

**IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

APPEAL FROM LANCASTER COUNTY
COURT OF COMMON PLEAS

Kenneth E. Goode, Circuit Court Judge

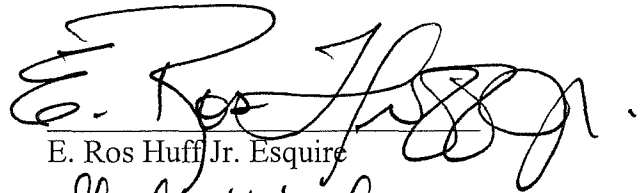
Trial Court Case No. 2006-CP-29-955

FRANCES S. HUDSON, DECEASED EMPLOYEE, BY KENNETH L. HUDSON
AND KEITH B. HUDSON, CO-EXECUTORS OF HER ESTATE, AS WELL AS
MATTHEW DEESE AND OR ANDREW DEESE, OF WHOM KENNETH L.
HUDSON AND KEITH B. HUDSON ARE
PETITIONERS/RESPONDENTS,

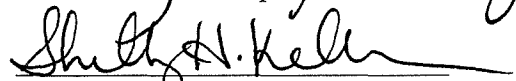
v.

LANCASTER CONVALESCENT CENTER, EMPLOYER, AND LEGION
INSURANCE COMPANY IN LIQUIDATION THROUGH S.C. PROPERTY AND
CASUALTY INSURANCE GUARANTY ASSOCIATION CARRIER,
RESPONDENTS/PETITIONERS.

**RESPONDENTS LANCASTER CONVALESCENT CENTER AND LEGION
INSURANCE COMPANY'S RETURN TO PETITIONERS PETITION FOR
WRIT OF CERTIORARI**



E. Ros Huff Jr. Esquire



Shelby H. Kellahan, Esquire

7244 Woodrow Street

PO Box 1935

Irmo SC 29063

(803)252-2232

Attorneys for Respondent/Employer

Lancaster Convalescent Center and Legion
Insurance Company

INDEX

Question Presented.....3

Statement of the Case.....4

Arguments.....7

I. **The Court of Appeals did not err in reversing the Commission’s ruling relative to the continued viability to the extent that the estate had no claim to these funds as they abated.**

II. **The Court of Appeals erred in determining that the benefits would be subject to S.C. Code Ann. Section 42-9-280, when this award should abate, and exceeded its authority in awarding the lump sum benefits without a Commission determination as to who the next of kin dependents were under 42-9-280.**

Conclusion.....18

QUESTIONS PRESENTED

I. Did the Court of Appeals err in reversing the Commission's ruling relative to the continued viability of the award to the extent that the estate had no claim to these funds?

II. Did the Court of Appeals err in reversing/vacating the Commission's approval of the potential beneficiaries' settlement agreement?

III. Did the Court of Appeals err in allowing Appellant to currently contest the distribution mechanism divided by all potential beneficiaries?

STATEMENT OF THE CASE

Ms. Frances Hudson was found permanently and totally disabled by SC Code Ann. Section 42-9-10 the S.C. Workers' Compensation Commission in an Order dated October 3, 2001. (R.15). Thereafter, Claimant requested a lump sum award pursuant to a Form 24. (R.132). A hearing was held to determine whether Ms. Hudson was entitled to a lump sum award pursuant to S.C. Code Ann. Section 42-9-301 (1976, as amended).

An order was issued on June 12, 2002 (Commissioner Sherry Martschink) awarding lump sum benefits. The Respondents filed a WCC Form 30 appeal indicating it was error to award lump sum payment. No other issues were brought up on appeal. *See Green v. City of Columbia*, 311 S.C. 78, 427 S.E. 2d 685 (SC App. 1993).

Prior to the appeal hearing being held, Ms. Hudson died from non work related causes (Cancer). On August 23, 2002, upon learning of the Claimant's death, the attorney for the Employer sent a letter to the S.C. Workers' Compensation Commission requesting a dependency hearing. (R.62). The Appellate Panel subsequently affirmed the lump sum award by Order dated January 27, 2003. (R.57). Up until the time Ms. Hudson died on July 30, 2002, the issue of abatement was not applicable or ripe for a hearing; therefore, abatement was not an issue that could be raised at the June 12, 2002 lump sum hearing before Commissioner Martschink. The appellate panel order was appealed by a Petition for Judicial Review to the Circuit Court. (R.135). The Petition, filed pursuant to S.C. Code § 1-23-380 (1976, as amended) and § 42-17-60 (1976, as amended), was limited in scope to the findings of the Appellate Panel. Even though the issue of abatement was not raised by appeal and not before him, on February 26, 2004, Judge Short issued an Order improperly finding that the issue of abatement was not preserved for appellate review and

affirmed the lump sum award to the Claimant. (R.61). The Respondents Lancaster Convalescent Center and Legion Insurance Company (Respondents or Employer) then filed a Notice of Appeal to the S.C. Court of Appeals dated March 24, 2004. (R.141). This Appeal was ultimately withdrawn, thereby making Judge Short's determination that lump sum benefits was proper and became the law of the case. At that time, only the issue of lump sum was the law of the case.

