

FORM 14  
DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL

**RECEIVED**

AUG 23 2021

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**SC Court of Appeals**

APPEAL FROM WORKER'S  
COMPENSATION COMMISSION  
Court of Common Pleas

Howard S. Barnes, Circuit Court Judge

Case No. 2021-000303

Raqucal Cunningham

Appellant,

v.

BMW Manufacturing Corporation, LLC, Employer, and Claims Management Services,  
Inc., Carrier,

Respondent,

DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Order of March 10, 2019 on file;
2. Order of June 13, 2019 ;
3. Complaint;
4. Answer;
5. Transcript of Proceedings pp. 63-68;
6. Appellant's Exhibits 1, 2, 3 and 4;

I certify that this designation contains no matter which is irrelevant to this appeal.

August 21, 2021

RAQUCAL CUNNINGHAM  
114 Vermillion Drive  
Spartanburg, S.C. 2930  
(864) 497-8680  
Appellant,

Raqucal C. Law

8-21-21



Exhibit 1

March 1, 2019

Raqucal Cunningham  
114 Vermillian Drive  
Spartanburg, SC 29306

Dear Ms. Cunningham:

Under the terms of the BMW Manufacturing Inactive Status Policy, you have exhausted the maximum allowable time under inactive status, and subsequently your employment with BMW MC will be terminated on **April 1, 2019**. In accordance with the Associate Termination Review Policy, termination review is not applicable if an associate has exceeded the maximum allowable time for inactive status.

In the event your doctor has indicated that you are capable of returning to active full time employment, **please provide written notification, no later than March 20, 2019.**

BMW Manufacturing Co., LLC  
Disability & Absence Management  
P.O. Box 11000  
Spartanburg, SC 29304-4100

If you have already contacted Industrial Health Services to initiate your return to work evaluation, the evaluation process will continue until a final determination is made. **During the evaluation period, if you have a change of medical condition, you must notify Disability Management at BMW MC immediately at 802-5551.**

If there is an open position at BMW Manufacturing Co., LLC that you are qualified for, at the time that you are able to return to work, you may apply for an open position through the BMW MC Global Recruiting System.

Sincerely,  
BMW Manufacturing Co., LLC

A handwritten signature in black ink, appearing to read 'Sean Noonan', written over a horizontal line.

Sean Noonan  
Vice President,  
Corporate Human Resources  
Americas

A handwritten signature in black ink, appearing to read 'Scott D. Medley', written over a horizontal line.

Scott D. Medley  
Manager  
Human Resources

Exhibit 2

**Op Notes****Op Note by Stephan Geoffrey Pill, MD at 8/9/2019 11:42 AM**

Author: Stephan Geoffrey Pill, MD      Author: Physician      Filed: 8/9/2019 1:45 PM  
 Note Status: Signed      Type:      Date of Service: 8/9/2019 11:42 AM  
 Editor: Stephan Geoffrey Pill, MD (Physician)      Cosign: Cosign Not Required

**PATEWOOD HOSPITAL**  
 175 Patewood Drive  
 Greenville SC 29615  
 Loc: 864-454-1000

**Operative Note****Surgery Date:** 8/9/2019**Preop Diagnosis:** Left ankle peroneal tendon tearing and instability**Postop diagnosis:** Same**Procedure:** Left ankle peroneus longus and brevis debridement, repair of peroneal lateral retinaculum**Surgeon:** Stephan G. Pill, MD**Assistants:** Jeremy McCallum, MD (fellow)**Procedure Summary****Anesthesia:** general**Estimated Blood Loss:** 20 cc**Drains:** None**Specimens:** \*

No

specimens

in

log

**Implants:** None**Complications:** None**Procedure Detail****Clinical history:**

Ms. Cunningham is a 45 y.o. year-old female who presented to the office with pain in the left posterior lateral ankle. She has had previous peroneal tendon tearing requiring surgery. She continued to have persistent pain overlying the retinaculum. There was suggestions of persistent tearing and instability. Her lateral ankle ligament complex was stable. The risks, benefits, and alternatives to surgery were discussed once the non-operative course failed. The patient elected to proceed with surgery. Specific risks of recurrence, stiffness, infection, nerve injury, and anesthesia risks were discussed.

