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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 2104833

APPELLATE CASE NO. 2024-001766

Qushon Inman, Employee,.....Appellant,

v.

GE Healthcare, Inc., Employer, and
Riverstone International Ins., Carrier,.....Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUE ON APPEAL

1. The Appellate Panel erred in affirming the Single Commissioner's admission of the November 3, 2022, hearsay statement of Dr. Edwards, as well as the resulting April 20, 2023, deposition testimony of Dr. Edwards.

STATEMENT OF THE CASE

This is a workers' compensation appeal filed by GE Healthcare, Inc. and Electric Insurance Company (GE) from the Decision and Order of the South Carolina Workers' Compensation Commission Appellate Panel (the Full Commission), filed on September 19, 2024, which unanimously upheld the Decision and Order of the Hearing Commissioner T. Scott Beck (Commissioner Beck).

On April 26, 2021, Appellant/Respondent ("Inman") filed a claim against Respondents/Appellants GE Healthcare, Inc. and Electric Insurance Company (collectively "GE"), alleging that on March 19, 2021, he sustained an injury by accident to his low back arising out of and in the course and scope of his employment with GE. GE denied the compensability of this claim.

Counsel for Inman deposed Dr. William Edwards on September 23, 2021, to address the cause of Inman's alleged injuries. Ultimately, Dr. Edwards testified that he could not provide a causation opinion for Inman based upon evidence presented to him at the deposition, most of which was presented by counsel for GE. **(Depo. of Dr. Edwards 9/23/21, p. 44, ll. 3-9)**. Thereafter, GE filed a Form 19 with the South Carolina Workers' Compensation Commission (Commission) on October 5, 2021, to administratively close the file.

The claim remained closed with the Commission until July 27, 2022, when Inman's counsel sought to schedule a second deposition of Dr. Edwards to address causation. Over GE's objection Inman's counsel scheduled the deposition for August 25, 2022. GE then filed a Motion to Quash the second deposition of Dr. Edwards, which was granted by Commissioner Cindy Dooley on August 30, 2022. **(Claimant's APA, pp. 290-91)**. Inman's counsel subsequently notified GE's counsel that he intended to move forward with the deposition anyway. As a result,

GE filed a Motion for Rule to Show Cause to enforce the terms of Commissioner Dooley's Order. After a Hearing on the merits of GE's Motion for Rule to Show Cause, the Motion was granted by Commissioner McCaskill by Order dated October 27, 2022. **(Claimant's APA, p. 311).**

Thereafter, and unbeknownst to GE, Inman's counsel met with Dr. Edwards on October 27, 2022, the date the second deposition was to take place, to secure a causation statement in lieu of the live deposition the Commission had specifically prohibited. **(See Claimant's APA, p. 217(A)(54-55)).**

Upon learning of the hearsay statement GE notified Commissioner Beck of its intent to object to the statement. On February 21, 2023, Commissioner Beck requested an off the record conference with counsel for GE and Inman to address the hearsay statement. The conference was held on February 23, 2023. During that conference GE was given a choice by Commissioner Beck to either allow the statement into evidence without deposing Dr. Edwards or take his deposition to address the statement. Effectively, GE was forced to either allow the statement into evidence without challenge, or do the very thing they previously successfully defended, the second deposition of Dr. Edwards. Of course, it was during this deposition that Inman secured the testimony he now relies on to prove compensability. Neither the statement of Dr. Edwards nor the first deposition of Dr. Edwards is now relied on by Inman. This inequity is not only disappointing but frankly violative of any sense of fairness and due process. The second deposition of Dr. Edwards was conducted on April 20, 2023.

A hearing on the merits of this case was scheduled for May 17, 2023. This hearsay document was submitted by Inman's counsel as evidence, in lieu of the deposition, at the hearing on May 17, 2023. GE's Motion to Exclude the hearsay statement of Dr. Edwards was denied by Commissioner Beck on May 18, 2023. GE filed a Form 30 with the Commission to appeal

Commissioner Beck's Order denying their Motion to Exclude the statement. The appeal was dismissed as interlocutory on July 20, 2023.

