

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAR 01 2022

APPEAL FROM THE SOUTH CAROLINA WORKERS
COMPENSATION COMMISSION APPELLATE PANEL

SC Court of Appeals

T. Scott Beck, Chairman
Aisha Taylor, Commissioner
Avery B. Wilkerson, Jr., Commissioner

Appellate Case No. 2022-000067

KYLE R. BAGLEY, Employee,..... Appellant,

v.

JN FIBERS, INC., D/B/A SUN FIBER, LLC, Employer, and
GREAT AMERICAN INSURANCE COMPANY, Carrier,..... Respondents.

RESPONDENTS' RETURN IN OPPOSITION TO APPELLANT'S
MOTION FOR EXTENSION OF TIME TO REQUEST TRANSCRIPT

Pursuant to Rule 240(e), SCACR, Respondents JN Fibers, Inc., d/b/a Sun Fiber, LLC, and Great American Insurance Company, hereby submits this Return in Opposition to Appellant's Motion for an Extension of Time to Request Transcript. For the following reasons, Respondents respectfully request the Court deny the motion. In the alternative, should the Court grant Appellant an extension of time, Respondents respectfully request that the transcript of the hearing on August 30, 2021, be included in the Transcript of the Proceedings for the Court's consideration.

BACKGROUND

On June 14, 2019, Appellant Kyle R. Bagley sustained an admitted work-related injury to his back when a bale of fiber material rolled down a short ramp and hit him on the head. In pleadings, Appellant alleged injuries to his back and various additional body parts. Respondents

admitted Appellant sustained a minor compensable injury to the back, but denied the remainder of the allegations.

On September 28, 2020, the matter was called for an evidentiary hearing before Commissioner Gene McCaskill (herein the “Single Commissioner”) in Greenville, SC. On May 13, 2021, the Single Commissioner issued a Decision and Order on the issues presented at the evidentiary hearing.

On May 25, 2021, Appellants timely filed a request that the matter be reviewed by the Appellate Panel of the Workers’ Compensation Commission (herein as “Full Commission”). The parties submitted briefs and a hearing before the Full Commission was scheduled.

On August 30, 2021, the matter was called for a hearing before the Full Commission comprised of Chairman T. Scott Beck, Commissioner Aisha Taylor, and Commissioner Avery B. Wilkerson, Jr. Due to the ongoing Covid-19 pandemic, the hearing before the Full Commission was conducted remotely with the use of Zoom teleconferencing.

On September 20, 2021, the Full Commission advised the parties via email that a decision had been reached and issued a Request for a Proposed Decision and Order (“order instructions”) to be prepared by counsel for Respondents. A copy of the order instructions is attached as **Exhibit 1**. The particulars of the hearing are listed on the order instructions, including the name and telephone number of the court reporter who transcribed the hearing.

On December 21, 2021, the Full Commission issued its Decision and Order reversing the order of the Single Commissioner and substituting their own findings of fact, conclusions of law, and final order.

On January 18, 2022, Appellant filed the present Notice of Appeal. In the Notice of Appeal, Appellant identified the Decision and Order of the Full Commission from December 21, 2021, as the final order being appealed. A copy of the Notice of Appeal (without exhibits) is attached as

Exhibit 2.

On February 8, 2022, the Chief Deputy Clerk for the South Carolina Court of Appeals advised Appellant that the timeline for ordering the transcript pursuant to Rule 207, SCACR, had expired. A copy of this correspondence is attached as **Exhibit 3**. According to the letter, within ten days, Appellant:

...must file a copy of the letter showing that [Appellant has] timely ordered the transcript from the court reporter. If you have not timely ordered the transcript, you must serve and file a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the SCACR, along with a copy of your letter addressed to the court reporter.

...

Please advise the Court of the status of the transcript within ten (10) days of the date of this letter, or your appeal will be dismissed.

On February 18, 2022, Appellant filed the present Motion Requesting Permission to Order the Transcript Outside Filing Deadlines. Appellant did not include a copy of any letter to the court reporter. Instead, Appellant included an email (dated 2/18/2022, **Exhibit 4**) to the Workers' Compensation Commission Appeals Division requesting the name of the court reporter for the hearing before the Full Commission.

