

# TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON  
COLUMBIA  
FLORENCE  
GREENVILLE  
MYRTLE BEACH

**Carmelo B. Sammataro**

E-mail: [SSammataro@TurnerPadget.com](mailto:SSammataro@TurnerPadget.com)

Writer's Direct Dial: (803) 227-4253

Writer's Direct Fax: (803) 400-1532

June 13, 2012

**RECEIVED**

JUN 13 2012

**S.C. Supreme Court**

**VIA HAND DELIVERY**

The Honorable Daniel E. Shearouse, Clerk  
South Carolina Supreme Court  
Supreme Court Building  
1231 Gervais Street  
Columbia, SC 29201

Re: Michael D. Crisp, Jr., Employee v. SouthCo, Inc., Employer, and Pennsylvania National Mutual Casualty Insurance Co., Carrier  
Supreme Court Tracking No.: 2010-180906  
File No.: 7030.101

Dear Mr. Shearouse:

Enclosed please find the original and fifteen (15) copies of the Brief of Respondents regarding the above-referenced matter. Also enclosed are the originals and one (1) copy each of the Certificate of Counsel and the Proof of Service. Please file the original filings and return clocked copies to me via our office courier. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.

  
Carmelo B. Sammataro

CBS/tj

Enclosures

cc: Kathryn Williams, Esquire (w/enc.)

BUSINESS • LITIGATION • SOLUTIONS

Bank of America Plaza • 17th Floor • 1901 Main Street (29201) • PO Box 1473 • Columbia, SC 29202

Phone (803) 254-2200 • Fax (803) 799-3957 • [turnerpadget.com](http://turnerpadget.com)

# TURNER PADGET

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**Carmelo B. Sammataro**

E-mail: [SSammataro@TurnerPadget.com](mailto:SSammataro@TurnerPadget.com)

Writer's Direct Dial: (803) 227-4253

Writer's Direct Fax: (803) 400-1532

May 8, 2012

**RECEIVED**

MAY 9 2012

**S.C. SUPREME COURT**

pm 5-8-12

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

Re: Michael D. Crisp, Jr., Employee v. SouthCo, Inc., Employer, and Pennsylvania  
National Mutual Casualty Insurance Co., Carrier  
Supreme Court Tracking No.: 2010-180906  
File No.: 7030.101


Dear Mr. Shearouse:

The purpose of this correspondence is to request protection for June 14-22, 2012. I will be out of town on a family vacation and, therefore, request that no hearing in the matter of which I am attorney of record be scheduled for the above dates. Please date stamp the enclosed copy of this letter and return it to me via the enclosed envelope. I greatly appreciate the Court's assistance and consideration in this matter. By copy of this letter, I am advising counsel of record of this request.

With kind regards, I am

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Carmelo B. Sammataro

CBS/tj

Enclosures

cc: Kathryn Williams, Esquire

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**Carmelo B. Sammataro**

E-mail: [SSammataro@TurnerPadget.com](mailto:SSammataro@TurnerPadget.com)

Writer's Direct Dial: (803) 227-4253

Writer's Direct Fax: (803) 400-1532

April 24, 2012

**VIA HAND DELIVERY**

The Honorable Daniel E. Shearouse  
Clerk, SC Supreme Court  
Supreme Court Building  
1231 Gervais Street  
Columbia, SC 29201

RECEIVED

APR 24 2012

S.C. Supreme Court

Re: Michael D. Crisp, Jr., Employee v. SouthCo, Inc., Employer, and Pennsylvania National Mutual Casualty Insurance Co., Carrier  
Supreme Court Tracking No.: 2010-180906  
File No.: 7030.101

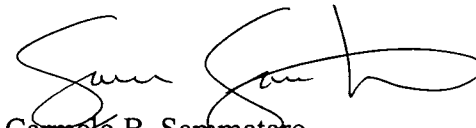
Dear Mr. Shearouse:

On behalf of Respondents SouthCo, Inc. and Pennsylvania National Mutual Casualty Insurance Co., I write to respectfully request a thirty-day extension of time to file and serve their Brief in the above-referenced action. A thirty-day extension of the original May 13, 2012 deadline would establish the new deadline for service and filing as June 12, 2012. Our check for the \$25.00 filing fee is enclosed. It would be greatly appreciated if you would return a clocked copy of this letter to me via our office courier. Thank you for your attention to this matter, and please contact me if you have any questions.

With kind regards, I am

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.

  
Carmelo B. Sammataro

check # 207570  
\$25.00

CBS/tj

Enclosure

cc: Kathryn Williams, Esquire (w/o enc.)

BUSINESS • LITIGATION • SOLUTIONS

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# TURNER PADGET

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**Carmelo B. Sammataro**

E-mail: [SSammataro@TurnerPadget.com](mailto:SSammataro@TurnerPadget.com)

Writer's Direct Dial: (803) 227-4253

Writer's Direct Fax: (803) 400-1532

April 24, 2012

**VIA HAND DELIVERY**

The Honorable Daniel E. Shearouse  
Clerk, SC Supreme Court  
Supreme Court Building  
1231 Gervais Street  
Columbia, SC 29201

RECEIVED

APR 24 2012

S.C. Supreme Court

Re: Michael D. Crisp, Jr., Employee v. SouthCo, Inc., Employer, and Pennsylvania National Mutual Casualty Insurance Co., Carrier  
Supreme Court Tracking No.: 2010-180906  
File No.: 7030.101


Dear Mr. Shearouse:

Enclosed please find the original and one copy of a Notice of Appearance regarding the above-referenced matter. Please file the filing and return a clocked copy to me via our office courier. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.

  
Carmelo B. Sammataro

CBS/tj

Enclosures

cc: Kathryn Williams, Esquire (w/enc.)

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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY  
Court Of Common Pleas

Roger L. Couch, Circuit Court Judge

RECEIVED

APR 24 2012

S.C. Supreme Court

Opinion No. 4746 (S.C. Ct. App. filed September 29, 2010)

Michael D. Crisp, Jr., Employee .....Petitioner,

v.

SouthCo., Employer, and Pennsylvania National  
Mutual Casualty Ins. Co., Carrier .....Respondents.

NOTICE OF APPEARANCE

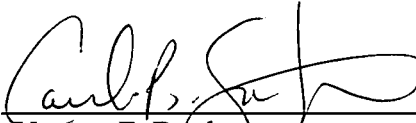
You will please take notice that Carmelo B. Sammataro of Turner, Padgett, Graham & Laney, P.A., hereby enters an appearance as counsel of record for Respondents in the above-captioned matter. The Clerk of Court is requested to add the name of Carmelo B. Sammataro to the list of attorneys representing the Respondents. Attorneys for all other parties are requested to make this change to their service lists for any filings related to this matter.

(Signature page to follow.)

TURNER PADGET GRAHAM & LANEY P.A.

April 24, 2012

By:



Vernon F. Dunbar

Post Office Box 1509

Greenville, SC 29602

Telephone: (864) 552-4600

Fax: (864) 552-4620

Carmelo B. Sammataro

Post Office Box 1473

Columbia, SC 29202

Phone: (803) 254-2200

Fax: (803) 799-3957

ATTORNEYS FOR RESPONDENTS

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

RECEIVED

APPEAL FROM SPARTANBURG COUNTY  
Court Of Common Pleas

APR 24 2012

S.C. Supreme Court

Roger L. Couch, Circuit Court Judge

---

Opinion No. 4746 (S.C. Ct. App. filed September 29, 2010)

---

Michael D. Crisp, Jr., Employee, .....Petitioner,

v.

SouthCo., Employer, and Pennsylvania National  
Mutual Casualty Ins. Co., Carrier .....Respondents.

---

PROOF OF SERVICE

---

I certify this 24th day of April 2012 that I served a copy of the NOTICE OF APPEARANCE upon other counsel of record, by mailing same, postage prepaid in the United States mail, addressed to the following:

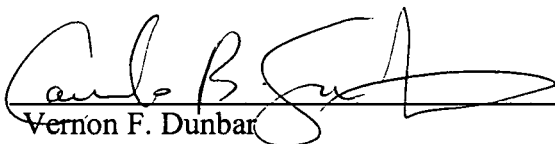
Kathryn Williams, Esquire  
Kathryn Williams, P.A.  
Post Office Box 10693  
Greenville, SC 29603

(Signature page to follow.)

TURNER PADGET GRAHAM & LANEY P.A.

April 24, 2012

By:

  
Vernon F. Dunbar

Post Office Box 1509

Greenville, SC 29602

Telephone: (864) 552-4600

Fax: (864) 552-4620

Carmelo B. Sammataro

Post Office Box 1473

Columbia, SC 29202

Phone: (803) 254-2200

Fax: (803) 799-3957

ATTORNEYS FOR RESPONDENTS

**KATHRYN WILLIAMS, P.A.**

ATTORNEYS AT LAW  
POST OFFICE BOX 10693  
GREENVILLE, SC 29603

KATHRYN WILLIAMS  
DONALD E. KAMB, JR.  
MELISSA S. MILLER  
TOM J. ERVIN  
OF COUNSEL

619 N. MAIN STREET  
GREENVILLE, SC 29601  
TELEPHONE (864) 235-6254  
FAX (864) 233-6591

April 13, 2012

The Honorable Daniel E. Shearouse  
Clerk of Court  
Supreme Court of South Carolina  
1231 Gervais Street  
Columbia, SC 29201

RECEIVED

APR 16 2012

S.C. Supreme Court  
pm 4-13-12  
FedEx

Re: **Crisp v. SouthCo, Inc., et al.**  
Court of Appeals Opinion No. 4746  
Supreme Court Case Tracking No.: **2010-180906**

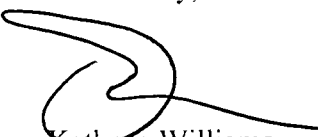
Dear Mr. Shearouse:

Enclosed herein please find the following items for filing in the above-referenced matter:

1. Brief of Petitioner (1 unbound original, 14 bound copies);
2. Certificate of Counsel; and
3. Certificate of Service by Mail.

Kindest regards,

Yours truly,

  
Kathryn Williams

KW:d  
Enclosures

cc: Vernon F. Dunbar, Esq.  
Turner Padgett Graham & Laney, P.A.  
P.O. Box 1509  
Greenville, SC 29602

**KATHRYN WILLIAMS, P.A.**

ATTORNEYS AT LAW  
POST OFFICE BOX 10693  
GREENVILLE, SC 29603

KATHRYN WILLIAMS  
DONALD E. KAMB, JR.  
MELISSA S. MILLER  
TOM J. ERVIN  
OF COUNSEL

619 N. MAIN STREET  
GREENVILLE, SC 29601  
TELEPHONE (864) 235-6254  
FAX (864) 233-6591

April 13, 2012

Vernon F. Dunbar, Esq.  
Turner Padgett Graham & Laney, P.A.  
P.O. Box 1509  
Greenville, SC 29602

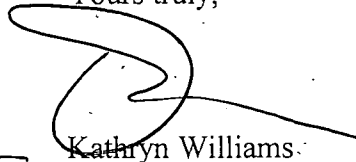
Re: **Crisp v. SouthCo, Inc., et al.**  
Court of Appeals Opinion No. 4746  
Supreme Court Case Tracking No.: **2010-180906**

Dear Vernon:

Enclosed is a copy of the Brief of Petitioner filed today in the above matter with the Supreme Court.

Kindest regards,

Yours truly,



Kathryn Williams

KW:d  
Enclosures

cc: The Honorable Daniel E. Shearouse  
Clerk of Court  
Supreme Court of South Carolina  
1231 Gervais Street  
Columbia, SC 29201



THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

---

Opinion No. 4746 (S.C. Ct. App. filed Sept. 29, 2010)

---

Michael D. Crisp, Jr., Employee, ..... Petitioner,

vs.

SouthCo, Inc., Employer, and Pennsylvania  
National Mutual Casualty Insurance Co.,  
Carrier, ..... Respondents.

