

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas  
Maite D. Murphy, Circuit Court Judge

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Case No. 2019-001719

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Innovative Waste Management Inc., Respondent,

v.

Crest Energy Partners, GP, LLC, Dunhill Products GP, LLC, Henry Wuertz, Innovative Waste Management, Inc., Crest Energy Partners LP, Dunhill Products LP, Edward H. Girardeau, C. Russ Lloyd, Defendants, Of Whom,

Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products, LP, and Henry Wuertz, are the Appellants.

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**APPELLANTS' REPLY TO  
RESPONDENT'S RETURN IN OPPOSITION TO  
MOTION FOR ENLARGEMENT OF TIME**

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COME NOW APPELLANTS, through undersigned counsel, who hereby offer this Reply to Respondent's Return in Opposition regarding Appellants' Motion to file their Initial Brief and Designation of Matter Out of Time.

The issues addressed in this Motion and the responsive memoranda are also addressed in Respondent's Motion to Dismiss and memoranda in response thereto. Appellants respectfully request that their arguments stated therein be incorporated in this Reply by reference.

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**May 19 2020**

**SC Court of Appeals**

Appellants recognize that the issues created by the untimely filing of their initial brief are a burden on the Court. Undersigned counsel offers his sincerest apologies and will attempt to address the issues raised in Respondent's return with brevity.

Appellant's Motion sought leave to file out of time due to a confluence of many circumstances. Most of those circumstances relate to the myriad of issues that arose as a result of the coronavirus emergency. If the court requests, the undersigned would gladly provide an affidavit for *in camera* review detailing the manner in which those issues collectively delayed this filing.<sup>1</sup> However, Appellants submit such an undertaking is unnecessary, because the Orders and Memoranda of the Supreme Court explicitly recognize that the entire legal community has been operating under extraordinary circumstances and also appear to imply that good cause can be presumed to exist for the extension of certain deadlines and even supporting a blanket forgiveness of prior procedural defaults. Appellants' counsel has acted and communicated to the Court in good faith to address this issue. Appellants submit that sufficient cause exists for this Honorable Court to Grant leave to file the Initial Brief and Designation of Matter out of Time, and they hereby respectfully request that the Court do so expeditiously.

With regard to the specific issues raised in Respondent's Return, Appellants' Motion also described an issue that arose relating to the undersigned's discovery that a portion of the physical case file had been damaged in storage.<sup>2</sup> Appellants raised that issue in their Motion only because that unexpected event, along with the fact that the Initial Brief covered an eight year-long discovery

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<sup>1</sup> The undersigned believes that any detailed description of these issues would encroach on the privacy rights of non-parties and matters of attorney-client privilege.

<sup>2</sup> Respondent's return describes that portion of the file as a "transcript", which is incorrect and misrepresents the content of the Motion. (Return, p. 3). Further, as noted in Appellant's Return to the Motion to Dismiss, Respondent's counsel's statement that Appellants had "all the materials necessary to prepare their initial brief" is either a patent misrepresentation of the record or a complete misunderstanding of what material is to be included in a Record on Appeal. (*Id.*)

dispute and spanned forty-six pages, were unrelated to the coronavirus emergency, and possibly would have required Appellants to request an extension of time under normal circumstances. Having any unexpected issue such as this arise can cause delays, but they can also compound the effects of other circumstances. Thankfully, the issue was curable; it simply took time that was scarce to begin with. Most members of the legal community recognize the impact of operating with limited, if any, assistance, during a period where the available time to devote to such projects is severely curtailed and in competition with the need to protect the physical and mental health of loved ones and ourselves. Appellants submit that the Judicial Department has expressly done so, and that this constitutes good cause to allow the filing of their Initial Brief out of time.

Respondent's Return states that the Initial Brief deadline was "four times extended" and also states that the Initial Brief "was due on November 8, 2020". (Return, p. 4). Appellants have no response to those statements, other than to point out that those comments appear to have no consideration of or link to the record. Respondent appears to be arguing against the Supreme Court's Order of March 20, 2020, which granted an extension in every pending appeal.

Admittedly, the Court's Order granting Appellant's Second Motion for Extension of Time stated that "[n]o further extensions would be granted absent extraordinary circumstances." If it is relevant that Appellant's first Motion for Extension was moot when processed by the Court, and that the Second Motion for Extension should have been the Appellant's First Motion, that language would likely not have appeared in the Order. Regardless, Appellants believe that extraordinary circumstances existed on April 27 and May 5, 2020, and continue.

Good cause exists and the Court should grant Appellants leave to file their Initial Brief and Designation of Matter out of time. Appellants therefore respectfully request that this Honorable

Court Deny Respondent's Motion to Dismiss and/or Grant Reinstatement of the Appeal, and grant Appellants leave to file their Initial Brief and Designation of Matter out of Time.

RESPECTFULLY SUBMITTED:

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May 18, 2020  
Charleston, South Carolina

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**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that on this 18<sup>th</sup> day of May, 2020 I served Respondent's counsel with Appellants' Reply to Respondent's Return to Appellant's Motion for Enlargement of Time, by mailing a copy to its counsel by U.S. Mail, postage prepaid, at the following address:

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s/ David B. Marvel  
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ATTORNEY FOR THE APPELLANTS

May 18, 2020  
Charleston, South Carolina

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