

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

Appellate Case No: 2013-001212

Joseph Mickle,)
)
Respondent/Appellant)
)
v.)
)
WTI Transport, Inc., Boyd Brothers)
Transportation, Inc. and TSL, Ltd.,)
)
And)
)
Lumberman's Underwriting Alliance,))
)
Appellants/Respondents)

RECEIVED
AUG 07 2013
SC Court of Appeals

PETITION OF BOYD BROTHERS AND WTI TRANSPORT, INC. TO
CONSOLIDATE APPEALS PENDING IN THE RICHLAND COURT OF
COMMON PLEAS AND IN THE SOUTH CAROLINA COURT OF APPEALS

Duke K. McCall, Jr.
Smith Moore Leatherwood, LLC
300 East McBee Ave., PO Box 87
Greenville, SC 29602-0087
(864) 242-6440

The Petitioners, Boyd Brothers and WTI Transport, Inc., would respectfully show unto the Court that there are two (2) separate Appeals pending in the above caption matter, one being filed in the Richland Court of Common Pleas on May 23, 2013 and the second filed in the South Carolina Court of Appeals on or about June 5, 2013.

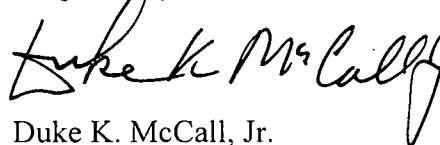
Petitioners are informed and believe that Section 42-17-60 provides that either party "may" appeal an Award of the South Carolina Workers' Compensation Commission to the Court of Appeals. The Petitioners by inadvertence filed their Appeal in the Court of Common Pleas for Richland County, the jurisdiction in which this case was tried before the South Carolina Workers' Compensation Commission. A copy is attached as Exhibit A. The Respondent filed an appeal in the South Carolina Court of Appeals.

Petitioners are informed and believe that since the above Statute permits an Appeal to the South Carolina Court of Appeals, the Statute is not mandatory but permissive, which was recognized by the Respondent.

Petitioners do not believe that there is any harm or prejudice which would occur by consolidating both appeals from both parties in the South Carolina Court of Appeals.

WHEREFORE, Petitioners move that this Court issue an Order Consolidating the Appeals in the Court of Appeals.

Respectfully submitted,



Duke K. McCall, Jr.
Smith Moore Leatherwood, LLP
P. O. Box 87
Greenville, S.C. 29602
864-240-2403
Duke.McCall@smithmoorelaw.com

August 5, 2013

Exhibit A

2013CP4003111

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Case No: 2013-CP--_____

SCWCC File No: 1022202

Joseph Mickle)
)
Employee/Respondent)

v.)

WTI Transport, Inc., Boyd Brothers)
Transportation, Inc., and TSL, Ltd)
Alleged Employers,)
and)
Lumbermans Underwriting Alliance,)
Carrier,)
Of Whom)

WTI Transport, Inc. and Boyd)
Brothers Transportation, Inc.)
)
are Appellants)

NOTICE OF INTENT TO APPEAL
WITH GROUNDS STATED
NON-JURY DOCKET

RICHLAND COUNTY
FILED
2013 MAY 23 AM 10:22
JEANETTE W. MCBRIDE
C.C.P. & G.S.

RECEIVED

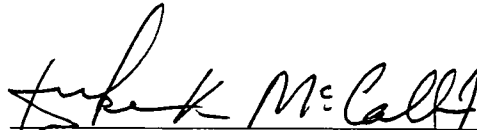
AUG 07 2013

SC Court of Appeals

TO: Frank A. Barton, Esq, ATTORNEY FOR RESPONDENT

YOU WILL PLEASE TAKE NOTICE that the WTI Transport, Inc. and Boyd Brothers Transportation, Inc., by the undersigned attorneys, do hereby appeal from the Appellate Panel Decision and Order of the Full Commission of the South Carolina Workers' Compensation Commission filed on May 14, 2013, to the Court of Common Pleas, upon the following grounds and exceptions which are attached hereto and incorporated herein by reference to this Notice of Intent to Appeal.

