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**May 03 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Cynthia C. Dooley, Chair  
T. Scott Beck  
Melody L. James

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WCC No. 1923480

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Appellate Case No.: 2023-001264

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Takara L. Stewart,.....Appellant,

v.

South Carolina CVS Pharmacy, LLC, Employer, and  
XL Insurance America, Inc., Carrier.....Respondents.

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**RESPONDENTS' RESPONSE IN OPPOSITION TO  
APPELLANT'S MOTION TO PRESENT NEW EVIDENCE**

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Attorneys for Respondents  
South Carolina CVS Pharmacy, LLC  
and XL Insurance America Inc.

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules (“SCACR”), Respondents, South Carolina CVS Pharmacy, LLC, and XL Insurance America Inc., by and through their counsel of record, respectfully submit this Opposition to Appellant’s Motion to Present New Evidence. In support of which, Respondents present the following:

**I. FACTUAL AND PROCEDURAL HISTORY**

Appellant claims she sustained an injury by accident arising out of and in the course of her employment with South Carolina CVS Pharmacy, LLC on December 26, 2019. On January 19, 2023, Commissioner Aisha Taylor issued an Order finding that Appellant sustained a compensable injury by accident and awarding her temporary total disability and medical benefits. On July 10, 2023, the Appellate Panel of the South Carolina Workers’ Compensation Commission reversed Commissioner Taylor’s Order and found that Appellant did not sustain a compensable injury thus denying her all benefits.

Appellant filed a Notice of Appeal to the South Carolina Court of Appeals on August 7, 2023 and, thereafter, she filed a Motion to Present New Evidence on April 24, 2024. According to the motion, Appellant seeks to present new evidence to include (1) a psychology referral from Dr. Hicks-Beckum, (2) a psychology consultation and debrief, (3) a psychology estimate requested by Respondents, and (4) documentation of Respondents’ settlement offers. Respondents oppose Appellant’s Motion to Present New Evidence based on the controlling South Carolina Appellate Court Rules, as well as South Carolina statutory and common law.

**II. ARGUMENT**

The Appellate Court’s review must be confined to the record and shall not include matters not previously presented to the South Carolina Workers’ Compensation Commission. Specifically, under Rule 210(c), SCACR, the record on appeal “**shall not**, however, **include** matter which was not

presented to the lower court or tribunal.” Additionally, under South Carolina Code § 1-23-380(4), “[t]he review must be conducted by the [appellate] court and **must be confined to the record.**” (Emphasis added).

Further, any attempt to include offers of settlement in the record, whether through appeal or otherwise, is improper. The South Carolina Supreme Court held that compromises are favored and evidence of an offer or attempt to compromise or settle a matter in dispute cannot be given in evidence against the party by whom such offer or attempt was made. Hunter v. Hyder, 236 S.C. 378, 387, 114 S.E.2d 493, 497–98 (1960).

To support her motion, Appellant cites only Rules 240, 210, and 269, SCACR. While Rule 240 allows Appellant to file a motion in the appellate court and outlines the procedures for doing so, it does not support Appellant’s argument that this Court should consider new evidence. Further, Appellant’s citation to Rule 210 in an attempt to support her motion manages to do the opposite. This rule prohibits the inclusion of matters which were not presented to the lower court or tribunal. Rule 210(c), SCACR. Finally, Rule 269, while applicable to the case at hand in that it pertains to frivolous motions and appeals taken solely for the purposes of delay, again does nothing to support Appellant’s argument that this Court allow her to present new evidence for consideration by this Court on appeal.

### **III. CONCLUSION**

Considering the legal authority cited above by Respondents which prevents this Court from considering evidence not previously presented to the South Carolina Workers’ Compensation Commission, and further considering the lack of legal authority cited by Appellant to support her motion, Respondents respectfully request the Court deny Appellant’s Motion to Present New Evidence.

Respectfully submitted,

**GALLIVAN WHITE & BOYD, P.A.**

*Michelle D. Yarbrough*

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May 3, 2024  
Greenville, S.C.

Attorneys for Respondents,  
South Carolina CVS Pharmacy, LLC and  
XL Insurance America Inc.

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FORM 7  
PROOF OF SERVICE OF RESPONDENTS' RESPONSE IN OPPOSITION TO  
APPELLANT'S MOTION TO PRESENT NEW EVIDENCE

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PROOF OF SERVICE

I certify that I have served the Respondents' Response in Opposition to Appellant's Motion to Present New Evidence on Takara L. Stewart, by depositing a copy of it in the United States Mail, postage prepaid, on May 3, 2024, at 108 E York Street, Suite 236, Savannah, GA 31401.

May 3, 2024  
Greenville, S.C.



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