---

**MOTION FOR EXTENSION OF TIME**

---

Kathryn Williams  
Kathryn Williams, P.A.  
P.O. Box 10693  
Greenville, S.C. 29603  
(864) 235-6254  
Attorney for Petitioner

Other Counsel of Record:

Vernon F. Dunbar, Esq.  
Turner Padgett Graham & Laney, P.A.  
P.O. Box 1509  
Greenville, SC 29602  
(864) 552-4601  
Attorney for Respondent

**RECEIVED**

MAR 16 2012


**S.C. Supreme Court**

Petitioner moves pursuant to Rules 224 and 234(b), SCACR, for an extension of time in which to file his Brief of Petitioner in the above matter. This motion is made on the following grounds:

1. The Brief of Petitioner and Appendix/Record on Appeal were originally due on February 13, 2012.
2. Petitioner filed a Motion for Extension of Time in which to file the brief and Appendix/Record on Appeal, and this Court graciously granted the motion, making the documents due on March 14, 2012.
3. Under separate cover, Petitioner today forwarded to the Court the additional copies of the Appendix, including the Record on Appeal.
4. However, due to continued current heavy calendar constraints, Petitioner's attorney is in need of additional time in which to file the Brief of Petitioner, and she believes that an additional thirty-day extension of time is warranted and is not interposed simply to delay the case.

WHEREFORE, Petitioner prays for an Order extending the time for filing the Brief of Petitioner in the above matter for an additional thirty days. With such an extension, the Return will be due on May 11, 2007.

Respectfully submitted,



*WV*

---

Kathryn Williams  
Kathryn Williams, P.A.  
P.O. Box 10693  
Greenville, S.C. 29603  
(864) 235-6254  
Attorney for Petitioner

Dated 3/14/12  
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

---

Opinion No. 4746 (S.C. Ct. App. filed Sept. 29, 2010)

---

Michael D. Crisp, Jr., Employee, ..... Petitioner,

vs.

SouthCo, Inc., Employer, and Pennsylvania  
National Mutual Casualty Insurance Co.,  
Carrier, ..... Respondents.

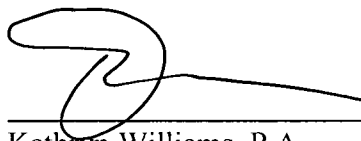
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**PROOF OF SERVICE**

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I certify that I have served the **MOTION FOR EXTENSION OF TIME** on Petitioners by depositing a copy in the U.S. Mail, postage prepaid, on March 14, 2012, addressed to:

Vernon F. Dunbar, Esq.  
Turner Padgett Graham & Laney, P.A.  
P.O. Box 1509  
Greenville, SC 29602



---

Kathryn Williams, P.A.  
P.O. Box 10693  
Greenville, S.C. 29603  
(864) 235-6254  
Attorney for Respondent

**RECEIVED**

MAR 16 2012

**S.C. SUPREME COURT**

**KATHRYN WILLIAMS, P.A.**

ATTORNEYS AT LAW  
POST OFFICE BOX 10693  
GREENVILLE, SC 29603

KATHRYN WILLIAMS  
DONALD E. KAMB, JR.  
MELISSA S. MILLER  
TOM J. ERVIN  
OF COUNSEL

619 N. MAIN STREET  
GREENVILLE, SC 29601  
TELEPHONE (864) 235-6254  
FAX (864) 233-6591

March 14, 2012

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

Re: **Crisp v. SouthCo, Inc., et al.**  
Case Tracking No.: 2010-180906

Dear Mr. Shearouse:


Enclosed herein please find the following items for filing in the above-referenced matter:

1. Motion for Extension of Time (original and six copies);
2. Proof of Service by Mail; and
3. Filing fee (\$25.00).

By copy of this letter, I am also serving Respondents's attorney with a copy of the same.

Kindest regards,

Yours truly,



Kathryn Williams

KW:d  
Enclosures

cc: Vernon F. Dunbar, Esq.  
Turner Padgett Graham & Laney, P.A.  
P.O. Box 1509  
Greenville, SC 29602

check# 27592  
\$25.00

**RECEIVED**

MAR 16 2012

**S.C. SUPREME COURT**

pm 3-14-12

**KATHRYN WILLIAMS, P.A.**

ATTORNEYS AT LAW  
POST OFFICE BOX 10693  
GREENVILLE, SC 29603

KATHRYN WILLIAMS  
DONALD E. KAMB, JR.  
MELISSA S. MILLER  
TOM J. ERVIN  
OF COUNSEL

619 N. MAIN STREET  
GREENVILLE, SC 29601  
TELEPHONE (864) 235-6254  
FAX (864) 233-6591

March 14, 2012

The Honorable Daniel E. Shearouse  
Clerk of Court  
Supreme Court of South Carolina  
1231 Gervais Street  
Columbia, SC 29201

Re: **Crisp v. SouthCo, Inc., et al.**  
Case Tracking No.: 2010-180906

Dear Mr. Shearouse:

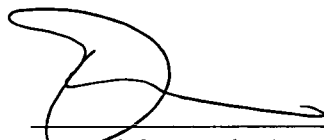
Enclosed in two separate boxes are 13 additional copies of the Appendix in this matter, including 13 additional copies of the Record on Appeal.

The Brief of Petitioner will be filed separately.

Kindest regards,

Yours truly,

Kathryn Williams, P.A.

  
Donald E. Kamb, Jr.

**RECEIVED**

MAR 15 2012

S.C. SUPREME COURT  
FedEx 3-14-12

dek  
Enclosures

cc: Vernon F. Dunbar, Esq. (w/o encl.)

# The Supreme Court of South Carolina

Michael D. Crisp, Jr.,  
Employee,

Petitioner,

v.

SouthCo, Inc., Employer, and  
Pennsylvania National Mutual  
Casualty Insurance Co.,  
Carrier,

Respondents.

The Honorable Roger L. Couch  
Spartanburg County  
Trial Court Case No. 2007-CP-42-10588

---

## ORDER

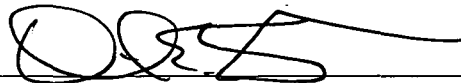
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For good cause having been shown, the time for serving and filing the Brief of Petitioner and additional copies of the Appendix in the above entitled matter is hereby extended until March 14, 2012.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

February 14, 2012

cc: Kathryn Williams, Esquire  
Vernon F. Dunbar, Esquire

**KATHRYN WILLIAMS, P.A.**

ATTORNEYS AT LAW  
POST OFFICE BOX 10693  
GREENVILLE, SC 29603

KATHRYN WILLIAMS  
DONALD E. KAMB, JR.  
MELISSA S. MILLER  
TOM J. ERVIN  
OF COUNSEL

619 N. MAIN STREET  
GREENVILLE, SC 29601  
TELEPHONE (864) 235-6254  
FAX (864) 233-6591

February 13, 2012

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

Re: **Crisp v. SouthCo, Inc., et al.**  
Case Tracking No.: 2010-180906

Dear Mr. Shearouse:

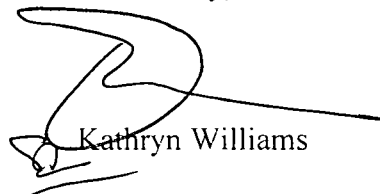
Please allow this letter to serve as my Motion for Extension of Time in which to file the Appendix and Brief of Petitioner in the above matter due to extensive current calendar constraints. The undersigned certifies that this request for a thirty-day extension of time is warranted and is not interposed to delay the case.

As the Appendix and brief are currently due on February 13, 2012, by my calculations, with such an extension, the documents will now be due on March 14, 2012.

Enclosed is my check in the amount of \$25.00 for filing this motion.

Kindest regards,

Yours truly,



Kathryn Williams

KW:dek  
Enclosure

cc: Vernon F. Dunbar, Esq.

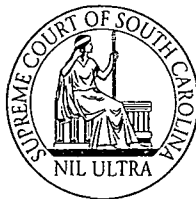
Check # 27396  
\$25.00

**RECEIVED**

FEB 14 2012

S.C. SUPREME COURT

pm 2-13-12



# 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

January 12, 2012

Kathryn Williams, Esquire  
P.O. Box 10693  
Greenville, SC 29603

Re: Crisp, Michael v. SouthCo Inc.

Dear Ms. Williams:

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 February 13, 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,

*Daniel E. Shearouse*  
DS

CLERK

DES/lda

Enclosure

cc: Vernon F. Dunbar, Esquire  
The Honorable Tanya Gee



THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

---

Opinion No. 4746 (S.C. Ct. App. filed Sept. 29, 2010)

---

**RECEIVED**

DEC 22 2010

S.C. Supreme Court

Michael D. Crisp, Jr., Employee, ..... Petitioner,

vs.

SouthCo, Inc., Employer, and Pennsylvania  
National Mutual Casualty Insurance Co.,  
Carrier, ..... Respondents.

---

**PETITION FOR WRIT OF CERTIORARI**

---

Kathryn Williams  
Kathryn Williams, P.A.  
619 North Main Street  
P.O. Box 10693  
Greenville, SC 29603  
(864) 235-6254  
Attorney for Petitioner

Other Counsel of Record:

Vernon F. Dunbar, Esq.  
Turner Padgett Graham & Laney, P.A.  
P.O. Box 1509  
Greenville, SC 29602  
(864) 552-4601  
Attorney for Respondent

**TABLE OF CONTENTS**

Certificate of Counsel ..... 1

Questions Presented ..... 1

Statement of the Case ..... 1

Arguments

    I.    The Court of Appeals erred in reversing the Circuit Court and finding  
          that substantial evidence supports the Workers' Compensation  
          Commission's finding that Crisp has not sustained physical brain  
          damage ..... 6

Conclusion ..... 14

## **CERTIFICATE OF COUNSEL**

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled upon by the Court of Appeals on November 22, 2010.

### **QUESTION PRESENTED**

- I. Did the Court of Appeals err in reversing the Circuit Court and finding that substantial evidence supports the Workers' Compensation Commission's finding that Crisp has not sustained physical brain damage where the Commission's specific finding directly contradicts another of the Commission's findings?
- II. Did the Court of Appeals err in reversing the Circuit Court and finding that substantial evidence supports the Commission's finding that Crisp has not sustained physical brain damage where the Commission's specific finding is not supported by substantial evidence?
- III. Did the Court of Appeals err in reversing the Circuit Court and finding that substantial evidence supports the Commission's finding that Crisp has not sustained physical brain damage where the Commission rejected the other expert's neuropsychological report such that the only conclusion that could be reached on the evidence is that Crisp has sustained physical brain damage within the meaning of the Workers' Compensation Act?

### **STATEMENT OF THE CASE**

This is an appeal from the Workers' Compensation Commission. Michael Crisp sought additional benefits for injury by accident he sustained on March 10, 2004 while working for SouthCo, Inc. He specifically contended he sustained injuries to his head, brain, neck, back, right upper extremity, and psyche as a result of the accident, and he sought continued temporary compensation benefits and continued medical treatment, including treatment in a traumatic brain

injury program.

SouthCo, and its workers' compensation insurance carrier Pennsylvania National (together "SouthCo"), admitted Crisp sustained injury by accident as alleged and admitted that he sustained compensable injury to his neck, back, and right upper extremity. However, SouthCo denied Crisp sustained compensable injury to any other body part or system. SouthCo specifically denied Crisp sustained a brain injury and physical brain damage as a result of the accident.

By Order dated August 1, 2006, the Hearing Commissioner found Crisp sustained compensable injuries to his neck, back, right upper extremity, head, and psyche as a result of the admitted injury by accident. While the Commissioner found Crisp sustained a compensable head injury and made very specific findings concerning the facts and the conditions diagnosed, including compensable neuropsychological and cognitive disorders, the Commissioner found that he had not sustained a physical brain injury. Nevertheless, the Commissioner ordered additional psychological and neuropsychological treatment, including evaluation and treatment in a brain injury center. (R. pp. 15-35)

SouthCo did not appeal the Commissioner's order. Crisp appealed to the Full Commission Panel contending the Commissioner erred in finding he has not sustained physical brain damage. By Order dated April 3, 2007, the Commission's Appellate Panel affirmed and adopted the Hearing Commissioner's Order. (R. pp. 12-14)

Crisp appealed to the circuit court for Spartanburg County, again contending the Commission erred in finding he has not sustained physical brain damage as a result of his injury by accident. The appeal came before the Honorable Roger L. Couch on June 10, 2008, and he filed an Order dated June 30, 2008. (R. pp. 1-10) Judge Couch reversed the Commission's conclusion concerning

Crisp's alleged brain injury.

