THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2018-002087

Dale Brooks, Employee, Appellant,

v.

Benore Logistics System, Inc., Employer, and Great American Alliance Insurance Company, Carrier, Respondents.

PETITION FOR REHEARING

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INTRODUCTION

Pursuant to Rules 221(a) and 240 of the South Carolina Appellate Court Rules, Respondents Benore Logistics System, Incorporated and Great American Alliance Insurance Company hereby petition the Court to grant rehearing of its opinion in *Brooks v. Benore Logistics System Incorporated*, Op. No. 5891 (S.C. Ct. App. filed January 19, 2022) (Howard Adv. Sh. No. 3 at 40). This matter necessitates rehearing for several reasons. First, the Court overlooked or misapprehended that the Appellate Panel of the South Carolina Workers' Compensation Commission (Full Commission) is allowed to accept or reject lay or medical evidence, and, in reversing the Full Commission's assessment of that evidence, the Court improperly substituted its opinion for that of the Full Commission as to questions of the weight assigned to evidence and credibility. Second, the Court overlooked or misapprehended that its interpretation of Section 42-1-172 of the South Carolina Code (2007) renders several provisions of that statute meaningless and relieves a claimant of proving all elements of his claim for a repetitive trauma injury. Respondents respectfully request that the Court grant rehearing to correct these errors, schedule the case for oral argument, and issue a substituted opinion affirming the decision of the Full Commission.

ARGUMENT

I. The Court violated its standard of review by substituting its opinion on questions of fact and the weight assigned to evidence by the Full Commission.

The Full Commission is the ultimate factfinder in a workers' compensation appeal. *Thomas v. 5 Star Transp.*, 412 S.C. 1, 9, 770 S.E.2d 183, 187 (Ct. App. 2015). Questions of the weight assigned to the evidence and credibility are reserved for the Full Commission. *Shealy v. Aiken Cnty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). Furthermore, whether there is any causal

connection between employment and an injury is a question of fact for the Full Commission. *Pee v. AVM, Inc.*, 352 S.C. 167, 172 n. 4, 573 S.E.2d 785, 788 n. 4 (2002).

The findings of the Full Commission are presumed correct and will be set aside only if unsupported by substantial evidence. *Pack v. State Dep't of Transp.*, 381 S.C. 526, 532, 673 S.E.2d 461, 464 (Ct. App. 2009). "'Substantial evidence' is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence that, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action." *Id.* "In deciding whether substantial evidence supports a finding of causation, it is appropriate to consider both the lay and expert evidence." *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 294, 599 S.E.2d 604, 613 (Ct. App. 2004). However, this Court must refrain from "judicial fact-finding or a substitution of judicial judgment." *Tobey v. L & P Constr. Co.*, 296 S.C. 122, 125, 370 S.E.2d 897, 899 (Ct. App. 1988).

Respondents respectfully assert that the issue on appeal—whether the Full Commission erred in finding Appellant did not meet his burden of proving a repetitive trauma injury—was a question of fact subject to the substantial evidence standard of review. Respondents further assert that the Court's opinion overlooked or misapprehended this standard of review and the substantial evidence that supported this finding.

A. The Court reweighed the evidence as found by the Full Commission

The Full Commission made the following finding of fact:

> Although [Appellant] testified that his job duties as a "Switcher" were repetitive in that they required him to bend over, and twist his body; we find the unbiased opinion of Glen Adams that [Appellant]'s job duties were not sufficiently repetitive *is entitled to greater weight than [Appellant]'s testimony* on that issue.

> We likewise find that *Dr. Loudermilk's opinion is entitled to less weight* because he appears to have relied on [Appellant]'s own self-serving statements as to the alleged repetitive job activities of a "Switcher" as well as a description of those job activities from [Appellant]'s attorney included in questionnaires.

(R. pp. 9-11 (*citing* R. pp. 309-310, 315-16) (emphasis added)).

