

# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 26, 2012

Thomas M. White, Esquire  
Steinberg Law Firm, LLP  
P.O. Box 1028  
Goose Creek, SC 29445

Cynthia Burns Polk, Esquire  
State Accident Fund  
6717 Valleybrook Rd.  
Columbia, SC 29206

Margaret M. Urbanic, Esquire  
Clawson & Staubes, LLC  
126 Seven Farms Drive  
Suite 200  
Charleston, SC 29492-7595

Re: Hutson, Franklin v. SC State Ports

Dear Counsel:

The record in the above case has been reviewed and the time allotment for oral argument for this case is as follows:

|                     |            |
|---------------------|------------|
| Petitioner          | 10 minutes |
| Respondents         | 10 minutes |
| Petitioner in Reply | 5 minutes  |

This case is scheduled for hearing on Wednesday, April 4, 2012 at 10:30 a.m.

Very truly yours,

Daniel E. Shearouse, Clerk

By Debbie M. Hopkins  
Administrative Assistant

DES/dmh

cc: Matthew Robertson, Esquire

DAVID T. PEARLMAN  
J. KEVIN HOLMES  
THOMAS M. WHITE  
DALE E. VAN SLAMBROOK  
MALCOLM M. CROSLAND, JR.  
STEVEN E. GOLDBERG  
KEVIN B. SMITH  
MICHAEL J. JORDAN  
BENJAMIN W. AKERY

CHARLES S. GOLDBERG, LLC, OF COUNSEL

HUGO M. SPITZ (RETIRED)  
IRVING STEINBERG (1902-1980)

Reply to: Thomas M. White  
twhite@steinberglawfirm.com

# THE STEINBERG

LAW FIRM

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FAX (843) 871-8565

February 21, 2012

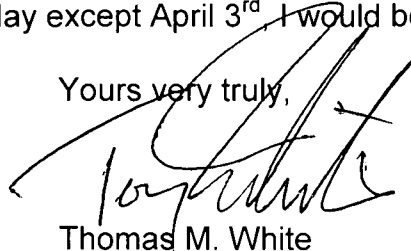
Daniel Shearhouse, Clerk of Court  
P.O. Box 11330  
Columbia, SC 29211

**RE: Franklin W. Hutson, Jr. v. SC State Ports Authority**  
**WCC File # : 0418244**  
**Our File # : 47220**

Dear Mr. Shearhouse:

In response to your request, I have reviewed my calendar and I do have a conflict on Tuesday, April 3, 2012 as I have an all day mediation scheduled that day with multiple lawyers. All other days are fine with no conflicts. I appreciate your request and if can be scheduled any day except April 3<sup>rd</sup> I would be most appreciative.

Yours very truly,



Thomas M. White

TMW/sdg

cc: Benjamin W. Akery, Esquire  
Client

**RECEIVED**

FEB 24 2012

**S.C. SUPREME COURT**



## The South Carolina Supreme Court

DANIEL E. SHEAROUSE  
CLERK OF COURT  
BRENDA F. SHEALY  
DEPUTY CLERK

P.O. BOX 11330  
COLUMBIA, S.C. 29211  
PHONE NO. 734-1080

To: Thomas M. White, Esquire  
From: Daniel E. Shearouse  
Date: February 17, 2012  
RE: April Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the April 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of April 3, 4, 5, 17 and 18. Please notify this office in writing prior to February 24, 2012 as to any scheduling conflicts for the April term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Hutson, Franklin v. SC State Ports



## The South Carolina Supreme Court

DANIEL E. SHEAROUSE  
CLERK OF COURT  
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P.O. BOX 11330  
COLUMBIA, S.C. 29211  
PHONE NO. 734-1080

To: Matthew Robertson, Esquire  
From: Daniel E. Shearouse  
Date: February 17, 2012  
RE: April Preliminary List

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Hutson, Franklin v. SC State Ports



## The South Carolina Supreme Court

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CLERK OF COURT  
BRENDA F. SHEALY  
DEPUTY CLERK

P.O. BOX 11330  
COLUMBIA, S.C. 29211  
PHONE NO. 734-1080

To: Margaret M. Urbanic, Esquire  
From: Daniel E. Shearouse  
Date: February 17, 2012  
RE: April Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the April 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

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Hutson, Franklin v. SC State Ports



# The South Carolina Supreme Court

DANIEL E. SHEAROUSE  
CLERK OF COURT  
BRENDA F. SHEALY  
DEPUTY CLERK

P.O. BOX 11330  
COLUMBIA, S.C. 29211  
PHONE NO. 734-1080

To: Cynthia Burns Polk, Esquire  
From: Daniel E. Shearouse  
Date: February 17, 2012  
RE: April Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the April 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

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Hutson, Franklin v. SC State Ports

**CLAWSON  
AND  
STAUBES**  
LLC

Margaret M. Urbanic  
purbanic@clawsonandstaubes.com

February 10, 2012

File No.: 2005-0389 mmu

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

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FEB 13 2012

Re: Franklin Hutson v. S.C. State Ports Authority  
Supreme Court Tracking Number: 2010-178226

S.C. Supreme Court  
pm 2-10-12

Dear Mr. Shearouse:

Pursuant to the Order granting the Petition for a Writ of Certiorari in the above referenced matter, please find enclosed fifteen (15) copies of the Brief of Respondents (1 copy being filed unbound).

By copy of this letter I am serving all counsel of record with a copy of the Brief of Respondents. I am also enclosing an original and one (1) copy of the Proof of Service of Brief of Respondents which I would appreciate a filed, stamped copy returned to my office in the enclosed self addressed, stamped envelope provided.

Should you need any additional information or have any questions, please do not hesitate to contact my office.

With kindest regards, I remain

Very truly yours,

CLAWSON AND STAUBES, LLC



Margaret M. Urbanic

MMU/rjh  
Enclosures

cc: Thomas M. White, Esquire

[www.clawsonandstaubes.com](http://www.clawsonandstaubes.com)  
126 Seven Farms Drive, Suite 200, Charleston, South Carolina 29492  
Fax: (843) 722 - 2867 / Office: (843) 577 - 2026

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Opinion No. 2010-4737 (S.C. Ct App. Filed September 8, 2010)

Franklin Hutson  
Claimant

Appellant,

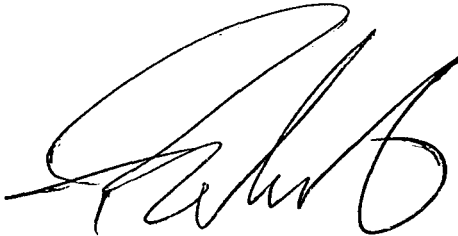
v.

South Carolina State Ports Authority,  
Employer

State Accident Fund  
Carrier,

Respondents.