From the foregoing, it is apparent the Commission made findings consistent with all of the symptoms and conditions on which Dr. Moss made his diagnosis of traumatic brain injury and physical brain damage, including chronic headaches, mild verbal memory problems, attention and concentration problems, problem solving and inhibition problems, probable personality change due to head injury, exacerbation of obsessive-compulsive tendencies, decrease in the sense of smell, frontal lobe brain injury, traumatic closed head injury, and Cognitive Disorder NOS. (Finding of Fact #6) . . . Nevertheless, despite finding Dr. Moss credible, adopting the findings of brain injury related symptoms and conditions that he used to diagnose frontal lobe brain injury and physical brain damage, and awarding treatment in a "brain injury program" he recommended, the Commission determined that claimant had not sustained physical brain injury. That conclusion contradicts the Commission's findings of brain injury related conditions, such as Cognitive Disorder NOS, and is clearly erroneous. The Commission rejected the other expert's report, so there is no other credible evidence on the record on which the Commission can base its finding that claimant did not sustain physical brain damage.

Therefore, because the only evidence on the record is that claimant has sustained frontal lobe brain injury and physical brain damage, it is the determination of this Court that the Commission's finding to the contrary is erroneous, is not supported by substantial evidence, and is reversed. Furthermore, since the only conclusion that can be reached on this evidence is that claimant has sustained frontal lobe brain injury and physical brain damage, this Court finds as a matter of law that claimant has sustained physical brain damage within the meaning of the Act.

(R. pp. 4-10)

The effect of Judge Couch's Order is to reverse only that part of Finding of Fact #23 that states Crisp "has not sustained a physical brain injury." (R. p. 31, Finding of Fact #23) Because SouthCo did not appeal the Commission's Order, the rest of the Hearing Commissioner's Order is final and is not subject to collateral attack. See Reese v. CCI Constr. Co., 334 S.C. 600, 514 S.E.2d

144 (Ct.App.1999)(unappealed order of the Commission is the law of the case and not subject to collateral attack).

SouthCo appealed to the Court of Appeals arguing primarily that Judge Couch erred in reversing the Commission. The Court determined that the circuit court erred in reversing the Commission's finding that claimant did not sustain physical brain damage because it found substantial evidence on the record to support that finding. (Appendix, pp. 82-89) Crisp's Petition for Rehearing was denied by Order dated November 22, 2010. (Appendix, pp. 106-107)

The evidence on the record shows that Crisp testified he was employed by SouthCo to hydroseed grass and perform construction related work. (R. p. 124, line 24-p. 125, line 3; p. 125, line 23-p. 126, line 15) Crisp readily admitted that he has had difficulty with abuse of alcohol and drugs in the past but stated that he has been sober since May 29, 2003 with the aid of daily Narcotics Anonymous meetings. (R. p. 125, lines 4-22; p. 152, lines 1-4; p. 159, line 24-p. 160, line 3)

On March 10, 2004, Crisp was assisting his coemployees to erect a silt fence, and to accomplish this task, Crisp held a pole while a coemployee pressed the pole into the ground by lowering the bucket of a Bobcat earthmover. Unfortunately, while performing this procedure, the bucket detached from the Bobcat and fell onto Crisp covering him. Crisp stated that he had simply bent down to place another pole, and the next thing he remembered was running toward the truck looking at his bleeding hand. He stated that his co-workers also indicated to him that his head was bleeding. (R. p. 126, line 16-p. 128, line 23) He was taken to the emergency room and subsequently underwent treatment for injuries to his right arm/hand, neck, and back and for headaches and psychological difficulties. (R. p. 128, line 24-p. 129, line 19; p. 134, lines 4-15; p. 149, line 5-p. 150, line 20)

Crisp testified that he also developed difficulty with focus and absent-mindedness following this accident, along with severe headaches. He stated that he complained to each of his doctors about the headaches but that he first noticed his problems focusing in January 2005. He explained that his wife had mentioned to him after his accident and before January 2005 that he needed to get medical evaluation and treatment for his difficulty focusing, but that he first noticed the problem after she left and was no longer available to do things for him. (R. p. 129, line 20-p. 133, line 4) He denied ever having any similar problems prior to his injury by accident. (R. p. 145, line 16-p. 146, line 7) Crisp was evaluated specifically for these problems by neuropsychologist Dr. Robert Moss in April 2005. (R. p. 133 line 5-p. 134, line 1; pp. 373-403)

Crisp stated that he continues to experience pain from his hips, through his low back, and up to his neck. He stated that the pain in his neck is constant, the pain in his low back is very sharp, and as a result, he cannot get comfortable at night to sleep more than a few hours. If he tries to do anything around the house during the day, he will have to take pain medication and spend the evening on the couch. His hand is better, but he has trouble with activities such as pumping gas with that hand. He still gets severe headaches some three to four times per week. Crisp stated that he is also still experiencing depression and does not feel worthy as a human being since he can no longer provide adequately for his family. (R. p. 137, line 9-p. 138, line 13; p. 134, lines 6-13) He stated that he is also still having difficulty focusing on doing more than one thing at a time and with completing tasks. He cannot take in information that is given to him too rapidly. He also continues to have trouble remembering things that he needs to do or appointments that he needs to keep, and he has to rely on his daughter to remind him. He has to set an alarm in the afternoon to remember to pick up his children from school. Crisp stated that his daughter is very responsible and helps him

a lot, and his father helps with his children and with his household. (R. p. 132, lines 4-24; p. 136, line 8-p. 137, line 8; p. 138, line 14-p. 139, line 12; p. 141, line 18-p. 142, line 9; p. 144, lines 16-p. 145, line 15; p. 160, lines 4-22)

Crisp testified that he has not worked since the accident and is not able to work. He has done some very occasional odd jobs, such as picking up scrap, helping his landlord pick up around the mobile home park, and helping build a deck. However, he had trouble doing even these simple things due to increased pain in his neck and back. He stated that he was only able to pick up the scrap for one day, was only able to work on the deck for an hour at a time and only for three hours total, and was unable to use a hand drill. (R. p. 134, line 16-p. 136, line 7; p. 139, lines 13-17; p. 152, line 20-p. 159, line 23)

The medical records show that the emergency room physicians at Mary Black Hospital recorded that Crisp had been struck on the back of his head and neck and on his right hand by a falling Bobcat bucket. On examination, it was noted that Crisp had abrasions and contusions on his posterior head and neck and an open fractures of his right hand. (R. pp. 297-299) He underwent surgery on his hand with Dr. James Essman, and he was referred for further treatment of his neck and back injuries. (R. pp. 297-306)

Dr. John Klekamp evaluated Crisp on April 16, 2004 and noted that he complained of neck pain, back pain, and headaches following his work injury. A diagram filled out by Crisp for Dr. Klekamp on that date indicates that he was experiencing pain over the front and back of his head. (R. 336-337, 341-345) After examination and radiological evaluation, he diagnosed a left paracentral disc herniation at C6-7 and degenerative changes at T12-L1. (R. pp. 337-340, 351-352) He was subsequently referred for pain management treatment. (R. p. 340)

Dr. Kevin Koperer evaluated Crisp on August 12, 2004 and noted complaints of headaches and continued neck, back, and arm pain. He noted that Crisp's back and neck pain were aggravated by bending, prolonged sitting, turning, twisting, and rotating his head and that he described some numbness in the hip area. After examination, Dr. Koperer diagnosed cervical and lumbar strains, in addition to the hand fractures, and he recommended physical therapy, medications, and work restrictions, but he also noted that the employer had no light duty available. (R. pp. 360-363, 369) Dr. Koperer's in-office physical therapist specifically noted that Crisp described experiencing continued severe headaches, and despite treatment for his neck injury and other problems, these headaches persisted. (R. pp. 353-359)

On September 23, 2004, Dr. Koperer noted that Crisp and his wife returned to the office and that Crisp's wife inquired about further diagnostic testing for Crisp's head since he was continuing to experience severe headaches since being struck on the head in the initial accident. Dr. Koperer ordered an MRI scan of the brain, and this was subsequently reported to be normal, but Crisp continued to complain of headaches. (R. pp. 364-365)

Dr. Robert Moss provided a neuropsychological evaluation of Crisp on April 12-13, 2005. He recorded Crisp's description of the accident, as above, including inability to recall the impact of the bucket on him and lack of complete details surrounding the incident. He also noted that Crisp described continuing headaches and neck pain following the accident and more recent realization that he has difficulty with memory, bringing his mind to rest, and focusing on what he is trying to do. Crisp also related to Dr. Moss that since his accident, he has experienced increased irritability, increased intensity of washing and cleaning behaviors, and changes in his reading comprehension, ability to perform math calculations, receptive language comprehension, word finding, planning and

organization abilities, mechanical abilities, enjoyment of music, and his sense of taste and smell. Though Dr. Moss noted that Crisp described a substance abuse problem in the past, he also noted that Crisp had, at that time, been clean for a period of two years. (R. pp. 373-375)

Following the administration of an extensive battery of tests, including several tests designed to specifically measure level of effort, Dr. Moss observed that “all effort measures support the tests of cognitive functions as valid.” He also noted that the testing revealed a mild to moderate impairment in verbal memory, with several instances of confabulation, borderline auditory attention span, problems with impulsivity and attention, problems in establishing and maintaining cognitive set, difficulties with problem solving, concentration difficulties, significantly impaired repetition consistent with memory/concentration problems, and high levels of psychological distress. Of special note, behavioral testing showed significantly elevated levels in several areas, which Dr. Moss opined are consistent with behavioral changes associated with frontal lobe injuries. (R. pp. 375-378)

Dr. Moss ultimately diagnosed Cognitive Disorder NOS, polysubstance abuse in full sustained remission, probable personality change due to head injury, obsessive compulsive disorder, and traumatic brain injury. He stated that Crisp has experienced personality changes as a result of his injury, is experiencing psychological distress from his injury, and that the current findings, including exacerbation of obsessive-compulsive tendencies and decrease in the sense of smell, are consistent with frontal lobe injury. He recommended psychological and neuropsychological treatment, including medications, participation in a head injury program, and psychological counseling. (R. pp. 378-379) On March 6, 2006, Dr. Moss specifically opined that Crisp has sustained physical brain damage as a result of his March 10, 2004 injury by accident. (R. p. 403) Dr. Moss clearly and unequivocally reiterated these opinions in his deposition on March 15, 2006.

