

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APR 05 2013

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Chief Administrative Law Judge

Dock. Nos. 07-ALJ-04-00444-AP, 07-ALJ-04-00445-AP, 07-ALJ-04-00446-AP,
07-ALJ-04-00447-AP, 07-ALJ-04-00448-AP, 07-ALJ-04-00449-AP,
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Paul Durham, #219573, Jerome Durham, #270393, Keith Eigner, #299153,
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Johnny Holden, #245199, Don Hughes, #256862, Michael Key, #266890,
Archie Lee, #226354, Isaac Richardson, #232574, Larkland Richards, #281768,
John Wojcik, #219463, James Bogan, #288111, Larry Burke, #281911,
Jammie Gaymon, #208922, David Harrell, #260004, Jeff Stinson, #260047,
Ricky Libby, #274681, Alain Lareau, #128014, Quentin Baker, #297868,
Frank Corley, #292975, James Jackson, #267718, Quintin Linen, #238553,
Thomas Miles, #246763, Chauncy Orr, #177069, Isaiah Scott, #228008,
Eric Youmous, #281091, Derek Carter, #275938, Willie Hare, #256641,
Ernest Miller, #235474, Robert Norris, #266101, Ronald Simmons, #267937,
Samuel Simmons, #302393, William Thomas, #272501, Anthony Murphy, #295893,
Anthony Murray, #237867, Johnny Hayes, #267910, Roy Morris, #288777,
Daniel Dewey, #276678, Nehemiah Greene, #243339, Leroy Choice, #113990,
James McFadden, #235419, Francis Prioleau, #268813, Darrell Rochester, #146731,
Wilbur Jordan, #272264, Alvin Stewart, #278595, Kevin Poston, #266083,
Kevin Smith, #272440, Donald Robinson, #277520, Douglas Bude, #263537,
Willie Elder, #246208, Rogelio Zavala, #245106, Dennis Knight, #286981,
Jacob Beach, #301270, Francis Ackerman, #266928, Darrin Miller, #259593,
Edward Bryant, #255998, Sherman Austin, #300028, Michael Baylor, #265682,
Taurus Bowman, #252745, Kenneth Carter, #243538, Calvin Drummond, #236322,
David Feggins, #287157, Terry Ferguson, #299080, Willie House, #257820,
Peter Jenkins, #257321, Percy Martin, #270035, James Murray, #165487,
Stephone Simmons, #300422, Larry McClam, #282972, Tyrone Aiken, #244428,
Tyrone Aiken, #248367, Frank Anderson, #282800, Ronald Brewer, #285756,
Keith Brown, #295762, Pete Bryant, #242370, Michael Busques, #191961,
Richard Butler, #162467, Gary Davis, #106144, Anthony English, #238474,
Kerlan Etheredge, #236635, James Evans, #267837, Jose Flores, #240563,
Robert Garrett, #291096, Reginald Geddis, #183851, Richard Graham, #228235,
Gary Grooms, #283860, Wayne Harlen, #245705, Johnny Hayes, #267910,
Steven Hickenbottom, #196263, Alfred Joyner, #260442, Donald Lyles, #296135,
Henry Baker, #263398, Thomas Carter, #249362, Thomas Butler, #257552,
Bobby Williams, #261486, Ray Wells, #173651, Rodney Pressley, #177947,
Keith Kelly, #257556, Maxie Gamble, #254413, James Enriquez, #215539,
Perry Deveaux, #109601, James Wells, #180458, Cedric Martino, #291396,
Donald McAteer, #292961, Robert Wydman, #260331, Anthony Wright, #214007,
Derrick Williams, #272958, Kenneth White, #228409, James Trumper, #247429,
Jeffrey Spears, #281697, Timothy Smith, #296539, David Sims, #278067,
Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911,
George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786,
Frank Patterson, #283098, Tony McNeil, #235846, Larry McClam, #282972,
Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080,

Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsden, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118.....Appellants,

v.

South Carolina Department of Corrections.....Respondent.