STANDARD

“Within ten (10) days after the date of service of the notice of appeal, appellant shall, in writing, make satisfactory arrangements with the administrative law court or the agency (administrative tribunal) to obtain a transcript of the proceeding before that body.” Rule 207(b)(1), SCACR. “Appellant shall contemporaneously furnish all counsel of record, and the clerk of the appellate court with copies of all correspondence with the administrative tribunal.” Id. “Unless the parties otherwise agree in writing, appellant must order a transcript of the entire proceedings before the administrative tribunal.” Id.

ARGUMENT

Ordinarily, Respondents would not object to a request for an extension of time – especially concerning administrative matters like ordering the transcript of a hearing. As a matter of professional courtesy, had Appellant reached out to resolve this issue in advance, there is no reason Respondents would have withheld consent to extend the deadline.

However, Appellant did not attempt to resolve the matter in advance. Instead, Appellant waited until the deadline and filed a motion for additional time, stating he “will seek” the contact information for the court reporter at the August 2021 hearing “if this is deemed necessary.”

Even after this motion, Respondents would ordinarily be inclined to consent to an extension of time to order the transcript. Given the posture of the parties, it is self-evident that the transcript of the hearing before the Full Commission on August 30, 2021, resulted in a favorable decision for Respondents. Frankly, Respondents *insist* the transcript of this hearing be included in the record before the Court, and would have no reservation about allowing additional time to order the transcript *if Appellant actually intended to order the transcript*.

However, it appears Appellant never intended to order the transcript of the Full Commission hearing in the first place. Instead, Appellant filed a motion which devoted a substantial amount of time attempting to justify his refusal to order the entire transcript of proceedings – albeit without admitting he is in fact refusing to order the entire transcript. These justifications do not make sense - if for no other reason than the order Appellant is appealing was issued pursuant to the hearing transcript he is refusing to order.

Therefore, Respondents respectfully request the Court deny the Motion for an Extension of Time to Request Transcript because Appellant has – unjustifiably and without consultation of Respondents – refused to order the transcript of the entire proceedings, specifically the transcript for hearing that led to the final order he is appealing.

In the alternative, should the Court grant Appellant an extension of time, Respondents respectfully request that the transcript of the hearing on August 30, 2021, be included in the Transcript of Proceedings.

I. Appellant has refused to order the transcript of the entire proceedings before the Workers' Compensation Commission in violation of Rule 207(b)(1).

As a threshold matter, there is no dispute that the hearing before the Full Commission on August 30, 2022, is part of the "proceedings before the administrative tribunal." Pursuant to S.C. Code Regs. 67-704, the parties were provided notice of the hearing. (**Exhibit 5**). Pursuant to S.C. Code Regs. 67-705, the parties submitted briefs to the Commission as required under the Administrative Procedures Act. Pursuant to S.C. Code Regs. 67-706, the parties participated in oral argument before the Appellate Panel of the Full Commission. Pursuant to S.C. Code Regs. 67-709, the Appellate Panel comprised of Chairmen Beck, Commissioner Taylor, and Commissioner Wilkerson reversed the order of the Single Commissioner. Finally, pursuant to S.C. Code Regs. 67-711, the hearing was transcribed.

Pursuant to Rule 207(b)(1), within ten days of serving the notice of appeal, Appellant was required to "make satisfactory arrangements" to obtain a transcript of the proceedings. Absent a written agreement of the parties, Appellant was required to "order a transcript of the entire proceedings" before the Workers' Compensation Commission. Id. Appellant refused to order a transcript of the entire proceedings, and did not enter a written agreement to submit a partial transcript.

Therefore, Respondents respectfully request the Court deny the motion based upon Appellant's refusal to order the transcript of the entire proceedings before the Workers' Compensation Commission in violation of Rule 207(b)(1).

II. Appellant has provided no legal or factual basis to extend the deadline to obtain transcript of the entire proceedings, and therefore the motion should be denied.