The parties hereby agree that Matthew Robertson, Chief Counsel for the State Accident Fund should be substituted for Cynthia Polk as Cynthia Polk retired from that State Accident Fund in 2011.



Thomas M. White  
The Steinberg Law Firm, LLP  
P.O. Box 1028  
Goose Creek, SC 29445  
Attorney for Petitioner



Margaret M. Urbanic  
Clawson & Staubes, LLC  
126 Seven Farms Drive, Suite 200  
Charleston, SC 29492-8144  
Attorney for Respondents



Matthew Robertson  
State Accident Fund  
Post Office Box 102100  
Columbia, SC 29221-5000  
Attorney for Respondents

**RECEIVED**

FEB 13 2012

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Opinion No. 2010-4737 (S.C. Ct App. Filed September 8, 2010)

Franklin Hutson  
Claimant

Appellant,


v.

South Carolina State Ports Authority,  
Employer

State Accident Fund  
Carrier,

Respondents.

I certify that I have served the agreement to substitute Matthew Robertson as counsel of record for Respondents on Appellant by depositing a copy of it in the United States Mail, postage prepaid, on February 9, 2012, addressed to the attorney of record Thomas M. White, Esquire, The Steinberg Law Firm LLP, P.O. Box 1028, Goose Creek, South Carolina 29445 as well as the Clerk of Court for the S.C. Supreme Court Daniel E. Shearouse, P.O. Box 11629, Columbia, SC 29211.



---

Margaret M. Urbanic  
Clawson & Staubes, LLC  
126 Seven Farms Drive, Suite 200  
Charleston, SC 29492-8144



---

Matthew Robertson  
State Accident Fund  
Post Office Box 102100  
Columbia, SC 29221-5000  
Attorney for Respondents

**CLAWSON  
AND  
STAUBES**  
LLC

Margaret M. Urbanic  
purbanic@clawsonandstaubes.com

February 9, 2012

File No.: 2005-0389 mmu

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

Re: Franklin Hutson v. S.C. State Ports Authority  
Supreme Court Tracking Number: 2010-178226

Dear Mr. Shearouse:

Please find enclosed the following documents for filing in this matter an agreement to substitute Matthew Robertson for Cynthia Polk as one of the attorneys of record for the Respondents along with a Proof of Service. Cynthia Polk retired as Chief Counsel from the State Accident Fund last year.

Thank you for filing the original and copies and returning a clocked-in copy to me in the envelope provided.

Please let me know if you have any questions or concerns.

**RECEIVED**  
FEB 13 2012  
S.C. SUPREME COURT  
pm 2-9-12

Respectfully yours,

CLAWSON & STAUBES, LLC



Margaret M. Urbanic

MMU/rjh  
enclosures

cc: Thomas M. White, Esquire (w/enc.)

DAVID T. PEARLMAN  
J. KEVIN HOLMES  
THOMAS M. WHITE  
DALE E. VAN SLAMBROOK  
MALCOLM M. CROSLAND, JR.  
STEVEN E. GOLDBERG  
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BENJAMIN W. AKERY

CHARLES S. GOLDBERG, LLC, OF COUNSEL

HUGO M. SPITZ (RETIRED)  
IRVING STEINBERG (1902-1980)

Reply to: Thomas M. White  
twhite@steinberglawfirm.com

# THE STEINBERG

LAW FIRM

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FAX (843) 871-8565

**RECEIVED**

JAN 17 2012

S.G. SUPREME COURT  
pm 1-13-12

January 13, 2012

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

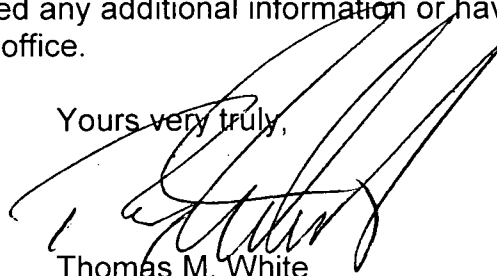
RE: Franklin W. Hutson, Jr. v. SC State Ports Authority  
Supreme Court Tracking No.: 2010-178226

Dear Mr. Shearouse:

Pursuant to your letter dated December 15, 2011 with enclosed Order granting our Petition for a Writ of Certiorari in the above referenced case please find enclosed fifteen (15) copies of Petitioner's Brief (1 copy being filed unbound). Also enclosed please find thirteen (13) additional copies of the Appendix pursuant to Appellate Court Rule 242(i).

By copy of this letter I am serving all counsel of record with a copy of Petitioner's Brief. I am also enclosing an original and one (1) copy of the Proof of Service of Petitioner's Brief which I would appreciate a file-stamped copy returned to my office in the enclosed self-addressed, stamped envelope. Please be advised Petitioner has previously served all parties of record with a copy of the Appendix by letter dated November 23, 2010. Should you need any additional information or have any questions please do not hesitate to contact my office.

Yours very truly,

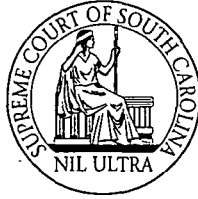


Thomas M. White

TMW/bwa

Enclosures

cc: Franklin Hutson (w/ enclosure)  
Margaret M. Urbanic, Esquire (w/ enclosure)  
Cynthia Polk, Esquire (w/ enclosure)



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

December 15, 2011

Thomas M. White, Esquire  
Steinberg Law Firm, LLP  
P.O. Box 1028  
Goose Creek, SC 29445

Re: Hutson, Franklin v. SC State Ports

Dear Mr. White:

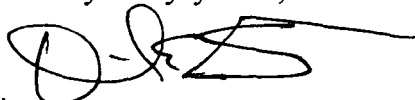
Enclosed is the Order granting your Petition for Writ of Certiorari in the above entitled matter.

It will be necessary for you to furnish this office with an additional thirteen (13) copies of the appendix within thirty (30) days from the date of this letter.

Brief of Petitioner should be served and filed on or before January 17, 2012. The brief is not properly filed until we have proof of service.

Brief of Respondent should be served and filed within thirty (30) days after petitioner's brief is filed. We must have proof of service. Any reply brief should be served and filed within ten (10) days after filing of respondent's brief.

Very truly yours,



CLERK

Hutson, Franklin v. SC State Ports  
Page Two  
December 15, 2011

DES/lda

Enclosure

cc: Cynthia Burns Polk, Esquire  
Margaret M. Urbanic, Esquire  
The Honorable Julie J. Armstrong  
The Honorable Tanya Gee

# The Supreme Court of South Carolina

Franklin Hutson,

Petitioner,

v.

