

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2020-001144
Case No. 2020-CP-23-2023

RECEIVED

Dec 07 2020

SC Court of Appeals

Kierra Johnson, Appellant,

v.

Greenville County, Greater Greenville Sanitation District, the
South Carolina Department of Transportation, American
Southern Insurance Company, and the State Fiscal
Accountability Authority Defendants,

Of which American Southern Insurance Company is, Respondent.

**MOTION TO STRIKE MATERIALS
DESIGNATED BY APPELLANT FOR INCLUSION
IN RECORD ON APPEAL**

The Respondent American Southern Insurance Company moves this Court pursuant to Rule 209(b) and Rule 210(c), SCACR, for an order directing that the

following documents be excluded from the Record on Appeal when it is prepared by the Appellant following submission of initial brief:

- (10) Plaintiff's demand/representation letter dated January 17, 2020
- (11) ASI's response to demand/representation letter dated January 17, 2020
- (13) Letter to Insurance Commission, March 21, 2018
- (14) Letter from Department of Insurance May 30, 2018
- (15) FOIA request to Department of Insurance, November 26, 2018
- (16) Response to FOIA request letter, December 12, 2018

These documents, which are not included in the lower court record and were not otherwise submitted to the lower court judge, have been improperly designated by the Appellant for inclusion in the Record on Appeal.

In addition to the exclusion of these documents from the Record on Appeal, the Respondent seeks an order directing that the excluded materials not be referred to nor cited in the Appellant's briefs.

In the alternative, if the Court allows any of these items to be included in the Record on Appeal despite never being submitted to the lower court, the Respondent seeks an order requiring the Appellant to produce a copy of such materials to the Respondent's counsel.

The Respondent's motion is addressed in greater detail in the supporting memorandum filed herewith.

The Respondent requests that all deadlines be held in abeyance until this motion is adjudicated.

LINDEMANN & DAVIS, P.A.

BY: s/ Andrew F. Lindemann

ANDREW F. LINDEMANN #13030

JAMES M. DAVIS, JR. #6519

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Counsel for Respondent

American Southern Insurance Company

December 6, 2020

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Accountability Authority Defendants,

Of which American Southern Insurance Company is, Respondent.

**MEMORANDUM IN SUPPORT OF
RESPONDENT’S MOTION TO STRIKE MATERIALS
DESIGNATED BY APPELLANT FOR INCLUSION
IN RECORD ON APPEAL**

This is an appeal from orders issued by the Circuit Court dismissing the Respondent American Southern Insurance Company from this action. As required by Rule 209, SCACR, the Appellant Kierra Johnson filed a Designation of Matter

to be Included in the Record on Appeal, together with the filing of her Initial Appellant's Brief.

After a careful review of the lower court's file (including the online Public Index for Greenville County) and the transcript of the motion hearing, the Respondent submits that the following items as designated by the Appellant are *not* filed in the lower court record nor were presented to Judge Perry H. Gravely at the motion hearing held on July 24, 2020:

- (10) Plaintiff's demand/representation letter dated January 17, 2020
- (11) ASI's response to demand/representation letter dated January 17, 2020
- (13) Letter to Insurance Commission, March 21, 2018
- (14) Letter from Department of Insurance May 30, 2018
- (15) FOIA request to Department of Insurance, November 26, 2018
- (16) Response to FOIA request letter, December 12, 2018

Rule 209(b), SCACR, provides that "the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]." Rule 210(c), SCACR, then provides that "[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal."

The items as identified above, which were never presented to or considered by the lower court, should not be included in the Record on Appeal. Counsel for

the Respondent is not even in possession of a copy of items (13) through (16). The Respondent, therefore, requests that this Court issue an order directing that the designated materials as identified above be excluded from the Record on Appeal when it is prepared by the Appellant following submission of initial briefs. The Court is further requested to order that the excluded materials not be referred to nor cited in the Appellant's briefs. In the alternative, if the Court allows any of these items to be included in the Record on Appeal despite never being submitted to the lower court, the Court is requested to order the Appellant to produce a copy of such materials to the Respondent's counsel.

Respectfully submitted,

LINDEMANN & DAVIS, P.A.

BY: s/ Andrew F. Lindemann

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Counsel for Respondent

American Southern Insurance Company

December 6, 2020

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Of which American Southern Insurance Company is, Respondent.

CERTIFICATE OF SERVICE

Pursuant to Section (c)(6) of the Supreme Court’s Order RE: Operation of the Appellate Courts During the Coronavirus Emergency Appellate Case No. 2020-000447 (As Amended May 29, 2020), the undersigned employee of Lindemann & Davis, P.A., counsel for the Respondent American Southern Insurance Company, does hereby certify that service of the **Motion to Strike Materials Designated by Appellant for Inclusion in Record on Appeal** and the **Memorandum in Support of Respondent’s Motion to Strike Materials Designated by Appellant for**

Inclusion in Record on Appeal was made upon all counsel of record by email only this the 7th day of December 2020:

Joshua T. Hawkins, Esquire
Helena L. Jedziniak, Esquire
Hawkins & Jedziniak, LLC
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s/ Andrew F. Lindemann



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December 7, 2020

Via Email Only

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Email: ctappfilings@sccourts.org

RECEIVED
Dec 07 2020
SC Court of Appeals

RE: Kierra Johnson v. Greenville County, the Greater Greenville Sanitation District and the South Carolina Department of Transportation
Appellate Case Number: 2020-001144
Civil Action Number: 2020-CP-23-2023
Claim Number: 7045583-CJ
Our File Number: 23.20315

Dear Ms. Kitching:

Pursuant to Section (c)(6) of the Supreme Court's Order RE: Operation of the Appellate Courts During the Coronavirus Emergency Appellate Case No. 2020-000447 (As Amended May 29, 2020), please find enclosed for filing by email only the **Motion to Strike Materials Designated by Appellant for Inclusion in Record on Appeal** and the **Memorandum in Support of Respondent's Motion to Strike Materials Designated by Appellant for Inclusion in Record on Appeal** in the above referenced matter. By copy of this letter, I am serving copies on all counsel of record by email only pursuant to Section (g)(3) of this same order. I am not sending a filing fee in accordance with Section (l)(1) of the same order.

If you require a formal motion, please advise. Thank you very much for your consideration of this request.

Sincerely,

LINDEMANN & DAVIS, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosures

The Honorable Jenny Abbott Kitchings
December 7, 2020
Page Two

cc: Joshua T. Hawkins, Esquire (*w/ Enclosures, Via Email Only*)
Helena L. Jedziniak, Esquire (*w/ Enclosures, Via Email Only*)