

20642

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2012-CP-14-00024

Andreal HollandAppellant

v.

J.C. Witherspoon, Jr., Inc., A&K Mulch, LLC, and Capital City Insurance
CompanyRespondents

RECORD ON APPEAL
Addendum 1

Thomas K. Fowler, Jr.
Attorney for the Appellant
Peake & Fowler Law Firm, P.A.
9357 Two Notch Road, Suite 103
PO Box 23601
Columbia, SC 29224
(803) 788-4370 Phone
(803) 788-7432 Facsimile

Peter P. Leventis, IV
Mark D. Cauthen
Attorneys for Respondents
McKay, Cauthen, Settana &
Stublely, P.A.
P.O. Box 7217
Columbia, SC 29202
(803) 256-4645 Phone
(803) 765-1839 Facsimile

RECEIVED

SEP 12 2013

SC Court of Appeals

INDEX

<u>Tab #</u>	<u>Document</u>	<u>Page #</u>
--------------	-----------------	---------------

VOLUME 1

A) ORDERS AND JUDGMENTS:

1	SCWCC Order May 18, 2009.....	4
2	SCWCC Order Granting Motion to Compel.....	8
2	Order Adding Party Defendant.....	9a
3	Consent Stipulation of Dismissal	10
4	Order of Single Commissioner March 10, 2011.....	12
5	Full Commission Decision & Order December 4, 2011.....	33
6	Amended Order November 28, 2012.....	58

B) PLEADINGS

7	Complaint.....	78
8	Amended Complaint	90
9	Answer of A&K Mulch, LLC.....	102
10	A&K Mulch Responses to Requests to Admit.....	115
11	First Report of Injury 10/15/09.....	121
12	First Report of Injury 6/5/06.....	122
13	Form 20.....	123
14	Form 50 dated June 15, 2006	124
15	Form 50 dated January 20, 2009	125
16	Form 51 dated February 18, 2009.....	126
17	Form 58 of Witherspoon dated May 20, 2009.....	127

18	Form 58 of Witherspoon & A&K dated September 20, 2009.....	130
19	Form S-2 dated October 13, 2009.....	133
20	Form S-2 Dated May 14, 2009	134
21	Form 21 of Respondents-dated August 10, 2010.....	135
22	Form 58 of Appellant dated November 12, 2010.....	136
23	Appellant’s brief to Single Commissioner.....	140
24	Respondents’ brief to Single Commissioner.....	158
25	Appellant’s Objections and Response.....	175
26	Respondents’ Reply to Single Commissioner.....	178
27	Appellant’s Form 30 to Full Commission.....	183
28	Appellant’s Brief to Full Commission.....	185
29	Respondents’ Brief to Full Commission.....	210

VOLUME 2:

30	Notice and Petition for Appeal	239
31	Brief of Respondents	263

C) EXHIBITS & OTHER MATERIALS

32	Articles of Organization, Certificate of Existence and Operating Agreement of A&K Mulch, LLC	293
33	Warren Group Report	311a
34	Paula Dyches email	312
35	Letter to Paula Dyches and responses.....	314
36	Secretary of State record J.C. Witherspoon, Inc.....	316
37	Employer Identification numbers of A& K and Witherspoon.....	317

38	Psychological Evaluation of Appellant	318
39	Vocational Assessment of Appellant	322
40	Medical & Dental bills for Appellant care	329

D) TRANSCRIPTS

41	Deposition of Appellant and GAL	332
42	Deposition of Dyches	376
43	Deposition of Witherspoon	411
44	Deposition of Jonas	438
45	Deposition of Fennel	462
46	Certificate of Attorney	479

ADDENDUM 1:

47	Form 58 of Witherspoon & A&K	480
48	Amended Form 58 of Witherspoon & A&K	481



Claimant's Name: Andreal Holland Employer's Name: J.C. Witherspoon, Jr., Inc. & A&K Mulch, LLC
Address: 726 Branchview Drive Address: PO Box 289
City: Manning State: SC Zip: 29102 City: Alcolu State: SC Zip: 29001
Home Phone: () Work Phone: () Carrier: Capital City Insurance
Preparer's Name: Mark D. Cauthen, Esquire Preparer's Phone #: (803) 256-4645

A claim for workers' compensation benefits is made based on the following grounds:

Injury Illness Repetitive Trauma

1. Compensation Rate: \$294.04 2. AWW: \$441.04 Date of Injury: 06/01/06
3. Type of injury and body part(s): Head, brain, face and teeth
4. Facts in controversy: Whether claimant elected his remedy and is barred from workers' compensation benefits based on failure to timely file Form S-2; whether Defendants are entitled to stop payment of TTD; if claimant is not barred from further benefits extent of disability; whether claimant has reached MMI; Whether claimant is entitled to lifetime workers' compensation benefit and/or medical benefits; Whether claimant sustained psychological injury; whether Defendants are entitled to credit for overpayment of TTD?
5. Legal issues involved: See No. 4.
6. Unusual aspects: None
7. Witnesses (designate if expert):* Martha Odom, J.C. Witherspoon, Paula Dyches or other representative of the employer/carrier, Hollie Hoadwonic, the claimant and any witnesses listed by the claimant (The Defendants reserve the right to cross-examine any expert submitted by the claimant pursuant to 1-23-330 (3). The Defendants reserve the right to amend their Pre-hearing brief upon receipt of additional information.
8. Exhibits: Deposition transcript of Claimant; Deposition transcript of Paula Dyhces; Deposition transcript of J.C. Witherspoon; Employment records from J. C. Witherspoon, Jr., Inc. and A&K Mulch; Summons & Complaint, Andreal Holland by his GAL, Peggy Knox v. Morbark, Inc., et. al.; Form S-2s; Defendant's Form 58s, 11/10/09 and 5/11/09; Order adding party Defendant 9/29/09
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See APA Submissions.
10. Name, address, and specialty, if any, of the treating physician: Devin Troyer, MD, Physical Medicine and Rehabilitation Outpatient Consultation; 2935 Colonial Drive, Columbia, SC 29203
11. Impairment rating(s); body part(s); physician and date of opinion: "20% whole person", Dr. Devin Troyer, dated 03/17/08
12. I am amending my Form 50/51 in the following manner:

I verify the contents of this form are accurate and true to the best of my knowledge.

