SENT VIA OVERNIGHT MAIL

Hon. Jenny Abbott Kitchings  
S.C. Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Re: Bouchelle Incorporated vs. Brinson  
Appellate Case No. 2018-001353

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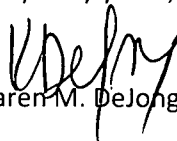
SEP 26 2019  
SC Court of Appeals

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the Petition for Rehearing and Motion to Allow Late Filing of Petition for Rehearing, with a check in the amount of \$50.00 for the filing fee. Please file the original and return a filed stamped copy to me in the enclosed self-addressed stamped envelope.

Thank you for your assistance in this matter.

Very truly yours,

  
Karen M. DeJong

KMD:abc  
Encs.

90966

STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

The Hon. Jennifer B. McCoy, Circuit Court Judge

**Appellate Case No. 2018-001353**  
(formerly Case No. 2016-CP-10-4984)

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BOUCHELLE INCORPORATED,

Appellant,

vs.

CANOPIUS US INSURANCE, INC., SENECA  
SPECIALTY INS. CO., THE BRINSON AGENCY  
AND JOHN BRINSON, Defendants,

Of Which The Brinson Agency and John Brinson  
Are the Respondents.

Respondents.

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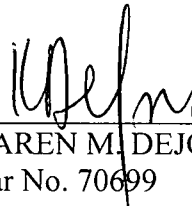
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**MOTION TO ALLOW LATE FILING OF  
PETITION FOR REHEARING**

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Now comes the Appellant in the above-referenced case who files this Motion requesting that the Petition for Rehearing be filed late. This request is made In good faith. As a result of Hurricane Dorian and the mandatory evacuation Ordered by Governor McMaster from August 31, 2018 to September 6, 2019, Appellant's counsel was delayed in preparing the Petition for Rehearing. This request is not made for the purpose of interposing delay or any other Inappropriate purpose and Respondent will not suffer any prejudice by this Request.

Dated: 09/24/2019



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KAREN M. DEJONG, ESQ.

Bar No. 70699

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Attorney for Appellant

Other Counsel of Record:

Andrew W. Countryman, Esq.

Countryman Law Firm

321 Wingo Way, Suite 102

Mount Pleasant, SC 29464

Tel. No. 843-253-4477

Attorney for Respondents

## Court News ...

2019-09-09-02

# The Supreme Court of South Carolina

Re: Hurricane Dorian

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**ORDER**

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On August 31, 2019, the Governor of South Carolina issued an executive order declaring a state of emergency existed throughout the State of South Carolina in anticipation of the arrival of Hurricane Dorian. On September 1, 2019, the Governor issued an executive order mandating the evacuation of all persons located in certain designated evacuation zones in Beaufort, Berkeley, Charleston, Colleton, Dorchester, Horry, Georgetown, and Jasper Counties beginning at noon on September 2, 2019. Additionally, beginning on September 2, 2019, the Governor directed the closure of all schools and state government offices in the above-listed counties.

On Thursday, September 5, 2019, Hurricane Dorian passed along the entirety of the South Carolina coastline. On that day, county and/or state government offices were closed in twenty-three counties. As a result of Hurricane Dorian, over 270,000 homes and businesses lost electrical power, and an estimated 360,000 to 441,000 persons evacuated the coastal areas of South Carolina. The last of the mandatory evacuations were not lifted by the Governor until the morning of Friday, September 6, 2019.

In light of the foregoing, this Court finds that Hurricane Dorian adversely affected the ability of many lawyers and litigants to comply with deadlines in court proceedings. Accordingly, this Court finds it appropriate to declare the days of Tuesday, September 3, 2019, thru Friday, September 6, 2019, to be statewide "holidays" for the purposes of computing time under Rule 263 of the South Carolina Appellate Court Rules; Rule 6 of the South Carolina Rules of Civil Procedure; Rule 35 of the South Carolina Rules of Criminal Procedure; and Rule 3 of the South Carolina Rules of Magistrates Court.

s/ Donald W. Beatty C.J

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina  
September 9, 2019

STATE OF SOUTH CAROLINA

In the Court of Appeals

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vs.

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SPECIALTY INS. CO., THE BRINSON AGENCY  
AND JOHN BRINSON, Defendants,

Of Which The Brinson Agency and John Brinson  
Are the Respondents.