Thus, the Full Commission found Adams' opinion was entitled to more weight than Appellant's testimony and Dr. Loudermilk's opinion, which is within its purview. *See Shealy*, 341 S.C. at 455, 535 S.E.2d at 442 ("The final determination of witness credibility and the weight to be accorded evidence is reserved to the [Full Commission]. It is not the task of this Court to weigh the evidence as found by the [Full Commission]."). This Court disagreed and found that Dr. Loudermilk's opinion was entitled to more weight than the ergonomics report. By doing so, it reweighed the evidence as found by the Full Commission.

B. The Full Commission can accept or reject lay and medical evidence when deciding an award of benefits under the Act

The appellate courts of this State have held on numerous occasions that the Full Commission is not required to accept the opinions of medical providers in deciding whether an injury is compensable. *See Potter v. Spartanburg Sch. Dist. 7*, 395 S.C. 17, 23-24, 716 S.E.2d 123, 126-27 (Ct. App. 2011) (explaining the Commission may consider lay and medical evidence and disregard medical evidence if the record contains other competent evidence, and reiterating the appellate court does not balance objective against subjective findings of medical witnesses, or weigh the testimony of one witness against that of another, in reviewing the Commission's findings); *Hargrove v. Carolina Orthopaedic Surgery Assocs., PA*, 389 S.C. 119, 125, 697 S.E.2d

641, 643 (Ct. App. 2010) ("Regardless of what the medical evidence indicated, we cannot disregard the lay evidence on which the [Full C]ommission relied in finding Hargrove did not prove her problems resulted from her fall."); *Tiller v. Nat'l Health Care Ctr. of Sumter*, 334 S.C. 333, 339-40, 513 S.E.2d 843, 846 (1999) (explaining the Commission has discretion to weigh and consider all evidence, both lay and expert, when determining causation); *Ballenger v. S. Worsted Corp.*, 209 S.C. 463, 467, 40 S.E.2d 681, 682-83 (1946) (finding despite doctor's testimony that there was not a connection with the accident that caused almost boiling dye to fly into the claimant's face and eyes and his subsequent eye problems, lay testimony of claimant's good vision before the accident was sufficient to support an award); *Poston v. Southeastern Constr. Co.*, 208 S.C. 35, 38-39, 36 S.E.2d 858, 860 (1946) (finding lay testimony that the claimant's eyes became runny and inflamed after construction material blew into them and that he lost vision in his eyes after the accident was sufficient to support an award even though the doctor testified the vision loss was not related to the work injury). More recently, this Court has held that it is error for the Full Commission to rely solely on "objective evidence" in deciding whether a claimant has suffered a change of condition. *Russell v. Wal-Mart Stores, Inc.*, 415 S.C. 395, 400, 782 S.E.2d 753, 756 (Ct. App. 2016).

The Court's opinion overlooked or misapprehended that, although medical evidence is entitled to great respect, the Full Commission is allowed to disregard it "*even when it is unanimous, uncontroverted, or uncontradicted*." Thus, even sharply contradicted evidence of injury can constitute substantial evidence for purposes of review." *Pack v. State Dep't of Transp.*, 381 S.C. 526, 536, 673 S.E.2d 461, 466-67 (Ct. App. 2009) (emphasis in original). The principle that the Full Commission can accept or reject even unanimous medical evidence is particularly applicable in a case such as this one where the medical opinions came from Appellant's independent medical

examiner, in response to a questionnaire from Appellant's attorney, and without actual testimony from the doctor. (R. 309-10, 315-16). The reason for this rule is simple—just because an expert offers an opinion does not mean that opinion is not subject to being challenged. Rather, the purpose of medical evidence is to "aid the [Full Commission] in coming to the correct conclusion." *Potter*, 395 S.C. at 23, 716 S.E.2d at 126. The Court's opinion in this case essentially holds that the Full Commission must accept the opinion of the medical provider to the exclusion of all other evidence. Respondents respectfully assert that this is not the law in South Carolina.