The Hearing proceeded on the merits of the claim on August 29, 2023, during which time GE renewed its objection to the alleged hearsay document as well as the subsequent deposition of Dr. Edwards on April 20, 2023. Commissioner Beck overruled GE's objection and allowed the November 3, 2022, statement and subsequent April 20, 2023, deposition of Dr. Edwards into evidence. The Order of Commissioner Beck was issued on February 16, 2024. In the Order, Commissioner Beck held Inman failed to meet his burden of proving an injury by accident under Section 42-1-160 or an aggravation of a pre-existing condition under Section 42-9-35 and, therefore, denied his entitlement to benefits under the South Carolina Workers' Compensation Act ("the Act"). **(Hearing Ord. p. 33).**

Both parties appealed the Decision and Order of Commissioner Beck to the Full Commission. Following a Hearing before the Appellate Panel on July 15, 2024, the Full Commission unanimously found Commissioner Beck's Decision and Order to be supported by the greater weight of the evidence and affirmed the Decision and Order in its entirety. **(Full Comm. Ord.).** This cross appeal by the parties followed.

STATEMENT OF THE FACTS

This cross appeal arises out of a denied claim filed by Qushon Inman, wherein he alleges injuries to his neck and lumbar spine on March 19, 2021, while under the employ of GE.

Inman began working at GE through a temp agency until he was hired directly by GE on January 13, 2021. On December 24, 2020, prior to the start of his employment, Inman completed a GE Healthcare Medical History form. On that form Inman denied currently having any back pain or trouble. **(Defendants' APA, p. 1).** He signed the document on December 24, 2020,

indicating that he understood “that any false answers or statements made by [him] on this form will be sufficient grounds for immediate discharge if [he was] employed, for refusal of employment if [he] has not yet started work . . .” **(Defendants’ APA, p. 2).**

Inman presented to McLeod Regional Medical Center (“MRMC”) on December 26, 2020, two days after completing the questionnaire. **(Claimant’s APA 1).** He reported lower back pain beginning one and a half months ago after exercising and complained of pain with bending and twisting. **(Claimant’s APA 1, p. 5) (emphasis added).** Inman stated that, in addition to lower back pain, he experienced numbness and pain in the left leg. He described the pain as stabbing in the low back and left leg at a ten out of ten severity. **(Claimant’s APA 1, p. 54).**

On March 22, 2021, Inman presented to the GE medical clinic and reported that he “hurt his back some months ago . . . he referenced December 2020. He did not know a specific event or what day he could have hurt his back.” **(Defendants’ APA, p. 6).** Inman presented to MUSC Florence (“MUSC”) on March 23, 2021, with complaints of lower back pain shooting down both legs and up his back. It is noted that the onset was gradual, and that Inman stated he may have jumped off a truck wrong. He reported the pain started at work on March 19, 2021, but that he had “similar pain” in December 2020 which has been “on and off since.” **(Claimant’s APA 2, pp. 75-76 and 80).** Inman returned to MUSC on March 29, 2021, with left lower back pain with radiation to the left lower leg for “several months.” **(Claimant’s APA 2, p. 145).**

Inman then presented to McLeod Orthopedics-Florence on April 1, 2021, where he was evaluated by P.A. Huiet. During this appointment Inman reported that “on March 19, 2021, he jumped out of an 18-wheeler at work and noticed immediate onset of pain radiating from the upper back to lower back and throughout the lower extremities.” He reported a history of back spasms beginning on December 23, 2020, but otherwise denied a history of “axial spine” injuries. He

reported that his symptoms in December “100% resolved after a few days.” **(Claimant’s APA 3, pp. 184 and 186).**

Dr. Edwards first evaluated Inman on June 22, 2021. Inman reported neck pain radiating to both shoulders which began on March 19, 2021, when he jumped from an 18-wheeler to a loading dock and felt a sharp pain in his neck. He denied any radicular discomfort. He denied any prior neck issues but did report “some previous back issues...” **(Claimant’s APA 4, p. 217(A)(15)).** Dr. Edwards reviewed the cervical, thoracic, and lumbar MRIs. Ultimately, he opined: “Patient has perplexing symptoms that seem out of proportion to MRI findings.” Dr. Edwards referred him for a full neurologic evaluation. **(Claimant’s APA 4, pp. 217(A)(16-17)).**