On October 22, 2004, a Dependency Hearing was held before the Commissioner Bass to determine if any of the unpaid compensation that was due to Ms. Hudson at the time of her death was payable to her next of kin dependents. Pursuant to S.C. Code Ann. Section 42-9-280, it was at this time that the Employer could timely and properly raise the issue of abatement for the first time. The Single Commissioner issued an Order on June 3, 2005 awarding benefits payable to Ms. Hudson's beneficiaries (not her next of kin dependent) and finding that Judge Short's Order was the law of the case, thus Respondents could not at the hearing before him raise the issue of abatement. (R.75). On June 21, 2005 and June 22, 2005 respectively, the attorneys for the Employer and Guaranty Association thereby filed Form 30's requesting that the S.C. Workers' Compensation Commission review the award of the Single Commissioner. (R.143-150). A hearing was held before the Appellate Panel on February 21, 2006 and an Order issued on July 29, 2006 which affirmed the Order of the Single Commissioner and reversed a portion imposing a 10% penalty. (R.99). Thereafter, the Employer, Guaranty Association, and the Petitioners filed Petitions for Judicial Review with the Circuit Court. (R.151 – 183).

A hearing was held before Judge Kenneth G. Goode, who ultimately affirmed the Full Commission's Order with the exception of the portion vacating 10% penalty, which he found the Defendants were responsible for paying. (R .109). It is from this Order that the Appellants appealed to the South Carolina Court of Appeals.

On March 3, 2010, the South Carolina Court of Appeals heard arguments on this matter. The Court of Appeals filed its first opinion on June 30, 2010 affirming the circuit court order (**First opinion**). The Court of Appeals substituted its opinion of June 30, 2010 and issued a Second Opinion affirming the Circuit Court in part in reversing in part on February 4, 2011 (**Second opinion**). On February 22, 2011, the Respondents filed a Petition for Rehearing on the basis that the Circuit Court Order dated February 17, 2004 was not the law of the case; that Judge Short did not have jurisdiction over the issue of abatement; and that Judge Goode's Order of March 27, 2008 must be reversed in so far as he affirms the Commission's July 29, 2006 Order as Ms. Hudson's award abated upon her death pursuant to the *Estate of Covington*, 304 S.C 436, 405 S.E.2d 393 (1991). The Court of Appeals denied the Petition for Rehearing, but substituted the February 4, 2011 opinion with a third opinion dated April 21, 2011 (**Third opinion**). Respondents again filed a Petition for Rehearing on May 4, 2011. The Court of Appeals denied that Petition by Order dated June 1, 2011. Both the Petitioners (Estate) and the Respondents (Employer/Carrier) filed Petitions for Writ of Certiorari to this Court. This Return is in response to Petitioners' Petition for Writ, which was filed on June 24, 2011.

ARGUMENTS

In response to Petitioners Petition for Writ of Certiorari, the Respondents, Lancaster Convalescent and Legion Insurance Company (Employer) assert the following:

- III. The Court of Appeals did not err in reversing the Commission's ruling relative to the continued viability to the extent that the estate had no claim to these funds as they abated.
- IV. The Court of Appeals erred in determining that the benefits would be subject to S.C. Code Ann. Section 42-9-280, when this award should abate, and exceeded its authority in awarding the lump sum benefits without a Commission determination as to who the next of kin dependents were under 42-9-280.

THE COURT OF APPEALS DID NOT ERR IN REVERSING THE COMMISSION'S RULING RELATIVE TO THE CONTINUED VIABILITY TO THE EXTENT THAT THE ESTATE HAD NO CLAIM TO THESE FUNDS AS THEY ABATED.

(QUESTIONS PRESENTED #1)

The Petitioners/Claimants contend that the Court of Appeals erred in reversing the ruling relative to the continued viability of Ms. Hudson's June 12, 2002 accrued lump sum disability because the court: (a) overlooked the retroactive impact of the subsequent affirmance of this order; (b) overlooked the material distinction between accrued and unaccrued benefits recognized in *Stone v. Roadway* (c) incorrectly relied upon the provisions of S.C. Code Ann. Section 42-9-280(1976), and (d) incorrectly/inequitably prohibited the estate beneficiaries from sharing in these accrued proceeds.