Pursuant to Rule 240 (c), SCACR, each motion filed before the Court of Appeals should include a “memorandum with citation of authorities in support of the motion” and should also include “affidavits and other documents in support of their positions.” “Unless the parties otherwise agree in writing, appellant must order a transcript of the entire proceedings before the administrative tribunal.” Rule 207(b)(1), SCACR.

In the present motion, Appellant argues that since the hearing before the Full Commission “involved only brief arguments of counsel,” and the Full Commission was able to review the record, the transcript of this hearing is “not material to the determination of matters on appeal.” However, the transcript of hearing before the Full Commission on August 30, 2021, is material to the present appeal since the appeal involves the order from this hearing. Additionally, the parties have not agreed to submit less than the entire transcript.

Since Appellant has not provided any factual or legal basis to include less than the entire transcript of the proceedings, Respondents respectfully request the Court deny Appellant’s motion for failure to provide a factual or legal basis in support of his position.

III. Should the Court grant Appellant an extension of time, Respondents respectfully request that the transcript of the hearing on August 30, 2021, be included in the Transcript of the Proceedings for the Court’s consideration.

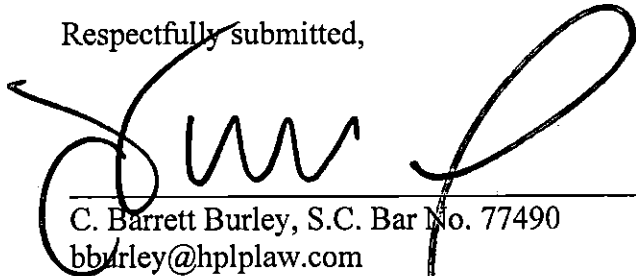
Should the Court grant Appellant’s motion, Respondents respectfully request that the transcript of the hearing on August 30, 2021, be included on the Transcript of Proceedings for the Court’s consideration. The appeal is based upon a Decision and Order of the Full Commission. The Full Commission issued this Decision and Order based, in part, upon arguments presented at the hearing on August 30, 2021. Therefore, Respondents respectfully request the transcript of the hearing on August 30, 2021, be included in the Transcript of Proceedings.

CONCLUSION

Based upon the foregoing, Respondents respectfully request the Court deny Appellant's Motion for an Extension of Time to Request Transcript on the basis that Appellant as improperly refused to order the entire transcript of proceedings and Appellant has no legal or factual basis to support his position.

In the alternative, should the Court grant Appellant an extension of time, Respondents respectfully request that the transcript of the hearing on August 30, 2021, be included in the Transcript of Proceedings.

Respectfully submitted,



C. Barrett Burley, S.C. Bar No. 77490

bburley@hplplaw.com

M. Brooks Biediger, S.C. Bar No. 77658

bbiediger@hplplaw.com

Holder Padgett Littlejohn + Prickett, LLC

1201 Main Street, Suite 1430

Columbia, South Carolina 29021

(803) 335-1446

*Attorneys for Respondents JN Fibers, Inc., d/b/a
Sun Fiber, LLC, and Great American Insurance
Company*

February 28, 2022
Columbia, South Carolina

Exhibit 1

Order Instructions from the Full Commission

9/20/2021

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
REQUEST FOR A PROPOSED DECISION AND ORDER**

This document is not a Decision and Order. It is a request for a proposed order. The Commissioners reserve the right to modify and/or delete any or all portions of the submitted Decision and Order.

**Kyle Bagley v Sun Fiber, LLC
SCWCC 1908703
Commission Panel: Beck, Taylor, Wilkerson; Chair
Order Assigned to Commissioner: Beck
Court Reporter – Sean Cary- 803-252-3445**

C. Barrett Burley
Bryan N. Sanchez

Defendants/Appellants
Claimant/Respondent

This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term of Review. The Commissioners considered the matter and **Reverse** the decision and order of the Single Commissioner. Claimant failed to satisfy his burden as it relates to the head, brain, left arm and hand, left foot, and psyche. The Panel places greater weight to the opinion of Dr. Brown and Dr. Gunter, over those of Dr. DuPuy & Dr. Roa. (Mr. Burley please draft consistent with your brief. Claimant at MMI on 8/28/19. Claimant entitled to an award of 10% PPD. Claimant not entitled to future medical treatment. Claimant not entitled to an award of TTD.