South Carolina State Ports  
Authority, Employer, and State  
Accident Fund, Carrier,

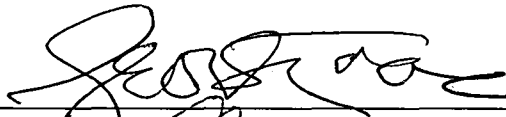


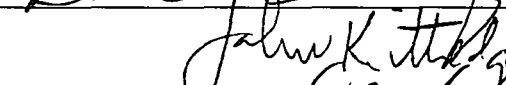
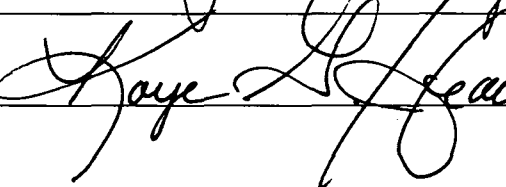
Respondents.

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## ORDER

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We grant the petition for a writ of certiorari to review the Court of Appeals' decision in Hutson v. S.C. State Ports Auth., 390 S.C. 108, 700 S.E.2d 462 (Ct. App. 2010). The parties shall proceed to serve and file the appendix and briefs as provided by Rule 242(i), SCACR.

 C. J.  
 J.  
 J.  
 J.  
 J.

Columbia, South Carolina

December 15, 2011

IN THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Judge Deadra L. Jefferson, Circuit Court Judge

---

Opinion No. 2010-4737 (S. C. Ct. App. filed September 8, 2010)

---

FRANKLIN HUTSON, Claimant, ..... Appellant,

v.

S.C. STATE PORTS AUTHORITY, Employer,  
and STATE ACCIDENT FUND, Carrier, ..... Respondents.

---

**PETITION FOR A WRIT OF CERTIORARI**

---

Thomas M. White, Esquire  
The Steinberg Law Firm  
Post Office Box 1028  
Goose Creek, South Carolina 29445  
(843) 572-0700  
Attorney for Petitioner

**RECEIVED**

NOV 29 2010

**S.C. Supreme Court**

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**CERTIFICATE OF COUNSEL**

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on October 29, 2010

**QUESTIONS PRESENTED**

1. **The Court of Appeals erred in holding there was substantial evidence in the record to support a finding that Claimant was capable of running a restaurant and, therefore, did not suffer wage loss under S.C. Code Ann. § 42-9-20 (1976) based solely on Claimant’s speculative testimony concerning possible future employment.**
  
2. **The Court of Appeals erred in holding the Appellant did not take issue and appeal his denial of total disability compensation where the Record on Appeal is replete with the Appellant’s position that he is permanently and totally disabled under either S.C. Code Ann. § 42-9-10 or § 42-9-30(21)**

**STATEMENT OF THE CASE**

This matter came before the South Carolina Workers’ Compensation Commission on a Form 50 and a stop pay. Claimant (hereinafter referred to as Appellant) contended he was permanently and totally disabled under § 42-9-10/42-9-30 or, in the alternative, suffered a wage loss under § 42-9-20 as a result of his accepted on-the-job injury of October 21, 2004.

The Defendants (hereinafter referred to as Respondents) contended the Appellant had only suffered a loss of use and disability to his back and should receive benefits solely under §42-9-30.

This matter was heard August 1, 2006, by a single Commissioner. An additional hearing was held on August 25, 2006. An Order was issued January 11, 2007, finding the Appellant should receive a thirty percent permanent partial disability for the loss of use to his back under § 42-9-30, and the Respondents should receive a credit for overpayment of temporary total benefits from August 31, 2005 to December 9, 2005 and from June 26, 2006 forward.

The Appellant timely filed a Form 30 Request for Commission Review. On May 9, 2007, the Commission issued an Order sustaining the Single Commissioners Order in its entirety.

The Appellant timely filed an appeal with the Court of Common Pleas in Charleston County on June 1, 2007. On March 11, 2008, a hearing was held. On April 17, 2008 an Order was issued affirming the findings of the full Commission.

The Appellant timely filed a Notice of Appeal to the South Carolina Court of Appeals on May 13, 2008. In its published Decision and Order filed September 8, 2010, the Court of Appeals affirmed in part and remanded the case back to the South Carolina Workers' Compensation Commission. The Court of Appeals denied Appellants Petition for Rehearing by its Order dated October 29, 2010. This Petition for Certiorari follows.

### **ARGUMENT**

- 1. The Court of Appeals erred in misapprehending the record below and the law governing a wage loss claim under S.C. Code Ann. § 42-9-20 (1976)**

In its opinion dated September 8, 2010, affirming in part and remanding the Decision and Order of the Trial Court, the court of Appeals overlooked the record below and misapprehended the applicable law governing the awarding of wage loss benefits under S.C. Code § 42-9-20 of the South Carolina Workers' Compensation Act.

The Appellant argues that the substantial evidence in the record below established He suffered a significant wage loss and is entitled to benefits under § 42-9-20.

It is well settled that the Workers' Compensation Act should be liberally construed in favor of the Claimant. "The Workmen's Compensation Act is entitled to a liberal construction in furtherance of the beneficial purposes for which it was designed." Carter v. Penny Tire & Recapping Co., 261 S.C. 341 (1973). "Workers' Compensation Act should be construed in favor of coverage, and any reasonable doubts as to construction of the Act should be resolved in favor of the Claimant." Hall v. Desert Aire, Inc., 376 S.C. 338 (Ct. App. 2007).

§ 42-9-20 entitles an injured Claimant to benefits which equal two-thirds (2/3) the difference between his average weekly wage before the injury and the average weekly wage which ***he is able to earn thereafter*** (emphasis added).

An award may not rest on surmise, conjecture or speculation. It must be founded on evidence of sufficient substance to afford a reasonable basis for it. Wynn v. People's Natural Gas Co. Of South Carolina, 238 S.C. 1, 110 S.E.2d 812, (S.Ct.SC, 1961). According to Webster's New World Dictionary 4<sup>th</sup> Edition, to Speculate is "to ponder; esp., to conjecture." The 4<sup>th</sup> Edition goes on to define Conjecture as "an inferring, theorizing, or predicting from incomplete evidence; guesswork."

In the case at bar the single Commissioner, whom the Appellate Panel, Circuit Court, and Court of Appeals have affirmed, based his decision that the Appellant had no loss of earning capacity solely on the Appellant's guesswork that he could probably run a restaurant although he had never tried to do this type of work before. However the uncontroverted vocational expert evidence stated that without vocational training the Appellant would be relegated to at or near minimum wage (\$5.15 - \$6.50 per hour)(R. p. 289). The Commissioner even stated that the Appellant's "confidence runs contrary to the greater weight of the other evidence in the record." (R. p. 15, lines 24-25).

