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

Gene McCaskill, Commissioner
Avery B. Wilkerson, Jr., Commissioner
R. Michael Campbell, II, Commissioner

W.C.C. FILE NO.: 1215681

APPELLATE CASE NO.: 2018-000359

Vickie Rummage, Employee,..... Appellant,

vs.

BGF Industries, Employer, and Great American Alliance Insurance Co., Carrier,
..... Respondents.

APPELLANT'S PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, Appellant, Vickie Rummage, respectfully petitions this Court to Rehear and Reconsider its ruling in Vickie Rummage, Employee, Appellant v. BGF Industries, Employer, and Great American Alliance Insurance Co., Carrier, Respondents, Op. No. 5822 (S.C. Ct. App. filed May 19, 2021).

Ms. Rummage asserts this Court overlooked and/or misapprehended the following points in affirming the South Carolina Workers' Compensation Commission's (Appellate Panel's) February 1, 2018 order:

1) The Court's conclusion Ms. Rummage had not adequately preserved the issue relative to Respondents' failure to comply with the mandatory standard of proof requirements

of S.C. Code Ann. Section 42-9-35 (2015) overlooks/misconstrues: (a) after considering her exceptions to the single commissioner's rulings, appellate memorandum and oral elaboration on these contentions, the appellate panel, notwithstanding Respondent's contrary position, specifically acknowledged consideration of this assertion in connection with its affirmance of the single commissioner's rulings; (b) this issue, including the dispositive implications of the South Carolina Supreme Court's ruling in Michau v. Georgetown County, 396 S.C. 589, 723 S.E. 2d 805 (2012), was unquestionably raised to and ruled upon by the appellate panel; (c) various axioms prescribing liberal construction of exceptions in this context; and (d) while the provisions of Section 42-9-35 regulate the quantum of proof required to establish or deny the aggravation of a preexisting condition, this statute does not establish parameters for the admissibility of evidence.

". . . [I]ssues raised [to] . . . and ruled upon by the commission are cognizable on appeal." Stone v. Roadway Express, 367 S.C. 575, 627 S.E. 2d 695, 698 (2006); Barr v. Darlington County School District, Op. No. 5815 (S.C. Ct. App. Filed April 7, 2021) (Shearouse Adv. Sh. No. 12 at 17). This Court has further delineated preservation in this context requires "an issue . . . must have been raised to and ruled upon by the single commissioner or in a request for commission review of the single commissioner's order . . . ." Jervey v. Martint Environmental, Inc., 396 S.C. 442, 721 S.E. 2d 469, 474 (Ct. App. 2012); Colonna v. Marlboro Park Hospital, 404 S.C. 537, 745 S.E. 2d 128, 135 (Ct. App. 2013).

In this instance, the appellate panel, as "the ultimate fact finder", was not only obliged to review the evidence underlying the single commissioner's determinations, but also inspect the Commission's claim file contents for the purpose of resolving the current preservation dispute. See, Shealy v. Aiken County, 341 S.C. 448, 535 S.E. 2d 438, 442 (2000); Provins v. Spirit

Construction Services, 433 S.C. 17, 855 S.E. 2d 318,322 (Ct. App. 2021). See also, Record on Appeal, (pp. 424 – 427). After examining the pertinent documents, the appellate panel clearly recognized while it did not agree with her legal analysis, Ms. Rummage:

> . . . (a) relying on the decision in Michau v. Georgetown County, 396 S.C. 589, 723 S.E. 2d 805 (2012), **contend the provisions of § 42-9-35, S.C. Code Ann. not only require medical evidence to prove the aggravation of a preexisting condition, but also to rebut any medical evidence supporting this contention**; (b) maintains the **record contains no competent evidence which supports the Hearing Commissioner's ruling that she did not meet her burden of proof, as there is no contrary medical evidence that satisfies the requirements of § 42-9-35, as Defendants'/Respondents' expert did not offer any opinions to a reasonable degree of medical certainty**; (c) argues the Hearing Commissioner's **adverse credibility findings alone are insufficient to rebut the multiple medical opinions confirming the aggravation of her preexisting psychological condition** by the consequences of her compensable injury; and (d) claims the denial of her request for treatment **resulted from an arbitrary decision-making process through which a medical question was determined through the Hearing Commissioner's rendering expert opinion**. (See, Record on Appeal, p. 28) (Emphasis added).