(R. p. 291, line 2-p. 293, line 16)

Neurologist Dr. Thomas Collings evaluated Crisp on May 24, 2005. He noted the same history described above and the medical reports of the other physicians, including the report and opinions of Dr. Moss. His report of Crisp's description of ongoing difficulty is similar to that related by Dr. Moss. (R. pp. 404-407) Dr. Collings noted that Crisp "does quite well on simple cognitive tasks asked of him during his examination today but more thorough neuropsychological testing and vocational testing reveal deficits which seem to exceed his premorbid state." (R. p. 407) He diagnosed traumatic brain injury/closed head injury due to the work-related injury by accident, polysubstance abuse in sustained remission, some personality change related to the head injury, and cervical strain and headaches related to the work injury, in addition to other physical injuries. (R. 407-408) Dr. Collings opined that Crisp has shown some slow improvement but has not yet reached maximum medical improvement and is in need of continuing neuropsychological and vocational support, including treatment at a brain injury center and ongoing psychological treatment and medications. (R. p. 408)

In his deposition, Dr. Collings stated that Crisp appears to have sustained a closed head injury, which he defined as global trauma to the brain, and he specifically reiterated his diagnosis of traumatic brain injury/closed head injury due to the work accident. (R. p. 186, line 20-p. 187, line 8; p. 237, line 20-p. 238, line 3; p. 241, lines 12-22) While he expressed some reservation due again to the differences he noted between his simple in-office examination and Dr. Moss's findings on neuropsychological exam, he also stated that the neuropsychological examination was a better indicator of brain injury than his in-office examination and that "taking it at face value, I would say it's the best information that would support that there's . . . significant change between this pre- and

post-condition.” (R. p. 213, line 2-p. 215, line 10; p. 226, lines 7-21) Dr. Collings stated that he put great weight on the neuropsychological report and that the recommendations in that report need to be followed in order to further delineate what has happened to Crisp and to treat his problems. (R. p. 235, line 20-p. 237, line 1; p. 239, line 23-p. 240, line 23; p. 242, line 24-p. 243, line 6)(see also R. pp. 400-402)

Psychologist Dr. David Price submitted a neuropsychological evaluation report on November 30, 2005. He interviewed Crisp and noted his medical evaluation and treatment to that point, including the evaluation provided by Dr. Moss. While Dr. Price submitted a very voluminous report, the majority of it is a recitation of the medical records and contains minimal testing. (R. pp. 428-483) The only testing that he administered was the MMPI-2 and the VIP. He stated that the MMPI showed severe psychological disorder and that the VIP, which he stated is a validity test, showed that responses were valid and that Crisp was compliant. (R. pp. 484-487) Dr. Price diagnosed Pain Disorder associated with both psychological factors and general medical condition, Adjustment Disorder with depressed mood, Obsessive-Compulsive Disorder, Polysubstance Dependence in current remission, Substance-induced Persisting Dementia, Partner Relational Problem, and Phase of Life Problem. (R. pp. 488-492) He opined that Crisp did not sustain a traumatic brain injury or concussion and that his symptoms are explained by the Substance-induced Persisting Dementia. He stated that psychologically, Crisp is able to perform some type of work. (R. pp. 489-492)

Dr. Moss responded to Dr. Price’s report and explained why his diagnosis of Substance-induced Persisting Dementia is not appropriate in this case, specifically that Dr. Price is unable to support his contention that Crisp meets the recognized criteria. He further explained why, in his opinion, the diagnosis of Cognitive Disorder NOS is appropriate. Dr. Moss stated that there were

several inconsistencies in Dr. Price's report, including for instance his diagnoses of several severe psychological conditions which would require significant impairment and his opinion that Crisp does not have significant impairment. He further stated that Dr. Price's evaluation was not a true neuropsychological evaluation, as he administered no neuropsychological testing. (R. pp. 394-399)

## ARGUMENTS

- I. **The Court of Appeals erred in reversing the Circuit Court and finding that substantial evidence supports the Workers' Compensation Commission's finding that Crisp has not sustained physical brain damage.**

The Commission found that Crisp sustained a traumatic closed head injury as a result of his injury by accident and that the head injury caused compensable neuropsychological injuries and cognitive disorders. However, in direct contradiction to those findings, the Commission also found that Crisp did not sustain physical brain damage. While the Circuit Court recognized the inherent contradiction found in these findings and reversed the Commission, the Court of Appeals reversed the Circuit Court and determined that the Commission's finding that claimant did not sustain physical brain damage is supported by substantial evidence. The Court of Appeals specifically stated that "[e]ven though the record presents conflicting evidence on the issue of whether Crisp suffered a physical brain injury, we conclude the circuit court erred in reversing the Commission." However, the issue is not strictly one of conflicting evidence, or even substantial evidence, but is an issue of the Commission's conflicting findings.

At issue is the General Assembly's provision in the third paragraph of §42-9-10 of the Workers' Compensation Act that

[n]otwithstanding the five-hundred-week limitation prescribed in this section or elsewhere in this title, any person determined to be totally and permanently disabled who as a result of a compensable injury is a paraplegic, a quadriplegic, or who has suffered *physical brain damage* is not subject to the five hundred week limitation and shall receive the benefits for life.

S.C. Code Ann. § 42-9-10 (2004)(emphasis added).

In the present case, Crisp was employed as a general laborer by SouthCo, a firm which is involved in hydroseeding grass and rebuilding fire-damaged houses. On March 10, 2004, Crisp was working with his coemployees to erect a silt fence when the bucket of the Bobcat earthmover that they were using to accomplish the task became detached and fell onto him. Crisp stated that he had simply bent down to place a fence pole, and the next thing he remembers is running away looking at his bleeding hand. He stated that his co-workers also indicated to him that his head was bleeding. Crisp was taken to the emergency room and subsequently underwent treatment for injuries to his right arm/hand, neck, and back and for headaches and psychological difficulties. (R. p. 125, line 23-p. 129, line 19)

Crisp testified that he also developed difficulty with focus and absent-mindedness following this accident, along with severe headaches. He stated that he complained to each of his doctors about the headaches, but that he first noticed his problems focusing in January 2005. He explained that his wife had mentioned to him after his accident and before January 2005 that he needed to get medical evaluation and treatment for his difficulty focusing, but that he first noticed the problem after she left and was no longer available to do things for him. He denied ever having any similar problems prior to his injury by accident. At that point, Crisp was evaluated specifically for those problems by psychologist Dr. Robert Moss. (R. p. 129, line 20-p. 134, line 15; p. 138, line 14-p. 139, line 17)

The medical records show that the emergency room physicians found abrasions and contusions on Crisp's posterior head and neck and an open fractures of his right hand. (R. pp. 299-300) He underwent surgery on his hand and was referred for further treatment of his neck and back

injuries. Dr. Hunter Leigh noted that Crisp complained of neck pain, nausea, and headache on March 26, 2004, and Dr. John Klekamp noted that he complained of neck and back pain and also headaches. (R. pp. 333-334, 336-340) A diagram filled out by Crisp for Dr. Klekamp on April 16, 2004 indicates that he was experiencing pain over the front and back of his head. (R. p. 343)

Crisp saw Dr. Kevin Kopera on August 12, 2004, and he noted complaints of headaches, in addition to continued neck, back, and arm pain. (R. p. 360) Dr. Kopera ordered physical therapy, and the therapist specifically noted that Crisp described experiencing severe headaches. (R. p. 353) Despite treatment for his neck injury and other problems, these headaches persisted. (R. pp. 357, 359)

On September 23, 2004, Dr. Kopera noted that Crisp's wife inquired about further diagnostic testing since Crisp was continuing to experience severe headaches since being struck on the head in the initial accident. Dr. Kopera ordered an MRI scan of the brain, and this was subsequently reported to be normal but Crisp continued to complain of headaches. (R. pp. 364-365)

Psychologist Dr. Robert Moss provided a neuropsychological evaluation of Crisp on April 12-13, 2005. He recorded Crisp's description of the accident, as above, including inability to recall the impact of the bucket on him and lack of complete details surrounding the incident. (R. p. 373) He also noted that Crisp described **continuing headaches and neck pain following the accident** and more recent realization that he has **difficulty with memory, bringing his mind to rest, and focusing on what he is trying to do.** (R. pp. 373-374) Crisp also related to Dr. Moss that since his accident, he has experienced **increased irritability, increased intensity of washing and cleaning behaviors, and changes in his reading comprehension, ability to perform math calculations, receptive language comprehension, word finding, planning and organization abilities,**

**mechanical abilities, enjoyment of music, and his sense of taste and smell.** Though Dr. Moss noted that Crisp described a substance abuse problem in the past, he also noted that Crisp had, at that time, been clean for a period of two years. (R. p. 374)

Dr. Moss administered an extensive battery of tests, including several tests designed to specifically measure level of effort, and he opined that **“all effort measures support the tests of cognitive functions as valid.”** (R. p. 375) Other testing revealed a **mild to moderate impairment in verbal memory, with several instances of confabulation, borderline auditory attention span, problems with impulsivity and attention, problems in establishing and maintaining cognitive set, difficulties with problem solving, concentration difficulties, significantly impaired repetition consistent with memory/concentration problems, and high levels of psychological distress.** Of special note, **behavioral testing showed significantly elevated levels in several areas, which Dr. Moss opined are consistent with behavioral changes associated with frontal lobe injuries.** (R. pp. 375-378)

Dr. Moss ultimately diagnosed **cognitive disorder NOS, polysubstance abuse in full sustained remission, probable personality change due to head injury, obsessive compulsive disorder, and traumatic brain injury.** He stated that

[o]n the basis of current examination, there are clear indications of deficits in verbal memory, attention, problem solving, and inhibition tied to his work injury. There are indications that he has likely experienced personality changes as a result of his injury. . . . Mr Crisp is experiencing psychological distress from his injury as well. **The exacerbation of obsessive-compulsive tendencies can also be associated with brain injuries involving the orbito-frontal area. This area is often affected in head injury cases due to the irregular shape of the skull and [the sense of smell] is often affected since the olfactory bulbs are there. The current findings would be consistent with frontal lobe injury.**

(R. p. 379)

Dr. Moss recommended psychological and neuropsychological treatment, including medications, participation in a head injury program, and psychological counseling. On March 6, 2006, **Dr. Moss specifically opined that Crisp has sustained physical brain damage as a result of his March 10, 2004 injury by accident.** (R. p. 403) He stated that given the extent of Crisp's physical problems and his poor insight into his own cognitive difficulties, it is not difficult to understand why the initial evaluating physicians has been unable to identify the brain injury. (R. p. 397) Dr. Moss clearly and unequivocally reiterated these opinions in his deposition on March 15, 2006. (R. p. 291, line 2-p. 293, line 16) Of note, he also clearly stated in his deposition that **all brain injuries are physical in nature and that is what is meant by the term "brain injury."** (R. p. 260, lines 2-7)

Dr. Thomas Collings, a neurologist, evaluated Crisp on May 24, 2005. He noted the same history described above and the medical reports of the other physicians, including the report and opinions of Dr. Moss. His report of Crisp's description of ongoing difficulty is similar to that related by Dr. Moss. Dr. Collings noted that Crisp "does quite well on simple cognitive tasks asked of him during his examination today **but more thorough neuropsychological testing and vocational testing reveal deficits which seem to exceed his premorbid state.**" He diagnosed **traumatic brain injury/closed head injury due to the work-related injury by accident**, polysubstance abuse in sustained remission, **some personality change related to the head injury**, and cervical strain and headaches related to the work injury, in addition to other physical injuries. Dr. Collings opined that Crisp has shown some slow improvement but has not yet reached maximum medical improvement and is in need of continuing neuropsychological and vocational support, including

treatment at a brain injury center and ongoing psychological treatment and medications. (R. pp. 404-408)

In his deposition, Dr. Collings stated that **Crisp appears to have sustained a closed head injury, which he defined as global trauma to the brain, and he specifically reiterated his diagnosis of traumatic brain injury/closed head injury due to the work accident.** (R. p. 186, line 20-p. 187, line 8; p. 237, line 20-p. 238, line 3; p. 241, lines 12-22) While he expressed some reservation because of the differences he noted between his simple in-office examination and Dr. Moss's findings on neuropsychological exam, he also stated that **the neuropsychological examination was a better indicator of brain injury than his in-office examination and that "taking it at face value, I would say it's the best information that would support that there's . . . significant change between this pre- and post-condition."** (R. p. 213, line 2-p. 215, line 10; p. 226, lines 7-21) Dr. Collings stated that he put great weight on the neuropsychological report and that the recommendations in that report need to be followed in order to further delineate what has happened to Crisp and to treat his problems. (R. p. 235, line 20-p. 237, line 1; p. 239, line 23-p. 240, line 23; p. 242, line 24-p. 243, line 6)

From this evidence, the Commission determined in part that "[a]s a result of his injury by accident, [Crisp] has sustained chronic headaches; mild verbal memory, attention and concentration, problem solving and inhibition problems; probable personality change due to head injury; exacerbation of obsessive-compulsive tendencies; decrease in the sense of smell; traumatic closed head injury; and Cognitive Disorder NOS." (R. p. 31, Finding of Fact #22) The Commission further correctly found that Crisp was not having any of these problems prior to his injury by accident. (R. p. 30, Finding of Fact #15) The Commission also specifically found that Dr. Moss's report and

opinions were more credible than the report offered by SouthCo's expert, Dr. Price, who had disagreed with Dr. Moss. (R. p. 31, Finding of Fact #19) The Commission also found Crisp sustained neuropsychological injuries and awarded further medical treatment for those injuries in a "brain injury program." (R. p. 32, Findings of Fact #25, 27; p. 34, Ruling of Law #5)

These findings were not appealed by either party and are now the law of the case. See Reese v. CCI Constr. Co., 334 S.C. 600, 514 S.E.2d 144 (Ct.App.1999)(unappealed finding of the Commission is the law of the case; failure to challenge finding is abandonment of issue).

