

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**Dec 08 2020**

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

**SC Court of Appeals**

The Honorable Perry H. Gravely, Circuit Court Judge

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Appellate Case No. 2020-001144

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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 whom American Southern Insurance Company is the.....Respondent.

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**RETURN TO RESPONDENT'S MOTION TO STRIKE  
MATERIALS RELATED TO THIS APPEAL**

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The respondent has moved to strike materials related to this appeal based upon its assertion that the materials were not submitted to the lower court. The problem, of course, is that all the materials the respondent wants the Court to strike are either directly related to this appeal or were discussed during the hearing at issue in the lower court or both.

For example, the demand letter referenced by the respondent was both discussed during the hearing on the appealed issues<sup>1</sup> and is directly related to the dismissed claims giving rise to the

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<sup>1</sup> In her Rule 59(e) motion, the appellant was unambiguous that all issues related to the hearing, pleadings, and related motions and filings were preserved for appeal.

appeal. There is no requirement that paper copies of all documents referenced in pleadings, filings, and at hearings be submitted to the circuit court and are forever barred from reference if they are not.

The respondent's real problem with the materials is simply that they are bad for the respondent. The documents show, as the appellant properly alleged and argued, that the plain language of the statute at issue has been ignored and that, as a result, the statute means nothing in practice. 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).]" Again, the transcript of the hearing shows that several of the materials the respondent has a problem with were discussed and are part of the record. The pleading most central to the hearing at issue is the complaint, and the allegations of the complaint make it clear that the appellant "by making a demand" sent the demand letter at issue to the respondent. Even though the demand letter and the other materials referenced by the respondent include materials that are directly related to the appeal and are part of the record by reference, the respondent nevertheless urges the Court to ignore their existence and proceed as if they are not central to the appeal. Even if the material the respondent seeks to have stricken was not part of the record and central to the appeal, the Appellate Court could require that the material be made part of the Record on Appeal pursuant to 212(a) SCACR.

Finally, the respondent has requested that, if the Appellate Court deny its motion to exclude materials central to the appeal, the appellant produce those materials. Of course, the appellant has no objection to providing all materials to the respondent. It should be noted, though, that the respondent is already in possession of at least some of the materials, because the appellant sent the demand letter to the respondent and the respondent drafted the denial letter that it sent in response.

For the foregoing reasons, the appellant respectfully requests that the Court deny the respondent's motion to strike materials related to this appeal.

Respectfully submitted,

s/ *Joshua T. Hawkins* \_\_\_\_\_

Joshua T. Hawkins, S.C. Bar #78470

Helena L. Jedziniak, S.C. Bar #100825

Hawkins & Jedziniak, LLC

1225 South Church Street

Greenville, South Carolina 29605

(864) 275-8142 (telephone)

(864) 752-0911 (facsimile)

josh@hjllesc.com

helena@hjllesc.com

**Attorneys for Appellant**

Greenville, South Carolina  
December 8, 2020

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State Fiscal Accountability Authority,.....Defendants,

Of whom American Southern Insurance Company is the.....Respondent.

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**PROOF OF SERVICE**

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I certify that I have served a copy of the Appellant's Return to Respondent's Motion to Strike, electronically to the Court of Appeals, and to the following attorney of record for the Respondent to the following electronic addresses, on this date December 8, 2020.

Andrew F. Lindemann  
James M. Davis, Jr.  
LINDEMANN, DAVIS & HUGHES, P.A.  
andrew@ldlawsc.com  
jim@ldlawsc.com

s/Joshua T. Hawkins  
Joshua T. Hawkins, SC Bar #78470  
Helena Jedziniak, SC Bar #100825  
Hawkins & Jedziniak, LLC  
1225 South Church Street  
Greenville, South Carolina 29605  
(864) 275-8142  
josh@hjlsc.com  
helena@hjlsc.com  
**Attorneys for Appellant**

Hawkins & Jedziniak, LLC

1225 South Church Street  
Greenville, South Carolina 29605  
Telephone: (864) 275-8142  
Facsimile: (864) 752-0911  
monica@hjlsc.com

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-via electronic filing/service: ctappfilings.com-  
Ms. Jenny Abbot Kitchings  
Clerk of Court  
South Carolina Court of Appeals

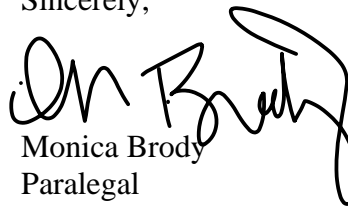
Re: *Kierra Johnson v. Greenville County, Greater Greenville Sanitation District, the South Carolina Department of Transportation, American Southern Insurance Company, and the State Fiscal Accountability Authority*  
App. Case No.: 2020-001144

Dear Ms. Kitchings:

Please find enclosed for filing Appellant's Response to Respondent's Motion to Strike, along with a Proof of Service upon Respondent.

Should you need anything further, please do not hesitate to contact our office.

Sincerely,



Monica Brody  
Paralegal

Enclosures

CC:  
Andrew F. Lindemann  
James M. Davis, Jr.  
LINDEMANN, DAVIS & HUGHES, P.A.  
andrew@ldlawsc.com  
jim@ldlawsc.com