Appellate Case No. 2012-210588

RECEIVED

APR 05 2013


APPELLANT FRED GATEWOOD'S PETITION FOR RE-
HEARING OF THE COURT'S MARCH 27, 2013 ORDER

SC Court of Appeals

COMES NOW, Appellant Fred Gatewood by counsel, who respectfully requests that the within Petition for Rehearing of the Court's March 27, 2013 order be granted because the Court overlooked or misapprehended the following. The order states that Gatewood's appeal is dismissed because there is no final order relating to Gatewood, as required in S.C. Code §1-23-610(A)(1). However, the relevant order for this appeal is the ALC's July 26, 2012 Second Amended Order, which Gatewood contends is final as to all appellants, including Gatewood, as to the eight (8) issues litigated and denied by that order. Obviously, appellants do not object or seek rehearing concerning the March 27 order that the remaining appellants' appeal shall proceed.

These matters are more particularly discussed in the attached memorandum.

Respectfully submitted,



Douglas H. Westbrook, #6039

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(843) 853-9600

Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Chief Administrative Law Judge

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Ricky Libby, #274681, Alain Lareau, #128014, Quentin Baker, #297868,
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Samuel Simmons, #302393, William Thomas, #272501, Anthony Murphy, #295893,
Anthony Murray, #237867, Johnny Hayes, #267910, Roy Morris, #288777,
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James McFadden, #235419, Francis Prioleau, #268813, Darrell Rochester, #146731,
Wilbur Jordan, #272264, Alvin Stewart, #278595, Kevin Poston, #266083,
Kevin Smith, #272440, Donald Robinson, #277520, Douglas Bude, #263537,
Willie Elder, #246208, Rogelio Zavala, #245106, Dennis Knight, #286981,
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Edward Bryant, #255998, Sherman Austin, #300028, Michael Baylor, #265682,
Taurus Bowman, #252745, Kenneth Carter, #243538, Calvin Drummond, #236322,
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Peter Jenkins, #257321, Percy Martin, #270035, James Murray, #165487,
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Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsden, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118.....Appellants,

v.

South Carolina Department of Corrections.....Respondent.

Appellate Case No. 2012-210588

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APR 05 2013

MEMORANDUM IN SUPPORT OF APPELLANT FRED GATEWOOD'S PETITION FOR REHEARING OF THE COURT'S MARCH 27, 2013 ORDER

SC COURT OF APPEALS

COMES NOW, Appellant Fred Gatewood, who submits the within memorandum in support of his Petition for Rehearing of the Court's March 27, 2013 order.

1. This appeal from the Administrative Law Court (ALC) involves inmate-appellants' grievances for prison work wages under S.C. Code §24-3-430, the prevailing wage statute. SCDC denied the grievances and appellants had appealed to the ALC.

2. By orders dated March 2 and 16, 2012, May 17, 2012, and July 26, 2012,* the ALC denied all appellants' grievances, except Fred Gatewood's, for untimely filing. For Gatewood's grievance, the parties were directed to brief his grievance on the merits.

3. On March 29, 2012, June 15, 2012, and August 22, 2012, all appellants filed notices of appeal from the above mentioned orders with the Court of Appeals. In the August 22 notice of appeal, Gatewood excepted from the appeal

* The July 26 order was proposed by the ALC on May 17 and formally issued on July 26 after this Court's approval.

the ALC ruling that Gatewood had timely filed and the parties were directed to brief his grievance on the merits.

4. In an order dated March 27, 2013, this Court dismissed Gatewood's appeal because there was no final order relating to Gatewood, citing S.C. Code §1-23-610(A)(1). In a cover letter accompanying the order, the Clerk stated, "(E)nclosed is the order concerning the motion to abbreviate the record on appeal filed by the appellants". However, the order enclosed did not cover, or mention, appellants' February 19, 2013 Motion to Abbreviate Record on Appeal.

5. Gatewood contends the Court may have overlooked or misapprehended that the July 26, 2012 ALC order was a final order entitling Gatewood to appeal. The current appeal (Ackerman consolidated appeal) concerned the ALC's March 2012 and July 26, 2012 orders, the July 26 order having probably superseded the March orders. The July 26 order covered the ALC's denial of all eight (8) issues raised by appellants, including Gatewood, to support timeliness of their grievances. A small portion of the order covered the ALC's ruling that Gatewood had timely filed and the parties were directed to merits brief his grievance.