Inman returned Dr. Edwards’ office on October 26, 2021, and was referred to physical therapy. **(Claimant’s APA 4, pp. 217(A)(26)).** Dr. Edwards next evaluated Inman on February 17, 2022. He presented with “low back pain and non-dermatomal symptoms in both legs.” Inman elected to proceed with surgical intervention of the lumbar spine in the form of a lumbar discectomy at L5-S1 on the left and possibly L4-5. **(Claimant’s APA 4, pp. 217(A)(34-36)).**

On September 23, 2021, Dr. Edwards was deposed by counsel for Inman in hopes of establishing causation. At the conclusion of direct examination, and without being shown the any of the aforementioned medical reports from December 2020 or March 2021, or the medical questionnaire Inman completed during the hiring process with GE, Dr. Edwards appeared to confirm causation as to the low back. **(Depo. of Dr. Edwards 9/23/2021, p. 25, l. 20-p. 26, l. 16).**

However, under cross-examination by counsel for GE, Dr. Edwards was shown the report from March 29, 2021, where Inman noted his pain had been ongoing for “several months”, Dr. Edwards testified that report was inconsistent with an injury on March 19, 2021. **(Depo. of Dr. Edwards 9/23/21, p. 32, ll. 6-13)(Claimant’s APA 2, p. 145).** He then testified that Inman’s

report to Dr. Edwards' P.A. on April 1, 2021, that his "back spasms" in December 2020 resolved "100%" are inconsistent with the report from December 26, 2020, where Inman reported 10/10 pain running down his left leg. Dr. Edwards testified that would not be considered a back spasm. **(Depo. of Dr. Edwards 9/23/21, p. 35, l. 6-p. 36, l. 13; Claimant's APA 1)**. In fact, Dr. Edwards testified Inman's problems on June 22, 2021, during his initial visit with Dr. Edwards, were identical to his presentation to the emergency room in December 2020. **(Depo. of Dr. Edwards 9/23/21, p. 40, ll. 10-17)**. He testified having this information which was not disclosed by Inman's counsel would have been important to have before rendering a causation opinion. **(Depo. of Dr. Edwards 9/23/21, p. 41, ll. 4-7)**. Dr. Edwards then addressed the questionnaire completed by Inman just two days before his December 26, 2020, ER visit. He testified the questionnaire "was not accurately completed" by Inman. **(Depo. of Dr. Edwards 9/23/21, p. 43, ll. 13-16)**. After reviewing all these documents not disclosed by Inman's counsel, Dr. Edwards recanted his previous testimony and confirmed he could not provide a causation opinion for Inman. **(Depo. of Dr. Edwards 9/23/21, p. 44, ll. 3-9)**. Counsel for Inman did not attempt to rehabilitate Dr. Edwards' testimony.

Per the above-referenced procedural history, counsel for Inman attempted to re-depose Dr. Edwards as to causation in August 2022. However, by Orders of Commissioners Dooley and McCaskill he was expressly prohibited from doing so. Counsel for Inman nonetheless met alone with Dr. Edwards on October 27, 2022, to discuss causation. From that meeting was produced a letter dated November 3, 2022, wherein Dr. Edwards gave the opinion that the Inman's L5-S1 disc herniation and need for surgery, as well as a C5-6 disc protrusion, were causally related to the Inman's "industrial injury." **(Claimant's APA 4, pp. 217(A)(54-55))**.