**Procedure Description:**

The patient was re-examined in the holding room, and the left ankle was marked with indelible pen. All remaining questions were answered. Preoperative antibiotics were started. She was brought to the operating room.

The patient was placed in a lateral position. The left lower extremity was prepped and draped in the usual sterile fashion. A formal timeout was done to confirm her identity and surgical site. The antibiotics were complete.

I made the previous incision overlying the posterior lateral left ankle. This was slightly oblique in nature overlying the lateral malleolus. 15 blade was used to skin only. Blunt Metzenbaum scissor was used to spread through subcutaneous tissue. The lateral malleolus was encountered. Sharp dissection was carried just posterior to this. A thickened partially repaired peroneal retinaculum was encountered. This was rather thick and tight towards the superior margin. The peroneal tendons were adhered to the backside of the retinaculum. There was also significant adhesions within the tendons themselves. There were adhered together. There was tenosynovitis seen with both the peroneus longus and brevis. There was partial tearing and thickening of the tendons towards the tip of the lateral malleolus.

A new 15 blade was used to debride the tendons. Approximately 20% of both tendons were sharply removed. The remainder of the tendons towards the lateral malleolus now appeared normal.

I then spent time debriding the tenosynovitis. A significant amount of scar tissue was excised from the tunnel. There is low-lying muscle belly also removed. This decompressed the peroneal tunnel allowing for a more loose closure of the retinaculum. The retinaculum was then found throughout its course. A 3-0 PDS suture was used in figure-of-eight fashion to repair the retinaculum.

Copious irrigation was used throughout the peroneal tunnel. No subluxation was seen of the tendons at this point. Quarter percent plain Marcaine was used for postoperative pain relief around the surgical area. Examined under anesthesia was done to reveal normal ligamentous tension to the lateral ligament complex.

Copious irrigation was done. Meticulous hemostasis was achieved. Incision closure was accomplished with 3-0 Vicryl and 3-0 Nylon suture. Dressings consisted of XeroFlo, gauze, Webril splint and ACE.

All surgical counts were correct. The patient awoke safely from anesthesia and was taken to the recovery room in stable condition.

**Post-operative Plan:**

Patient will remain in splint for 1 week. We will then begin peroneal tendon protocol. This will include weightbearing as tolerated in a Cam walker. We will begin early motion.

Electronically signed:  
Stephan Geoffrey Pill, MD  
8/9/2019 / 12:51 PM

Exhibit 3



Reply To  
VERNON F. DUNBAR  
Direct Dial: (864) 239-6735  
vernon.dunbar@mgclaw.com

May 14, 2020

Raqual Cunningham  
114 Vermillion Drive  
Spartanburg South Carolina 29306

RE: Raqual Cunningham v. BMW Manufacturing and Hartford Accident & Indemnity Company c/o Sedgwick Claims Management  
Date of Accident: May 2, 2017  
WCC File No.: 1704918  
Our File No.: 20194.17369  
Claim No.: 30177811453-0001

Dear Ms. Cunningham:

Please find enclosed your disability award check pursuant to the order of Commissioner Michael Campbell, II. I am also enclosing a Form 19. Please sign the Form 19 which reflects your receipt of the disability award payment. Please return the check to me in the enclosed, stamped and self-addressed envelope. **The signing of the Form 19 does not affect your appeal in any way and your request for additional disability benefits.**

By copy of this letter to the Director of the Claims Department of the South Carolina Workers Compensation Commission, I am apprising Ms. Sonji Spann of my communication with you; the payment of the disability award pursuant to the order; and the request for you to sign and return the Form 19.

