

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

RECEIVED

MAR 19 2021

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

Full Commission Appellate Panel Order

WCC File No.:1417071

Appellate Case No.: 2019-001643

Joseph Jefferson, Employee,.....Respondent,

v.

South Carolina Department of Transportation, Employer, and

State Accident Fund, Carrier,.....Appellants.

**MOTION TO FILE APPELLANTS' FINAL REPLY BRIEF OUTSIDE OF FILING DEADLINES FOR COURT CONSIDERATION**

Appellants, by and through the undersigned attorney, hereby move before this Honorable Court for permission to file final copies of Appellants' Reply Brief. As grounds for this Motion, Appellants would show that Appellants properly filed and served a copy of their Reply Brief with this Honorable Court and Respondent on February 25, 2020. See Exhibit 1. Thereafter, Appellants properly filed and served final copies of Appellants' Final Brief and the Record on Appeal as required by applicable Appellate Court Rules. Appellants would respectfully draw the Court's

attention to the timeline of events between Appellants' submission of the initial copy of their Reply Brief in February 2020 and the final copies of the Final Brief and Record on Appeal in early April 2020. Specifically, between the two events, the implications of COVID-19 on the South Carolina legal system and filing documents in accordance with the same underwent several changes. While Appellants submitted their Reply Brief for final printing and binding alongside the Final Brief and Record on Appeal, it has now come to Appellants' attention this Honorable Court has not received a copy of the same. Despite an earnest investigation, Appellants are unable to determine the exact cause for this. Upon receipt of the correspondence from this Honorable Court dated March 16, 2021, Appellants worked to immediately re-submit final copies of their Reply Brief.

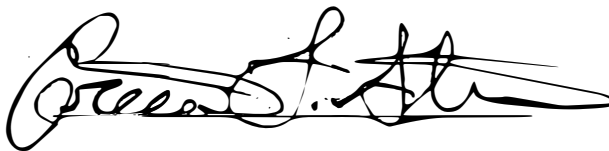
Accordingly, Appellants respectfully request this Honorable Court allow Appellants to re-submit final copies of their Reply Brief for consideration in this matter. In accordance with applicable South Carolina Appellate Court Rules, Appellants note the final Reply Brief does not include any substantive changes from the initial Reply Brief submitted on February 25, 2020. *See* Exhibit 1.

Appellants would further note Respondent has consented to Appellants' request to file final copies of their Reply Brief outside of the filing deadline.

[Signature page to follow]

Respectfully submitted,

**WILLSON JONES CARTER & BAXLEY, P.A.**

A handwritten signature in black ink, appearing to read "Erica L. Starnes". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Erica L. Starnes, Esquire

3600 Forest Drive, Suite 204

Columbia, SC 29204

**Attorney for Appellants**

March 19, 2021

THE STATE OF SOUTH CAROLINA  
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**EXHIBIT 1**

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# WILLSON JONES CARTER & BAXLEY, P.A.

ATTORNEYS AT LAW

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February 25, 2020.

**Via Hand Delivery**

The Honorable Jenny Abbott Kitchings  
The South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RECEIVED  
FEB 25 2020  
SC Court of Appeals

Re: Joe Jefferson vs. SC Department of Transportation  
Appellate Case No. 2019-001643

Dear Ms. Kitchings:

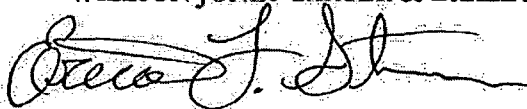
Pursuant to Rule 208 (a)(3), please find enclosed for filing one (1) original and one (1) copy of our **Appellants' Reply Brief, Certificate of Counsel, and Proof of Service** for the same, in the above-referenced matter.

Please note that pursuant to Rule 242(c), SCACR, no filing fee is required in this case since it is being filed by the State of South Carolina or one of its agencies or departments.