After GE's failed objections and motions to exclude the letter from evidence as being a hearsay statement and violative of the Orders of Commissioners Dooley and McCaskill, GE was given the option of deposing Dr. Edwards prior to the merits Hearing or proceeding with the Hearing without doing so. Effectively, GE was forced to depose Dr. Edwards to address the November 3, 2022, letter. Of course, this provided Inman's counsel with his ultimate objective, the opportunity to re-examine Dr. Edwards which again was prohibited by two Orders of the Commission. This deposition occurred on April 20, 2023. Importantly, Dr. Edwards confirmed that neither his prior deposition testimony nor the majority of evidence referenced by counsel for GE in the prior deposition was provided to or reviewed by him during the meeting on October 27, 2022. Dr. Edwards did testify that Inman's counsel showed him the December 2020, medical questionnaire completed by Inman for GE at hiring. **(Depo. of Dr. Edwards 4/20/2023 p. 9, ll. 7-18; p. 10, ll. 16-23; p. 12, l. 17-p. 13, l. 5; p. 22, ll. 11-23).**

During the deposition, counsel for GE went through all the above-referenced testimony from the September 2021 deposition again with Dr. Edwards, and he re-confirmed all of his prior opinions. **(Depo of Dr. Edwards 9/23/21, p. 27, l. 6-p. 44, l. 11)(Depo of Dr. Edwards 4/20/23, p. 24, l. 15-p. 29, l. 12; p. 21, ll. 12-18; p. 39, l. 23-p. 40, l. 22; p. 46, ll. 9-20; p. 49, l. 12-p. 50, l. 17).** He then proceeded with the following testimony:

Q: Is it likely the issues, the pathology in his spine that was causing - - when he presented to the emergency room with - - on December 26th, 2020, is exactly the same pathology that he - - that caused the problems he presented to you with - -

A: That would be a fair assessment or a fair assumption to make.

Q: Okay. There was not a miraculous change in the pathology? It was likely the exact same issue?

A: Chances are, yes.

(Depo. of Dr. Edwards 4/20/2023, p. 45, ll. 9-21).

Admittedly, Dr. Edwards then seemingly testified that Inman sustained an aggravation of a pre-existing condition but noted that he was not asked that question during the first deposition, nor in the November 3, 2022, letter. **(Depo. of Dr. Edwards 4/20/2023, p. 51, ll. 16-23)**. He then qualified his testimony as follows:

Q: The length of time that he had this issue is all different according to these reports; is that fair?

A: It is.

Q: How do we know this isn't just a continuation of is ongoing issues?

A: We really don't except for again, the patient tell me something and I have to rely on that. And - -

Q: But can you relay on the patient based on what I've shown you today?

A: It makes it more challenging to do that.

(Depo. of Dr. Edwards 4/20/2023, p. 53, ll. 8-20) (see also p. 74, ll. 2-12). Dr. Edwards then confirmed Inman was not truthful about the nature and status of his pre-existing condition and treatment. **(Dr. Edwards 4/20/23 p. 54, l. 6-p. 55, l. 19)**. Dr. Edwards ultimately testified that "I don't think that the symptoms that you've had me review in these records that predated the injury were anything other than the same thing I've been treating him for." **(Depo. of Dr. Edwards 4/20/2023, p. 75, ll. 7-11)**.

STANDARD OF REVIEW

"The South Carolina Administrative Procedures Act (APA) governs judicial review of decisions by the Commission." *Hartzell v. Palmetto Collision, LLC*, 415 S.C. 617, 622, 785 S.E.2d 194, 197 (2016). "An appellate court's review is limited to the determination of whether or not the Commission's decision is supported by substantial evidence or is controlled by an error of law." *Id.* "In workers' compensation cases, the Commission is the ultimate fact finder." *Id.*

“Although it is logical for the Full Commission, which did not have the benefit of observing the witnesses, to give weight to the Single Commissioner's opinion, the Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner.” *Muir v. CR Bard, Inc.*, 336 S.C. 266, 282, 519 S.E.2d 583 (Ct. App. 1999). “The findings of the Commission are presumed correct and will be set aside only if unsupported by substantial evidence.” *Id.* Appellate courts must affirm the Commission’s factual findings if they are supported by the evidence. *Holmes v. Nat’l Serv. Indus., Inc.*, 395 S.C. 305, 308, 717 S.E.2d 751, 752 (2011).