C. The Court exercised judicial fact-finding in attempting to discredit the ergonomics report in favor of Dr. Loudermilk's opinions

Although this Court held that the ergonomics report was not competent evidence to support the Full Commission's denial of benefits, it then proceeded to object with the manner the Full Commission decided to rely on the ergonomics report over Dr. Loudermilk's opinion. Specifically, the Court states the Full Commission illogically "tried to discredit Dr. Loudermilk by claiming 'his opinions assume the job is sufficiently repetitive,' and 'there is no evidence Dr. Loudermilk ever reviewed a job description for a 'switcher.'" However, it is undisputed there is no evidence in the record that Dr. Loudermilk reviewed a job description for a "switcher." It is also undisputed that Dr. Loudermilk was never asked whether Appellant's job duties were repetitive. (R. 309-10, 315-16). To the extent that this Court found Appellant's reports of his job duties to Dr. Loudermilk were "competent evidence" on this issue, the Full Commission identified several reasons why those reports were entitled to less weight. (R. 7-11). Namely, Appellant's testimony at the hearing regarding the date of onset of symptoms differed from some of the initial medical records with Dr. Loudermilk. (R. 10). Next, the Full Commission found the descriptions of Appellant's job duties would have been self-serving statements from Appellant and/or his attorney. (R. 10). Although

the Court chastises the Full Commission for using "fuzzy logic," the Court's finding—Dr. Loudermilk was aware of Appellant's job duties because Appellant told him—rests entirely on an assumption that Appellant provided Dr. Loudermilk an honest and accurate description of both his job duties and his onset of symptoms. The Full Commission decided he did not and cited several reasons to support its conclusion. (R. 7-11). Respondents doubt that medical providers would be surprised to learn that the Full Commission occasionally finds that patients may not always give doctors an honest and accurate description of their medical history and onset of symptoms.

Moreover, the Full Commission noted Glen Adams personally observed Appellant's job duties, determined the job involved two activities with forward bending, but neither of those tasks involved elevated risks for the development of lumbar musculoskeletal disorders. (R. 11). Although this Court takes issue with the Full Commission's interpretation of the findings of the ergonomics report, it is undisputed that the report does not support Appellant's claim that he suffered a repetitive trauma injury to his back resulting from his activities as a "switcher." (R. 339-45). The fact that the ergonomics report does not conclusively rule out the possibility that Appellant suffered a compensable repetitive trauma injury is irrelevant and improperly shifts the burden of proof to Respondents to disprove the alleged work-related injury. *See Crisp*, 401 S.C. at 641, 738 S.E.2d at 842.

This Court then proceeded to make a factual finding that Dr. Loudermilk avowed that the ergonomics report did not change his opinion. However, as Respondents have argued in this case, there is no factual finding from the Full Commission that Dr. Loudermilk ever reviewed the ergonomics report contained in the record. (R. 1-13). Presumably, the Full Commission did not make this factual finding because the Adams ergonomics report was not actually included as part of Appellant's questionnaires to Dr. Loudermilk. (R. 309-10, 315-16). Regardless, it is improper

for the Court to now make that factual finding on appeal. *See Tobey*, 296 S.C. at 125, 370 S.E.2d at 899 (stating an appellate court reviewing a decision of the Full Commission must not engage in "judicial fact-finding or a substitution of judicial judgment").

D. The Court erred in ruling the issue before the Court was a matter of expertise reserved solely for Dr. Loudermilk

The Court held that it was reversible error for the Full Commission to accept the opinion of the ergonomics report over Dr. Loudermilk's opinion because, relying on *Herndon v. Morgan Mills, Inc.*, 246 S.C. 201, 143 S.E.2d 376 (1965), whether Appellant suffered a repetitive trauma injury was a matter in which a layman can have no knowledge, and Dr. Loudermilk's opinion on the issue is conclusive. However, this Court has previously rejected the "expert's word is final" rule in cases such as this one where the existence of a compensable work-related event was an issue of fact in dispute in the case.

For example, in *Tobey v. L & P Construction Company*, this Court held:

> *Herndon* does not apply to the present situation. In the case before us, whether the "accident" occurred as alleged is not a matter for experts or skilled witnesses *alone;* it can be addressed by lay testimony and we hold that it is not a situation in which "a layman can have no knowledge." Finally, whether the alleged accident did or did not happen at the time and place alleged by the claimant was a matter of fact to be determined by the commission, and lay testimony was pertinent to this issue. And we so hold.