The finding that the Appellant could work in the restaurant business and had not suffered a wage loss under § 42-9-20 is speculative on two grounds and should be either reversed or remanded for findings by the Workers' Compensation Commission to determine if the Appellant can work in a restaurant and in what capacity and what the Appellant is capable of earning in which job to establish benefits under § 42-9-20. The Court is speculating, conjecturing and predicting from incomplete evidence in the findings that had previously been made. The Appellant had worked as a crane operator for twenty-four of the previous twenty-five years. Appellant learned to be a crane operator from his father (R. p. 7). At the time of the hearing, he was forty-four years of age (R. p. 6). He had been a crane operator for twenty-four of the previous twenty-five years which would carry him back to age nineteen. All he had ever done was operate a crane except work as a rigger for one year. He had taken a couple of courses at Trident Tech and never finished and never received a degree in Culinary Art. To find that he was employable in the restaurant business is predicting from incomplete evidence. If he could work in the restaurant business, what could he do? Could he own a restaurant? Could he manage

a restaurant? Could he be the chef? Could he be a waiter? Could he be a busboy? There is absolutely no evidence anywhere in the record establishing what he could do in the restaurant and if he had any skills to work in a restaurant. This finding was pure speculation.

Secondly, even if Appellant could work in a restaurant, there must be a finding that he could earn the same wages as he earned as a crane operator otherwise he is entitled to benefits under § 42-9-20 if that would maximize his recovery. He had injuries to the back that affected his leg and § 42-9-20 would be an appropriate section to award benefits. Even if the Court of Appeals believed there was evidence in the record to support he could work in a restaurant there is no evidence what he could do in the restaurant. You would then have to make a finding as to what he could earn in the restaurant to render a valid decision that § 42-9-20 did not apply because he had not suffered a loss of earning capacity or his earnings were going to be so close to his previous earnings that it would not be beneficial for him to go under § 42-9-20. There is no evidence about this in the record. How could there be a finding that § 42-9-20 does not apply when even if you can assume he could work in a restaurant, there is nothing in the record about how much money he would make. How much money would he make bussing tables, how much would he make as a waiter, how much would he make as a manager, how much would he make as a chef, how much would he make as an owner. He was making \$89,960.00 per year as a crane operator. If he could work in the restaurant industry, there has to be a finding as to what he could earn. If he could make \$25,000.00 a year as a manager, he would still be entitled to benefits under §42-9-20 because he had suffered a substantial wage loss. If he could make \$35,000.00 as a chef, he would still be entitled to benefits under § 42-9-20.

The Appellant has the right to pick the appropriate section to maximize his recovery. The ONLY evidence in the record is that he could earn \$5.15 to \$6.50 per hour if he did not complete the vocational rehabilitation program. He did not complete the program and, again, the only evidence in the record that is uncontradicted by the Respondents is that he could make \$5.15 to \$6.50 per hour. This is \$13,520.00 a year. The Court of Appeals Decision should be reversed and these figures should be the income for calculation under § 42-9-20. All other evidence in the record is conjecture, speculation and predicting from incomplete evidence.

If the finding is that Appellant can work in a restaurant, the case should then be remanded back to the Full Commission to determine what he could do in a restaurant and what that rate of pay would be to calculate his benefits under § 42-9-20. From the Wynn case, our Court states that, "The increasing tendency to accept awards unsupported by medical testimony should not be allowed to obscure the basic necessity of establishing medical causation by expert testimony in all but simple and routine cases". Here, the expert testimony clearly shows the Appellant is employable at a maximum earning capacity of \$5.15 to \$6.50 per hour and the Court of Appeals has taken the Appellant's testimony (which was total guesswork) to refute the evidence of the only expert when that testimony was simply speculation, conjecture and a prediction from incomplete evidence.

The whole philosophy of our Workers' Compensation Act is to compensate for, or relieve from, the loss or impairment of an employee's capacity to earn or from the deprivation of support from his earnings and not to indemnify for any physical impairment or impairment as such, except in the classes of cases specifically provided in the Act. Jewel v. R.V. Pond, 198 S.C. 86, 15 S.E. 684, 686 (S.C. 1941).

The Court of Appeals erred in not reversing the case as there was substantial evidence that the Appellant suffered a significant wage loss under § 42-9-20 based on the expert medical and vocational evidence. However, even if the Court of appeals agreed with the lower courts that the Appellant could work in a restaurant environment the case should have been remanded to the Full Commission to determine what Appellant could earn working in a restaurant then calculate his benefits under § 42-9-20.

**2. The Court of Appeals erred in misapprehending the record below and misstated that the Appellant did not take issue and appeal his denial of total disability compensation.**

In its opinion dated September 8, 2010, affirming in part and remanding the Decision and Order of the Trial Court, the Court of Appeals stated “Appellant does not take issue with the denial of compensation for total disability; however he asserts he is entitled to recover for partial disability.” This was a misapprehension of the record below and a material misstatement by the Court of Appeals.

The Record on Appeal is replete with the Appellant’s position that he is permanently and totally disabled under either S.C. Code Ann. § 42-9-10 or § 42-9-30(21).

Subsequent to the Single Commissioner’s Decision and Order the Appellant filed a request for Full Commission Review on January 19, 2007 and argued that the Single Commissioner erred in not finding the Claimant was permanently and totally disabled under § 42-9-10 or 42-9-30(21) (R. p. 41). This was again argued in the Appellant’s Brief to the Appellate Panel (R. p. 46). After the Appellate Panel rendered their Decision and Order the Appellant again argued that he was permanently and totally disabled under § 42-9-10 or 42-9-30(21) in his Appeal to the Court of Common Pleas Charleston County on May 30,

2007 (R. p. 64).

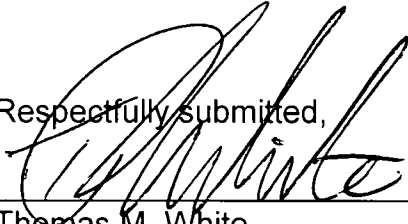
Finally, the Appellant specifically stated in the Final Appellant Brief that “the Order of the Court of Common Pleas Charleston County affirming the single commissioner and the Commission Appellate Panel’s Orders should be reversed or modified with instructions that Claimant receive either **total disability** under § 42-9-10/42-9-30 or wage loss under § 42-9-20” (Appellant’s Final Brief p. 16) (emphasis added). The Appellant again argued he was entitled to total disability benefits in his Reply Brief as well (Appellant’s Reply Brief p. 6).

Therefore, the Court of Appeals opinion dated September 8, 2010 should be reversed to hold that the Appellant did indeed take issue and appeal his denial of total disability compensation.