The August 22, 2012 notice of appeal appealed the July 26 order, but excluded from the appeal the favorable ruling as to Gatewood. However, Gatewood appealed the other issues in the July 26 order along with the other appellants.

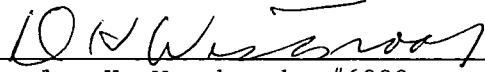
Gatewood contends the July 26 order is final as to all appellants, including Gatewood, concerning the eight (8) issues litigated and denied by the ALC in its order. Unless appellants, including Gatewood, appealed the July 26 order, it would be a final, adverse decision on the eight (8) issues decided, and merits briefing would never occur. This would be important, for instance, if Gatewood lost his appeal in Gatewood v. SCDC, Appellate Case No. 2012-210574 - the Court's March 26 order dismissed that appeal - but won on one or more of the eight (8) issues being appealed with other appellants in Francis Ackerman, #266928, et al. v. SCDC, Appellate Case No. 2012-210588, the appeal now under consideration.

6. Finally, Gatewood notes that SCACR 240(i)(Petition for Rehearing cannot be entertained unless the court's action dismisses or finally decides the appeal) is satisfied as the March 27 order dismissed Gatewood's appeal in the current appeal, Ackerman.* Appellants recognize the omission of an order covering appellants' February 19, 2013 Motion to Abbreviate Record on Appeal is not a dismissal or final decision, and thus not a basis for rehearing under SCACR 240(i). Appellants mention this in case the Court inadvertently left out and wishes to issue such an order.

For the above reasons, Gatewood respectfully requests that his Petition for Rehearing be granted.

* This Petition for Rehearing assumes the March 27 order dismisses Gatewood's appeal only, in the appeal now under consideration, Francis Ackerman, #266928, et al. v. SCDC Appellate Case No. 2012-210588.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "D. H. Westbrook", is written over a horizontal line.

Douglas H. Westbrook, #6039

23 Broad St.

Charleston, SC 29401

(843) 853-9600

Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APR 05 2013

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Chief Administrative Law Judge

SC Court of Appeals

Dock. Nos. 07-ALJ-04-00444-AP, 07-ALJ-04-00445-AP, 07-ALJ-04-00446-AP,
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08-ALJ-04-01045-IJ, 09-ALJ-04-00304-IJ, 07-ALJ-04-00826-AP.*

Francis Ackerman, #266928, Malik Aljalil, #219551, Linso Allen, #269378,
Michael Benninger, #264212, Fredrick Brown, #289602, Timothy Brown, #238461,
Terrell Buchanon, #277262, Christopher Bush, #300690, Rudy Cassady, #238732,
Sheldon Clark, #264772, Zawaski Cobb, #187136, Kamathene Cooper, #145333,
Gladstone Cummings, #267450, Patrick Curtis, #175139, Quintin Daniels, #196284,
Curtis Davis, #238776, Heyward Dempsey, #134171, Phillip Denney, #240678,
Paul Durham, #219573, Jerome Durham, #270393, Keith Eigner, #299153,
Bernard Felder, #122099, Jermaine Garriett, #191274, Fred Gatewood, #289775,
Dennis Goff, #177506, Gregory Grant, #109656, Nelson Hampton, #286427,
James Hartman, #219770, Gary Hayes, #263985, Michael Hood, #279897,
Nikia Law, #260855, Stephen Lease, #137016, Harry Leonard, #249996,
Herbert McFadden, #184297, Michael McFarland, #266870, Earl Mack, #216237,
John Moultrie, #276527, Matin Muntaqim, #142282, Tony Pitts, #280579,
Germaine Pringle, #250390, Gene Richardson, #93614, Dennis Richey, #233472,

* Docket No. 07-ALJ-04-00826-AP is probably assigned to an unrelated case.
See June 8, 2012 letter to the ALC with copy to the Court of Appeals. The
number remains in this caption because it appears in the ALC Second Amended
Order caption, line 6, and has not yet been deleted by the Court of Appeals.