296 S.C. 122, 126, 370 S.E.2d 897, 899-900 (Ct. App. 1988) (emphasis in original).

As in *Tobey*, whether Appellant suffered a repetitive trauma injury at the time, place, and manner alleged was an issue of fact before the Full Commission. There was obviously a question of fact as to whether Appellant suffered the alleged repetitive trauma injury because Respondents denied the claim. (R. 7). Moreover, when the alleged incident occurred was certainty disputed because Respondents argued *ad nauseum* that the medical records were inconsistent regarding Appellant's date of onset of symptoms and mechanism of injury. (R. 53-54). Based on *Tobey*, it follows that whether the repetitive trauma injury occurred as alleged is a matter in which lay testimony would be permissible. Indeed, Appellant's testimony was undoubtedly considered by the Full Commission; however, they chose to afford it less weight than this Court would have preferred. (R. 7-11). Therefore, Respondents respectfully assert that the Court misconstrued *Herndon* in holding that the determinative issue on appeal—whether Appellant suffered a compensable repetitive trauma injury—was a matter of expertise reserved solely for Dr. Loudermilk.

In essence, the Court holds that an ergonomics report is not competent evidence under section 42-1-172 while simultaneously holding Appellant's reports to the doctor about his job duties is competent evidence in which to base a reversal in this case, and when the Full Commission specifically stated it was assigning the ergonomics report more weight than Appellant's testimony on the issue. The Court's ruling leaves Respondents perplexed as to why Appellant's reports to Dr. Loudermilk are competent evidence; however, the ergonomics report is not. Moreover, the Court's opinion effectively accepts everything Appellant reported to Dr. Loudermilk as true, even when the records themselves were inconsistent with Appellant's testimony, and, again, even when the Full Commission decided to assign Appellant's testimony less weight than other evidence. Frankly, the fact that Respondents are having to argue about the

weight assigned to certain evidence in their petition for rehearing should signal to the Court that this was an issue left to the sound discretion of the Full Commission as the factfinder. Respectfully, this Court overlooked or misapprehended its own standard of review by deciding to reweigh the evidence.

II. The Court misconstrued S.C. Code Ann. § 42-1-172 (2007) by relieving the claimant of the burden of proving all elements of his claim for a repetitive trauma injury.

The South Carolina Workers' Compensation Act essentially provides three theories of compensability to establish a prima facie case for compensability: (1) an injury by accident (S.C. Code Ann. § 42-1-160 (2007)), (2) an occupational disease (S.C. Code Ann. § 42-11-10 (2007)), or (3) a repetitive trauma injury (S.C. Code Ann. § 42-1-172 (2007)). Regardless of the theory of compensability, the claimant bears the ultimate burden of proving all elements of his claim. *See Crisp v. SouthCo.*, 401 S.C. 627, 641, 738 S.E.2d 835, 842 (2013) ("The claimant has the burden of proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture, or speculation." (quoting *Clade v. Champion Labs.*, 330 S.C. 8, 11, 496 S.E.2d 856, 857 (1998))).

Causation is one element that a claimant must prove as part of his claim for benefits. *See, e.g.*, *Nicholson v. S.C. Dep't of Soc. Servs.*, 411 S.C. 381, 385, 769 S.E.2d 1, 3 (2015) (explaining the circumstances when an "accidental injury" is causally related to the employment); *Frampton v. S.C. Dep't of Nat. Res.*, 432 S.C. 247, 263, 851 S.E.2d 714, 722 (Ct. App. 2020) (holding that "even if [the claimant] had met his burden pursuant to § 42-9-35, he did not show his neck injury was proximately caused by the dove-field accident pursuant to § 42-1-160(A)"). However, there are other elements he must prove in addition to causation. For an "injury by accident," a claimant must prove (1) an injury, (2) by accident, (3) arising out of, and (4) in the course and scope of his

employment. *See e.g.*, *Osteen v. Greenville Cty. Sch. Dist.*, 333 S.C. 43, 49, 508 S.E.2d 21, 24 (1998) (noting the terms "arising out of" and "in the course of employment" are not synonymous and "[b]oth parts must exist simultaneously before any court will allow recovery"). For an occupational disease, he must prove six distinct elements to recover benefits. *See Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 283, 519 S.E.2d 583, 591-92 (Ct. App. 1999). Both of these theories of compensability have multiple elements.