Respectfully submitted,



Duke K. McCall, Jr. (S.C. Bar No. 3720)

Smith Moore Leatherwood, LLC

P. O. Box 87

Greenville, S.C. 29602-0087

Attorneys for Appellants, *WTI Transport, Inc.*
and Boyd Brothers Transportation, Inc.

May 20, 2013

GROUNDS FOR REVIEW

Joseph Mickle (Respondent) v. WTI Transport, Inc., TSL, Ltd, and Boyd Brothers Transportation, Inc. (of whom WTI Transport, Inc. and Boyd Boyd Brothers Transportation, Inc. are Appellants)

WCC File No: 1022202

1. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Finding of Fact No. 1, it being submitted that the South Carolina Workers' Compensation Commission does not have jurisdiction of this matter, this being an Alabama workers' compensation claim.
2. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Finding of Fact No. 7, it being submitted that there is no evidence or testimony, nor any substantial evidence to support this finding of fact.
3. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Finding of Fact No. 8, it being submitted that there is no evidence or testimony, and certainly no substantial evidence to support this finding of fact.
4. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Finding of Fact No. 9, it being submitted that there is no evidence or testimony, and certainly no substantial evidence to support this finding of fact.
5. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Finding of Fact No.10, it being admitted that the Respondent sustained a back injury, but it is denied that the Respondent has, "radiation affecting both legs". There is no testimony to support his finding.
6. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Finding of Fact No. 14, it being submitted that while the Respondent does take medications which may prohibit him from driving at this time, there is no evidence that the taking of medication is a permanent requirement which will last the Respondent's life time, nor that the medications permanently prevent the Respondent from performing "any other form of work".
7. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Finding of Fact No. 18, it being respectfully submitted that there is no evidence that the Respondent is permanently unable to perform any substantial gainful work activity. This finding is speculative in nature.

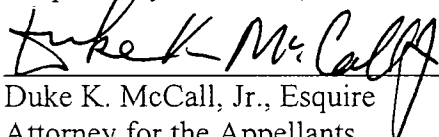
8. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Finding of Fact No. 19, it being submitted that there is no evidence or testimony, and certainly no substantial evidence to support this finding, particularly since the attending physician has given the Respondent an impairment rating of 11% to the lumbar spine.
9. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Finding of Fact No.20, it being submitted that there is no evidence or testimony, and certainly no substantial evidence to support this finding, particularly since the attending physician has given the Respondent an impairment rating of 11% to the lumbar spine.
10. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Finding of Fact No.21, it being submitted that there is no evidence or testimony, and certainly no substantial evidence to support this finding, particularly since the attending physician has given the Respondent an impairment rating of 11% to the lumbar spine.
11. It is respectfully submitted that the South Carolina Workers' Compensation Commission did not have jurisdiction in this case because the Respondent's employer was WTI Transport, a company who had less than four (4) employees in this State.
12. It is respectfully submitted that the Statutory Employer doctrine does not apply regardless of the number of employees which WTI Transport has in this State.
13. It is submitted that being a subsidiary does not make the other company, Boyd Brothers Transportation, a statutory employer of the Respondent, in and of itself without more evidence that both companies were performing the trade, business or occupation of the other.
14. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Conclusion of Law No. 1, it is respectfully submitted that the Hearing Commissioner did not have jurisdiction in this case because the Respondent's employer was WTI Transport, a company who had less than four (4) employees in this State.
15. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Conclusion of Law No. 1, it is respectfully submitted that the Hearing Commissioner did not have jurisdiction in this case because it was improper to consider a subsidiary corporation for the purpose of determining the number of employees an "employer" had within the State to determine jurisdiction.
16. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Conclusion of Law No. 2, it is

respectfully submitted that the Hearing Commissioner did not have jurisdiction in this case because the Respondent's employer was WTI Transport, a company who had less than four (4) employees in this State.

17. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Conclusion of Law No. 2, it is respectfully submitted that the Hearing Commissioner did not have jurisdiction in this case because it was improper to consider a subsidiary corporation for the purpose of determining the number of employees an "employer" had within the State to determine jurisdiction.
18. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Conclusion of Law No. 3, it is respectfully submitted that the Hearing Commissioner did not have jurisdiction in this case because the Claimant's employer was WTI Transport, a company who had less than four (4) employees in this State.
19. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Conclusion of Law No. 3, it is respectfully submitted that the Respondent is capable of light work and is not totally disabled or entitled to life time medical care.
20. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Conclusion of Law No. 4, it is respectfully submitted that while the Respondent was released by the attending physician, he is still under medical care taking medications. Further, there is no finding of fact to support this conclusion.
21. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Conclusion of Law No. 5, it is respectfully submitted that while the Respondent was released by the attending physician, he is still under medical care taking medications. Further, there is no finding of fact to support this conclusion.
22. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Conclusion of Law No. 6, it is respectfully submitted that while the Respondent was released by the attending physician, he is still under medical care taking medications.
23. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Conclusion of Law No. 6, it is respectfully submitted that there is no finding of fact to support this conclusion, nor is there evidence to justify or support this conclusion.

24. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Conclusion of Law No. 7, it is respectfully submitted that the Respondent is capable of light work and is not totally disable or entitled to life time medical care. Further, there is no finding of fact to support this conclusion.
25. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Conclusion of Law No. 8, it is respectfully submitted that while the Respondent was released by the attending physician, he is still under medical care taking medications.
26. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Conclusion of Law No. 8, it is respectfully submitted that there is no finding of fact to support this conclusion, nor is there evidence to justify or support this conclusion.
27. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Order, it being submitted that there is no evidence or testimony, and certainly any reasonable evidence that both legs of the Respondent are permanently affected by this accident.
28. It is respectfully submitted that the Appellate Panel in affirming the Hearing Commissioner committed error in adopting his Order, the errors being those set forth in the above grounds for review which are incorporated individually and all together in this ground with out re-stating each ground separately.

Respectfully submitted,



Duke K. McCall, Jr., Esquire
Attorney for the Appellants
WTI Transport, Inc. and Boyd Brothers
Transportation

May 20, 2013

APPELLATE PANEL
of the
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

JOSEPH MICKLE, CLAIMANT-RESPONDENT

v.

BOYD BROTHERS TRANSPORTATION, INC., EMPLOYER,

and

LUMBERMANS UNDERWRITING ALLIANCE, CARRIER,

DEFENDANTS-APPELLANTS

WCC FILE NO. 1022202

Appearances:

Claimant Represented by Frank A. Barton, Esquire and the Mullis Law Firm, Columbia, South Carolina

Defendants, WTI Transport, Inc. and Boyd Brothers Transportation Inc., represented by Duke McCall, Esquire, Smith Moore Leatherwood, Greenville, South Carolina

STATEMENT OF THE CASE

The parties were heard by Commissioner T. Scott Beck on November 18, 2011, in Columbia, South Carolina. On March 14, 2012, Commissioner Beck issued his Order with the following specific Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

“Based upon the stipulations of the parties and the evidence presented, both in the form of submissions under the Administrative Procedures Act and the Hearing testimony, it is found as fact:

1. That the parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act as amended;

2. That Claimant is an employee of WTI Transport, Inc.;
3. That WTI Transport, Inc. is a wholly owned subsidiary of Boyd Brothers Transportation, Inc.;
4. That WTI Transport, Inc. did not regularly employ 4 or more employees in South Carolina;
5. That Defendants initially chose to pay benefits to Claimant in Alabama for the admitted claim; however, Claimant determined to pursue benefits in South Carolina where he resides;
6. That Boyd Brothers Transportation, Inc. has coverage in South Carolina;
7. That flatbed truck driving is an important, necessary, and essential part of the business and trade of Boyd Brothers Transportation, Inc.;
8. That employees of Boyd Brothers Transportation, Inc. regularly perform the identical work activity, flatbed truck driving, that Claimant performed in his work for Boyd's wholly owned subsidiary, WTI, Transport, Inc.;
9. That where the work activity Claimant engaged in for WTI, flatbed truck driving, was part of the general trade, business, or occupation of the owner, Boyd Brothers' Transportation, Inc., the owner, is a statutory employer as contemplated in S.C. Code Section 42-1-400 (1985), and is, therefore, responsible for the payment of benefits to Claimant;
10. That Claimant's injury is to his back, with radiation affecting both legs;
11. That Claimant failed to meet his burden of proving a compensable psychological injury;
12. That the Functional Capacity Evaluation (FCE) places Claimant in the sedentary to light work capacity;
13. That Claimant's treating physicians limit Claimant to sedentary work capacity;

14. That Claimant is required to take significant prescription medications which prohibit him from driving a truck and which would also substantially limit his ability to perform any other form of work;

15. That the authorized treating physicians have restricted Claimant from driving trucks;

16. That Claimant's work history was almost exclusively in truck driving;

17. That Claimant is sixty-six (66) years of age with a high school education;

18. That the vocational assessment conducted by Robert Brabham concludes that Claimant is unable to perform any substantial gainful work activity;

19. That Claimant is unable to perform any substantial gainful work activity and, therefore, he is permanently and totally disabled;

20. That Claimant is entitled to and Defendants shall provide lifetime causally related medical care.

21. That the proceeds of the award will be allocated and disbursed under Utica Mohawk Mills v. Orr, 227 S. C. 226, 87 S.E. 2d 589 (1955), resulting in a weekly distribution to the Claimant of \$ 147.53 per week or a monthly entitlement of \$ 639.31 per month commencing upon execution of this Order and continuing for the rest of his life (See page 15 paragraph #8).

CONCLUSIONS OF LAW

Based on the evidence submitted in this case, the testimony given, the stipulations entered into and the foregoing Findings of Fact, this Commissioner makes the following Conclusions of Law:

1. Pursuant to §42-3-180 and §42-1-400, the South Carolina Workers' Compensation Commission has jurisdiction in this proceeding.

2. Pursuant to §42-1-400, Claimant was a covered statutory employee under the Act and Boyd Brothers Transportation, Inc, is a statutory employer as contemplated in Section 42-1-400, and is, therefore, responsible for the payment of benefits to Claimant.

3. Pursuant to §42-15-60, Defendant Boyd Brothers Transportation, Inc. is responsible for payment of causally-related medical care from the date of accident and for providing lifetime medical care.

4. Pursuant to §42-15-60, Claimant has reached maximum medical improvement.

5. Pursuant to §42-9-10, Claimant is permanently and totally disabled as the result of the injuries to his back and legs.

6. Pursuant to §42-9-301, a lump sum payment is approved as being in the best interest of Claimant and not prejudicing Defendants.

7. That Defendants owe Claimant the balance of his 500 weeks, taking credit for the weeks of temporary total disability benefits paid.

8. It is ordered by the Commission that the proceeds of this Order of One Hundred and Eighty-Eight Thousand Five Hundred and Forty-Three and 38/100ths (\$ 188,543.38) Dollars shall be allocated as follows: Sixty-Two Thousand Eight Hundred and Forty-Seven and 79/100ths (\$ 62,847.79) Dollars as attorney fees [one third (1/3)]; at least Two Thousand Three Hundred Thirty-Three and 57/100ths (\$ 2,333.57) Dollars for litigation costs; resulting in a Net to the Claimant of One Hundred and Twenty-Three Thousand Three Hundred and Sixty-Two and 02/100ths (\$ 123,362.02) Dollars. This amount shall be allocated and paid to the Claimant under Section 42-9-10 and Section 42-9-20 of the 1976 Code of Laws of South Carolina as