Although the Court questioned the timeliness of elaboration on this aspect of the single commissioner's ruling, the Appellate Panel necessarily found: (a) various exceptions which challenge the single commissioner's "unlawful adjudication process", contest the absence of evidentiary basis for her ruling and specifically contend the only reasonable inference arising from the evidence of record established her compliance with the provisions of Section 42-9-35 allowed further elaboration on compliance with this statute; (b) similarly determined Ms. Rummage's adherence to her previously stated belief there was "no competent evidence which supports the fact finder's determination [she] . . . did not meet her burden of proof per" Section 42-9-35, coupled with her continued recognition of the requirement for "expert opinion . . . stated to a reasonable

degree of medical certainty" created by this statute, as referenced in her review memorandum, afforded an opportunity for further elaboration on the standard of proof; and (c) actually questioned Respondents' counsel as to whether the sole expert opinion they had offered complied with the requirements of this statue (See, Record on Appeal, p. 136); and (d) resolved the preservation dispute in the fashion traditionally embraced by our Appellate Courts (". . . [W]hen this court comes to construe an exception, it will make its construction as liberal as the language will allow, in order to decide the question involved, unless it is satisfied that the statement has misl[e]d . . . the respondent to his injury.") Zorn v. Crawford, 252 S.C. 127, 165 S.E. 2d 640, 645 (1969); Citizens for Quality Rural Living, Inc. v. Greenville County Planning Commission, 426 S.C. 97, 825 S.E. 2d 721, 730 (Ct. App. 2019)(fn. 9).

In this regard, the appellate panel obviously recognized: (a) the plain language of Section 42-9-35 affords no "gray area" in terms of the requirement of medical evidence "stated to a reasonable degree of medical certainty"; (b) this "yes or no" inquiry does not lend itself to further argument; and (c) given these facts, liberal construction produces no degree of prejudice.

The appellate panel's finding of issue preservation is further validated by the axioms: (a) "a party is not required to use the exact name of a legal doctrine in order to preserve the issue" (Herron v. Century BMW, 395 S.C. 461, 719 S.E. 2d 640, 642 (2011); Kosciusko v. Parham, 428 S.C. 481, 836 S.E. 2d 362, 376 (Ct. App.)); (b) where, as here, the Court can discern the substance of a the appeal through inspection of the record and briefs, "a meritorious case [should] . . . not be disposed of on technical grounds" (Sandel v. Cousins, 266 S.C. 19, 221 S.E. 2d 111, 112 (1975); see also, Baker v. Weaver, 279 S.C. 479, 309 S.E. 2d 770, 771 (Ct. App. 1983)); (c) the "Court is concerned with the substance of an appeal, not the technical differences

in the issues raised by the exceptions" (Bartles v. Livingston, 282 S.C. 448, 319 S.E. 2d 707, 717 (Ct. App. 1984); Boykin v. Boykin, 296 S.C. 100, 370 S.E. 2d 884, 885 (Ct. App. 1988)); (d) "substance will generally take precedence over technical rules in considering exceptions" (Brock v. Board of Adjustment and Appeals of the City of Rock Hill, 308 S.C. 539, 419 S.E. 2d 773, 776 (1992)); (e) "appellate courts should remain 'mindful of the need to approach issue preservation rules with a practical eye and not in a rigid hyper-technical manner'" (Amisub of South Carolina, Inc. v. South Carolina Department of Health and Environmental Control, 423 S.C. 50, 813 S.E. 2d 719, 721 (2018)); and (f) where the issue before the Court mirrors the one addressed below, "it is preserved" (See, Conits v. Conits, 422 S.C. 74, 810 S.E. 2d 253, 254 (2018).