### CONCLUSION

Taking into consideration the record as a whole as well as the principle that the Workers’ Compensation Act should be construed liberally in favor of the injured Claimant, Appellant requests the Court review the decision in Hutson v. S.C. State Ports Authority, No. 2010-4737, (S.C. Ct. App. September 8, 2010) and either reverse the Court of Appeals Decision and Order and hold that Appellant suffered a wage loss under § 42-9-20 based upon the vocational expert evidence or remand the issue of whether or not Claimant suffered wage loss under § 42-9-20 to the South Carolina Workers’ Compensation Commission for further findings of fact in accordance with the above cited statutory and case law. Additionally Appellant requests the Court of Appeals Decision and Order be reversed by this Court to hold that the Appellant did indeed take issue and appeal his denial of total disability compensation.

Respectfully submitted,



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**November 23, 2010**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Judge Deadra L. Jefferson, Circuit Court Judge

---

Opinion No. 2010-4737 (S. C. Ct. App. filed September 8, 2010)

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FRANKLIN HUTSON, Claimant, ..... Appellant,

v.

S.C. STATE PORTS AUTHORITY, Employer,  
and STATE ACCIDENT FUND, Carrier, ..... Respondents

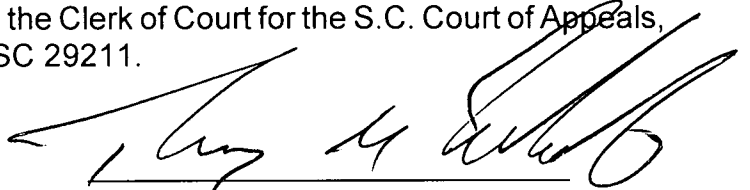
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**PROOF OF SERVICE**

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I certify that I have served Appellant's Petition for a Writ of Certiorari and Appendix on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on November 23, 2010, addressed to their attorneys of record, Margaret Mary Urbanic, Esquire at Clawson & Staubes, LLC., 126 Seven arms Drive, Suite 200, Charleston, SC 29492 and Cynthia Polk, Esquire, State Accident Fund, PO Box 102100, Columbia, SC 29221-5000 as well as the Clerk of Court of the S.C. Supreme Court Daniel E. Shearouse, P.O. Box 11330, Columbia, SC 29211 and the Clerk of Court for the S.C. Court of Appeals, Tanya Gee, P.O. Box 11629, Columbia, SC 29211.

November 23, 2010



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IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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S.C. Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Judge Deadra L. Jefferson, Circuit Court Judge

Opinion No. 2010-4737 (S. C. Ct. App. filed September 8, 2010)

FRANKLIN HUTSON, Claimant, ..... Appellant,

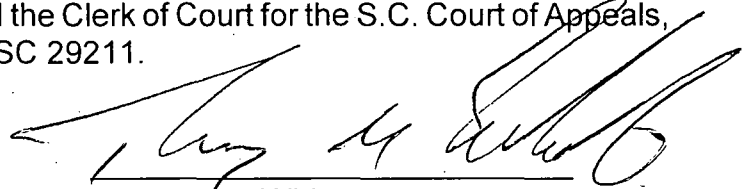
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S.C. STATE PORTS AUTHORITY, Employer,  
and STATE ACCIDENT FUND, Carrier, ..... Respondents

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November 23, 2010



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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Opinion No. 2010-4737 (S.C. Ct. App. Filed September 8, 2010)

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Claimant

Appellant,

v.

South Carolina State Ports Authority,  
Employer

State Accident Fund  
Carrier,

Respondents.

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DEC 20 2010

S.C. Supreme Court

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RETURN TO PETITION FOR WRIT OF CERTIORARI

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**QUESTIONS PRESENTED**

1. THE COURT OF APPEALS WAS CORRECT IN HOLDING THAT THERE WAS SUBSTANTIAL EVIDENCE TO SUPPORT THE COMMISSION'S FINDINGS THAT THE CLAIMANT DID NOT SUFFER A WAGE LOSS UNDER § 42-9-20.
2. THE COURT OF APPEALS WAS CORRECT THAT THE APPELLANT DID NOT TAKE ISSUE AND APPEAL HIS DENIAL OF TOTAL DISABILITY COMPENSATION.

**STATEMENT OF THE CASE**

This matter came before the South Carolina Workers' Compensation Commission on August 1, 2006. A hearing was held pursuant to Forms 50/51 and Form 21. ( R. pp. 31-34). Respondents' filed a Form 21 on August 31, 2005 requesting a credit for overpayment from the date of maximum medical improvement.

This case involves an admitted injury to the Appellant's back that occurred in the course and scope of his job at the South Carolina State Ports Authority. At the hearing on August 6, 2006, Appellant alleged that he suffered a wage loss under § 42-9-20 or that he was permanently and totally disabled under § 42-9-10 and/or § 42-9-30(19). Appellant claims that he suffered an injury to his back and legs, primarily his right leg

and alleges a date of maximum medical improvement as of September 20, 2005. ( R. pp. 69-70, lines 24-9). It was the position of the Respondent's that the Appellant reached maximum medical improvement as of June 25, 2005. Respondents asked to stop temporary total benefits and asked for a credit for overpayment of benefits paid after the date of maximum medical improvement and alleged that the Appellant is only entitled to permanent partial disability under § 42-9-30. Respondents denied that the Appellant is permanently and totally disabled or that he suffered a wage loss under § 42-9-20. ( R. p.70, lines 10-18).

The Single Commissioner found that Appellant was not permanently and totally disabled and that the Appellant did not suffer a wage loss. The Single Commissioner found that Appellant had a 30% permanent partial disability to his spine. ( R. pp. 10-18). Appellant appealed the Order to the Full Commission which affirmed the Order. ( R. pp. 19-22). Appellant then appealed the Order to the Circuit Court which also affirmed the Order in its entirety. ( R.. pp. 23-29). The Court of Appeals affirmed in part and remanded the case in part.

1. THE COURT OF APPEALS WAS CORRECT IN HOLDING THAT THERE WAS SUBSTANTIAL EVIDENCE TO SUPPORT THE COMMISSION'S FINDINGS THAT THE CLAIMANT DID NOT SUFFER A WAGE LOSS UNDER § 42-9-20.

The Court of Appeals was correct in finding that there is substantial evidence to support the finding that Appellant did not suffer a wage loss as the record is full of testimony regarding the Appellant's plan to open a restaurant. Appellant studied culinary arts and food sanitation at Trident Technical College. ( R. p. 72, lines 7-11).