Ignacio Rivera, #300424, Vondell Sanders, #241308, James Sattler, #235043,
Joseph Schmitz, #173987, Arthur Scott, #251957, Jerome Scott, #153381,
Roosevelt Scott, #275631, Archie Simmons, #161419, Robert Smith, #199324,
James Williams, #282929, Gary Bryant, #258972, Harlon Edger, #261866,
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v.

South Carolina Department of Corrections.....Respondent.

Appellate Case No. 2012-210588

AFFIDAVIT

I, Douglas H. Westbrook, depose and state as follows:

1. I represent appellants in the above captioned appeal.
2. On March 28, 2013, I received from the Deputy Clerk, Court of Appeals, the following: (a) A cover letter, dated March 27, 2013, stating "(E)nclosed is the order concerning the motion to abbreviate the record on appeal filed by the appellants"; and (b) The Court's order of March 27, 2013 with a three page caption for Francis Ackerman, #266928, et al. v. SCDC Appellate Case No. 2012-210588. The order dismissed appellant Fred Gatewood's appeal because there was no final order relating to Gatewood, and directed the remaining appellants' appeal to proceed. There was no order, or provision in the March 27 order, concerning appellants' February 19, 2013 Motion to Abbreviate Record on Appeal.
3. The ALC's March 2 and 16, 2012, and July 26, 2012 orders denied all appellants' grievances for untimely filing, except Fred Gatewood's, and directed the parties to brief Gatewood's grievance on the merits.

FURTHER DEPONENT SAYETH NOT.

D H Westbrook
Douglas H. Westbrook, #6039

Signed and Sealed Before Me

This 3rd Day of April, 2013.

Jane W Moore
Notary Public for South Carolina

My Commission Expires:
06-02-2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APR 05 2013

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Chief Administrative Law Judge

SC Court of Appeals

Dock. Nos. 07-ALJ-04-00444-AP, 07-ALJ-04-00445-AP, 07-ALJ-04-00446-AP,
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Francis Ackerman, #266928, Malik Aljalil, #219551, Linso Allen, #269378,
Michael Benninger, #264212, Fredrick Brown, #289602, Timothy Brown, #238461,
Terrell Buchanon, #277262, Christopher Bush, #300690, Rudy Cassady, #238732,
Sheldon Clark, #264772, Zawaski Cobb, #187136, Kamathene Cooper, #145333,
Gladstone Cummings, #267450, Patrick Curtis, #175139, Quintin Daniels, #196284,
Curtis Davis, #238776, Heyward Dempsey, #134171, Phillip Denney, #240678,
Paul Durham, #219573, Jerome Durham, #270393, Keith Eigner, #299153,
Bernard Felder, #122099, Jermaine Garriett, #191274, Fred Gatewood, #289775,
Dennis Goff, #177506, Gregory Grant, #109656, Nelson Hampton, #286427,
James Hartman, #219770, Gary Hayes, #263985, Michael Hood, #279897,
Nikia Law, #260855, Stephen Lease, #137016, Harry Leonard, #249996,
Herbert McFadden, #184297, Michael McFarland, #266870, Earl Mack, #216237,
John Moultrie, #276527, Matin Muntaqim, #142282, Tony Pitts, #280579,
Germaine Pringle, #250390, Gene Richardson, #93614, Dennis Richey, #233472,

* Docket No. 07-ALJ-04-00826-AP is probably assigned to an unrelated case. See June 8, 2012 letter to the ALC with copy to the Court of Appeals. The number remains in this caption because it appears in the ALC Second Amended Order caption, line 6, and has not yet been deleted by the Court of Appeals.