Notwithstanding any discrepancies between the Form 30 exceptions and argument before the appellate panel, it cannot be legitimately disputed: (a) Ms. Rummage has consistently asserted the single commissioner's ruling was not supported by competent evidence and the product of an unlawful adjudication process, while maintaining the current record compelled a determination she had satisfied the requirements of Section 42-9-35; (b) the narrow issue has been and remains whether the medical evidence upon which the single commissioner and appellate panel relied in denying her entitlement to psychological care passes legal muster; (c) the current record, like those referenced in Sandel, Baker and Boykin, leaves no doubt as to the dispositive issue; (d) Respondents can advance no argument that would alter or change the ultimate issue - - whether the medical evidence they offered in response to Ms. Rummage's presentation satisfied the standard of proof established by Section 42-9-35; and (e) the current circumstances undoubtedly warrant consideration of this issue, on its merits, per application of these multiple authorities.

Finally, Ms. Rummage would respectfully note the Court's apparent indication she was obliged to object to the admission of Dr. Thomas Gualtieri's report is misplaced, as: (a) Section 42-9-35 institutes **standard of proof** governing the establishment and rebuttal (per Michau) of a compensable aggravation; (b) " 'standard of proof' . . . refers to the degree or level of proof demanded in a specific case" (In re: Navarra, 185 A. 3d 342, 353 (2018)(fn. 5); In re: Portus, 325 Mich. App. 374, 926 N.W. 2d 33, 41 (2018)); (c) Section 42-9-35 does not render medical evidence that does not meet its requirements inadmissible, but rather deems it insufficient to meet the prevailing standard of proof; (d) the parties' respective rights, "includ[ing] . . . the procedures for adjudicating a compensation claim as well as . . . substantive entitlement", are wholly dependent upon the statutes which comprise the South Carolina Workers' Compensation Act (Cook v. Mack's Transfer & Storage, 291 S.C. 84, 352 S.E. 2d 296, 298 (1986); Estate of Covington by Montgomery v. AT&T Nassau Metals Corp., 304 S.C. 436, 405 S.E. 2d 393, 394 (1991)); (e) an adjudicating tribunal "must apply the law as it currently exists" (Redmond v. Lexington County School Dist. No. Four, 314 S.C. 431, 445 S.E. 2d 441, 443 (1994); Colleton County Taxpayers Association v. School District of Colleton County, 371 S.C. 224, 638 S.E. 2d 685, 691 (2005)); (f) Ms. Rummage was entitled to consideration of all evidence of record in accordance with this "heightened standard of proof" (Doe v. South Carolina Department of Social Services, 407 S.C. 623, 757 S.E. 2d 712, 719 (2014); South Carolina Department of Social Services v. Patten, 412 S.C. 93, 770 S.E. 2d 192, 195 (Ct. App. 2015)); and (g) she has appropriately challenged the unlawful adjudication process employed by the single commissioner and appellate panel, which each failed to recognize the evidence introduced by Respondents simply failed to satisfy the statutory standard of proof. See, Moore v. McKelvey, 266 S.C. 95, 221

S.E. 2d 780, 781 (1976); Beneficial Financial I, Inc. v. Windham, 431 S.C. 256, 847 S.E. 2d 793, 804 (Ct. App. 2020).

Based upon the underlying facts, as well as the above-cited legal authorities, the issue relative to Respondent's compliance with the standard of proof prescribed by Section 42-9-35, through submission of Dr. Gualtieri's report, was clearly preserved and required a merits adjudication. Consequently, Ms. Rummage respectfully requests the Court to grant her Petition, withdraw/amend its prior decision, rehear the matter and issue a new decision reversing the appellate panel's Order, which is unquestionably the product of an unlawful adjudication process premised upon incompetent evidence that does not satisfy the standard of proof requirement established by Section 42-9-35.

2) The Court overlooked/misconstrued the substantial impact of the "clearly erroneous" admission of Commissioner G. Bryan Lyndon's March 5, 2008 Decision and Order on the single commissioner's and appellate panel's rulings her current psychological symptoms were purely preexisting, rather than due, at least in material part, to the aggravating consequences of her compensable accident.