Appellant testified that his family has been in the restaurant business all his life and that he has several aunts and uncles in the restaurant business. ( R. p. 87, lines 12-20). He testified that if he "established that something like that I can supervise other people to work for me and make, you know, a decent salary." ( R. p. 87, lines 17-20). Appellant testified that he had been researching locations, getting menu selections and pricing equipment to determine what it would take to set up an establishment. ( R. pp. 87-88, lines 21-3). Appellant testified that he had been working on the restaurant project since Dr. Stovall had released him. ( R. p. 91, lines 4-6 ). Appellant testified that he had several potential locations that he was looking at in the Goose Creek/Moncks Corner area. ( R. p. 91 lines 15-18). Appellant testified that he would be able to sit and figure out menus; sit and figure out how to write checks and pay the bills and would stand if he had to work the register. ( R. p. 96, lines 7-21). Appellant testified that he would be able to help in the restaurant. ( R. p. 96, lines 18-20). Appellant testified that he had spoken to his family members and they told him that it took long hours to run a restaurant, including manual labor. ( R. pp. 100-101, lines 19-6). Appellant testified that he plans to be either the manager or owner of a restaurant. ( R. p. 91, lines 7-14). Clearly, the Appellant's testimony that he could operate a restaurant was extensive if not overwhelming on this issue.

Appellant argues that the evidence that the he could run a restaurant is speculative. However, the basis for finding that Appellant is capable of running a restaurant is based on the Appellant's **own** testimony. Appellant is asking the Court to disregard his entire testimony in order to find that he suffered a wage loss. As the Court of Appeals noted, the Appellant has the burden of proving his case and he was

the one who brought forth all the testimony about working on the restaurant. It is contradictory for the Appellant to ask the courts to ignore his own testimony with regards to what he is capable of doing.

Appellant argues that if the decision is that the Appellant can work in a restaurant then the case should be reversed to determine what he could do in a restaurant and to calculate his wage loss under § 42-9-20. Appellant testified that he was unable to determine how much a restaurant grosses. ( R. pp. 91-92, lines 19-5). Appellant had that opportunity to present evidence of possible future earnings but chose not to at the hearing in front of the Single Commissioner even though one of the issues Appellant plead on his Form 58 was whether Appellant suffered a wage loss under § 42-9-20. ( R. p. 35). Appellant failed to provide any evidence regarding what earnings Appellant could earn in the restaurant business and therefore, the Court was correct in making an award under § 42-9-30. As previously noted, Appellant had the burden of proof.

In Sellers vs. Pinedale Residential Center, 350 S.C. 183, 554 S.E.2d 694 (Ct. App. 2002), the Court of Appeals found that it was appropriate for the Commission to use the compensation rate for an electrician, although Sellers was not working as a electrician at the time of the injury. The Commission relied on the testimony of Sellers in determining Sellers' future earnings about what he would have earned as electrician. The Commission was found to be correct to consider the future earnings of Sellers. Likewise, in the case at bar, the Commission was correct in considering the future earnings of the Appellant based on the Appellant's own testimony about his plans to open a restaurant.

Appellant argues that there is uncontradicted expert vocational evidence that he can not earn above minimum wage and has no transferable skills. However, the evidence is contradicted as the Appellant's own testimony is in sharp contrast to the vocational report. Regardless, the Commission has the ability to weigh the evidence and make the final determination as to the weight of evidence is reversed for the Commission. Where there is a conflict in the evidence, the Commission's findings of fact are conclusive. Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999). The Commission was neither required to accept or rely on the report of Jean Hutchinson, the Appellant's vocational expert.

At the hearing, Appellant testified extensively about his ability to run a restaurant. The Commission obviously put more weight on the testimony of the Appellant than the vocational opinion. Furthermore, the vocational report does not reference the opinion of Dr. Stovall who found that Appellant could engage in medium work. Nor does the vocational report mention or address, Appellant's plan to open a restaurant. Therefore, it is not surprising that Commission placed little weight on the vocational expert's opinion. ( R. pp. 282-289). Furthermore, the Court of Appeals noted the there was vocational evidence by way of Dr. Stovall's opinion that Appellant "should be able to carry on a moderate level of activity at the medium work capacity."

Therefore, the Court of Appeals was correct in holding that the Appellant did not prove a wage loss under § 42-9-20.

2. THE COURT OF APPEALS WAS CORRECT THAT THE APPELLANT DID NOT TAKE ISSUE AND APPEAL HIS DENIAL OF TOTAL DISABILITY COMPENSATION.

The Court of Appeals did not overlook the records or misstate the Appellant's position.

The Appellant stated three issues on appeal in his briefs:

- I. Did the Court of Common Pleas Charleston County err in holding there was substantial evidence in the record to support a finding that Claimant was capable of running a restaurant and, therefore, did not suffer wage loss under S.C. Code § 42-9-30 (1976) when it was found the Claimant's injury affected his back and leg?
- II. Did the Court of Common Pleas Charleston County commit an error of law in affirming an award limiting Claimant's recovery to the back under S.C. Code Ann. § 42-9-30 (1976) when it was found the Claimant's injury affected his back and leg.
- III. Did the Court of Common Pleas Charleston County commit an error of law in not remanding the claim to the Commission to make findings of fact sufficient to for appellate review as to the Claimant's current capacity and/or the extent of his loss or loss of use of his back, leg and/or whole person?

The opinion of the Court of Appeals clearly discusses all of these issues in the opinion. Appellant did not appeal the denial of compensation for permanent and total disability. In the Appellant's arguments section of the second issue, Appellant specifically argues that the commission erred in failing to make a ruling as to Claimant's loss of use to his right leg. (Appellant's Brief, p. 12). Appellant never argues that the denial of total disability. Appellant only briefly references 42-9-10 in his "Conclusion" paragraph of his brief. An issue is deemed abandoned on appeal and not presented for review, if it is argued in a short, conclusory statement without supporting authority. Fields v. Melrose Ltd. Partnership, 312 S.C. 439, S.E. 2d 283 (Ct. App. 1993). Therefore, the Appellant did not raise and appeal the issue of the denial of compensation for permanent and

total disability.

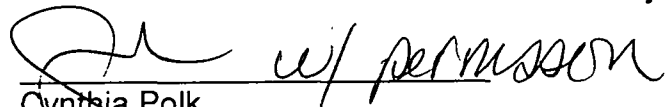
### CONCLUSION

Therefore, the Court of Appeals was correct in finding that there was substantial evidence to affirm the finding that the Appellant was not permanently and totally disabled and that he did not suffer a wage loss.



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Attorney for Respondents

Charleston, South Carolina  
December 16, 2010

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Opinion No. 2010-4737 (S.C. Ct App. Filed September 8, 2010)

Franklin Hutson  
Claimant

Appellant,

v.

