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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Case No. 2013-000354

Frank Wilson,..... Appellant,

v.

American LaFrance,..... Employer,

and

AIG c/o
Gallagher Bassett Services, Inc.,..... Respondents.

MOTION TO DISMISS

Respondents American LaFrance, and Gallagher Bassett Services, Inc. hereby move to dismiss the Appeal in the above-referenced matter pursuant to Rule 260(a), SCACR. Claimant/Appellant failed to timely file an appeal with a court of proper jurisdiction and failed to provide the required notice to the South Carolina Workers Compensation Commission as required by Rule 221 SCACR This matter involves a work-related injury sustained on May 16, 2005. As such, the Court of Appeals is without jurisdiction to hear this appeal directly following

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a Decision and Order from the Appellate Panel of the South Carolina Workers' Compensation Commission pursuant to S.C. Code Ann. § 42-17-60 (Supp. 1993).

Claimant/Appellant, Frank Wilson, filed a workers' compensation claim against American LaFrance ["Employer"] alleging various work-related injuries. This matter proceeded to a hearing before the Single Commissioner, who issued an Order on June 21, 2012, regarding the merits of this claim. Claimant/Appellant timely appealed the Single Commissioner's Decision and Order to the Appellate Panel of the Workers' Compensation Commission. After hearing arguments from both parties, the Appellate Panel of the South Carolina Workers' Compensation Commission issued its Decision and Order on January 7, 2013. Claimant/Appellant attempted to file a Notice of Appeal with the Court of Appeals on February 6, 2013; however failed to include the correct filing fee and proof of service as required by Rule 203 and Rule 262, SCACR. Notice of this deficiency was provided to Claimant/Appellant on February 25, 2013, advising Claimant/Appellant that these deficiencies must be corrected within ten (10) days of the date of this notice. Thereafter, according to Claimant's/Appellant's Motion dated April 10, 2013, Claimant/Appellant hand delivered the required filing fee and proof of service to the Court of Appeals on March 11, 2013. As such, Defendants/Respondents assert Claimant failed to timely correct the aforementioned deficiencies as this delivery occurred outside the mandated 10 days after notice by the Court of Appeals was given. Therefore, Defendants/Respondents respectfully request Claimant's/Appellant's appeal be dismissed with prejudice.

Pursuant to Rule 263 SCACR, an appellate court may not extend the time to appeal. *See also, S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, 380 S.C. 349, 669 S.E.2d 899 (Ct. App. 2008) *overruled on other grounds* (Compliance with statutory time

periods for filing appeals is a prerequisite for an appellate entity to have jurisdiction to hear an appeal. Compliance with appeals filing deadlines grants jurisdiction to an appellate court while noncompliance divests jurisdiction. Service of the notice of intent to appeal is a jurisdictional requirement, and an appeals court has no authority to extend or expand the time in which the notice of intent to appeal must be served.)

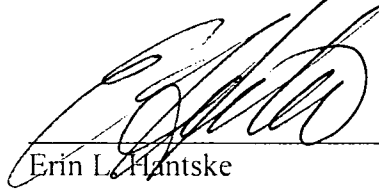
In the alternative, Defendants/Respondents request Claimant's/Appellant's appeal be dismissed with prejudice for failure file in a court of proper jurisdiction. Pursuant to S.C. Code Ann. § 42-17-60 (Supp. 1993), which applies to all injuries sustained prior to July 1, 2007, either party to a dispute, within 30 days from the date of the award or within 30 days after receipt of notice to be sent by registered mail of the award, but not thereafter, may appeal from the decision of the Commission to the Court of Common Pleas of the County in which the alleged accident happened, or in which the Employer resides or has his principle office, for errors of law under the same terms and conditions as govern appeals in ordinary civil actions. As such, Defendants/Respondents assert any appeal directly from the Appellate Panel of the South Carolina Workers' Compensation Commission directly to the Court of Appeals for an injury sustained on May 16, 2005 is not proper, and proper jurisdiction lied in the Court of Common Pleas in which the accident happened, or in which the Employer resides or has his principal office.

As the Claimant/Appellant failed to timely file an appeal with a court of proper jurisdiction pursuant to S.C. Code Ann. § 42-17-60 (Supp. 1993), Defendants/Respondents respectfully request this appeal be dismissed with prejudice.

This Motion conforms with Rule 240 and Rule 267, SCACR.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC



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April 19, 2013

Attorneys for Defendants/Respondents

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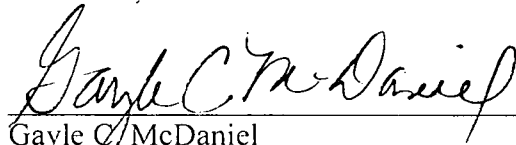
and

AIG c/o
Gallagher Bassett Services, Inc.,..... Respondents.

PROOF OF SERVICE

I certify that on the 19th day of April 2013, I served the **Respondents' Motion to Dismiss** upon Frank Wilson by depositing a copy of same in the United States Mail, postage prepaid, via both *First Class Mail and Certified Mail-Return Receipt Requested*, addressed to:

Frank Wilson
8755 Jessica Court
North Charleston, South Carolina 29406



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