interpreted by the Supreme Court decision of Utica Mohawk Mills v. Orr, 227 S. C. 226, 87 S.E. 2d 589 (1955); Sciarotta v. Bowen, 837 F.2d 135 (1988); Lemire v. Secretary of Health and Human Services, 682 F. Supp 102 (D.C.N.H.1988) and Hatch v. Heckler, 626 F. Supp. 1367 (N.D. California 1986). The Claimant's life expectancy under S. C. Code Section 19-1-150 is 16.08 years (a Sixty-Six year old male). This therefore results in a weekly distribution to the Claimant of \$ 147.53 [\$ 123,362.02 divided by the life expectancy in weeks of 836.16 weeks (16.08 years times 52 weeks per year)] or a monthly entitlement of \$ 639.31 [\$ 123,362.02 divided by the life expectancy in months of 192.96 months (16.08 years times 12 months per year)] commencing upon the execution and approval of this Order and continuing for the rest of his life."

DISCUSSION

Within the statutory period for review, counsel for Defendants filed an application for review setting forth their grounds for review, copies of which were furnished to all interested parties, prior to oral argument presented by the Appellate Panel on February 20, 2013. In their briefs, which were properly filed with Commission and properly served on all interested parties, and at oral arguments before the Appellate Panel on February 20, 2013, Defendants argued that the Hearing Commissioner erred (1) in finding that Boyd Brothers Transportation, Inc. was Claimant's statutory employer and that the Commission had jurisdiction over the claim; (2) in finding that Claimant was totally and permanently disabled and entitled to benefits and lifetime medical care; and (3) in including an erroneous calculation of the amount of the lump sum award.

In his Brief of Respondent which was properly filed with the Commission and properly served on all interested parties, and at oral arguments before the Appellate Panel on February 20, 2013, Claimant asserted that, as the result of a typographical error in the Hearing Commissioner's December 12, 2011 Order Directives, the Hearing Commissioner's Order incorrectly gave the employer credit for having paid 136 weeks of temporary total disability benefits despite the fact that it was undisputed that Claimant had been paid only 32 weeks of benefits at that time. Claimant took the position that the Appellate Panel should amend the Order so as to correct the mistaken credit and adjust the calculation of benefits due.

All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and have since been under study and consideration. In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50 (1989), review the award, weigh the evidence as presented at the initial hearing, and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner.

After considering all of the evidence in the record and the arguments presented, the Appellate Panel, by unanimous vote, affirms the Order of the Hearing Commissioner in full. Accordingly, the following Findings of Fact and Conclusions of Law shall become, and hereby are, the law of the case:

FINDINGS OF FACT

Based upon the stipulations of the parties and the evidence presented, both in the form of submissions under the Administrative Procedures Act and the Hearing testimony, it is found as fact:

1. That the parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act as amended;
2. That Claimant is an employee of WTI Transport, Inc.;
3. That WTI Transport, Inc. is a wholly owned subsidiary of Boyd Brothers Transportation, Inc.;
4. That WTI Transport, Inc. did not regularly employ 4 or more employees in South Carolina;
5. That Defendants initially chose to pay benefits to Claimant in Alabama for the admitted claim; however, Claimant determined to pursue benefits in South Carolina where he resides;
6. That Boyd Brothers Transportation, Inc. has coverage in South Carolina;
7. That flatbed truck driving is an important, necessary, and essential part of the business and trade of Boyd Brothers Transportation, Inc.;
8. That employees of Boyd Brothers Transportation, Inc. regularly perform the identical work activity, flatbed truck driving, that Claimant performed in his work for Boyd's wholly owned subsidiary, WTI, Transport, Inc.;
9. That where the work activity Claimant engaged in for WTI, flatbed truck driving, was part of the general trade, business, or occupation of the owner, Boyd Brothers' Transportation, Inc., the owner, is a statutory employer as contemplated in S.C. Code Section 42-1-400 (1985), and is, therefore, responsible for the payment of benefits to Claimant;