South Carolina State Ports Authority,  
Employer

State Accident Fund  
Carrier,

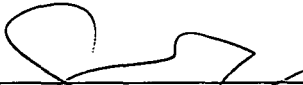
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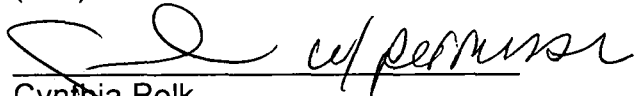
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S.C. Supreme Court

I certify that I have served the Respondents' Return to the Petition for Writ of Certiorari on Franklin Hutson, Appellant by depositing a copy of it in the United States Mail, postage prepaid, on December 16, 2008, addressed to the attorney of record Thomas M. White, Esquire, The Steinberg Law Firm LLP, P.O. Box 1028, Goose Creek, South Carolina 29445 as well as the Clerk of Court for the S.C. Supreme Court Daniel E. Shearouse, P.O. Box 11629, Columbia, SC 29211.

  
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IN THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Judge Deadra L. Jefferson, Circuit Court Judge

Opinion No. 2010-4737 (S. C. Ct. App. filed September 8, 2010)

**RECEIVED**  
DEC 9 2010  
S.C. SUPREME COURT

FRANKLIN HUTSON, Claimant, ..... Petitioner,

v.

S.C. STATE PORTS AUTHORITY, Employer,  
and STATE ACCIDENT FUND, Carrier, . . . . . Respondents.

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**REPLY TO PETITION FOR WRIT OF CERTIORARI**

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1. **The Court of Appeals erred in misapprehending the record below and the law governing a wage loss claim under S.C. Code Ann. § 42-9-20 (1976)**

In its opinion dated September 8, 2010, affirming in part and remanding the Decision and Order of the Trial Court, the court of Appeals overlooked the record below and misapprehended the applicable law governing the award of wage loss benefits under S.C. Code section 42-9-20 of the South Carolina Workers' Compensation Act.

The Petitioner maintains that the substantial evidence in the record below established he suffered a significant wage loss and is entitled to benefits under section 42-9-20.

The Respondent's argument that Sellers v. Pinedale Residential Center, 350 S.C. 183, 554 S.E.2d 694 (Ct. Ap. 2002) stands for the proposition that the Commission can rely on future earning capacity as stated solely by a Claimant is misplaced. In Sellers, this Court specifically stated "The Commission based the pay scale on the **testimony of a vocational expert**. Employer offered no evidence to contradict this testimony." Id. at 699 (emphasis added). Sellers is specifically on point with the case at bar in that the expert in this case opined that Petitioner had suffered a significant wage loss and the employer offered no evidence to contradict this testimony. Therefore, any finding that Petitioner did not suffer a significant wage loss is based merely on speculation.

The Court of Appeals erred in not reversing the case as there was substantial evidence that the Petitioner suffered a significant wage loss under § 42-9-20 based on

the expert medical and vocational evidence. However, even if the Court of appeals agreed with the lower courts that the Petitioner could work in a restaurant environment the case should have been remanded to the Full Commission to determine what Appellant could earn working in a restaurant then calculate his benefits under § 42-9-20.

**2. The Court of Appeals erred in misapprehending the record below and misstated that the Appellant did not take issue and appeal his denial of total disability compensation.**

In its opinion dated September 8, 2010, affirming in part and remanding the Decision and Order of the Trial Court, the Court of Appeals stated “Appellant does not take issue with the denial of compensation for total disability; however he asserts he is entitled to recover for partial disability.” This was a misapprehension of the record below and a material misstatement by the Court of Appeals.

As recited in the Petition for Writ of Certiorari, the Record on Appeal is replete with the Petitioners position that he is permanently and totally disabled under either S.C. Code Ann. § 42-9-10 or § 42-9-30(21).

The Respondent urges that the Petitioner never argued the denial of total disability however, this issue was specifically argued throughout the appeals process. Further, in Petitioners Issue for Appeal #2 Petitioner specifically argued that he was not limited to a scheduled member loss under S.C. Code §42-9-30. This issue encompasses the argument that Appellant was either totally disabled under Section 42-9-10/42-9-30 or suffered a wage loss under Section 42-9-20. To hold otherwise would

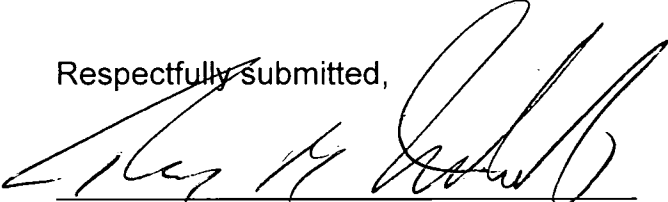
unduly burden a workers' compensation Claimant in having to specifically argue for benefits under every possible section in the Act.

Therefore, the Court of Appeals opinion dated September 8, 2010 should be reversed to hold that the Petitioner did indeed take issue and appeal his denial of total disability compensation.

### **CONCLUSION**

Taking into consideration the record as a whole as well as the principle that the Workers' Compensation Act should be construed liberally in favor of the injured Claimant, Petitioner requests the Court review the decision in Hutson v. S.C. State Ports Authority, No. 2010-4737, (S.C. Ct. App. September 8, 2010), where the Petitioner suffered a wage loss under § 42-9-20 based upon the vocational expert evidence or remand the issue of whether or not Petitioner suffered wage loss under § 42-9-20 to the South Carolina Workers' Compensation Commission for further findings of fact in accordance with the above cited statutory and case law. Additionally Petitioner requests the Court of Appeals Decision and Order be reversed by this Court to hold that the Appellant did indeed take issue and appeal his denial of total disability compensation.

Respectfully submitted,



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IN THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Judge Deadra L. Jefferson, Circuit Court Judge

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Opinion No. 2010-4737 (S. C. Ct. App. filed September 8, 2010)

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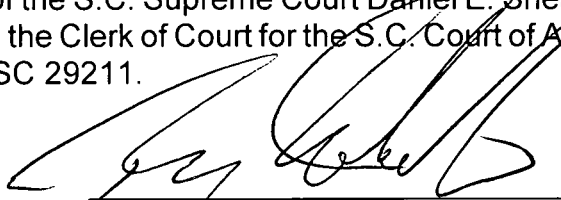
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**PROOF OF SERVICE**

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I certify that I have served Petitioners Reply to Petition for Writ of Certiorari on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on December 23, 2010, addressed to their attorneys of record, Margaret Mary Urbanic, Esquire at Clawson & Staubes, LLC., 126 Seven Farms Drive, Suite 200, Charleston, SC 29492 and Cynthia Polk, Esquire, State Accident Fund, PO Box 102100, Columbia, SC 29221-5000 as well as the Clerk of Court of the S.C. Supreme Court Daniel E. Shearouse, P.O. Box 11330, Columbia, SC 29211 and the Clerk of Court for the S.C. Court of Appeals, Tanya Gee, P.O. Box 11629, Columbia, SC 29211.