Finding of Fact #22 is taken directly from the diagnoses made by Dr. Moss and Dr. Collings. (R. pp. 373-379, and specifically pp. 378-379; pp. 404-408, and specifically pp. 407-408) And significantly, Dr. Moss specifically testified that these diagnoses, and specifically the diagnoses of traumatic closed head injury and Cognitive Order NOS, constitute physical brain damage. (R. pp. 379, 403; depo of Moss at R. p. 251, lines 6-19, p. 254, line 12-p. 256, line 21, p. 258, line 7-p. 260, line 7, p. 292, line 2-p. 293, line 16) Defendants presented no evidence contradicting Dr. Moss on that point. Finding of Fact #22 is therefore directly contradictory to Finding of Fact #23, which states that Crisp has not sustained physical brain damage.

Similarly, Finding of Fact #23 is internally inconsistent. That finding states that "claimant has sustained a head injury resulting in cognitive disorders to his brain, but has not sustained a physical brain injury." However, as Dr. Moss explained, a head injury resulting in cognitive disorder is physical brain damage. (R. pp. 378-379, 403; depo of Moss at R. p. 254, lines 12-20, p. 260, lines 2-7)

Finding of Fact #22 and Finding of Fact #23 cannot be reconciled. The internal inconsistency in Finding of Fact #23 cannot be reconciled. For this reason, it is simply not enough to say that there

is substantial evidence to support the Commission's finding that Crisp has not sustained physical brain damage. Finding of Fact #23 is clearly erroneous and cannot be supported by substantial evidence. In short, reasonable minds cannot reach the conclusion the administrative agency reached in order to justify its action. See Brown v. Greenwood Mills, Inc., 366 S.C. 379, 391-93, 622 S.E.2d 546, 553-54 (Ct.App.2005).

Accordingly, the Circuit Court concluded as a matter of law that Crisp has sustained frontal lobe brain injury and physical brain damage within the meaning of the Workers' Compensation Act, as that is "the only conclusion that can be reached on this evidence." (R. p. 10) It is well settled that "where the evidence is susceptible of but one reasonable inference, the question is one of law for the court rather than one of fact for the Commission." Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, \_\_\_, 458 S.E.2d 76, 80 (Ct.App.1995).

The situation in this case is different than that found in the Court of Appeals' recent decision in Pack v. South Carolina Dep't of Transp., 381 S.C. 526, 673 S.E.2d 461 (Ct.App.2009). In Pack, the Circuit Court had found that "[t]he only medical evidence contained in the record supports the [Single Commissioner's] original finding that [Pack] sustained an injury to the brain" and concluded such as a matter of law. The Court of Appeals reversed the Circuit Court and remanded the case to the Commission for further factual findings because there was in fact conflicting evidence on the issue of brain injury in the record.

Here, the Commission made findings which basically adopted the assessment and diagnoses of one neuropsychologist, Dr. Moss, and specifically rejected the assessment of the other neuropsychologist, Dr. Price. (R. pp. 30-31, Findings of Fact Nos. 17-19, 22) The only other expert, Dr. Collings, specifically diagnosed traumatic brain injury/closed head injury based on Dr. Moss's

neuropsychological testing. (R. pp. 407-408; p. 237, line 20-p. 238, line 3) Dr. Collings testified in his deposition that there were basically three ways to determine if a person has physical brain damage: 1) CT or MRI scanning, 2) cognitive behavioral level of functioning, and 3) neuropsychological testing. (R. p. 212, lines 4-22)

Dr. Collings opined that the first two methods were inconclusive in this case. He stated that there can be physical damage to the brain that cannot be seen on such scans, and therefore, SouthCo's argument that the normal MRI and CT scans are substantial evidence that Crisp has not sustained physical brain damage is simply erroneous. (R. p. 185, line 23-p. 186, line 7; p. 187, lines 16-25; see also depo. of Moss, p. 260, lines 2-18; p. 292, lines 6-14)

As to the second method, Dr. Collings further specifically stated that while his own in-office examination of functioning raised questions in his mind, Dr. Moss's neuropsychological examination was a better indicator of brain injury than his own in-office examination. Dr. Collings opined that the third way to determine physical brain damage, neuropsychological testing, was "the best information that would support that there's . . . significant change between this pre- and post-condition," and he stated that he put great weight on that report. (R. p. 213, line 2-p. 215, line 10; p. 226, lines 7-21; p. 235, line 20-p. 237, line 1; p. 239, line 23-p. 240, line 23; p. 242, line 24-p. 243, line 6) Relying on that report, and despite the absence of radiological evidence and despite his questions about Crisp's level of functioning, Dr. Collings diagnosed traumatic brain injury/closed head injury. (R. pp. 407-408; p. 237, line 20-p. 238, line 3) He further opined that the findings of the neuropsychological report were a result of Crisp's work injury. (R. p. 241, lines 12-22)

While the Court of Appeals relied heavily on evidence from Dr. Collings in holding that the Commission's physical brain damage finding is supported by substantial evidence, the Court erred

in ignoring the fact that despite such evidence, **Dr. Collings ultimately concluded that Crisp sustained traumatic brain injury as a result of his work accident.** He stated that Dr. Moss's testing was the best evidence in this case and is the basis of his diagnosis of traumatic brain injury. (depo of Collings at R. p. 197, line 22-p. 198, line 14, p. 226, lines 7-25, p. 235, line 1-p. 236, line 19, p. 241, lines 12-22) He stated that while he saw some inconsistencies between the neuropsychological testing and his own examination, those inconsistencies were not enough to discredit the neuropsychological testing and that he relies on the neuropsychological information since it is more in-depth than what he can do in the examination room. (depo of Collings at R. p. 198, lines 4-14, p. 242, line 24-p. 243, line 6)

As such, it is error to base a decision on Dr. Collings statement to the effect that he had found only slight evidence to support physical brain damage if he disregards the neuropsychological report. The neuropsychological report cannot be removed from the evidence, and Collings himself relied on it. In fact, in the opinions of both Dr. Moss and Dr. Collings, it is the best evidence that such an injury has occurred. As both doctors stated, **the neuropsychological testing results are the clear and conclusive indicator that Crisp has sustained traumatic brain injury and physical brain damage.**

Finally, to the extent that the Court relied on Dr. Collings' statement that any brain injury Crisp sustained appeared to be minor, the statute in question does not mandate that an injured worker sustain a particular degree of physical brain damage. Even minor physical brain damage can have severe consequences. The statute merely states that the physical brain damage must exist. Whether a worker has sustained minor physical brain damage or severe physical brain damage, the existence of physical brain damage satisfies the statute. Here, all the probative expert evidence, including the

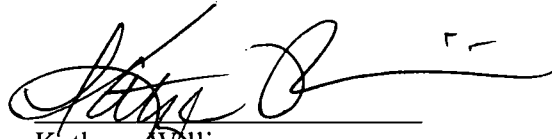
neuropsychological evidence, proves claimant sustained brain injury and physical brain damage within the meaning of the statute, and the Commission so found in Finding of Fact #22. That is the only conclusion that can be reached on this record. As such, the Commission should have found that Crisp sustained physical brain damage as a matter of law. Its finding to the contrary, Finding of Fact #23, is clearly erroneous and should be reversed.

## CONCLUSION

The Commission's Findings of Fact #22 and #23 are directly contradictory. Finding of Fact #22 is taken directly from the diagnoses made by Dr. Moss and Dr. Collings, and Dr. Moss specifically testified that these diagnoses, and specifically the diagnoses of traumatic closed head injury and Cognitive Order NOS, constitute physical brain damage. That finding was not appealed by either party and is the law of this case. Finding of Fact #23 however states just the opposite – that Crisp has not sustained physical brain damage. Therefore, Finding of Fact #22 and Finding of Fact #23 cannot be reconciled. For this reason, it is simply not enough to say that there is substantial evidence to support the Commission's finding that Crisp has not sustained physical brain damage. Finding of Fact #23 is clearly erroneous and cannot be supported by substantial evidence. In short, reasonable minds cannot reach the conclusion the administrative agency reached in order to justify its action.

The issue in this case is not one of conflicting evidence. The Commission made specific findings on the evidence, and the parties are no longer in dispute on that evidence, as neither party appealed any finding other than Finding of fact #23. The issue is rather one of conflicting findings. Finding of Fact #23 cannot be reconciled with the evidence or the Commission's other findings. As such, the Court of Appeals clearly erred in reversing the Circuit Court and finding that the Commission's Finding of Fact #23 is supported by substantial evidence. Crisp respectfully requests that this Court grant his petition for writ of certiorari.

Respectfully submitted,



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Date:

12/21/10

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Opinion No. 4746 (S.C. Ct. App. filed Sept. 29, 2010)

RECEIVED

DEC 8 2010

S.C. SUPREME COURT  
RECEIVED

DEC 22 2010

S.C. Supreme Court

Michael D. Crisp, Jr., Employee, ..... Petitioner,

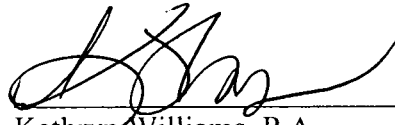
vs.

SouthCo, Inc., Employer, and Pennsylvania  
National Mutual Casualty Insurance Co.,  
Carrier, ..... Respondents.

CERTIFICATE OF SERVICE

This is to certify that the undersigned did cause the **PETITION FOR WRIT OF CERTIORARI** to be served upon the below-named by mailing a copy as addressed by U.S. Mail, proper postage paid, on the 21st day of December, 2010.

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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

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**S.C. Supreme Court**

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This is to certify that the undersigned did cause the **PETITION FOR WRIT OF CERTIORARI** to be served upon the below-named by mailing a copy as addressed by U.S. Mail, proper postage paid, on the 21<sup>st</sup> day of December, 2010.

The Honorable Tanya A. Gee  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211



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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM SPARTANBURG COUNTY  
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ROGER L. COUCH, Circuit Court Judge

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Michael D. Crisp, Jr., Employee, ..... Petitioner,

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SouthCo., Inc., Employer, and, Pennsylvania National  
Mutual Casualty Ins. Co., Carrier, ..... Respondents.

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**RESPONDENTS' RETURN TO  
PETITION FOR WRIT OF CERTIORARI**

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S.C. SUPREME COURT

**TABLE OF CONTENTS**

**Pages**

QUESTIONS PRESENTED ..... 1

I.    **DID THE COURT OF APPEALS CORRECTLY DECIDE THAT THE CIRCUIT COURT HAD EXCEEDED ITS SCOPE OF REVIEW WHEN THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION'S FINDINGS OF FACT ARE SUPPORTED BY SUBSTANTIAL EVIDENCE, DESPITE CONFLICTING EVIDENCE ON WHETHER CRISP SUFFERED A PERMANENT PHYSICAL BRAIN INJURY?**

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COUNTER-STATEMENT OF THE CASE ..... 2

ARGUMENTS

I.    **THE COURT OF APPEALS CORRECTLY DECIDED THAT THE CIRCUIT COURT HAD EXCEEDED ITS AUTHORITY WHEN THE SOUTH CAROLINA COMMISSION'S FINDINGS OF FACT ARE SUPPORTED BY SUBSTANTIAL EVIDENCE, DESPITE CONFLICTING FACTUAL EVIDENCE..... 6**

II.   **THE COURT OF APPEALS DID NOT ERR IN DEFERRING TO THE FACTUAL FINDINGS OF THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION IN ITS REVERSAL OF THE CIRCUIT COURT'S ORDER REGARDING THE ISSUE OF WHETHER CRISP SUFFERED PERMANENT PHYSICAL BRAIN DAMAGE PURSUANT TO SECTION 42-9-10 AS OPPOSED TO A BRAIN INJURY PURSUANT TO SOUTH CAROLINA COMMISSION REGULATION 67-1101. .... 11**

CONCLUSION ..... 14

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## **COUNTER-STATEMENT OF THE CASE**

In an Opinion filed on September 29, 2010, the South Carolina Court of Appeals unanimously reversed the Circuit Court's Decision. The Circuit Court found Michael Crisp [hereinafter "Crisp"] had sustained a physical brain injury, despite factual findings of the South Carolina Workers' Compensation Commission determining that Crisp had not suffered a physical brain injury. (Appendix pp. 82-89). Crisp filed a Petition for Rehearing with the Court of Appeals. (Appendix pp. 90-94). SouthCo, Inc., employer, and its worker's compensation insurance carrier, Pennsylvania National Mutual Casualty Insurance Company [hereinafter "Respondents"], filed a Reply to Crisp's Petition. (Appendix pp. 95-100). By Order dated November 22, 2010, the Court of Appeals promulgated an Order denying Crisp's Petition for Rehearing. (Appendix pp. 106-107). Crisp then filed a Petition for Writ of Certiorari by letter dated December 20, 2010.