By copy of this letter and enclosures to Stephen Wukela, counsel of record for Respondent, we are serving a copy of our **Appellants' Reply Brief and Certificate of Counsel** upon him as indicated by the attached **Proof of Service**.

If you have any questions or concerns, please do not hesitate to contact me. Thank you for your consideration.

With kindest regards,  
WILLSON JONES CARTER & BAXLEY, P.A.



Erica L. Starnes

ELS/els

[Enclosures to follow]

Enclosure(s)

cc: Mr. Stephen J. Wukela, Esq.  
Ms. Larisa Benson (*via email only*)

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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**APPELLANTS' REPLY BRIEF**

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## ARGUMENTS

### I. RESPONDENT IMPROPERLY DESCRIBES THE FUNCTION OF S.C. CODE ANN. § 42-9-240.

It is well-established that “statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and given effect, if it can be done by any reasonable construction.” *Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass’n.*, 417 S.C. 562, 567–68, 790 S.E.2d 783, 786 (S.C. Ct. App. 2016) (internal citations omitted).

Respondent portrays the Legislature as providing carriers with a 14-day “grace period beyond the statutory due date” of an award. (Resp. Brief, p.13). However, reading S.C. Code Ann. § 42-9-240 on its own would not comply with the statutory intent of the Legislature, and accompanying case law, which clearly state that sections of the Workers’ Compensation Act must be read together when possible. To that end, Respondent conveniently fails to reference S.C. Code Ann. § 42-17-50, which states in pertinent part:

“If an application for review is made to the commission within fourteen days from the date when notice of the award shall have been given, the commission shall review the award and, if good grounds be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award.”

S.C. Code Ann. § 42-17-50 (2015).

While carriers have the option to pay an award due within 14 days of an order, a critical consideration during this 14-day time period is whether or not the carrier—or a claimant—wants to appeal an order of the Commission. Typically, even if a party is considering appealing an order, it does not make sense to pay an award that would only be tied up in the appeal process and potentially turned back over to the paying party (the carrier).

Although a carrier may choose to pay an award to avoid judgment interest and still pursue

appealing an order;<sup>1</sup> Respondent inaccurately and selectively represents § 42-9-240 as a “grace period,” when in reality, it is merely one section to be considered in conjunction with § 42-17-50 while parties are determining if they want to pursue an appeal with the South Carolina Workers’ Compensation Commission.

**II. THIS CASE IS PROPERLY BEFORE THIS COURT BECAUSE AS NOTED BY THE COMMISSION AND IN RESPONDENT’S BRIEF, THERE IS NO SOUTH CAROLINA PRECEDENT ON THIS LEGAL ISSUE AND THE IMPLICATIONS OF THIS DECISION ARE OF SIGNIFICANT PUBLIC IMPORTANCE.**

Despite using the greater part of seven of thirteen pages of Respondent’s brief for a string of legal quotations and citations, Respondent does not cite to a single South Carolina case for precedent on the issue of how to construe when an award is considered “paid” in the context of the Workers’ Compensation Act. Respondent’s brief is devoid of any such citation because one does not exist. Here, the dissent in the Commission’s order astutely points out, “...that, in the absence of South Carolina precedent, this Commission should adopt the logic of the North Carolina Court of Appeals in construing the term ‘paid’....” (Resp. Brief, p.8).

Even though the Commission may look to our sister state—upon which our own workers’ compensation system was heavily based—for guidance, Appellants respectfully request that this Court grant the petition for a writ of certiorari to address a novel issue. Significantly, even the Full Commission Appellate Panel did not come to a unanimous decision regarding when an award is “paid” in South Carolina.