December 22, 2010



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P.O. BOX 9  
CHARLESTON, SC 29402-0009  
TELEPHONE (843) 720-2800  
FAX (843) 722-1190  
  
SUMMERVILLE OFFICE  
1520 OLD TROLLEY RD, SUITE B  
SUMMERVILLE, SC 29485  
TELEPHONE (843) 871-6522  
FAX (843) 871-8565

December 22, 2010

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

RE: Franklin W. Hutson, Jr. v. SC State Ports Authority  
Supreme Court Tracking No.: 2010-178226

Dear Mr. Shearouse:

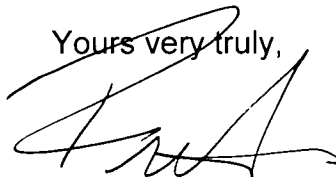
Enclosed please find the following documents regarding the above referenced matter:

- (1) An original and six (6) copies of the Reply to Petition for Writ of Certiorari;
- (2) An original and six (6) copies of the Proof of Service

By copy of this letter, I am serving all counsel of record with a copy of the above referenced documents. Please file six (6) copies of the Reply to Petition for Writ of Certiorari with attached copies of the proof of Service and return a clocked copy of each to this office in the enclosed self-addressed, stamped envelope.

Should you have any questions please do not hesitate to contact my office.  
Thank you for your assistance in this matter.

Yours very truly,



Thomas M. White

TMW/bwa  
Enclosures

cc: Franklin Hutson  
Margaret M. Urbanic, Esquire  
Cynthia Polk, Esquire  
The Honorable Tanya Gee, SC Court of Appeals

RECEIVED  
DEC 23 2010  
S.C. SUPREME COURT  
pm 12-23-10

CLAWSON & STAUBES, LLC  
ATTORNEYS AT LAW

MARGARET M. URBANIC  
purbanic@clawsonandstaubes.com

December 16, 2010

In Reply Please Reference  
Our File No.: 2005-389mmu

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

Re: Franklin Hutson v. S.C. State Ports Authority  
Supreme Court Tracking Number: 2010-178226

Dear Mr. Shearouse:

Please find enclosed the following documents for filing in this matter:

1. An original and six (6) copies of the Return to Petition for Writ of Certiorari;
2. An original and one (1) copy of the Proof of Service.

I am also serving a copy of this letter and the enclosed pleadings on all counsel of record.

Thank you for filing the original and copies and returning a clocked-in copy of both the Return to Petition for Writ of Certiorari and the Proof of Service to me in the envelope provided.

Please let me know if you have any questions or concerns.

Respectfully yours,

CLAWSON & STAUBES, LLC



Margaret M. Urbanic

MMU/res  
enclosures

cc: Thomas M. White, Esquire  
Cynthia Polk, Esquire  
The Honorable Tonya Gee, Court of Appeals

Charleston Office:  
126 Seven Farms Dr., Suite 200  
Charleston, SC 29492-8144  
(o) 843.577.2026  
(f) 843.722.2867

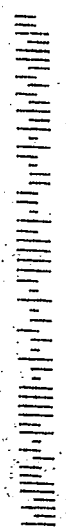
Charlotte Office:  
756 Tyvola Rd., Suite 130  
Charlotte, NC 28217-3535  
(o) 704.940.9128  
(f) 704.522.9033

clawsonandstaubes.com

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DEC 20 2010

S.C. Supreme Court



**CLAWSON & STAUBES, LLC**

**ATTORNEYS AT LAW**

126 Seven Farms Dr., Suite 200  
Charleston, SC 29492-8144  
843.577.2026

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

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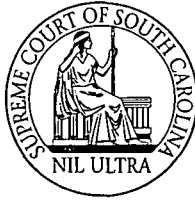
12/16/2010  
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\$02.58<sup>9</sup>

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ZIP 29492  
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# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

November 30, 2010

Thomas M. White, Esquire  
Steinberg Law Firm, LLP  
P.O. Box 1028  
Goose Creek, SC 29445

Re: Hutson, Franklin v. SC State Ports Authority, et al.  
Case Tracking No. 2010-178226

Dear Mr. White:

This office has received your Petition for Writ of Certiorari and Appendix in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Please be advised that in future correspondence/filings in the above matter that Franklin Hutson should be shown as Petitioner.

Hutson, Franklin v. SC State Ports  
Page Two  
November 30, 2010

Very truly yours,



CLERK

DES/lda

Enclosure

cc: Cynthia Burns Polk, Esquire  
Margaret M. Urbanic, Esquire  
The Honorable Tanya Gee

DAVID T. PEARLMAN  
J. KEVIN HOLMES  
THOMAS M. WHITE  
DALE E. VAN SLAMBROOK  
MALCOLM M. CROSLAND, JR.  
STEVEN E. GOLDBERG  
KEVIN B. SMITH  
MICHAEL J. JORDAN  
BENJAMIN W. AKERY

CHARLES S. GOLDBERG, LLC, OF COUNSEL

HUGO M. SPITZ (RETIRED)  
IRVING STEINBERG (1902-1980)

# THE STEINBERG

L A W F I R M

L. L. P.

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November 23, 2010

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

**RECEIVED**  
FedEx pm 11-23-10  
NOV 29 2010

S.C. Supreme Court

RE: Franklin W. Hutson, Jr. v. SC State Ports Authority  
Case No.: 2007-CP-10-2305  
Opinion No.: 2010-4737 (S.C. Ct. App. filed September 8, 2010)

Dear Mr. Shearouse:

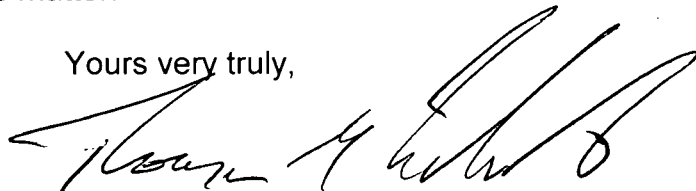
Enclosed please find the following documents regarding the above referenced matter:

- (1) An original and six (6) copies of the petition for Writ of Certiorari;
- (2) One (1) unbound and three (3) bound copies of the Appendix
- (3) Two Copies of the Proof of Service;
- (4) The filing fee of \$100.00 to the Supreme Court of South Carolina

By copy of this letter, I am serving all counsel of record with a copy of all of the above. Please file six (6) copies of the Petition for Writ of Certiorari along with one (1) copy of the proof of Service and return a clocked copy of each to this office in the enclosed self-addressed, stamped envelope.

Should you have any questions please do not hesitate to contact my office. Thank you for your assistance in this matter.

Yours very truly,



Thomas M. White

TMW/bwa  
Enclosures

cc: Franklin Hutson  
Margaret M. Urbanic, Esquire  
Cynthia Polk, Esquire  
The Honorable Tanya Gee, Court of Appeals