With kind and ward regards, I remain

Very truly yours,

Vernon F. Dunbar

VFD/amc

Enclosure(s) Disability Check, Form 19 and self-addressed envelope

cc: Donell Smith, BMW Manufacturing Corporation  
Emily Gregg, Sedgwick Claims Management  
Andrew Walker, BMW Manufacturing Corporation  
Sonji Spann, Director of Claims

McANGUS GOUDELICK & COURIE LLC

55 EAST CAMPERDOWN WAY  
SUITE 300 (29601)  
POST OFFICE BOX 2980  
GREENVILLE, SC 29602

864.239.4000 PHONE  
864.242.3199 FAX  
WWW.MGCLAW.COM

BEFORE THE WORKER'S COMPENSATION  
COMMISSION  
WCC FILE NO: 1704918

Raqucal Cunningham, )  
Employee/Claimant )  
vs. )  
BMW Manufacturing Corporation, )  
Employer )  
And )  
Hartford Accident & Indemnity )  
Company c/o Sedgwick Claims )  
Management Services, Inc., )  
Carrier )  
\_\_\_\_\_ )

DECISION AND ORDER

**DATE OF HEARING:** Hearing held in Greenville, South Carolina on March 28, 2019.

**APPEARANCES:** Claimant appeared and represented by Charles P. Edwards, Esquire, of Spartanburg, South Carolina.

Defendants represented by Vernon F. Dunbar, Esquire of McAngus Goudelock & Courie, L.L.C. of Greenville, South Carolina.

**PURPOSE OF THE HEARING:** To determine all issues as set forth in Form 21.

**COMMISSIONER:** Commissioner Aisha Taylor

**FILED:** June 13, 2019

**APA SUBMISSIONS**

The following documents were admitted into evidence without objection under the Administrative Procedures Act:

<b>APA#</b>	<b>PROVIDER</b>	<b>DATES</b>	<b>PAGES</b>
1.	BMW- Industrial Health Services	5-6-15 - 6-19-17	1-32
2.	Greenville Health System	5-3-17	33-38
3.	Piedmont Orthopedic Associates	8-29-17 - 1-05-19	39-51
4.	Dr. Hans Blaakman, Upstate Foot Care	8/24/17 -12-13-18	52-58
5.	Multiple- BMW-Industrial Health Services	8/31/18-11/12/18	59-60
6.	Dr. M. Tollison, Piedmont Orthopedic Associates	11/10/17-11/5/18	61-88
7.	Dr. Stephan G. Pill, GHS-Steadman Hawkins	2/14/19-3/7/19	89-96

**STIPULATIONS**

It is stipulated that:

- Claimant sustained a compensable injury to her left ankle on May 2, 2017 within the course and scope of her employment.
- Claimants weekly wage is \$803.67.
- Claimants Compensation rate is \$535.81.

**STATEMENT OF THE CASE**

This matter came to be heard before the undersigned on March 28, 2019 in Greenville, South Carolina pursuant to the Employer's Form 21. In the Form 21 the employer seeks to stop

payment of compensation, to determine if a permanent award is due, if so the amount thereof, and to determine if credit is due for overpayment of temporary compensation. In her Form 22, Claimant presents a general denial and requests a second opinion and continued treatment.

The Claimant sustained an injury to her left ankle on May 2, 2017 during the course and scope of her employment by the employer. The treating physician, Dr. Michael Tollison, operated on her left ankle on November 15, 2017. The Claimant returned to work in August 6, 2018. Her ankle swelled and hobbled her at work. She worked until August 31, 2018 but due to her inability to perform the employer removed her from the job and returned her to temporary total disability. Dr. Tollison issued a 14B Physician's Statement on January 15, 2019 and sometime later the employer placed Claimant in a work hardening program preparatory to return to a work assignment. During this time, she consulted Dr. Stephan Pill of the Steadman-Hawkins Clinic. Dr. Pill recommends arthroscopic surgery to improve the Claimant's ability to work.

#### EVIDENCE OF THE CASE

Testimony was taken from the Claimant. The Claimant testified that on August 6, 2018 she attempted to return to work, that her job duties involved standing and walking and that the ankle would swell up and become extremely painful during the shift causing her to interrupt her tasks and seek care at the plant infirmary. This continued for several weeks and the employer accommodated the Claimant. After several weeks, however, the employer determined that the Claimant should discontinue work and resume TTD. She testified that she had consulted Dr. Hans Blaakman, of Upstate Footcare, independently. He had suggested bracing, topical medication, steroids, and laser treatment. She states that when Dr. Tollison released her, she desired to consult another orthopedist for a second opinion. She consulted Dr.