10. That Claimant's injury is to his back, with radiation affecting both legs;
11. That Claimant failed to meet his burden of proving a compensable psychological injury;
12. That the Functional Capacity Evaluation (FCE) places Claimant in the sedentary to light work capacity;
13. That Claimant's treating physicians limit Claimant to sedentary work capacity;
14. That Claimant is required to take significant prescription medications which prohibit him from driving a truck and which would also substantially limit his ability to perform any other form of work;
15. That the authorized treating physicians have restricted Claimant from driving trucks;
16. That Claimant's work history was almost exclusively in truck driving;
17. That Claimant is sixty-six (66) years of age with a high school education;
18. That the vocational assessment conducted by Robert Brabham concludes that Claimant is unable to perform any substantial gainful work activity;
19. That Claimant is unable to perform any substantial gainful work activity and, therefore, he is permanently and totally disabled;
20. That Claimant is entitled to and Defendants shall provide lifetime causally related medical care.
21. That the proceeds of the award will be allocated and disbursed under Utica Mohawk Mills v. Orr, 227 S. C. 226, 87 S.E. 2d 589 (1955), resulting in a weekly distribution to the Claimant of \$ 147.53 per week or a monthly entitlement of \$ 639.31 per month commencing upon execution of this Order and continuing for the rest of his life.

CONCLUSIONS OF LAW

Based on the evidence submitted in this case, the testimony given, the stipulations entered into and the foregoing Findings of Fact, the Commission makes the following Conclusions of Law:

1. Pursuant to §42-3-180 and §42-1-400, the South Carolina Workers' Compensation Commission has jurisdiction in this proceeding.
2. Pursuant to §42-1-400, Claimant was a covered statutory employee under the Act and Boyd Brothers Transportation, Inc, is a statutory employer as contemplated in Section 42-1-400, and is, therefore, responsible for the payment of benefits to Claimant.
3. Pursuant to §42-15-60, Defendant Boyd Brothers Transportation, Inc. is responsible for payment of causally-related medical care from the date of accident and for providing lifetime medical care.
4. Pursuant to §42-15-60, Claimant has reached maximum medical improvement.
5. Pursuant to §42-9-10, Claimant is permanently and totally disabled as the result of the injuries to his back and legs.
6. Pursuant to §42-9-301, a lump sum payment is approved as being in the best interest of Claimant and not prejudicing Defendants.
7. That Defendants owe Claimant the balance of his 500 weeks, taking credit for the weeks of temporary total disability benefits paid.

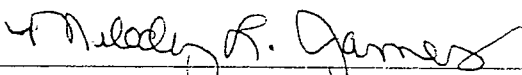
8. It is ordered by the Commission that the proceeds of this Order of One Hundred and Eighty-Eight Thousand Five Hundred and Forty-Three and 38/100ths (\$ 188,543.38) Dollars shall be allocated as follows: Sixty-Two Thousand Eight Hundred and Forty-Seven and 79/100ths (\$ 62,847.79) Dollars as attorney fees [one third (1/3)]; at least Two Thousand Three Hundred Thirty-Three and 57/100ths (\$ 2,333.57) Dollars for litigation costs; resulting in a Net to the Claimant of One Hundred and Twenty-Three Thousand Three Hundred and Sixty-Two and 02/100ths (\$ 123,362.02) Dollars. This amount shall be allocated and paid to the Claimant under Section 42-9-10 and Section 42-9-20 of the 1976 Code of Laws of South Carolina as interpreted by the Supreme Court decision of Utica Mohawk Mills v. Orr, 227 S. C. 226, 87 S.E. 2d 589 (1955); Sciarotta v. Bowen, 837 F.2d 135 (1988); Lemire v. Secretary of Health and Human Services, 682 F. Supp 102 (D.C.N.H.1988) and Hatch v. Heckler, 626 F. Supp. 1367 (N.D. California 1986). The Claimant's life expectancy under S. C. Code Section 19-1-150 is 16.08 years (a Sixty-Six year old male). **This therefore results in a weekly distribution to the Claimant of \$ 147.53** [\$ 123,362.02 divided by the life expectancy in weeks of 836.16 weeks (16.08 years times 52 weeks per year)] **or a monthly entitlement of \$ 639.31** [\$ 123,362.02 divided by the life expectancy in months of 192.96 months (16.08 years times 12 months per year)] **commencing upon the execution and approval of this Order and continuing for the rest of his life.**