The Petitioners/Claimants contend that there was a subsequent affirmance of the June 12, 2002 lump sum award. Thereby this 2002 award was final via Judge Short's February 2, 2004 Order. This is an error of fact and law. The Petitioners rely on several cases to support this proposition. However, one of these cases was an out of state decision See *Greier v. Tjaden* 84 N.W. 2d 582, 583 (N.D 1957), and the other case was a

family court decision See *Calhoun v. Calhoun*, 339 S.C. 96, 529 S.E.2d 14 (2000). The South Carolina Workers Compensation Commission is uniquely different in that the Appellate Panel can make its own findings of fact independent and or in direct opposition to the findings of the single commissioner. Therefore, the decisions cited by the Petitioners are completely irrelevant to the workers compensation determination in this matter. See *Etheredge v. Monsanto Co.*, 349 S.C. 451 (S.C. Ct. App. 2002), holding that “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.”

The Petitioners/Claimants also argue that when a claim for compensation has accrued but is unpaid, at the time of death of the employee, it constitutes an asset of the estate in absence of any provisions to the contrary. However, the Petitioners rely on a string of North Carolina decisions to support this contention. Inasmuch as the South Carolina Worker's Compensation Act is modeled after the North Carolina Act, the appellate court naturally looks to North Carolina's decisions in interpreting similar provisions. See *Pressley v. REA Constr. Co.*, 374 S.C. 283 (S.C. Ct. App. 2007). However, in this instance, the North Carolina statute expressly provides that a personal representative (estate) can take under the award. See *N.C. Gen. Stat.* Section 97-37. The South Carolina statute has no such provision. Therefore, it is a misstatement of the law to contend that the North Carolina cases are controlling in this situation. Moreover, there is South Carolina law on point that specifically addresses this type of situation. See *Estate of Covington v. AT&T Nassau Metals Corporation*, 405 S.E.2d 393, 394 (1991); *see also*; *Stone v. Roadway Express*, 367 S.C. 575, 627 S.E.2d 695, 700 (2006).

The Respondent/Employer contends that the Court of Appeals erred in not determining that the Claim abated in its totality upon Ms. Hudson's death. However, in Response to Petitioners' argument as to the viability of the estate's claim, the Employer/Respondent argues that the Court of Appeals correctly determined that the estate had no right to the award.

The Claimant was receiving a weekly payment of an award of total disability benefits pursuant to the Order dated October 3, 2001, in which Commissioner Lyndon found and concluded that the Claimant was entitled to permanent and total disability based on wage loss as a result of her work related injuries pursuant to the **first paragraph** of S.C. Code Ann. § 42-9-10 (2005). (R.29) However, the Claimant, at the time of her death was still receiving weekly payments, thus the Claimant's right to compensation ceased and abated upon her death and her beneficiaries (estate) and/or next of kin dependents cannot make a claim for her compensation.

In South Carolina, "a cause of action created by statute survives when and only when some provision for its survival is made in the statute itself, or in some other statute." *Ferguson v. Charleston Lincoln Mercury, Inc.*, 344 S.C. 502 544 S.E.2d 285, (S.C. Ct. App. 2001). Workers' compensation is a cause of action created by statute. *See generally*, S.C. Code Title 42. *See also Estate of Covington*, 304 S.C 436, 405 S.E.2d 393 (1991). The compensation afforded by the Act is statutory in character, and the right of any claimant thereto is dependent upon the terms and conditions of the statute.

The survivability of the Claimant's workers' compensation claim depends on the statutory provision for its survival. Although the Act does, in certain limited situations, provide for the survival of an action, in this instance it does not. South Carolina Code

Ann. § 42-9-280 (2005), is entitled Payment of unpaid balance of compensation when employee dies. This code section states in its entirety:

“When an employee receives or is entitled to compensation under this Title *for an injury covered by the second paragraph of § 42-9-10 or § 42-9-30* and dies from any other cause than the injury for which he was entitled to compensation, payment of the unpaid balance of compensation shall be made to his next of kin dependent upon him for support, in lieu of the compensation the employee would have been entitled to had he lived. But if the death is due to a cause that is compensable under this Title and the dependents of such employee are awarded compensation therefore, all right to unpaid compensation provided by this section shall cease and determine.” S.C. Code § 42-9-280.

Pursuant to this statute, the threshold determination in a case in which the employee dies from an unrelated cause before he has been paid all benefits for his workers' compensation claim, is whether the award is “for an injury covered by the second paragraph of § 42-9-10 or § 42-9-30.” S.C. Code § 42-9-280 (2005). In this case, the Claimant received her compensation award under the first paragraph of § 42-9-10. Thus, she does not fall within the terms of the statute and her award does not survive, and abated upon her death.