Significantly, even it were assumed arguendo the credibility findings relative to Ms. Rummage contained in this Order were cumulative in the context of the current record, it is respectfully submitted: (a) this Court recognized the contents of Commissioner Lyndon's Order negatively "speaks directly to the credibility of . . . [Dr. Fred D. McQueen, Jr.,] a key medical provider in the . . . [current] case"; (b) the Court likewise determined admission of this Order into evidence impermissibly attacked not only Ms. Rummage's character, but also "the credibility of Dr. McQueen," **the only medical expert of record who had the benefit of examining/treating**

her both prior to and after the admittedly compensable May 18, 2012 accident; (c) the material implications of this tainted evidentiary admission on the viability of Dr. McQueen's uniquely relevant opinions cannot be minimized, as **he dispels any notion** Ms. Rummage's current psychological symptoms are solely attributable to purely preexisting distress; (d) inspection of the single commissioner's and appellate panel's Orders reveals Dr. McQueen's "key" opinions were wholly ignored; and (e) the impact of this "troubling" character attack on Dr. McQueen, in the context of a medically driven issue, was severe.

As noted in this Court's Opinion, Ms. Rummage independently sought assessments from Drs. Donna Schwartz-Maddox (forensic psychiatrist), Amanda Salas (forensic psychiatrist) and Tora Brawley (neuropsychologist), who each verified not only the absence of malingering, but also the causal relationship of her current psychiatric/psychological distress. She was also examined on numerous occasions by Dr. Daniel L. Collins, Respondents' designated treating physician, who similarly validated these facts.

Additionally, Ms. Rummage received treatment from Dr. McQueen **both prior to and after** the May 18, 2012 trauma. In view of his extended pre-injury treatment of Ms. Rummage and personal familiarity with her post-injury condition, it was clear: (a) Dr. McQueen had **a unique perspective** that allowed him to most reliably address the impact of Ms. Rummage's May 18, 2012 accident consequences on her preexisting conditions; and (b) **no other** medical provider or assessor could offer equivalent insight.

Pursuant to questionnaire responses dated March 13, 2014, Dr. McQueen confirmed, to a reasonable degree of medical certainty: (a) "Ms. Rummage's current headaches are **most probably the product of a post-concussive syndrome**, as opposed to the tension

headaches for which [he] . . . provided treatment prior to the May 18, 2012 trauma"; (b) "the level/frequency of Ms. Rummage's cervical symptoms have also **increased following this work related fall**"; (c) **"the nature/intensity of Ms. Rummage's psychological disturbance have also increased in a manner consistent with a post-concussive syndrome"**; (d) **"each of these components has been materially aggravated by the consequences of Ms. Rummage's May 18, 2012 work related fall"**; (e) **"the treatment Dr. Collins has provided/prescribed for these aggravated conditions is different and/or more focused than what Ms. Rummage's symptoms required prior to her May 18, 2012 work related fall"**; and (f) ". . . [d]espite the presence of cervical symptoms, depression and headaches prior to her May 18, 2012 work related fall, . . . the treatment modalities [he] . . . provided allowed Ms. Rummage to remain employed...." (See, Record on Appeal, pp. 380-382).

Inspection of the single commissioner's Order (as adopted by the appellate panel) reveals specific and consistent attempts to justify rejection of the corroborative causation opinions offered by Drs. Maddox, Salas and Brawley. (See, Record on Appeal, pp. 39-40 and 68-69). They similarly elected to focus on remote testimony of Dr. Collins (expressing his initial concerns (which reversed over time) as to the reliability of her reported history) to support adverse credibility findings, as well as the presence of longstanding psychological symptoms. (See, Record on Appeal, pp. 38-39 and 66-67).

Significantly, both the single commissioner's and appellate panel's Orders are **devoid of any reference to the causation opinions expressed by Dr. McQueen**. Given his status as "a key medical provider in the case", even a jaded mind would find it incredible: (a) this unique medical provider's opinions relative to Ms. Rummage's post-injury status **were unworthy of any**

comment; (b) a fact finder could determine his corroborative opinions could be summarily/surreptitiously dismissed; and (c) this process occurred in a vacuum.

Error can only be characterized as harmless when it "could not reasonably have affected the result of the trial." State v. Mitchell, 286 S.C. 572, 336 S.E. 2d 150, 151 (1985); State v. Johnson, 432 S.C. 652, 855 S.E. 2d 305, 309 (Ct. App. 2021). Additionally, where, as here, "there [is] . . . no equivalent testimony presented", exclusion of the evidence is not harmless. Means v. Gates, 348 S.C. 161, 558 S.E. 2d 921, 926 (Ct. App. 2001).