Finally, this case is one of significant public interest and involves legal principles of major

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<sup>1</sup> Appellants note that they have paid Respondent the award at issue in this case during the pendency of this appeal to avoid interest accruing on the Commission’s award. However, Appellants respectfully request—and Respondent’s counsel conceded it would be proper—that the award be given back to Appellants should this honorable Court determine Appellants prevail on the merits.

importance due to its potential implications. There are thousands of workers' compensation claims processed every year in South Carolina. Accordingly, when and how an award is considered *timely* paid from a carrier to a claimant is an integral aspect of our workers' compensation system. There are significant policy interests of every insurance carrier, and every claimant, in when penalties can be assessed based on an award payment. Hence, Appellants request that this Court provide guidance to the bar on South Carolina's interpretation on this important legal issue.

### CONCLUSION

In sum, Appellants respectfully request that this Court provide guidance to the bar on this novel legal issue, reverse the majority Full Commission's findings, and order Respondent to return the penalty paid.

Respectfully submitted,

**WILLSON JONES CARTER & BAXLEY, P.A.**



Erica L. Starnes, Esquire  
3600 Forest Drive, Suite 204  
Columbia, SC 29204  
**Attorney for Appellants**

February 25, 2020  
Columbia, South Carolina

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CERTIFICATE OF COUNSEL

Appellants, by and through their undersigned counsel, certify that Appellants' Reply Brief complies with Rule 208 (a)(3), SCACR.



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Attorney for Appellants

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**PROOF OF SERVICE**

I certify that I have properly served **Appellants' Reply Brief and Certificate of Compliance**, by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses on February 25, 2020:

Mr. Stephen J. Wukela, Esquire  
403 Second Loop Road  
P.O. Box 13057  
Florence, South Carolina  
29504-3057

**(HAND DELIVERY)**  
The Honorable Jenny Abbott Kitchings  
The South Carolina Court of Appeals  
P.O.Box 11629  
Columbia, SC 29211

[Signature page to follow]



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**PROOF OF SERVICE**

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I certify that pursuant to the South Carolina Court of Appeals' letter dated March 16, 2021, I have properly served the final copy of **Appellants' Reply Brief** and **Appellants' Motion to File Appellants' Final Reply Brief Outside of Filing Deadlines for Court Consideration**, by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses on March 19, 2021:

Mr. Stephen J. Wukela, Esquire  
403 Second Loop Road  
P.O. Box 13057  
Florence, South Carolina  
29504-3057

**(HAND DELIVERY)**

The Honorable Jenny Abbott Kitchings  
The South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

[Signature page to follow]



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**Attorney for Appellants**

March 19, 2021

Columbia, South Carolina

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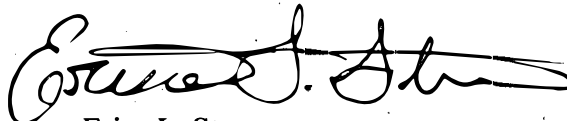
Dear Ms. Kitchings:

Pursuant to correspondence regarding the above-captioned case from the Honorable Court dated March 16, 2021, please find enclosed for filing one (1) unbound original and one (1) bound copy of **Appellant's Final Reply Brief** with attached **Proof of Service** for the same. Please also find enclosed for filing one original unbound copy of **Appellants' Motion to File Appellants' Final Reply Brief Outside of Filing Deadlines for Court Consideration**, and **Proof of Service** for the same, in the above-referenced matter.

By copy of this letter and enclosures to Stephen Wukela, counsel of record for Respondent, we are serving a copy of **Appellant's Final Reply Brief** and **Appellants' Motion to File Appellants' Final Reply Brief Outside of Filing Deadlines for Court Consideration**, upon him as indicated by the attached **Proof of Service**.

If you have any questions or concerns, please do not hesitate to contact me. Thank you for your consideration.

With kindest regards,  
WILLSON JONES CARTER & BAXLEY, P.A.



Erica L. Starnes

ELS/els

[Enclosures to follow]

Enclosure(s)

cc: Mr. Stephen J. Wukela, Esquire (*via United States Mail*)  
Ms. Larisa Benson (*via email only*)

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