“A court may not substitute its judgment for that of an agency as to the weight of the evidence on questions of fact unless the agency's findings are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.” *Muir*, 336 S.C. at 282, 519 S.E.2d at 591. “Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached.” *Id.* “[T]he substantial evidence test ‘need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment’; and a judgment upon which reasonable men might differ will not be set aside.” *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981) (quoting *Dickinson-Tidewater, Inc. v. Supervisor of Assessments of Anne Arundel Cty.*, 273 Md. 245, 256, 329 A.2d 18, 25 (1974)).

ARGUMENT

I. The November 3, 2022, statement of Dr. Edwards is uncorroborated hearsay and therefore inadmissible.

Hearsay is defined as a statement, oral or written, “other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. While it has been well established that the South Carolina Rules of Evidence

generally do not apply in proceedings before the Workers' Compensation Commission, hearsay testimony may only be admissible in workers' compensation matters "if corroborated by facts, circumstances, or other evidence." *S.C. Code Ann. § 1-23-330(1)* (1986 & Supp. 1999) (except in proceedings before the Workers' Compensation Commission, rules of evidence apply in contested matters before an agency); *Hamilton v. Bob Bennett Ford*, 528 S.E.2d 667, 339 S.C. 68 (2000) (Hearsay testimony was excluded where it was not corroborated by other evidence at the hearing).

In the instant case, Inman submitted as evidence the November 3, 2022, hearsay document prepared by Dr. Edwards to address the direct causation of Inman's alleged injuries in this case. **(See Claimant's APA, p. 217(A)(54-55))**. Importantly, the document arose from a private meeting between counsel for Inman and Dr. Edwards on the date of Dr. Edwards' second deposition, which was scheduled by Inman even after being ordered by Commissioner Dooley not to do so, and then cancelled after Commissioner McCaskill again ordered the deposition not to be taken.

It is undeniable that the document was submitted to "prove the truth of the matter asserted," *i.e.* causation and, therefore, the document is by definition hearsay. According to *Hamilton*, the only remaining question is whether the document could be corroborated by any other evidence in the record. When the letter was prepared, the **only** evidence in the record addressing causation was the deposition of Dr. Edwards from September of 2021, during which Dr. Edwards clearly and indisputably testified to a reasonable degree of medical certainty that he could not establish causation. **(Depo. of Dr. Edwards 9/23/21, p. 44, ll. 3-9)**. As such, the hearsay evidence could not be corroborated by any evidence in the record and should have been excluded by Commissioner Beck.

Interestingly, Inman argues that Rule 803 of the Rules of Evidence excludes as hearsay statements for the purpose of medical diagnosis or treatment, or records of regularly conducted

business activity. This argument is without merit, however, as this document is neither. The purpose of the letter was to address causation, not provide a medical diagnosis, and the letter is most certainly not a record of regularly conducted business activity. It is undeniably a causation statement.¹

Because the hearsay statement is not “corroborated by facts, circumstances, or other evidence,” Commissioner Beck and the Full Commission erred as a matter of law in allowing the hearsay statement to be entered into evidence in this case over GE’s objection. Further, had the November 3, 2022, hearsay statement been properly excluded from evidence, GE would not have been effectively forced to re-depose Dr. Edwards on April 20, 2023. GE requests this Court to reverse the Decision and Order of the Full Commission and find it was an error of law to find this statement, and ultimately the second deposition, admissible.

II. The November 3, 2022, statement of Dr. Edwards was improperly admitted into evidence in violation of Regulation 67-612 and the Orders of two Commissioners.