Crisp suffered work related injuries to his neck, shoulder and right hand on March 10, 2004, when a Bobcat bucket struck him on the aforesaid body parts. (R. pp. 123, lines 3-9; 297 and 307). Contrary to Crisp's assertion in the "Statement of the Facts" as is set forth in his Petition on page 4, the Bobcat bucket did not detach, fall onto Crisp and completely cover him.

Crisp contended that he had sustained a permanent physical brain injury and was entitled to lifetime medical and indemnity benefits pursuant to Section 42-9-10 of the South Carolina Code of Laws. (R. pp. 17-18).

By Order dated August 1, 2006, the Hearing Commissioner found and concluded that Crisp had sustained injuries to the back, neck, right upper extremity and hand and

a psychological injury emanating from the work related accident of March 10, 2004. (R. pp. 15-35). The Hearing Commissioner further found and concluded that Crisp had not sustained a traumatic physical brain injury pursuant to Section 42-9-10. Rather, the Commission awarded Crisp ongoing medical treatment due to the impact of chronic pain stemming from the right hand and upper extremity injuries and because of Crisp's preexisting and long standing psychological problems stemming from an extensive history of drug use. (R. pp. 32-35). See, *S.C. Annot. §42-9-10 (2010)* and *Regulation 67-1101 (2010)*.

Crisp appealed the Hearing Commissioner's Order to the South Carolina Workers' Compensation Full Commission Appellate Panel [hereinafter "Appellate Panel"]. In a Decision and Order dated April 3, 2007, the Appellate Panel unanimously affirmed the Order of the Hearing Commissioner. (R. pp. 12-14).

By way of background, Crisp attended school through age 16. Crisp performed poorly in school and repeated the 8<sup>th</sup> grade four times. (R. pp. 433 and 523). Crisp has an extensive history of abusing narcotic drugs and alcohol. Crisp admitted being addicted to marijuana, cocaine, crystal meth, heroine, and LSD. Crisp began using drugs and alcohol at age 11 and continued using such through early adulthood in 2003. (R. 438).

At the time of the accident, Crisp did not complain of a head injury nor was a loss of consciousness reported. During Crisp's treatment at the emergency room, he was cognizant enough to apprise the medical staff that he was a recovering drug user and could not be prescribed narcotic medication. (R. p. 151, lines 3-9 and p. 299). Crisp

never complained of a head injury during the entire course of his medical treatment at the emergency room or during orthopaedic treatment with Dr. James Essman, who treated Crisp's fracture of the right hand and right and middle ring fingers. (R. pp. 303 and 307-328).

Crisp received continuous medical treatment from the date of his injury, March 10, 2004 through April 13, 2005. Crisp was treated by Drs. James Essman, J. Hunter Leigh, John W. Klekamp, Terrance M. Clark, Kevin Kopera, Robert Caswell and Daniel Falcon. (R. pp. 262, lines 10-25; 297-303; 336; 352-353; and 360-371). The numerous physician reports from this period of time do not reference a brain injury or complaints of a head injury because of the accident.

Crisp later treated with Dr. Kevin Kopera for neck and low back pain. Dr. Kopera eventually discussed with Crisp the prospect of returning to gainful employment. Dr. Kopera noted that Crisp was apprehensive about returning to work in a report dated September 2, 2004. (R. p. 363). During Crisp's next visit with Dr. Kopera on September 23, 2004, complaints of headaches were raised in relation to the neck injury or cervical strain. (R. p. 364). Dr. Kopera ordered a MRI of the head and neck, despite the fact Crisp was neurologically intact upon physical examination. (R. p. 364). Dr. Kopera later discharged Crisp to return to work upon review of a normal MRI.

Crisp's counsel referred him to Robert Moss, a licensed psychologist, for an evaluation on April 12, 2005. (R. p. 373). Although Robert Moss does not possess a medical degree and is not trained in the field of radiology, he opined that Crisp had suffered a physical brain injury. This was the first and only assessment of a physical

brain injury and this occurred approximately fourteen (14) months after the work related accident. (R. pp. 248-248 and 380-381).

Robert Moss opined that Crisp had sustained a physical brain injury despite a normal MRI of the brain; no emergency room reports or other medical reports of a head injury; no abnormal neurological evaluations; and no reported loss of consciousness. (R. pp. 365 and 368).

By contrast, Dr. Thomas Albert Collins, a Board Certified Neurologist, testified that Crisp did not suffer a head injury, but rather a neck injury with an abrasion. (R. p. 217, lines 8-11). Dr. Collins testified that individuals sustaining closed head injuries would usually have chronic and severe headaches for the first several months immediately after the injury; and the headaches would improve over time. (R. p. 220, lines 1-4).

According to Dr. Collins, Crisp did not complain of severe or chronic headaches in the first weeks after the accident. Because Crisp never complained of chronic or severe headaches, Dr. Collins testified that this fact refutes the allegation of a purported physical brain injury. (R. pp. 222, lines 1-25; and 223, lines 1-12).

Dr. Collins testified he was unable to opine that Crisp had sustained a traumatic physical brain injury in view of his neurological examination; a review of the imaging studies; and by comparing Crisp's level of functioning pre and post-accident. (R. pp. 212-215). Dr. Collins also questioned the validity of Robert Moss' neuropsychological examination. Dr. Collins found numerous inconsistencies with Moss' report in

comparison to his neurological examination, review of the medical records and his interaction with Crisp. (R. p. 227).

The evidence in the record reflects that Crisp is the custodial parent for two of his three children. Crisp lives with and cares for his daughter, who was twelve years old at the time of the hearing, and his son, who was nine years old at the time of the hearing. (R. p. 136, lines 8-20; and 431). Aside from performing all childcare duties, Crisp grocery shops, pays bills, rides a motorcycle on a frequent basis, files insurance forms and income tax returns. Moreover, since the accidental injury of March 10, 2004, Crisp has performed jobs that involve painting, installing carpet, performing carpentry work, clearing lots and selling used household appliances. (R. pp. 153-159, 167 and 532).

### **ARGUMENTS**

**I. THE COURT OF APPEALS CORRECTLY DECIDED THAT THE CIRCUIT COURT HAD EXCEEDED ITS AUTHORITY WHEN THE SOUTH CAROLINA COMMISSION'S FINDINGS OF FACT ARE SUPPORTED BY SUBSTANTIAL EVIDENCE, DESPITE CONFLICTING FACTUAL EVIDENCE.**

The Appellate Court in a worker's compensation appeal has authority only to review the facts to determine whether or not there is competent evidence to support the findings of the fact finding body. Arnold v. Benjamin Booth Co., 257 S.C. 337, 185 S.E.2d 830 (1971). Accordingly, an award of the South Carolina Workers' Compensation Commission may only be reversed if there is an absence of substantial competent evidence to support an award. Linen v. Ruscon Construction Co., 286 S.C. 67, 332,

S.E.2d 211 (1985); and Cross v. Concrete Materials, 236 S.C. 440, 114 S.E.2d 828 (1960).

In the instant case, there is medical evidence, expert testimony, and lay evidence to support the Commission's findings of fact that Crisp did not suffer a physical brain injury. The Commission's findings in this regard are supported by the diagnostic medical tests, medical records, and the testimonies of Drs. Collins and David Price. Also, the testimony of Wanda Surett, owner of SouthCo., supports the Commission's determination that Crisp's cognitive dysfunction existed well before his work related accident. Ms. Surett testified that after she first hired Crisp, she observed he was unable to remember things. (R. p. 166, lines 3-10; pp. 170-171). She often had to refresh Crisp's memory concerning work tasks. Ms. Surett testified that her company employs persons who have had a history of drug use, and it is not unusual to have to repeat instructions to them. (R. p. 172, lines 5-8).

The testimony of Ms. Surett reflects memory problems and cognitive dysfunction existed before Crisp's accident of March 10, 2004. Ms. Surett's testimony is corroborated by Dr. David Price's diagnosis of substance induced persisting dementia; which in turn supports Commissioner Susan Barden's findings and conclusions as is expressed in her concurring opinion. (R. pp. 14, 488-489, 549).

The evidence of pre-accident memory loss was ignored or inappropriately weighed by the Circuit Court in its decision to reverse the Order of the South Carolina Worker's Compensation Commission. (R. pp. 1-10; 238, lines 4-25; 274, lines 3-15; 489).

The medical records do not indicate or document that Crisp suffered a physical brain injury or loss of consciousness. There is no documentation in the medical records that Crisp had any post traumatic amnesia, but rather Crisp had a complete recall of the chain of events of the accident. Further, there is no objective medical evidence of a brain injury in the entire record such as an abnormal CT scan, MRI or EEG.

Absent objective medical tests, x-rays and scans reflecting a "*physical brain injury*", a psychologist or neuro-psychologist's opinion that brain damage was sustained is unsupported by the medical evidence. Such an opinion is tantamount to surmise, speculation and conjecture. A psychologist's practice and supervision is limited "to the area(s) of competence in which proficiency has been gained through education, training and experience as demonstrated to the Board..." *S.C. Reg. 100-4(C)(1) (2009)*. There is no evidence Robert Moss has the education, training or experience to interpret diagnostic medical tests. (R. p. 248, lines 2-15).

Dr. Thomas Collins, a neurologist, testified about his examination of Crisp. Dr. Collins had assessed Crisp as being capable of performing the same activities subsequent to his accident as he had in his pre-morbid state. (R. p. 213). Dr. Collins indicated that the level of functioning as opined by Dr. Moss was totally contradictory to his findings and observations. (R. pp. 214-215). Dr. Collins testified that he had difficulty finding any evidence to support Dr. Moss' conclusion that Crisp had suffered a physical brain injury. (R. p. 215, lines 5-10).

According to Dr. Collins, one of the most prevalent signs of a head injury is persistent headaches. A review of the medical records reflects that Crisp did not

complain of chronic headaches from March 2004 until he saw Robert Moss upon the referral of his attorney. (R. pp. 206-209). In the meantime, Crisp had treated with physicians at Mary Black Health System in the Emergency Room Department, Drs. James Essman and John W. Klekamp, various physical therapists and other medical providers without complaining of headaches. Again, this lay and medical evidence constitutes substantial evidence in support of the Commission's findings that Crisp did not suffer physical brain damage.

Furthermore, on August 12, 2004, Crisp was treated by Dr. Kevin Kopera. Upon physical examination, Dr. Kopera noted that Crisp had "no cognitive deficits." (R. p. 361). In a subsequent visit on September 23, 2004, the issue of chronic and persistent headaches was first raised, along with a blow to the head. (R. p. 364). Dr. Kopera ordered an MRI scan of the brain, despite his opinion that Crisp appeared "neurologically intact". (R. p. 364). The MRI was performed on October 6, 2004. (R. p. 365). In a report dated November 1, 2004, Dr. Kopera assessed Crisp as having attained maximum medical improvement and released him from his care with medical ratings of five (5%) percent to the spine for the lumbar injury and an eight (8%) percent medical impairment with respect to the cervical spine injury. Dr. Kopera found no medical impairment of the brain. (R. p. 368).