Repetitive trauma injuries are no exception to this rule. The South Carolina Workers' Compensation Act provides the following provisions regarding a "repetitive trauma injury."

Section 42-1-160 provides in relevant part:

> (A) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of employment....
>
> ....
>
> (F) The word "accident" as used in this title must not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously, or at frequent intervals in the course of such employment, over extended periods of time. *Any injury or disease attributable to such causes must be compensable only if culminating in a compensable repetitive trauma injury pursuant to Section 42-1-172 ....*

S.C. Code Ann. § 42-1-160 (2007) (emphasis added).

Section 42-1-172 provides:

> (A) "Repetitive trauma injury" means an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic

events. Compensability of a repetitive trauma injury must be determined only under the provisions of this statute.

(B) An injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the **repetitive activities that occurred while the employee was engaged in the regular duties of his employment and** the injury.

(C) As used in this section, "medical evidence" means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed and qualified medical physician.

(D) A "repetitive trauma injury" is considered to arise out of employment only if it is established by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury.

S.C. Code Ann. § 42-1-172 (2007) (emphasis added)

Examining subsection 42-1-172(A), it appears that a "repetitive trauma injury" is defined as the following: (1) an injury, (2) which is gradual in onset, (3) and caused by the cumulative effects, (4) of repetitive traumatic events. Moreover, subsection 42-1-172(B) provides certain qualifiers as to what types of injuries constitute a "repetitive trauma injury." Specifically, an injury is not considered a "repetitive trauma injury" unless a commissioner makes a specific finding of fact by a preponderance of the evidence of "a causal connection that is established by medical

evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury." Finally, subsection 42-1-172 (D) further provides that "[a] 'repetitive trauma injury' is considered to arise out of employment only if it is established by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury."

The Court's opinion focuses on the medical causation aspect of the "repetitive trauma injury" in this case. According to the Court, this element is covered by subsection (B). Interestingly, section 42-1-172 appears to have two causation subsections: (B) and (D). Subsection (B) requires the Commissioner to make a specific finding of fact by a preponderance of the evidence of a causal connection between the "repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury." In other words, the Commissioner must make a finding of fact by a preponderance of evidence that is established by medical evidence of a causal connection (i.e., causation) between the "repetitive activities that occurred while the employee was engaged in his regular duties of employment" and "the injury."

It seems logical to assume that for a Commissioner to make the requisite finding of fact required under subsection (B) of a "causal connection" between the "repetitive activities that occurred while the employee was engaged in the regular duties of his employment," that there must actually be (1) repetitive activities, (2) that occurred, (3) while the employee was engaged in the regular duties of his employment. Any interpretation that would remove these requirements would render that language used in subsection (B) meaningless. *See Ranucci v. Crain*, 409 S.C. 493, 500, 763 S.E.2d 189, 192-93 (2014) ("This Court will not construe a statute in a way which leads to an absurd result or renders it meaningless."). If the Full Commission is not required to analyze the basis of the physician's opinion in determining whether an alleged injury meets the

definition of a compensable "repetitive trauma injury" under section 42-1-172, then the Court's opinion in this case is correct. However, Respondents believe the Legislature included that language in subsection (B) to require the Full Commission to analyze whether there were indeed (1) repetitive activities, (2) that occurred, (3) while the employee was engaged in the regular duties of his employment.

This language is important because it distinguishes "repetitive trauma injuries" from other theories of compensability. Prior to July 1, 2007, repetitive trauma injuries were compensable under section 42-1-160. *See Murphy v. Owens Corning*, 393 S.C. 77, 83, 710 S.E.2d 454, 457 (Ct. App. 2011) ("Appellants concede that repetitive trauma injuries were compensable under section 42-1-160 prior to July 1, 2007."). Effective July 1, 2007 the repetitive trauma statute, section 42-1-172, was added and section 42-1-160 was amended to specifically exclude repetitive trauma injuries. *See* S.C. Code Ann. § 42-1-160(F). Respondents assert that by specifically excluding "repetitive trauma injuries" from the definition of an "injury by accident," the Legislature intended "repetitive trauma injuries" to require proof of something more than an injury by accident.