Should this Court determine the November 3, 2022, statement of Dr. Edwards is a medical report rather than a hearsay document subject to *Hamilton* as set forth above, the question of admissibility is nonetheless still governed by Regulation 67-612 of the South Carolina Workers’ Compensation Commission. Under Regulation 67-612, expert reports are admissible so long as they are timely provided to the opposing party. Previously, Inman has relied upon *Gadson v.*

¹ Persuasive on this point is a case from the Florida Court of Appeals wherein the court held that correspondence prepared by the authorized treating physician “which, on its face, appears to have been prepared for the purposes of litigation in that it addresses a legal issue only and is not associated with a medical office visit,” was deemed a hearsay document and not a medical report for purposes of admissibility. *Vaughan v. Broward Gen. Med. Ctr.*, 105 So. 3d 569 (Fla. Dist. Ct. App. 2013). In the case at hand, we are dealing with a statement prepared by an unauthorized medical provider at the behest of Inman’s attorney specifically to address the legal issue of causation. Similar to Regulation 67-612 of the South Carolina Workers’ Compensation Commission, Florida Statute Section 440.29(4) allows for the admission of medical reports at a hearing. Just as with Regulation 67-612, the purpose of the Florida statute is to “streamline the evidentiary process” at a hearing. The question before the court in *Vaugh* was whether the physician letter constituted a hearsay document or a medical report that fell within bounds of Section 440.29(4).

Mikasa Corp., 368 S.C. 214, 628, S.E.2d 262 (Ct. App. 2006), where the Court explained that Regulation 67-612 allows for “written reports and documentation in lieu of live testimony, concomitantly saving time and expense in the presentation of testimony before the single commissioner.” *Gadson*, 368 S.C. at 226 (emphasis added).

It is well established that an Order of the Commission, if not appealed, becomes the law of the case. Inman filed a Form 30 appealing the August 30, 2022, Order of Commissioner Dooley on September 12, 2022. The Form 30 was subsequently dismissed as interlocutory on September 19, 2022. No further appeal was filed on the issue and, thus, Commissioner Dooley’s Order granting GE’s Motion to Quash the second deposition of Dr. Edwards became the law of the case. Further, Inman filed another Form 30 appealing the October 27, 2022, Order of Commissioner McCaskill wherein Commissioner Dooley’s original Order of August 30, 2022, was upheld. That Form 30 was also dismissed as interlocutory by the Full Commission on November 21, 2022. No further appeal was filed by Inman on this issue and Commissioner McCaskill’s Order is now also the law of the case. Thus, Inman was strictly prohibited for securing additional testimony from Dr. Edwards regarding causation of his alleged injuries.

Nevertheless, Inman secured the November 3, 2022, statement of Dr. Edwards specifically in lieu of live testimony, which he ultimately conceded by citing to Regulation 67-612 to support his position. Offering as evidence this statement in lieu of live testimony is a clear violation of the orders of Commissioners Dooley and McCaskill which strictly prohibited additional live testimony from Dr. Edwards. Commissioner Beck and the Full Commission erred as a matter of law in finding otherwise, and GE now requests this Court to reverse the Decision and Order of Full Commission as to this ground.

CONCLUSION

GE requests this Court find the Full Commission erred in affirming Commissioner Beck's denial of the Motion to Exclude the statement of Dr. Edwards, and further exclude the April 20, 2023, deposition of Dr. Edwards taken only as result of the denied Motion.

Respectfully Submitted,



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v.

GE Healthcare, Inc., Employer, and
Riverstone International Ins., Carrier,.....Respondents.

PROOF OF SERVICE

I, the undersigned legal assistant, of the law offices of Robinson Gray Stepp & Laffitte, LLC, attorneys for the Respondents, do hereby certify that I have served all counsel in this action with a copy of Initial Brief of the Respondents on the Appellant, by mailing a copy of same to via United States Mail, postage prepaid, and/or electronic service at the following address(es):

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Litigation + Business

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RE: Qushon Inman v. General Electric - Florence
WCC No.: 2104833
DOI: March 19, 2021
Claim No.: 402104ASG6C0001
Appellate Case No.: 2024-001766
Our File No.: 6589/8252

Dear Ms. Kitchings:

Enclosed for filing please find the Respondents' Initial Brief and Designation of Matter to be Included in the Record on Appeal, as well as the Proof of Service for same. Should you have any questions, please do not hesitate to contact my office.

With a copy of this letter, we are hereby serving a copy of these documents on counsel for the Appellant.

With kindest personal regards, I remain

A handwritten signature in black ink, appearing to read "Nicolas L. Haigler".

Nicolas L. Haigler, Esquire

Enclosures

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