Respondents.

---

**PETITION FOR REHEARING**

---

Karen M. DeJong, Esq.  
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Attorney for Appellant

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SEP 26 2019  
SC Court of Appeals

Other Counsel of Record:

Andrew W. Countryman, Esq.

Countryman Law Firm

321 Wingo Way, Suite 102

Mount Pleasant, SC 29464

Tel. No. 843-253-4477

Attorney for Respondents

Pursuant to Rules 221(a) and 240, SCACR, Appellant, Bouchelle Incorporated, files this Petition for Rehearing as to Opinion No. 2019-UP-302 of the Court filed on August 21, 2019.

### **STATEMENT OF CASE**

On July 20, 2018, Appellant filed its' Notice of Appeal of the Circuit Court's Order granting Respondents' Motion for Summary Judgment ("Order") dated June 29, 2018. On August 21, 2019, the Court filed Opinion No. 2019-UP-302, which affirmed the Circuit Court Order. In affirming the Circuit Court Order, the Court ruled that 1) that there existed no contract between Bouchelle and Brinson and 2) that even if there existed a contract between the parties and Brinson failed to advise Bouchelle of the insufficient insurance coverage, Bouchelle could have discovered that the insurance was inadequate prior to the incident taking place.

### **REHEARING STANDARD**

The scope of review for deciding a Petition for Rehearing is limited to whether the Court "overlooked or misapprehended" a point in reaching its' decision. Rule 221 of South Carolina Appellate Court Rules states, "[a] petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the *points supposed to have been overlooked or misapprehended by the court*". Rule 221(a), SCACR (emphasis added). In order to prevail on a petition for rehearing, appellants must demonstrate that the Court overlooked or misapprehended their argument. Kennedy v. S.C. Retirement Sys., 349 S.C. 531, 532, 564 S.E.2<sup>nd</sup> 322 (2001).

### **ARGUMENT**

The Court misapprehended or overlooked the fact that the Appellate Court shall review a grant of summary judgment under the same standard applied by the circuit court pursuant to Rule 56, SCRCR. Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). "Summary judgment is proper when there is no genuine issue of material fact

and the moving party is entitled to judgment as a matter of law." Id. When reviewing the record, the evidence and all inferences which can be reasonably drawn therefrom are viewed in the light most favorable to the nonmoving party. Id. at 361-62, 563 S.E.2d 331.

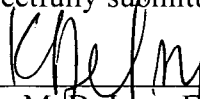
The deposition transcripts and submitted evidence of both parties clearly show that there is a dispute between Bouchelle and Brinson as to what actually occurred with regard to the issuance of the 2014-2015 insurance policy. The conflicting testimony supports that there are genuine issues as to material facts in this case.

More importantly, after pleadings had been filed and oral arguments made, Hon. J.C. Nicholson, Jr. denied Brinson's Motion of Summary Judgment by his Order dated December 14, 2017. Therefore, all evidence and inferences should have been viewed in the light most favorable to Bouchelle, the non-moving party. The parties should have their day in court so that the trial judge can ascertain the true facts of the case.

### CONCLUSION

For the aforementioned reasons, Appellant requests that the Court order a rehearing as prayed above, reverse the Court's decision in Opinion No. 2019-UP-302 filed on August 21, 2019 and reverse the lower court's Order Granting Brinson's Motion for Summary Judgment dated June 29, 2018.

Respectfully submitted,



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Karen M. DeJong, Esq.

S.C. Bar 70699

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Attorney for Appellant

STATE OF SOUTH CAROLINA

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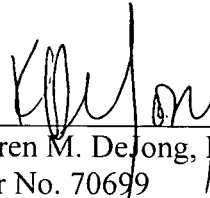
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**PROOF OF SERVICE**

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The undersigned hereby certifies that on September 25, 2019, I served counsel of record in the foregoing matter with a copy of the Petition for Rehearing and Motion to Allow Late Filing of Petition for Rehearing by depositing same by overnight mail, addressed as follows:

Andrew W. Countryman, Esq.  
Countryman Law Firm  
321 Wingo Way, Suite 102  
Mount Pleasant, SC 29464



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Karen M. DeJong, Esq.

