THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE WORKERS COMPENSATION COMMISSION
David W. Huffstetler, Commissioner
Andrea C. Roche, Commissioner
Avery B. Wilkerson, Jr., Commissioner

WCC File No. 1003812

Andrew Marrs,..... Respondent,

v.

1751, LLC d/b/a Saludas and
The South Carolina Uninsured Employer's Fund,..... Defendants,
Of Whom

1751, LLC d/b/a Saluda's is the .....Appellant.

REPLY TO RETURN TO PETITION FOR REHEARING

The appellant, hereby replies to the Respondent's Return to Appellant's Petition for Rehearing with the following:

I.

The Respondent contends that the decision in this instance was sufficient because the appellate court rules "require only that the court state the points which were necessary to its decision." However, the court in this instance did not state any points, much less, what points or facts that it found necessary to its decision.

The Respondent next contends that the decision is sufficient because under SCACR 220(b)(1) " an appellate court may use a memorandum opinion to affirm a lower court's decision when the lower court's findings of fact are not clearly erroneous or no error of law appears." This is a misstatement of law because Rule 220(b)(1), which allows such opinions, only applies to the Supreme Court.

The Respondent states that Rule 220(b)(2) of the SCACR allows the court to ignore any argument that is manifestly without merit. This rule does not apply in this situation because the court did not ignore just an argument without merit, the opinion doesn't show that it considered **any** argument at all in issuing its decision.

The Respondent contends that the memorandum decision represents the Court's judgment that the Workers Compensation Commission reached the correct result and that there is no impediment to Petitioner presenting the supreme court with the same arguments it presented to the court. This is also erroneous because the order in which the Petitioners would be appealing is the order of the Court of Appeals. Under rule 226(a) of the SCACR, the Supreme Court may in its discretion, on motion of any party to the case or on its own motion issue a writ of certiorari to review a final decision of the **Court of Appeals** "(*emphasis added*). The appeal before the Supreme Court would be an appeal of the **Court of Appeals** decision and not the decision of the Commission. This order is not sufficiently detailed to allow such a review.

II.

The Respondent next contends that the order is sufficient because the employee's entitlement to benefits hinges on whether the order of prohibition set the boundary of the employee's job versus whether the order governed the employee's conduct while doing his job.

This is erroneous. Mr. Marrs received direct instructions from the employer not to use the stairs. Specifically, Finding of Fact number 7 of the Order of the Hearing Commissioner states that the claimant was specifically instructed on numerous occasions not to use the back steps.

The employer issued a specific prohibition and any injury incurred while violating this prohibition is not compensable and in the sphere of his employment pursuant to the Wright v. Bi-Lo decision. Therefore, the finding of compensability of the claim was erroneous and an error of law.

III.

The respondent argues that the issue of the personal comfort doctrine is an issue the parties explored in their briefs and there is no argument that the stoop was off limits. This is false. The respondent was told on numerous occasions that the stoop was off limits and as such, there is no causal connection between Mr. Marrs' employment as a cook and his injury on the smoke break in the prohibited and dangerous area.

Although the order does not state which facts in which it relied upon in applying the personal comfort doctrine, the simple act of Mr. Marrs' smoking at the time of the injury does not automatically entitle him to protection under the personal comfort doctrine.

CONCLUSION

Based upon the above cited arguments, Appellant Saluda's would respectfully request that the court grant its Petition for Rehearing.

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July 8th, 2013

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PROOF OF SERVICE

I certify that I have served the Reply to Return to Petition for Rehearing by depositing a copy of the same in the United States Mail, postage prepaid, on July 8th, 2013 to the following parties, and or their representatives:

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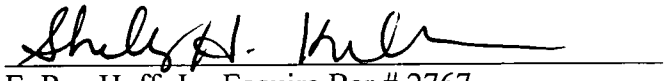
July 8th, 2013



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