Stephan Pill of Steadman-Hawkins Clinic. She testified that she desired to pursue arthroscopic surgery that Dr. Pill had proposed to restore her ability to work.

The November 5, 2018 office visit note of the treating physician, Dr. Michael Tollison releases Claimant from Dr. Tollison's care and states that there are no anticipated future medical or surgical needs. (APA #6 page 87).

In his February 14, 2019 office visit note, Dr. Stephen Pill indicates an intent to order an MRI of the left ankle and notes he will review her operative note from the prior surgery. (APA #7 page 92) His records reflect that the MRI was performed on February 22, 2019. The report is located at APA #7 page 94. Dr. Pill scheduled surgery for April 5, 2019. (APA #7 page 96).

Raqual Cunningham testified that the surgery had been postponed in order to allow the Commission to consider authorizing the surgery. The Claimant testified that she was presently in a work hardening program provided by the employer and anticipated to be reassigned to a suitable work assignment within the next few weeks.

#### FINDINGS OF FACT

I find as a fact that:

1. Claimant sustained an admitted compensable injury to her left ankle on May 2, 2017 within the course and scope of her employment.
2. Claimant received medical treatment at the direction of the Defendants and was placed at MMI as of December 28, 2018 by Dr. Tollison through his January 15, 2019 Form 14B Physician's Statement.

3. Claimant attempted to return to work before and after her release from Dr. Tollison. Claimant continues to experience severe swelling during her work shift and has been unable to regularly perform the normal functions of her job. The employer has accommodated Claimant's continued complaints of pain and swelling. At the time of the hearing, Claimant was in a work hardening program provided by the employer.

4. Claimant sought a second opinion from Dr. Stephen Pill of the Steadman-Hawkins Clinic. Dr. Pill obtained an MRI of Claimant's left ankle and has recommended arthroscopic surgery to help restore some functionality so Claimant can return to work.

5. Based on the preponderance of the evidence including the medical opinion of Dr. Pill as well as the credible testimony of the Claimant, I find Claimant is not at maximum medical improvement for her May 2, 2017 work injury.

6. There is additional medical treatment that may tend to lessen her period of disability including but not limited to the arthroscopic surgery recommended by Dr. Pill.

7. Dr. Pill should be authorized to take over medical care as the Defendants' physician, Dr. Tollison, has released the Claimant and opined he could not offer anything further.

8. Claimant is entitled to additional medical treatment to include the arthroscopic surgery to her left ankle as recommended by Dr. Pill.

9. Claimant is entitled to temporary benefits for all compensable lost time from work as a result of this work injury.

10. No hearing costs are assessed.

### CONCLUSIONS OF LAW

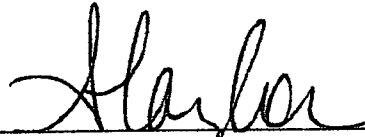
I therefore conclude as a matter of law that:

1. Pursuant to Section 42-15-60, there is additional medical treatment that may tend to lessen the Claimants period of disability including but not limited to the arthroscopic surgery recommended by Dr. Pill.
2. Pursuant to Section 42-17-30, Dr. Phil should be and hereby is authorized to take over medical care as Defendant's physician.
3. Section 42-15-60, the Claimant should be and she hereby is entitled to additional medical treatment to include the arthroscopic surgery to her left ankle as recommended by Dr. Pill.
4. Pursuant to Section 42-7-10, the Claimant should be and she hereby is entitled to temporary benefits for all compensable lost time from work as a result of this work injury.

**ORDER**

Claimant is not at maximum medical improvement for her May 2, 2017 work injury to her left ankle. Claimant is entitled to additional medical treatment at the direction of Defendants to include arthroscopic surgery to the left ankle as recommended by Dr. Pill. Defendants' From 21 is denied.

**IT IS SO ORDERED.**



---

Commissioner Aisha Taylor

**CERTIFICATE OF SERVICE**

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

June 14, 2019

By: Renee Smith, Administrative Assistant to Commissioner Taylor

1 Q: I was glad you were able to get out.

2 A: None taken.

3 Q: And the only reason why I bring this up is that  
4 approximately one month after the surgery, no  
5 brace, no walking boot, you're in a sneaker or  
6 tennis shoe and you're out having a good time,  
7 correct?