ORDER

IT IS HEREBY ORDERED that the Order of the Hearing Commissioner filed in the above-captioned matter on March 14, 2012, is hereby **AFFIRMED IN FULL**.

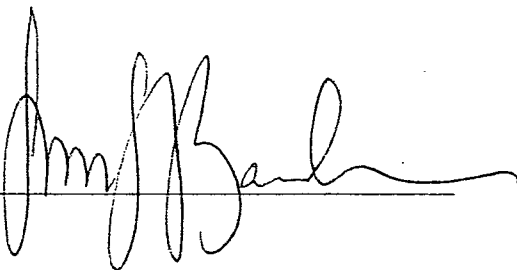
AND IT IS SO ORDERED.

South Carolina Workers' Compensation Commission

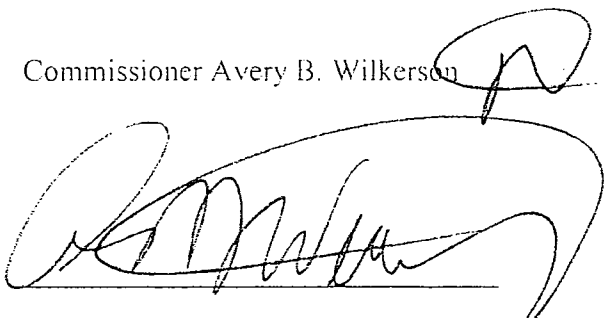
By: 
Commissioner Melody L. James
South Carolina Workers' Compensation Commission

**FULL AFFIRMATION
CONCUR:**

Commissioner Susan S. Barden, Chair



Commissioner Avery B. Wilkerson



CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States mail addressed to any unrepresented party.

By Valerie Deller on May 14, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Case No: 2013-CP-- _____

SCWCC File No: 1022202

Joseph Mickle)
)
Employee/Respondent)

v.)

NOTICE OF INTENT TO APPEAL
WITH GROUNDS STATED
NON-JURY DOCKET

WTI Transport, Inc., Boyd Brothers)
Transportation, Inc., and TSL, Ltd)
Alleged Employers,)
and)
Lumbermans Underwriting Alliance,)
Carrier,)
Of Whom)

WTI Transport, Inc. and Boyd)
Brothers Transportation, Inc.)
)
are Appellants)

CERTIFICATE OF MAILING

RECEIVED

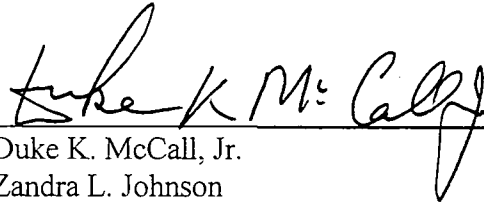
AUG 07 2013

SC Court of Appeals

IT IS HEREBY CERTIFIED that a copy of the Appellants' Notice of Intent to Appeal With Grounds Stated Attached was served upon the Employee/Claimant by placing a copy of the same in the United States Mail, postage prepaid, on the ____ day of May, 2013, addressed as follows:

**Mr. Frank A. Barton, Esq.
Attorney at Law
1611 Augusta Road
West Columbia, S.C. 29169-5629**

Ms. Virginia L. Crocker,
Judicial Director
South Carolina Workers' Compensation Commission
P. O. Box 1715
Columbia, S. C. 29202-1715



Duke K. McCall, Jr.
Zandra L. Johnson
Attorney for Appellants

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Post Office Box 87
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(864) 240-2474 (Fax)