An issue in this case is how does one prove "repetitive activities that occurred while the employee was engaged in the regular duties of employment"? The Court's opinion essentially holds that requiring a claimant to prove his job is repetitive (i.e., "repetitive activities that occurred while the employee was engaged in the regular duties of his employment") reads an "improper, redundant condition" into section 42-1-172 and "sees something in the statute that is not there." However, Respondents respectfully assert that the language in the statute is, in fact, there. Because the General Assembly felt obliged to include that language in the statute, Respondents can only assume that they had a reason for doing so. *See CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (stating courts must interpret statutes so "that no word,

clause, sentence, provision or part shall be rendered surplusage, or superfluous" because "[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law").

The Court's opinion further holds that requiring a claimant to prove his job is repetitive would require him to present an ergonomics report to the Full Commission, but that would not be sufficient because section 42-1-172 requires causation to be established by medical evidence stated to a reasonable degree of medical certainty, which an ergonomics report cannot do. However, the Full Commission did not find that a claimant must present an ergonomics report to prove a *prima facie* case under section 42-1-172. Rather, it held that "neither the medical nor the ergonomics evidence" (which, aside from Appellant's testimony was the only evidence presented) supported a finding that the Appellant's job activities as a switcher were repetitive (*i.e.*, Appellant did not prove the switcher job consisted of "repetitive activities that occurred while [he] was engaged in the regular duties of his employment"). (R. 11-12). In short, Respondents respectfully assert that this Court erred in its statutory interpretation of section 42-1-172.

CONCLUSION

Respondents respectfully assert that this Court overlooked or misapprehended that the Full Commission is the ultimate factfinder and can accept or reject even purportedly uncontradicted medical evidence. The Court overlooked or misapprehended that its interpretation of Section 42-1-172 renders several provisions meaningless and relieves the claimant of the burden of proving all elements of his claim for a repetitive trauma injury. For the foregoing reasons, we respectfully request that the Court grant rehearing on Opinion No. 5891, schedule the case for oral argument, and issue a new opinion affirming the decision of the Full Commission.

Respectfully Submitted,

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February 3, 2022

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SC Court of Appeals

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PROOF OF SERVICE

The undersigned certifies that he served Respondents' **Petition for Rehearing** on Appellant's attorney via electronic mail and by depositing a copy of same in the United States mail, postage pre-paid, on this the 3rd day of February, 2022, addressed to:

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February 3, 2022

Subject: Dale Brooks - Petition for Rehearing
Date: Thursday, February 3, 2022 at 10:42:26 AM Eastern Standard Time
From: Will Childers
To: Rob Usry
CC: Dan Eller, Amanda Steward
Priority: High
Attachments: Dale Brooks Petition for Rehearing FINAL .pdf, Letter to Court of Appeals re PFR .pdf

Rob,

Attached please find our Petition for Rehearing that is being filed with the Court of Appeals today. You will also receive a hard copy via U.S. mail.

Thanks,
Will

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February 3, 2022

VIA "ONE-DRIVE"

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

Re: Dale Brooks v. Benore Logistics and Great American Alliance Insurance Company
Appellate Case No. 2018-002087

Dear Ms. Kitchings:

Enclosed please find Respondents' Petition for Rehearing of this Court's Opinion in *Brooks v. Benore Logistics System Incorporated*, Op. No. 5891 (S.C. Ct. App. filed January 19, 2022) (Howard Adv. Sh. No. 3 at 40). I have also attached proof of service of same upon Appellant's counsel. Thank you for your consideration.

With kind regards,

ELLER TONNSEN BACH, LLC

Daniel B. Eller

DBE/ktm

Enclosures

cc: Robert T. Usury (via electronic mail)