Mr. Burley please prepare a proposed order and submit to the Judicial Department within thirty (30) days of this notice. The proposed order shall be submitted in Word format to appeals@wcc.sc.gov and shared with each Party. Please make sure the Appellate Panel Decision and Order recites the specific Finds of Fact and Rulings of Law of the Single Commissioner's Decision and Order and reflects any comments requested by a Commissioner.

The signature page shall include a signature line for each Commissioner and the first signature should be the name of the Commissioner assigned the case as indicated above.

If you have any questions, please do not hesitate to email me at ehollmon@wcc.sc.gov or call at 803.737.5737

Judicial

Transmitted via email this 20 September 2021

Exhibit 2

Notice of Appeal (without exhibits)

1/18/2022

RECEIVED

Jan 18 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 19-08703
Appellate Case No.:

KYLE R. BAGLEY, Employee-Claimant, Appellant,

v.

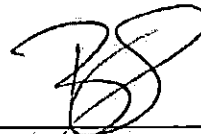
JN FIBERS INC D/B/A SUN FIBER, LLC, Employer-Defendant, Respondent,

AND

GREAT AMERICAN INSURANCE COMPANY, Defendant-Carrier, Respondent(s).

NOTICE OF APPEAL

The Appellant, Kyle R. Bagley, Claimant, pursuant to S.C. Appellate Court Rule 204 and S.C. Code Ann. §42-17-60, appeals the December 21, 2021, Order of the Full S.C. Workers' Compensation Commission (which overturned the May 13, 2021, Decision and Order of the Hearing Commissioner Gene McCaskill). A copy of the May 13, 2021, and December 21, 2021, Orders are attached. Appellant received the December 21, 2021, Order by email on December 21, 2021.



Bryan N. Sanchez, SCSB #80372
bryan.sanchez@stacylewislaw.com
Lewis Law Firm, LLC
PO Box 11583, Rock Hill, SC 29731
(803) 327-1103 – Telephone
(843) 324-0086 – Facsimile
Attorney for Appellant Bagley

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Jan 18 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 19-08703
Appellate Case No.:

KYLE R. BAGLEY, Employee-Claimant, Appellant,

v.

JN FIBERS INC D/B/A SUN FIBER, LLC, Employer-Defendant, Respondent,

AND

GREAT AMERICAN INSURANCE COMPANY, Defendant-Carrier, Respondent(s).

PROOF OF SERVICE

I certify that I have served the Appellant's Notice of Appeal on Respondents by depositing a copy of it in the United States Mail, postage prepaid, on January 18, 2022, addressed to the respondent's Attorney of Record, C. Barrett Burley, Esq., Holder Padgett Littlejohn & Prickett, LLC, 1201 Main Street, Suite 1430, Columbia, SC 29201; and on Amy Bracy, Director, Judicial Department, South Carolina Workers' Compensation Commission, Post Office Box 1715, Columbia, SC 29202.

January 18, 2022.



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(803) 327-1103 – Telephone
(843) 324-0086 – Facsimile
Attorney for Appellant Bagley



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 08, 2022

Mr. Bryan Nicolas Sanchez, Esquire
PO Box 11583
772 Cherry Road
Rock Hill SC 29731

Re: Kyle R. Bagley v. JN Fibers Inc.
Appellate Case No. 2022-000067

Dear Counsel:

Our records reflect that the time for ordering the transcript has expired. Within ten days of the date of this letter, you must file a copy of the letter showing that you have timely ordered the transcript from the court reporter. If you have not timely ordered the transcript, you must serve and file a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the SCACR, along with a copy of your letter addressed to the court reporter.

Be sure to copy the Court, the Office of Court Administration and opposing counsel with all correspondence concerning the transcript. The address for Court Administration is as follows:

South Carolina Office of Court Administration
1220 Senate Street, Suite 200
Columbia, SC 29201

Please advise the Court of the status of the transcript within ten (10) days of the date of this letter, or your appeal will be dismissed.