Despite evidence supporting the Commission's Decision that Crisp did not suffer a compensable physical brain injury, the Circuit Court erroneously substituted its judgment for that of the Commission on the weight of the evidence on questions of fact by virtue of focusing only on the report of Robert Moss. See, DeBruhl v. Kershaw

County Sheriff's Dept., 303 S.C. 20, 397 S.E.2d 782 (Ct. of App. 1990). The Circuit Court's decision to reverse the Commission in view of this evidence meant it abdicated its responsibility and exceeded its authority, as an Appellate Court by weighing the sufficiency of the evidence presented to the Commission. Windham v. City of Florence, 221 S.C. 350, 70 S.E.2d 553 (1952) and Muir v. C. R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. of App. 1999).

The Court of Appeal's Decision reversing the Circuit Court's Order and reinstating the Decision of the South Carolina Workers' Compensation Commission is correct as a matter of law because there is substantial evidence to support the Commission's findings of fact regarding the non-occurrence of a physical brain injury stemming from the work related accident of March 10, 2004. Therrell v. Jerry's Inc., 370 S.C. 22, 633 S.E.2d 893 (2006). It is obvious the Circuit Court substituted its judgment for that of the Commission on the weight of the evidence on questions of fact by virtue of its exclusive focus on the report of Robert Moss. See, DeBruhl v. Kershaw County Sheriff's Dept., 303 S.C. 20, 397 S.E.2d 782 (Ct. of App. 1990). Despite the possibility of drawing inconsistent conclusions from evidence presented, this fact does not prevent the South Carolina Workers' Compensation Commission's Decision from being supported by substantial evidence. Sharp v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999). See also, Tiller v. Nat'l Health Care Center of Sumter, 334 S.C. 333, 513 S.E.2d 843 (1999).

The petition should be denied for the following reasons. First, Crisp has presented no novel questions of law. Second, there was no dissent in the Court of

Appeals Decision; and the Decision of the Court of Appeals in this case does not conflict with a prior Decision of the Supreme Court. Last, there are no substantial constitutional issues or Federal questions involved. Accordingly, Crisp has failed to present compelling reasons in support of his Petition.

**II. THE COURT OF APPEALS DID NOT ERR IN DEFERRING TO THE FACTUAL FINDINGS OF THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION IN ITS REVERSAL OF THE CIRCUIT COURT'S ORDER REGARDING THE ISSUE OF WHETHER CRISP SUFFERED PERMANENT PHYSICAL BRAIN DAMAGE PURSUANT TO SECTION 42-9-10 AS OPPOSED TO A BRAIN INJURY PURSUANT TO SOUTH CAROLINA COMMISSION REGULATION 67-1101.**

Crisp ignores the long-held proposition of law that when there is a conflict in the evidence from either different witnesses or the same witnesses, the Findings of Fact of the Workers' Compensation Commission as triers of the fact are conclusive. Pack v. State Dep't. of Transp., 381 S.C. 526, 536, 673 S.E.2d 461, 466 (Ct. of App. 2009); and Rogers v. Kunja Knitting Mills, Inc., 312 S.C. 377, 381, 440 S.E.2d 401, 403 (Ct. of App. 1994).

Crisp argues that this Court erred in reversing the Circuit Court's finding and conclusion that he sustained physical brain damage. Specifically, Crisp argues that Findings of Fact 22 and 23 contradict one another. Therefore, this alleged inconsistency should be resolved in his favor with a finding of a compensable physical brain injury. This argument ignores other Findings of Fact in which the Commission concluded Crisp's need for medical treatment is as a result of a long-standing preexisting psychological condition and drug use. The preexisting cognitive disorders resulting from a history of substance abuse and a personality disorder were aggravated

by Crisp's back, neck and right upper extremity pain. *See*, Findings of Fact 16, 20, 24 and 25; and Conclusions of Law 3 and 4. (Recd. pp. 30-34 and R. pp. 407 and 488).

The Commission placed greater weight on non-refutable evidence that Crisp had normal MRI scans, normal radiological imaging of the brain, and normal neurological examination. (Finding of Fact 16, R. p. 30). As a matter of fact, in Finding of Fact 20, the Commission unequivocally states that the expert report and opinions of Dr. Collins are credible. The Order summarizes Dr. Collins' expert medical conclusions as a factual finding as follows:

**"Cognitive problems usually start immediately after the injury, that the seriousness of the impact of the head trauma is diminished since claimant had no initial loss of consciousness, that he would have expected claimant to have complained of headaches and had medical intervention for such headaches if they were severe after the injury, that there were no objective tests to suggest that claimant had a physical brain injury and that there are no notations by physicians of brain injury symptoms, and that there was no [medical] referral for testing."**

(R. p. 31).

By comparison, the Commission did not accept all of Dr. Moss' findings and conclusions. While Finding of Fact 23 notes Crisp sustained a head injury resulting in cognitive disorders to the brain, the Commission obviously concluded that the cognitive disorders suffered by Crisp did not proximately result or emanate from a physical brain injury on March 10, 2004. Specifically, Dr. Collins noted that with a serious brain injury, "usually there is a loss of consciousness..." (R. p. 193, lines 23-24). Dr. Collins further stated that his assessment of Crisp was somewhat inconsistent with the neurological assessment of Dr. Moss. (R. p. 214, lines 6-20).

The absence of a physical brain injury via diagnostic tests and the presence of pre-accident or preexisting cognitive dysfunction is best reflected in Dr. Collins' deposition testimony as follows:

**"Usually, when people have a significant head injury, closed head injury, they're knocked out. They're unconscious for a period of time and then they're confused when they wake up from that and they're often unable to get up and would be ataxic or have control of their balance and so forth. All of these things are lacking in that report. Did he have a head injury? Yes he had some type of head injury but it appears from the records to be very minor..." (R. p. 229, lines 17-25 and R. p. 230, lines 1-2).**

Dr. Collins had also questioned in his report dated May 24, 2005 whether Crisp's problems emanated from the purported physical brain injury as found by Dr. Moss. Dr. Collins noted

**"How much of this is a possible frontal lobe or closed head injury versus the psychological content of what he [had] been through in addition to his past psychological and substance abuse history, is unclear but what is clear, is that [Crisp] is presently unemployable due to the summation of these deficits."**

In Finding of Fact 24 and Conclusion of Law 3, the Commission found Crisp needed additional medical treatment because of underlying psychiatric/psychological problems and prior drug addiction problems. (R. p. 235, lines 16-20). Dr. Collins opined Crisp had needed neuropsychological and psychological treatment for cognitive disorders before the work related accident. (R. p. 238, lines 4-11; and R. p. 407).

Accordingly, Findings of Fact 22 and 23 are not inconsistent, but when read together best illustrates the Commission's consistency therein with respect to ordering medical treatment needed to effectuate an attainment of maximum medical improvement.

Thus, the Findings of Fact called into question by Crisp in this Petition are not contradictory or inconsistent; but were considered and addressed by the Court of Appeals and the Commission. Further, these Findings of Fact are directly corroborated and supported by Dr. Collins' conclusions and opinion, whom the Commission found to be imminently qualified and credible. (R. p. 240, lines 4-25 and p. 241, lines 1-7). The Commission's findings and conclusions are also supported by the report of Dr. Price.

The Court of Appeals Decision affirming the Commission's Decision and Order that Crisp did not suffer a physical brain injury with respect to payment of lifetime indemnity payments pursuant to Section 42-9-10 is supported by evidence in the Record. Crisp's cognitive problems emanate underlying psychiatric and psychological disorders. This minor head injury does not constitute a catastrophic physical brain injury as is set forth in Section 42-9-10, but rather the minor head injury is governed by Regulation 67-1101.

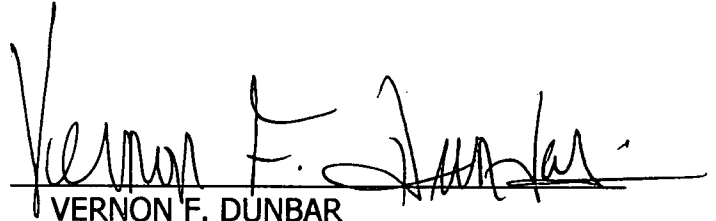
### **CONCLUSION**

Because a Writ of Certiorari is not a matter of right, it is incumbent upon Petitioner to set forth valid reasons to convince this Court to exercise its judicial discretion and review a case. Crisp failed to present any reasons for the Court to exercise its discretion or use its power to consider and grant his Petition in accordance with Rule 226 of the Appellate Court Rules. See, Rule 226 (a-b), SCACR.

The Court of Appeals was legally correct in its ruling that there were no conflicting Findings of Fact that would prevent the appellate body from ascertaining that the Commission's Decision is supported by competent and substantial evidence.

Respectfully submitted,

Turner Padgett Graham & Laney P.A.

By: 

VERNON F. DUNBAR

Post Office Box 1509

Greenville, SC 29602

Telephone: 864-552-4601

ATTORNEY FOR RESPONDENTS

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

ROGER L. COUCH, Circuit Court Judge

---

Opinion No. 4746 (S.C. Ct. App. filed September 29, 2010)

---

Michael D. Crisp, Jr., Employee, ..... Petitioner,

vs.

SouthCo., Inc., Employer, and, Pennsylvania National  
Mutual Casualty Ins. Co., Carrier, ..... Respondents.

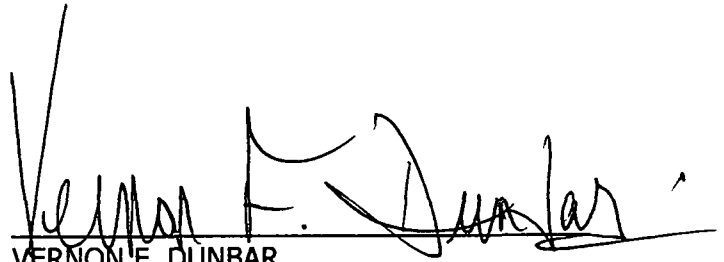
---

**CERTIFICATE OF SERVICE**

---

I certify that on February 21, 2011, I served the Respondents Return to Petition for Writ of Certiorari on Petitioner by depositing a copy in the U.S. Mail, postage prepaid, addressed as below:

Kathryn Williams, Esquire  
Kathryn Williams, P.A.  
619 North Main Street  
Post Office Box 10693  
Greenville, SC 29603



VERNON F. DUNBAR  
Turner Padgett Graham & Laney P.A.  
200 East Broad Street, Suite 250 (29601)  
Post Office Box 1509  
Greenville, SC 29602  
Telephone: (864) 552-4601  
ATTORNEY FOR RESPONDENTS

**KATHRYN WILLIAMS, P.A.**

ATTORNEYS AT LAW  
POST OFFICE BOX 10693  
GREENVILLE, SC 29603

KATHRYN WILLIAMS  
DONALD E. KAMB, JR.  
MELISSA S. MILLER  
TOM J. ERVIN  
OF COUNSEL

619 N. MAIN STREET  
GREENVILLE, SC 29601  
TELEPHONE (864) 235-6254  
FAX (864) 233-6591

January 9, 2012

The Honorable Daniel E. Shearouse  
Clerk of Court  
Supreme Court of South Carolina  
1231 Gervais Street  
Columbia, SC 29201

Re: **Crisp v. SouthCo, Inc., et al.**  
Case Tracking No.: 2010-180906

Dear Mr. Shearouse:

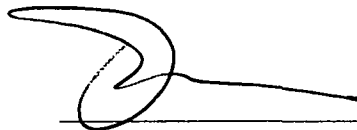
Pursuant to my conversation with your office last week, enclosed is a another unbound copy of the Record on Appeal. This copy is identical to that filed by SouthCo in the Court of Appeals, except that I have gone through the document and removed additional personal identifiers that were missed before. I apologize for any difficulty this may have caused your office; I had assumed that this was taken care of at the time of filing with the Court of Appeals.

Should you have any questions or need anything more, please feel free to contact me.

Kindest regards,

Yours truly,

Kathryn Williams, P.A.