Ignacio Rivera, #300424, Vondell Sanders, #241308, James Sattler, #235043,
Joseph Schmitz, #173987, Arthur Scott, #251957, Jerome Scott, #153381,
Roosevelt Scott, #275631, Archie Simmons, #161419, Robert Smith, #199324,
James Williams, #282929, Gary Bryant, #258972, Harlon Edger, #261866,
Johnny Holden, #245199, Don Hughes, #256862, Michael Key, #266890,
Archie Lee, #226354, Isaac Richardson, #232574, Larkland Richards, #281768,
John Wojcik, #219463, James Bogan, #288111, Larry Burke, #281911,
Jammie Gaymon, #208922, David Harrell, #260004, Jeff Stinson, #260047,
Ricky Libby, #274681, Alain Lareau, #128014, Quentin Baker, #297868,
Frank Corley, #292975, James Jackson, #267718, Quintin Linen, #238553,
Thomas Miles, #246763, Chauncy Orr, #177069, Isaiah Scott, #228008,
Eric Youmous, #281091, Derek Carter, #275938, Willie Hare, #256641,
Ernest Miller, #235474, Robert Norris, #266101, Ronald Simmons, #267937,
Samuel Simmons, #302393, William Thomas, #272501, Anthony Murphy, #295893,
Anthony Murray, #237867, Johnny Hayes, #267910, Roy Morris, #288777,
Daniel Dewey, #276678, Nehemiah Greene, #243339, Leroy Choice, #113990,
James McFadden, #235419, Francis Prioleau, #268813, Darrell Rochester, #146731,
Wilbur Jordan, #272264, Alvin Stewart, #278595, Kevin Poston, #266083,
Kevin Smith, #272440, Donald Robinson, #277520, Douglas Bude, #263537,
Willie Elder, #246208, Rogelio Zavala, #245106, Dennis Knight, #286981,
Jacob Beach, #301270, Francis Ackerman, #266928, Darrin Miller, #259593,
Edward Bryant, #255998, Sherman Austin, #300028, Michael Baylor, #265682,
Taurus Bowman, #252745, Kenneth Carter, #243538, Calvin Drummond, #236322,
David Feggins, #287157, Terry Ferguson, #299080, Willie House, #257820,
Peter Jenkins, #257321, Percy Martin, #270035, James Murray, #165487,
Stephone Simmons, #300422, Larry McClam, #282972, Tyrone Aiken, #244428,
Tyrone Aiken, #248367, Frank Anderson, #282800, Ronald Brewer, #285756,
Keith Brown, #295762, Pete Bryant, #242370, Michael Busques, #191961,
Richard Butler, #162467, Gary Davis, #106144, Anthony English, #238474,
Kerlan Etheredge, #236635, James Evans, #267837, Jose Flores, #240563,
Robert Garrett, #291096, Reginald Geddis, #183851, Richard Graham, #228235,
Gary Grooms, #283860, Wayne Harlen, #245705, Johnny Hayes, #267910,
Steven Hickenbottom, #196263, Alfred Joyner, #260442, Donald Lyles, #296135,
Henry Baker, #263398, Thomas Carter, #249362, Thomas Butler, #257552,
Bobby Williams, #261486, Ray Wells, #173651, Rodney Pressley, #177947,
Keith Kelly, #257556, Maxie Gamble, #254413, James Enriquez, #215539,
Perry Deveaux, #109601, James Wells, #180458, Cedric Martino, #291396,
Donald McAteer, #292961, Robert Wydman, #260331, Anthony Wright, #214007,
Derrick Williams, #272958, Kenneth White, #228409, James Trumper, #247429,
Jeffrey Spears, #281697, Timothy Smith, #296539, David Sims, #278067,
Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911,
George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786,
Frank Patterson, #283098, Tony McNeil, #235846, Larry McClam, #282972,
Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080,

Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsden, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118.....Appellants,

v.

South Carolina Department of Corrections.....Respondent.

Appellate Case No. 2012-210588

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PROOF OF SERVICE

SC Court of Appeals

I certify that I have served Appellant Fred Gatewood's Petition for Rehearing of the Court's March 27, 2013 Order, Memorandum in Support of Appellant Fred Gatewood's Petition for Rehearing of the Court's March 27, 2013 Order, and Affidavit on the S.C. Department of Corrections by depositing a copy of these documents in the U.S. Mail, first class postage prepaid, on 4-4-13 addressed to its attorneys of record, Lake Summers, Esquire and Katherine Phillips, Esquire, Malone, Thompson, Summers & Ott, LLC, 339 Heyward St., Ste. 200, Columbia, SC 29201.

Douglas H. Westbrook

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