In this instance, it cannot be presumed: (a) the adverse credibility findings relative to Dr. McQueen contained in Commissioner Lyndon's Order, as part of the evidentiary record, was tantamount to a sealed document; (b) any assertion is unassailable; or (c) the hearing outcome would not have been different had the "troubling" admission of this evidence not occurred. See, Ledford v. Department of Public Safety, 428 S.C. 387, 835 S.E. 2d 509 (2019). Rather, consideration of the current circumstances warrants recognition the tainted evidentiary record: (a) materially/negatively impacted upon Ms. Rummage's position; and (b) did not simply constitute harmless error.

Consequently, Ms. Rummage respectfully requests the Court grant her Petition, withdraw/amend its prior decision, rehear the matter and issue a new decision determining the Commission committed reversible error in allowing introduction of Commissioner Lyndon's prior Order.

3) The Commission overlooked/misconstrued the evidentiary record in determining the appellate panel's denial of medical benefits for her aggravated psychological/psychiatric injury component was supported by substantial evidence, as: (a) the medical evidence upon which it

relied in reaching this determination (Dr. Gualtieri's report) did not satisfy the standard of proof prescribed by Section 42-9-35; and (b) the only reasonable inference which may be gleaned from the evidence contained in the hearing record, in light of this governing standard of proof, clearly confirms she established her entitlement to treatment for this aggravated preexisting condition as a matter of law.

Section 42-9-35 prescribes that: (a) aggravation of a preexisting condition "shall [be] . . . established by a preponderance of the evidence, including medical evidence"; and (b) " 'medical evidence' means expert opinion or testimony stated to a reasonable degree of medical certainty".

As previously recognized by the Supreme Court (when analyzing another portion of the 2007 Amendment to Title 42), this statutory language: (a) "expressly creates an additional heightened standard" for establishing a compensable aggravation of a preexisting condition; and (b) "requires 'medical evidence,' in the form of 'expert opinion or testimony . . . [to be] stated to a reasonable degree of medical certainty.'" Michau v. Georgetown County ex rel. South Carolina Counties Workers Compensation Trust, 396 S.C. 589, 723 S.E. 2d 805, 807 (2012). See also, Hartzell v. Palmetto Collision, LLC, 419 S.C. 87, 796 S.E. 2d 145, 149-150 (Ct. App. 2016) (recognition of heightened standard of proof established by requirement of medical evidence to a reasonable degree of medical certainty). Section 42-9-35 similarly: (a) does not differentiate between the need for "opinion or testimony" when confirming, as opposed to denying, the aggravation of a preexisting condition; and (b) is equally applicable to medical "opinion" verifying the aggravation of a preexisting condition by compensable injury consequences, as well as to medical "opinion" denying this aggravation. Michau, 723 S.E. 2d at 808.

In this instance, Respondents "specifically sought out Dr. [Gualtieri] . . . to evaluate . . . [Ms. Rummage] and issue a medical 'opinion' to decide the compensability of [her] . . . claim." (Id.) In view of this fact, Dr. Gualtieri's reports: (a) can only be characterized as an "opinion or testimony" that must be "stated to a reasonable degree of medical certainty"; and (b) do not constitute "competent evidence" to support a denial of the aggravated psychological/psychiatric condition validated by no less than five experts. Michau, 723 S.E. 2d at 808-809. See also, Section 42-9-35 (C).

Consequently, the appellate panel's attempt to circumvent the specific requirements of Section 42-9-35 is necessarily "null and void." Bazzle v. Huff, 319 S.C. 443, 462 S.E. 2d 273, 274 (1995) (Commission's attempts to require submission/approval of attorney fees prior to effective date of empowering regulation "exceeded their statutory authority and thus were null and void"); Responsible Economic Development v. South Carolina Department of Health and Environmental Control, 371 S.C. 547, 641 S.E. 2d 425, 428 (2007) (action taken by administrative agency outside its statutory authority "is null and void").

