

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Appellate Case No. 2020-000641
W.C.C. File Nos. 1322789, 1423445, 1503655, 1519702, 1719990

Terry Capone,Appellant,

v.

City of Columbia, Employer, and
Companion Third Party Administrator, LLC, Carrier, Respondents.

**RETURN IN OPPOSITION TO
APPELLANT'S PETITION FOR REHEARING**

Respondents City of Columbia, Employer, and Companion Third Party Administrator, LLC, Carrier, ("Respondents") submit this return in opposition to the Petition for Rehearing by Appellant Terry Capone ("Appellant").

ARGUMENT

As the Court correctly observed in its order dismissing this appeal, Appellant's underlying workers' compensation claims remain pending before the Commission; therefore, this appeal is interlocutory and should not be considered until a final judgment disposing of all issues has been rendered. Inasmuch as the orders challenged on appeal are interlocutory and do not constitute a final adjudication of all issues in this case, the appeal should be dismissed.

South Carolina and the Workers' Compensation Commission "adhere to the final judgment rule. Accordingly, subject to certain exceptions, an appeal lies only from a final

judgment.” *Brunson v. American Koyo Bearings*, 367 S.C. 161, 165, 623 S.E.2d 870, 872 (Ct. App. 2005), *reh’g denied* (Jan. 19, 2006), citing *Hagood v. Sommerville*, 362 S.C. 191, 194-195, 607 S.E.2d 707, 708 (2005); S.C. Code Ann. § 1-23-380, -390; Rule 201(a), SCACR. “An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed.” *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 709 (2005) (citing *Tatnall v. Gardner*, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct. App. 2002)).

The issue on appeal in the instant case is not a final order and does not prevent a final judgment. A “final judgment” is an order that must dispose of the whole subject matter of the action or terminate the action, leaving nothing to be done but to enforce what already has been determined. *Bone v. U.S. Foodservice*, 404 S.C. 67, 744 S.E.2d 552 (2013) (citing *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep’t. of Health and Envtl. Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010)); *Long v. Sealed Air Corp.*, 391 S.C. 483, 706 S.E.2d 34 (Ct. App. 2011). Consistent with the holdings of *Bone* and *Long*, the orders below do not dispose of the entire case. Since no final judgment has been rendered, this appeal should be dismissed as interlocutory and remanded to the Commission for further proceedings consistent with the Commission orders. Pursuant to the holdings of *Long*, *Charlotte-Mecklenburg*, and *Bone*, the dismissal and remand ordered by this Court will preserve judicial resources and prevent piecemeal appeal of the various issues presented (and not yet decided) in this case.

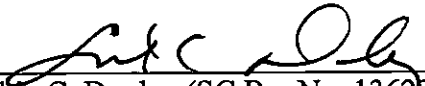
CONCLUSION

For the reasons stated herein, Respondents respectfully submit that the Petition for Rehearing of Appellant *pro se* should be denied.

[Signature page to follow.]

May 18, 2020

By: _____


Cynthia C. Dooley (SC Bar No. 13628)
Carmelo B. Sammataro (SC Bar No. 69746)
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ATTORNEYS FOR RESPONDENTS

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Terry Capone,Appellant,

v.

City of Columbia, Employer, and
Companion Third Party Administrator, LLC, Carrier, Respondents.

PROOF OF SERVICE

I certify this 18th day of May 2020 that I have served a copy of the RETURN IN
OPPOSITION TO APPELLANT'S PETITION FOR REHEARING by mailing same, postage
prepaid in the United States mail, addressed to the following:

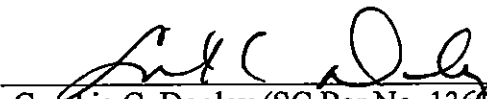
Terry Capone
130 Summerlea Drive
Columbia, SC 29203

APPELLANT, *PRO SE*

(Signature page to follow.)

May 18, 2020

By: _____


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May 18, 2020

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Terry Capone v. City of Columbia and Companion Third Party Administrator, LLC
Appellate Case No.: 2020-000641
File No.: 15030.113

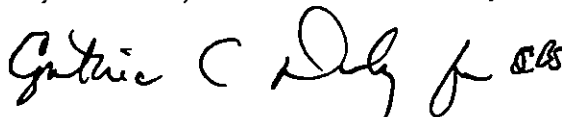
Dear Ms. Kitchings:

Enclosed please find the originals and one copy each of Respondents' Return in Opposition to Appellant's Petition for Rehearing and the Proof of Service regarding the above-referenced matter. Please file the original filings and return clocked copies to me via the enclosed envelope. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Carmelo B. Sammataro

CBS/tj

Enclosures

cc: Terry Capone, Appellant *pro se* (w/enc.)

P.O. Box 1473 Columbia, SC 29202

15030.113

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The Honorable Jenny Abbott Kitchings, Clerk

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