Donald E. Kamb, Jr.

dek  
Enclosure

cc: Vernon F. Dunbar, Esq. (w/o encl.)

**RECEIVED**  
JAN 10 2012  
S.C. SUPREME COURT

**KATHRYN WILLIAMS, P.A.**

ATTORNEYS AT LAW  
POST OFFICE BOX 10693  
GREENVILLE, SC 29603

KATHRYN WILLIAMS  
DONALD E. KAMB, JR.  
MELISSA S. MILLER  
TOM J. ERVIN  
OF COUNSEL

619 N. MAIN STREET  
GREENVILLE, SC 29601  
TELEPHONE (864) 235-6254  
FAX (864) 233-6591

March 14, 2011

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

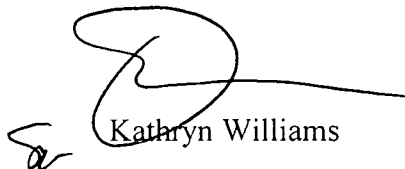
Re: **Crisp v. SouthCo, Inc., et al.**  
Court of Appeals Opinion No. 4746  
Supreme Court Case Tracking No.: **2010-180906**

Dear Mr. Shearouse:

Enclosed is Petitioner's Reply to Respondents' Return to the Petition for Writ of Certiorari (original and six copies), along with a Certificate of Service by Mail.

Should you have any questions or need additional information, please feel free to contact me.

Yours truly,

  
Kathryn Williams

KW:d  
Enclosures

cc: Vernon F. Dunbar, Esq.  
Turner Padgett Graham & Laney, P.A.  
P.O. Box 1509  
Greenville, SC 29602

**RECEIVED**

MAR 16 2011

**S.C. SUPREME COURT**

pm 3-14-11

# The Supreme Court of South Carolina

Michael D. Crisp, Jr.,  
Employee,

Petitioner,

v.

SouthCo, Inc., Employer, and  
Pennsylvania National Mutual  
Casualty Insurance Co.,  
Carrier,

Respondents.

The Honorable Roger L. Couch  
Spartanburg County  
Trial Court Case No. 2007-CP-42-1588

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## ORDER

---

For good cause having been shown, the time for serving and filing Reply to Return to Petition for Writ of Certiorari in the above entitled matter is hereby extended until March 14, 2011.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

March 4, 2011

cc: Kathryn Williams, Esquire  
Vernon F. Dunbar, Esquire

**KATHRYN WILLIAMS, P.A.**

ATTORNEYS AT LAW  
POST OFFICE BOX 10693  
GREENVILLE, SC 29603

KATHRYN WILLIAMS  
DONALD E. KAMB, JR.  
MELISSA S. MILLER  
TOM J. ERVIN  
OF COUNSEL

619 N. MAIN STREET  
GREENVILLE, SC 29601  
TELEPHONE (864) 235-6254  
FAX (864) 233-6591

March 2, 2011

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

Re: **Crisp v. SouthCo, Inc., et al.**  
Court of Appeals Opinion No. 4746  
Case Tracking No.: 2010-180906

Dear Mr. Shearouse:

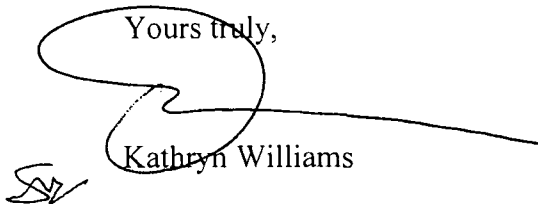
Please allow this letter to serve as my Motion for Extension of Time in which to file Crisp's Reply to SouthCo's Return to the Petition for Certiorari in the above matter. This additional time is needed due to extensive current calendar constraints. Respondent certifies that this request for a ten-day extension of time is warranted and is not interposed to delay the case.

By my calculations, with such an extension, the brief will now be due on March 14, 2011.

Enclosed is my check in the amount of \$25.00 for filing this motion.

Kindest regards,

Yours truly,

  
Kathryn Williams

KW:dek  
Enclosure

cc: Vernon F. Dunbar, Esq.

**RECEIVED**

MAR 04 2011

S.C. SUPREME COURT

pm 3-2-11

February 21, 2011

**Vernon F. Dunbar**  
**Attorney at Law**

VDunbar@TurnerPadget.com  
Direct Dial: 864-552-4601  
Direct Fax: 864-282-5942

The Honorable Daniel E. Shearouse  
Clerk of the South Carolina Supreme Court  
Supreme Court Building  
1231 Gervais Street  
Columbia, SC 29211

RE: Michael Crisp v. SouthCo Inc.  
Case Tracking No.: 2010-180906  
Our File No.: 7030.101

Dear Mr. Shearouse:

Please find enclosed for filing the original and seven copies of **Respondents' Return to Petition for Writ of Certiorari** for filing with the Court. Please return a file stamped copy of the Return in the self-addressed stamped envelope I have enclosed. I hereby certify that I have served a copy of this Return on Appellants/Petitioner, as is evidenced by the attached certificate of service.

With kind and warm regards, I remain

RECEIVED

FEB 23 2011

S.C. SUPREME COURT  
pm 2-21-11

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.

Vernon F. Dunbar

VFD/rhd

Enclosure: Respondents' Return/COS/SASE

cc: Kathryn Williams, Esquire (w/enclosures)  
Ms. Tina Tucker (w/enclosures)



THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

ROGER L. COUCH, Circuit Court Judge

---

Case No. 2007-CP-42-1588  
Case Tracking No.: 2010-180906  
Opinion No.: 4746 (S.C. Ct. App. Filed September 29, 2010)

---

RECEIVED

JAN 20 2011

S.C. Supreme Court

Michael D. Crisp, Jr., Employee .....Claimant/Petitioner

vs.

SouthCo., Inc., Employer.....Defendant/Respondent

- and -

Pennsylvania National Mutual Casualty Ins. Co., Carrier...Defendant/Respondent

---

**NOTICE OF MOTION AND MOTION FOR EXTENSION  
OF TIME IN WHICH TO FILE RETURN TO PETITION FOR  
WRIT OF CERTIORARI**

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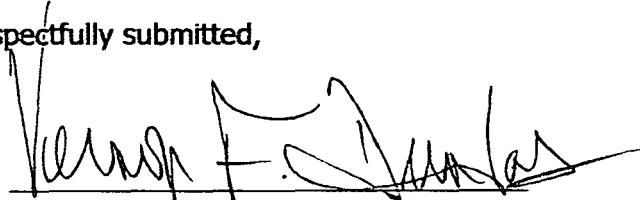
TO: THE HONORABLE DANIEL E. SHEAROUSE, CLERK OF COURT OF THE SOUTH  
CAROLINA SUPREME COURT; and KATHRYN WILLIAMS, ESQUIRE,  
ATTORNEY FOR MICHAEL CRISP, CLAIMANT/PETITIONER.

The Return Brief of SouthCo., Inc. and Pennsylvania National Mutual Casualty  
Insurance Company is due on or about January 20, 2011. Counsel for the  
Respondents, SouthCo., Inc. and Pennsylvania National Mutual Casualty Insurance  
Company, needs additional time or specifically thirty (30) days in order to properly  
file a Return.

Accordingly, counsel for the Respondent hereby respectfully requests a thirty (30) day extension in which to file a Return Brief. Thus, the Return Brief will be filed on or before February 21, 2011.

Respectfully submitted,

By:



Vernon F. Dunbar  
Turner Padgett Graham & Laney P.A.  
Post Office Box 1509  
Greenville, SC 29602  
Telephone: 864-552-4601

January 20, 2011


Other Counsel of Record:

Kathryn Williams, Esquire  
Post Office Box 10693  
Greenville, SC 29603  
ATTORNEYS FOR RESPONDENTS  
Telephone: 864-235-6254

**PROOF OF SERVICE**

The undersigned certifies that she is an employee at TURNER, PADGET, GRAHAM & LANEY, P.A., and that the attached *Respondents' Notice of Motion and Motion for Extension of Time in Which to File Return to Petition for Writ of Certiorari* was served upon Kathryn Williams, Esquire, the attorney for the claimant/ petitioner, this 20th day of January 2010 pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

Kathryn Williams, Esquire  
Kathryn Williams, P.A.  
P.O. Box 10693  
Greenville, SC 29603

  
Jeanie McDade  
Secretary to Vernon F. Dunbar

**RECEIVED**

JAN 20 2011

S.C. Supreme Court

January 20, 2011

**Vernon F. Dunbar**  
**Attorney at Law**

VDunbar@TurnerPadget.com  
Direct Dial: 864-552-4601  
Direct Fax: 864-282-5942

**VIA HAND DELIVERY**

The Honorable Daniel E. Shearouse  
Clerk of the South Carolina Supreme Court  
Supreme Court Building  
1231 Gervais Street  
Columbia, SC 29211

**RECEIVED**

JAN 20 2011

S.C. Supreme Court

RE: Michael Crisp v. SouthCo Inc.  
Case Tracking No.: 2010-180906  
Our File No.: 7030.101

Dear Mr. Shearouse:

Please find enclosed for filing the original and seven copies of *Respondents' Notice of Motion and Motion for Extension of Time in Which to File Return to Petition for Writ of Certiorari* for filing with the Court. Please return a file stamped copy of the Motion in the self-addressed stamped envelope I have enclosed. I hereby certify that I have served a copy of this motion on appellants/petitioners, as is evidenced by the attached certificate of service.

Last, please find enclosed a check in the amount of \$25.00 as payment for the cost of filing this motion.

With kind and warm regards, I remain

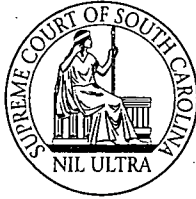
Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Vernon F. Dunbar

VFD/jsm  
Enclosure: Motion/COS/SASE/Filing Fee  
cc: Kathryn Williams, Esquire (w/enclosures)  
Ms. Tina Tucker (w/enclosures)



# 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 23, 2010

Kathryn Williams, Esquire  
P.O. Box 10693  
Greenville, SC 29603


Re: Crisp, Michael v. SouthCo Inc.  
Case Tracking No. 2010-180906

Dear Ms. Williams:

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.

Very truly yours,



CLERK

DES/lda

Enclosure

cc: Vernon F. Dunbar, Esquire  
The Honorable Tanya Gee

**KATHRYN WILLIAMS, P.A.**

ATTORNEYS AT LAW  
POST OFFICE BOX 10693  
GREENVILLE, SC 29603

KATHRYN WILLIAMS  
DONALD E. KAMB, JR.  
MELISSA S. MILLER  
TOM J. ERVIN  
OF COUNSEL

619 N. MAIN STREET  
GREENVILLE, SC 29601  
TELEPHONE (864) 235-6254  
FAX (864) 233-6591

December 20, 2010

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

**RECEIVED**

DEC 22 2010

**S.C. Supreme Court**

Re: **Crisp v. SouthCo, Inc., et al.**  
Court of Appeals Opinion No. 4746

Dear Mr. Shearouse:

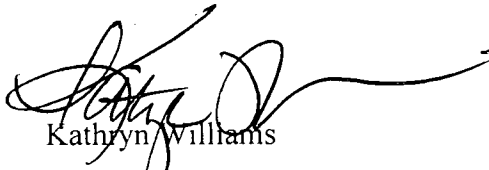
Enclosed herein please find the following items for filing in the above matter:

1. Petition for Writ of Certiorari (original and six copies),
2. Appendix (two copies),
3. Record on Appeal (two copies),
4. Certificate of Service by Mail on Respondent, and
5. Certificate of Service by Mail on Clerk of the Court of Appeals,
6. Filing fee (\$100.00).

By copy of this letter, I am serving copies of the Petition on the attorney for Respondent and Tanya A. Gee, Clerk of the Court of Appeals.

Should you have any questions, please feel free to contact me.

Yours truly,

  
Kathryn Williams

KW:d  
Enclosures

cc: Vernon F. Dunbar, Esq.  
The Honorable Tanya A. Gee, S.C. Court of Appeals  
Ms. Virginia L. Crocker, Judicial Director, SCWCC

check # 24706  
\$ 100.00