Bar No. 70699

DeJong Law Firm, LLC

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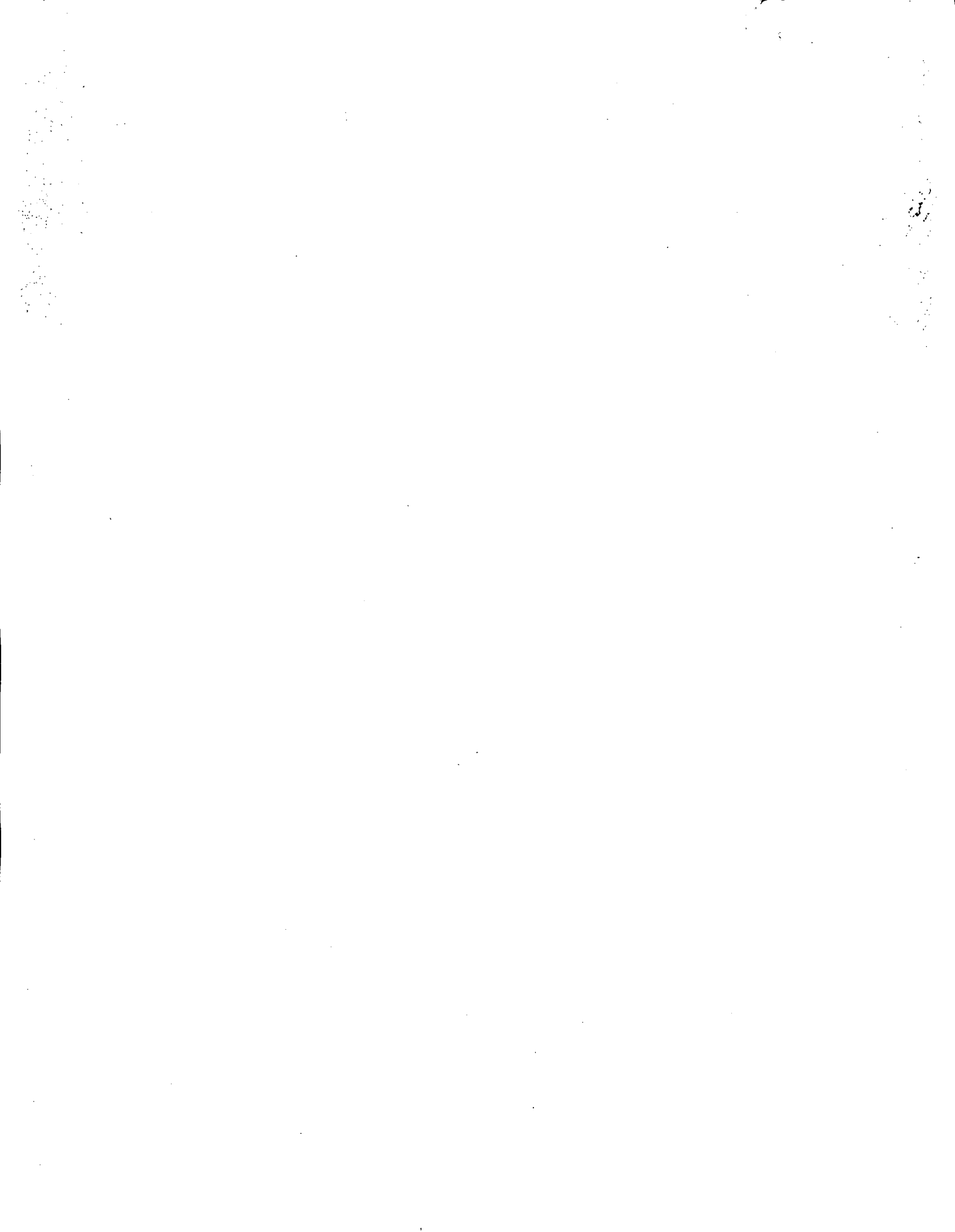
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Attorney for Appellant

September 25, 2019  
Mount Pleasant, SC



# FedEx Express

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FZ 104

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DEJONG LAW FIRM, LLC  
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UNITED STATES US

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S.C. COURT OF APPEALS  
1220 SENATE STREET SC Court of Appeals  
COLUMBIA SC 29201

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