8 A: 'Cause I was allowed -- yes, sir, 'cause I was  
9 allowed to.

10 Q: And isn't it fair to say as time has gone on  
11 your ankle condition has improved. Movement,  
12 mobility, strength and everything has gradually  
13 come back as Dr. Pill indicated in the report  
14 that I just showed you; is that correct?

15 A: Some of it is correct.

16 Q: Okay. Now, with regard to any prior  
17 convictions you were convicted for a fraudulent  
18 check, right?

19 A: My criminal record has nothing to do with  
20 what's goin' on right now with my ankle.

21 Q: I understand that.

22 A: What I ---

23 Q: But unfortunately I ---

24 A: Look -

25 **COMMISSIONER CAMPBELL:** Let him answer -- ask the



1 question.

2 Q: Unfortunately, I get to ask the questions and

3 you have to answer them.

4 A: Well ---

5 Q: So my question simply is ---

6 A: Whatever you have on that paper take that as my

7 yes or no. Whatever you have on the paper

8 'cause we're not here for my background; we're

9 here for a workers' comp.

10 Q: All right. So ---

11 A: I answered your question.

12 Q: So my question is you were once convicted for

13 writing fraudulent checks, correct?

14 A: Whatever's on the paper.

15 Q: So that paper would be the SLED report that I

16 submitted.

17 A: Whichever is on that paper, which was thrown

18 out on the first hearing should be thrown on

19 this hearing, but whatever's on that paper.

20 Q: Okay. You don't deny that you were convicted.

21 A: Whatever is on that paper. I'm answerin' his

22 question, am I right? Whatever's on that

23 question -- on that paper.

24 Q: So I will take your response as whatever's

25 reflected in the SLED report ---



1 A: Whatever's on that paper.

2 Q: --- and if the SLED report says you were  
3 convicted for writing a fraudulent check ---

4 A: Whatever's on that paper.

5 Q: That's what on the document.

6 A: Has nothing to do with the condition of my  
7 ankle and that I got hurt at your people's  
8 establishment.

9 Q: All right. You have not looked for work at all  
10 since you were terminated from BMW, have you?

11 A: No.

12 Q: Do you have any other pending lawsuits or any  
13 type of EEOC charges or claims against BMW?

14 A: I am in here for workers' comp and workers'  
15 comp only. Anything pertainin' to EEOC or any  
16 other people I ---

17 **MR. EDWARDS:** I would object to the relevance of the  
18 question.

19 A: That has nothin' to do with this.

20 **COMMISSIONER CAMPBELL:** Okay. And, Mr. Dunbar, I'll  
21 let you respond to the objection.

22 **MR. DUNBAR:** Your Honor, I think it is relevant  
23 since she's claiming that her ankle is 25  
24 percent disabled despite the evidence from the  
25 physicians as well as the photographs, that



1           this is greatly embellished and that it shows  
2           that there's some other ulterior motives other  
3           than just a injured ankle that's been repaired.

4   **COMMISSIONER CAMPBELL:**   Okay, I'll allow it.

5   Q:    Again, do you have any other ---

6   A:    I'm not answerin'.

7   Q:    --- pending lawsuits?

8   A:    I'm not answerin'.

9   **MR. EDWARDS:**   The Commissioner says you must answer  
10       the question.

11   A:    He -- whatever he has on that paper.  What's up  
12       on that paper is on that paper.  Whatever's on  
13       that paper.

14   Q:    So are you ---

15   A:    But I just don't understand how you can ---

16   **MR. EDWARDS:**   Answer the question, Ms. Cunningham.

17   **MS. CUNNINGHAM:**  I did.  Whatever's on his paper.  I  
18       answered it.

19   **COMMISSIONER CAMPBELL:**  So you agree that whatever  
20       is in -- reflected on those records is  
21       accurate?

22   **MS. CUNNINGHAM:**  No.  What I'm sayin' is the -- they  
23       have nothing' to do.  These -- the two cases  
24       has nothin' to do.  One has nothin' to do with  
25       the other.



1 **COMMISSIONER CAMPBELL:** That's not what I asked.

2 **MS. CUNNINGHAM:** Okay. Well what was the question?