The appellate panel's factual findings "may not be based upon surmise, conjecture or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it." Glover v. Rhett Jackson Company of Bush River Road, 274 S.C. 644, 267 S.E. 2d 77, 80 (1980); Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E. 2d 76, 82 (Ct. App. 1995). Where "there is no evidence to support the finding of fact made by the Commission this court . . . has the power to reverse" the administrative agency's determination. Sanders v. Richardson, 251 S.C 325, 162 S.E. 2d 257, 259 (1968); Hutson v. South Carolina State Ports Authority, 399 S.C. 381, 732 S.E. 2d 500, 504 (2012).

It is also axiomatic that while "the Commission is the fact finding body, where the evidence gives rise to but one reasonable inference the question becomes one of law for the court to decide." Kinsey v. Champion American Service Center, 268 S.C. 177, 232 S.E. 2d 720, 722 (1977); Moore v. Family Service of Charleston, 269 S.C. 275, 237 S.E. 2d 84, 86 (1977). See also, Springs Industries, Inc. v. South Carolina Second Injury Fund, 296 S.C. 359, 272 S.E. 2d 915, 917 (Ct. App. 1988); Carolinas Recycling Group v. South Carolina Second Injury Fund, 398 S.C. 480, 730 S.E. 2d 324, 327 (Ct. App. 2012).

As previously noted, Ms. Rummage submitted medical evidence containing confirmatory opinions relative to the causal relationship of her current psychological/psychiatric distress to the aggravating effects of her May 18, 2012 compensable accident from four physician experts, as well as a seasoned neuropsychologist. These medical opinions were offered by not only two forensic psychiatrists, but also: (a) Dr. McQueen, who possessed a unique awareness of Ms. Rummage's extensive pre-accident treatment course; and (b) Dr. Collins, Respondents' designated physician, who personally assessed her on essentially a monthly basis for three years.

Consistent with the requirements of Section 42-9-35, each of Ms. Rummage's physician experts verified, "to a reasonable degree of medical certainty", the consequences of her admittedly compensable physical injuries had aggravated the preexisting psychological condition. Given this fact, as well as the absence of any competent contradictory medical opinion or testimony, Ms. Rummage respectfully submits: (a) the appellate panel's determination she "failed to prove an aggravation of her preexisting psychological condition" is devoid of evidentiary basis; (b) absent the requisite "expert opinion or testimony stated to a reasonable degree of medical certainty", this denial is clearly the product of "surmise, conjecture [and] . . . speculation", rather

than "founded on . . . [competent] evidence"; (c) the "only evidence in the record shows that . . . [her preexisting psychological condition] was . . . aggravated by" the consequences of her compensable injury; (d) the only reasonable inference arising from the record unequivocally establishes she has satisfied the requirements of Section 42-9-35; and (e) her current psychological/psychiatric symptoms are "related to the accident as a matter of law." Mullinax, 445 S.E. 2d at 82.

Accordingly, Ms. Rummage respectfully requests this Court to grant her Petition, withdraw/amend its prior decision, rehear the matter and issue a new decision which: (a) reverses the appellate panel's February 1, 2018 ruling in its entirety; (b) conclude she has proven her entitlement to receipt of medical treatment for the aggravation of a preexisting psychological/psychiatric condition as a matter of law; and (c) requiring the appellate panel to award these medical benefits in accordance with the provisions of Section 42-9-35 and S.C. Code Ann. Section 42-15-60 (2015).

4) The Court overlooked/misapprehended that Respondents' failure to appeal the appellate panel's determination Ms. Rummage had adequately preserved the issue relative to compliance with the standard of proof required by Section 42-9-35 precluded them from contesting this issue on appeal, as: (a) they could not dispute this issue absent filing of a cross appeal with the Court; and (b) their failure to do so resulted in the appellate panel's acknowledgment this issue was preserved becoming the law of this case.

When Respondents attempted to limit the nature/scope of Ms. Rummage's appeal through submission of a proposed Order that excluded several assertions of error, the undersigned requested revision of this document to reflect all issues which were properly raised to and ruled

upon by the Panel. While the Court's Opinion notes the appellate panel was ultimately "persuaded . . . to include a mention of the Michau case in section 42-9-35 in its final order", it overlooks the facts: (a) Ms. Rummage did not merely ask the appellate panel to mention the controlling statute, but actually identified the factual basis for her contention the issue relative to compliance with the applicable standard of proof had been preserved; (b) Respondents' formally contested her position through submission of a January 12, 2018 letter (Record on Appeal, pp. 424-425); and (c) the appellate panel's ruling on this dispute was expressed through entry of an Order that was clearly inconsistent with Respondents' contention.