Signature: Email: mcauthen@mckayfirm.com

Date of hearing: November 12, 2010 (Commissioner Beck) Time needed for hearing: 1 Hour

On behalf of Claimant Employer



12/17

www.wcc.sc.gov

AMENDED

Claimant's Name: Andreall Holland Employer's Name: J.C. Witherspoon, Jr., Inc. & A&K Mulch, LLC
Address: 726 Branchview Drive Address: PO Box 289
City: Manning State: SC Zip: 29102 City: Alcolu State: SC Zip: 29001
Home Phone: () Work Phone: () Carrier: Capital City Insurance
Preparer's Name: Mark D. Cauthen, Esquire Preparer's Phone #: (803) 256-4645

A claim for workers' compensation benefits is made based on the following grounds:

Injury Illness Repetitive Trauma

1. Compensation Rate: \$294.04 2. AWW: \$441.04 Date of Injury: 06/01/06
3. Type of Injury and body part(s): Head, brain, face and teeth
4. Facts in controversy: Whether claimant elected his remedy and is barred from workers' compensation benefits based on failure to timely file Form S-2; whether Defendants are entitled to stop payment of TTD; whether Defendants are entitled to credit for overpayment of TTD?
5. Legal Issues Involved: See No. 4.
6. Unusual aspects: None
7. Witnesses (designate if expert):* Martha Odom, J.C. Witherspoon, Paula Dyches or other representative of the employer/carrier, the claimant and any witnesses listed by the claimant (The Defendants reserve the right to cross-examine any expert submitted by the claimant pursuant to 1-23-330 (3). The Defendants reserve the right to amend their Pre-hearing brief upon receipt of additional information.
8. Exhibits: Deposition transcript of Claimant; Deposition transcript of Paula Dyches; Deposition transcript of J.C. Witherspoon; Deposition transcript of Peggy Knox; Employment records from J. C. Witherspoon, Jr., Inc. and A&K Mulch; Summons & Complaint, Andreall Holland by his GAL, Peggy Knox v. Morbark, Inc., et. al.; Form S-2s; Defendant's Form 58s, 11/10/09 and 5/11/09; Order adding party Defendant 9/29/09; Deposition transcript of James M. Fennell, Esquire (scheduled for 12/13/10); Deposition transcript of Donald E. Jonas, Esquire (scheduled for 12/13/10); Complaint filed 09/05/08
9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance):
See APA Submissions.
10. Name, address, and specialty, if any, of the treating physician: Devin Troyer, MD, Physical Medicine and Rehabilitation Outpatient Consultation; 2935 Colonial Drive, Columbia, SC 29203
11. Impairment rating(s); body part(s); physician and date of opinion: "20% whole person", Dr. Devin Troyer, dated 03/17/08
12. I am amending my Form 50/51 in the following manner:

I verify the contents of this form are accurate and true to the best of my knowledge.

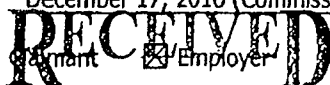
Signature: Mark D. Cauthen

Email: mcauthen@mckayfirm.com

Date of hearing: December 17, 2010 (Commissioner Beck)

Time needed for hearing: 1 Hour

On behalf of Claimant Employer



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

R. FERRELL COTHRAN, JR., Circuit Court Judge

Case No. 2012-CP-14-00024

ANDREAL HOLLAND,

Appellant,

v.

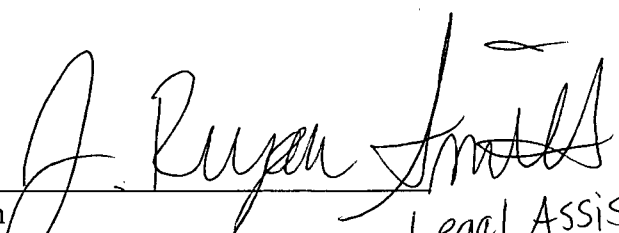
J.C. WITHERSPOON, INC.,
A.K. MULCH, LLC, and
CAPITAL CITY
INSURANCE,

Respondents.

CERTIFICATE OF SERVICE

I, the undersigned, employee of the Law Offices of Peake & Fowler Law Firm P.A., attorneys for the claimant do hereby certify that I have on this the 12th day of September, 2013 served a copy of Appellant's ADDENDUM TO RECORD ON APPEAL, pursuant to Rule 210(a), upon attorneys of record, MARK CAUTHEN, ESQUIRE and PETER P. LEVENTIS, IV, ESQUIRE, in this action by personal delivery to the following:

Mark Cauthen, Esquire
Peter P. Leventis, IV, Esquire
McKay Law Firm
1303 Blanding Street
Columbia, SC 29201



Ryan Smith
Peake & Fowler Law Firm, P.A.
P.O. Box 23601
Columbia, SC 29224
(803) 788-4370

Legal Assistant
to Thomas K.
Fowler, Jr.

RECEIVED

SEP 12 2013

SC Court of Appeals