3 **COMMISSIONER CAMPBELL:** Do you agree with -- what  
4 Mr. Dunbar was asking was -- do you agree  
5 whether that was accurate -- what's on those --  
6 piece of paper?

7 **MS. CUNNINGHAM:** I didn't agree. I don't know  
8 what's on his papers 'cause like I said I  
9 thought I came here for workers' comp so I  
10 don't know what he's talkin' about.

11 **COMMISSIONER CAMPBELL:** Mr. Dunbar, you can continue.

12 **Q:** Certainly. You have accused BMW of acting  
13 improperly, you have accused BMW of acting  
14 unethically, you have accused BMW of conspiring  
15 with the doctors against you, and as a result  
16 of those accusations I have a right to ask you  
17 questions about your behavior as a result.

18 **MR. EDWARDS:** I object to that question in that she  
19 should be allowed to respond whether she's  
20 accused of these several things that Mr. Dunbar  
21 stated. There was a laundry list of things  
22 that she's said to have been accused for and  
23 she may not admit to all of those things. It  
24 was a compound question and I wish it might  
25 could be broken down and let her admit or deny



1 first.

2 Q: My question to you, Ms. Cunningham, simply is  
3 this: Have you filed an EEOC claim against BMW  
4 for retaliation of treating you unfairly?

5 A: What does that have to do with this?

6 Q: Do you mind answering?

7 **COMMISSIONER CAMPBELL:** Answer the question just yes  
8 or no.

9 **MS. CUNNINGHAM:** I have.

10 Q: Okay. Thank you.

11 **MS. CUNNINGHAM:** But can I ask now?

12 **COMMISSIONER CAMPBELL:** I'll allow you to -- yeah,  
13 absolutely, ma'am.

14 **MS, CUNNINGHAM:** What does that have to do with  
15 workers' comp?

16 **COMMISSIONER CAMPBELL:** But you can't -- you don't  
17 get to ask him questions.

18 **MS. CUNNINGHAM:** Who do I ask questions to?

19 **COMMISSIONER CAMPBELL:** Nobody.

20 **MS. CUNNINGHAM:** Oh, nobody.

21 **COMMISSIONER CAMPBELL:** No.

22 **MS. CUNNINGHAM:** Oh, I thought you told me to ask.

23 **COMMISSIONER CAMPBELL:** No, you can't.

24 **MS. CUNNINGHAM:** No?

25 **COMMISSIONER CAMPBELL:** I will let you ---



FORM 7  
PROOF OF SERVICE OF A NOTICE OF APPEAL

**RECEIVED**

AUG 23 2021

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**SC Court of Appeals**

APPEAL FROM WORKER'S COMPENSATION  
COMMISSION  
Court of Common Pleas

Howard S. Barnes, Circuit Court Judge

Case No. 2021-000303

RAQUICAL CUNNINGHAM

Appellant,

v.

BMW Manufacturing Corporation, LLC,  
Employer, and Hartford Accident & Indemnity  
Company c/o Sedgwick Claims Management  
Service, Inc., Carrier

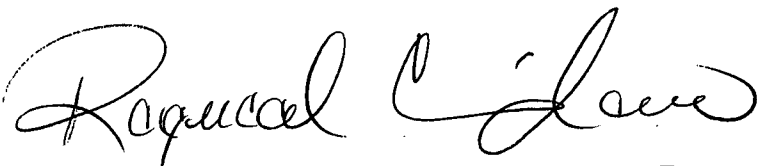
Respondent,

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on The Court of Appeals @ P.O. Box 11629 Columbia, S.C. 29211 and Vernon F. Dunbar @ 55 East Camperdown Way P.O. Box 2980 Greenville, S.C. 29602 by depositing a copy of it in the United States Mail, postage prepaid, on August 21, 2021, addressed to the court and the respondent's attorney on record.

August 21, 2021

Raqual  
Cunningham  
114 Vermillion  
Drive.  
Spartanburg, S.C., 29000  
(864) 497-8680  
Appellant



8-21-21

Roguel Cunningham  
114 Vermilion Drive  
Spartanburg, SC 29306



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SC Court of Appeals

South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