Very truly yours,

V. Claire Allen

CLERK

cc: C. Barrett Burley, Esquire

Exhibit 3

Letter from the Chief Deputy Clerk to counsel for Appellant

2/8/2022

Exhibit 4

Email from counsel for Appellant to SCWCC Appeals Division

2/18/2022

Brooks Biediger

From: Bryan Sanchez <bryan.sanchez@stacylewislaw.com>
Sent: Friday, February 18, 2022 3:04 PM
To: appeals@wcc.sc.gov
Cc: Jen Lane
Subject: RE: Full Commission Order - WCC#:1908703 - BAGLEY

I need to see "who the court reporter is/was for this Zoom hearing" (for which this Order was issued). How can I best go about doing this?

Bryan N. Sanchez
Licensed in South Carolina and North Carolina Lewis Law Firm
772 Cherry Road (Physical)
PO Box 11583 (Mailing)
Rock Hill, SC 29731
Phone: (803) 327-1103
Fax: (803) 324-0056
Email: Bryan.Sanchez@StacyLewislaw.com
Website: www.LewisLawCarolinas.com

CONFIDENTIALITY NOTICE:

Information contained in this e-mail transaction is legally privileged, confidential and intended for the use of the individual or company to whom it is directed. If a receiver of this e-mail transmission is not the intended recipient, you are hereby notified that distributing or copying this e-mail is strictly prohibited by both State and Federal communications laws. If you have received this e-mail in error, please delete any and all copies of the same from any media to which it may have been stored, including, but not limited to hard drive, removable floppy discs, CDR or hard copies which may have been printed. Further, please immediately notify the sender of this transmission by reply e-mail or by phone at (803) 327-1103 so addressing errors may be corrected to prevent further erroneous transmission.

-----Original Message-----

From: appeals@wcc.sc.gov <appeals@wcc.sc.gov>
Sent: Tuesday, December 21, 2021 3:48 PM
To: BBURLEY@HPLPLAW.COM; Bryan Sanchez <bryan.sanchez@stacylewislaw.com>; Jen Lane <jen.lane@stacylewislaw.com>; MHENDRIX@HPLPLAW.COM; STEPHANIE.K@HPLPLAW.COM; TKENT@HPLPLAW.COM; APPEALS@WCC.SC.GOV
Subject: Full Commission Order - WCC#:1908703 - BAGLEY

Attached is the Full Commission Order for WCC#: 1908703

R08 ORD - Full Commission Order - 12/21/2021 - ORDER#: 96576 - WCC #: 1908703

Exhibit 5

Notice of Hearing

8/30/2021

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1908703
Carrier File #: A00223320
August 9, 2021

NOTICE OF APPELLATE HEARING

RESET

KYLE R BAGLEY v Sun Fiber, LLC

Subject: Set on Review.

Date: 08/30/2021 at 03:00 PM

Location: South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29201

South Carolina Regulations 67-701 through 67-711 govern appeals before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Briefs are due according to prior notice and are governed by Regulation 67-705. For questions regarding this matter, please visit eCase Status at www.wcc.sc.gov or contact the Judicial Department of the South Carolina Workers' Compensation Commission at (803) 737-5739 or appeals@wcc.sc.gov.

The Commission requests your presence thirty minutes prior to your scheduled oral argument.

This matter is set before: Panel B

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail. Unrepresented parties were served by United States Postal Service first class postage.