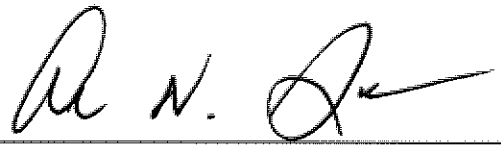
This Court has repeatedly ruled where, as here, a respondent does not pursue cross appeal of an adverse ruling by the lower tribunal, the: (a) previously contested issue "is not properly before the court for review"; and (b) unappealed ruling "becomes the law of the case". See, Commercial Credit Loans, Inc. v. Riddle, 334 S.C. 176, 512 S.E. 2d 123, 128 (Ct. App. 1999); Martin v. Bay, 400 S.C. 140, 732 S.E. 2d 667, 675 (Ct. App. 2012).

Inspection of the record confirms the issue relative to the scope/breadth of Ms. Rummage's exceptions, including her preservation of evidentiary compliance with the standard of proof requirement of Section 42-9-35: (a) was certainly disputed before the appellate panel; (b) generated a ruling encapsulated in the Panel's Order that was contrary to Respondents' formally stated position; and (c) was not appealed to this Court. It consequently became the law of this case.

Accordingly, Ms. Rummage respectfully requests the Court to grant her Petition, withdraw/amend its prior decision, rehear the matter and issue a new decision reversing the Appellate Panel's Order, which is unquestionably the product of an unlawful adjudication process

premised upon incompetent evidence that does not satisfy the standard of proof requirement established by Section 42-9-35.

Respectfully submitted,



Andrew N. Safran, Esquire
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689

Attorney for Appellant

Columbia, South Carolina
June 18, 2021

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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..... Respondents.

CERTIFICATE OF SERVICE

Paula F. Bregovi, paralegal for the firm of Andrew N. Safran, LLC, Attorney at Law, with offices at Columbia, South Carolina, hereby certifies that on the 18th day of June, 2021, she served Appellant's Petition for Rehearing in the following fashion:

To: **VIA EMAIL & U.S. MAIL**
Michael A. Farry, Esquire
Jeremy R. Summerlin, Esquire
Horton, Drawdy, Ward, Mullinax & Farry, P.A.
307 Pettigru Street
Greenville, South Carolina 29601

Paula F. Bregovi
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689

ANDREW N. SAFRAN, LLC
ATTORNEY AT LAW
1400 PICKENS STREET, SUITE 300
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE 803.256.6689
FACSIMILE: 803.799.1003

MAILING ADDRESS
POST OFFICE BOX 12089
COLUMBIA, SOUTH CAROLINA 29211

June 18, 2021

VIA EMAIL
ctappfilings@sccourts.org
callen@sccourts.org
The Honorable V. Claire Allen
Deputy Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RE: Vickie Rummage v. Great American Alliance Insurance Company
Appellate Case No.: 2018-000359
Opinion No.: 5822

Dear Claire:

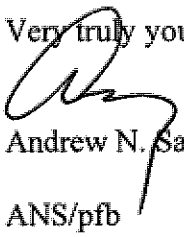
Attached please find a Petition for Rehearing, which I am filing on behalf of Ms. Vickie Rummage relative to the above-referenced matter. I am also mailing my firm check in the amount of Fifty and No/100 ($50.00) Dollars in satisfaction of the Court's filing fee.

By copy of this letter, I am serving this Petition for Rehearing on Mike Farry and Jeremy Summerlin, counsel for Respondents. As always, in the event they have any questions or comments concerning this matter, I invite them to contact me.

Thank you for your cooperation.

With kindest regards, I am

Very truly yours,



Andrew N. Safran

ANS/pfb
Enclosures

cc: Michael A. Farry, Esquire (via email and U.S. Mail)
Jeremy R. Summerlin, Esquire (via email and U.S. Mail)