By: Eugenia Hollmon, SC Workers' Compensation, August 9, 2021

Party

Employee: KYLE R BAGLEY

Employer: Sun Fiber, LLC

Carrier: Great American Alliance Insurance Company

Attorney

Bryan N. Sanchez
bryan.sanchez@stacylewislaw.com
803-324-2086

C Barrett Burley
bburley@hplplaw.com
803-335-1446

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION APPELLATE PANEL

RECEIVED

MAR 01 2022

SC Court of Appeals

T. Scott Beck, Chairman
Aisha Taylor, Commissioner
Avery B. Wilkerson, Jr., Commissioner

Appellate Case No. 2022-000067

KYLE R. BAGLEY, Employee,..... Appellant,

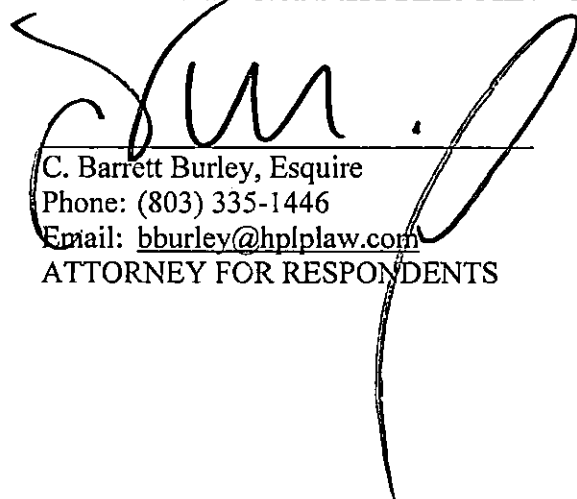
v.

JN FIBERS, INC., D/B/A SUN FIBER, LLC, Employer, and
GREAT AMERICAN INSURANCE COMPANY, Carrier,..... Respondents.

PROOF OF SERVICE

I certify that I have served the **RESPONDENTS' RETURN IN OPPOSITION TO APPELLANT'S MOTION FOR EXTENSION OF TIME TO REQUEST TRANSCRIPT** by depositing a copy of it in the United States Mail, postage prepaid, on February 28, 2022, addressed to the Appellant's Attorney of Record, Bryan N. Sanchez, Esq., Lewis Law Firm, LLC, PO Box 11583, Rock Hill, South Carolina 29731 and via email at bryan.sanchez@stacylewislaw.com.

HOLDER PADGETT LITTLEJOHN + PRICKETT, LLC



C. Barrett Burley, Esquire
Phone: (803) 335-1446
Email: bburley@hplplaw.com
ATTORNEY FOR RESPONDENTS

Columbia, South Carolina
February 28, 2022

C. Barrett Burley

Reply to: Columbia
office: (803) 335-1446
fax: (803) 708-7820
bburley@hplplaw.com

February 28, 2022

VIA US-MAIL AND EMAIL TO:

The Honorable Jenny Abbott Kitchings
Clerk of Court for the South Carolina Court of Appeals
Calhoun Building
1220 Senate Street
Columbia, SC 29201
ctappfilings@sccourts.org

RECEIVED

MAR 01 2022

SC Court of Appeals

Re: Kyle R. Bagley v. Sun Fiber, LLC, and Great American Alliance Insurance Company
Appellate Case No.: 2022-000067
Date of Accident: June 14, 2019

Dear Ms. Kitchings:

Enclosed for filing is the original, and seven (7) copies, of the **RESPONDENTS' RETURN IN OPPOSITION TO APPELLANT'S MOTION FOR EXTENSION OF TIME TO REQUEST TRANSCRIPT** in the above-referenced case, along with a **PROOF OF SERVICE** that one (1) copy was served on the Appellant (via their Counsel of Record Bryan N. Sanchez). Please accept this for filing and kindly return one (1) clocked copy of this to my office (I have enclosed a postage pre-paid envelope for your convenience when returning this to me.)

If you have any questions, or if you need further assistance from us, please do not hesitate to call.

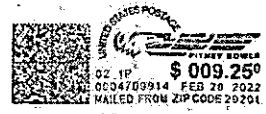
Respectfully,

HOLDER PADGETT LITTLEJOHN + PRICKETT, LLC


C. Barrett Burley

CBB/swk
Enclosures

cc: Liz Hsu, JN Fibers Inc d/b/a Sun Fiber, LLC (via email)
Amado Azua Jr., JN Fibers Inc d/b/a Sun Fiber/LLC (via email)
Bryan N. Sanchez, Esquire, Lewis Law Firm (via email and US-Mail)
Tearsa D. White, Strategic Comp (via fax)



Holder Padgett Littlejohn Prickett
1201 Main Street, Suite 1430
Columbia, SC 29201

RECEIVED
MAR 01 2022
SC Court of Appeals

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