Commissioner Lyndon's findings made it clear that the Claimant was compensated under the first paragraph of § 42-9-10 because that is the only part (first paragraph) that requires proof of the incapacity to work. Evidence of vocational ability would be completely unnecessary if trying to prove the second paragraph since it does not concern the capacity to work, but instead deals with the listed body parts. *See* SC Code Ann. Section 42-9-30

Commissioner Bass' order tries to rewrite the basis of the original decision of Commissioner Lyndon i.e. loss of earning capacity under § 42-9-10, first paragraph, without the issue ever being raised or litigated before Commissioner Bass because Commissioner Lyndon's Order is binding and is the law of the case.

Because the Legislature chose not to provide for the survival of benefits awarded under the first paragraph of § 42-9-10, the award abated upon Claimant's death. "[U]nless a statute *specifically provides* for the survival of an action for personal injury, it does not lie after the injured person's death." *Reed v. Medlin*, 284 S.C. 585, 328 S.E.2d 115 (S.C. Ct. App. 1985) (emphasis added), *overruled on other grounds by Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894 (1994).

"As a general proposition, the right to receive future workers' compensation benefits is not inheritable." Larson, *Workers' Compensation Law*, § 89 (2001). *See also* 82 Am.Jur.2d *Workers' Compensation* § 670 (2003)("It is generally recognized that upon the death of a worker receiving compensation benefits, the worker's personal representative has no right to any benefit payments which were not due and payable at the time of the worker's death."). At the time of Ms. Hudson's death, there was no final binding Lump Sum Order, but only an order awarding lump sum benefits that was pending an appeal before the SC Workers Compensation Commission. At the time of her death, Ms. Hudson was only entitled to receive a weekly check as it accrued each week, nothing more, and nothing less.

Section 42-9-280 contains no survivability provision regarding an award of benefits under the first paragraph of § 42-9-10; therefore, the instant action did not survive Claimant's death. *See generally* S.C. Code Ann. § 42-9-280.

The Claimant's beneficiaries (estate) cannot then claim that Ms. Hudson's workers' compensation benefits fall under the general survivability statute. The Supreme Court of South Carolina has specifically held that S.C. Code § 15-5-90 does not provide for the survival of claims brought under the Workers' Compensation Act. *Estate of Covington v. AT&T Nassau Metals Corporation*, 405 S.E.2d 393, 394 (1991). The Claimant was paid all benefits that were due to her, as she was receiving ongoing weekly benefits payments until her death. Further, because she was awarded benefits under the first paragraph of § 42-9-10, her estate was not entitled to any benefits to which she would have been entitled had she survived. By the clear terms of § 42-9-280, the Claimant's benefits did not survive her death. By allowing her estate and/or next of kin dependents within the terms of § 42-9-280 would alter the express intention of the Legislature and is thus prohibited. *See Adkins v. Comcar Industries, Inc.*, 447 S.E.2d 228, 230 (1994), *aff'd*. 475 S.E.2d 762 (1996) (to depart from the meaning expressed by the words is to alter the statute; to legislate and not to interpret.... There is a marked distinction between liberal construction of statutes by which the court determines their true meaning, and the act of a court in engrafting upon a law something that has been omitted, which the court believes ought to have been embraced). Therefore, the Claimant's beneficiaries' (estate) claims do not fall under the general survivability statute.

Regardless of Abatement, based upon paragraph 1 or paragraph 2 of S.C. Code Ann. Section 42-9-10, the next of kin dependents don't take because the benefits have not accrued. The Claimant's benefits were unaccrued and contingent in nature and ceased with her death. While Petitioners argue that the benefits had accrued, his argument is in

error. An Order dated June 12, 2002 by Commissioner Martschink granted the Claimant's request for a lump sum payment. (R.44-56). However, Respondents filed a Request for Full Commission Review of this decision. (R.133-134) (Pursuant to Section 42-17-50). During the pendency of the appeal, the Claimant died of unrelated causes. Because this Order was under appeal, it was not final and binding. "All findings of fact and law by the hearing commissioner become and are the law of this case, **except** only those within the scope of the exception of defendant and the notice given to the parties by the Commission." *Ham v. Mullins Lumber Co.*, 193 S.C. 66, 7 S.E.2d 712 (1940). At the time of her death, the Claimant was still receiving her benefits on a weekly basis, therefore as stated in Larson's, "when the award, although fixed for a number of weeks, is paid weekly or periodically, most jurisdictions in the absence of a special statute to the contrary have held that heirs have no claim upon the unaccrued payments since the award is a personal one, based upon the employee's need for a substitute for lost wages and earning capacity." Larson, Workers' Compensation Law, § 89.03 (2001). Further, as stated in *Stone v. Roadway Express*, 367 S.C. 575, 627 S.E.2d 695, 700 (2006), a Claimant's beneficiaries and/or next of kin dependents are not entitled to unaccrued benefits. In the Stone decision, the Supreme Court specifically stated that

The language of §42-9-280 is plain. The Legislature, as is its prerogative, determined that dependent survivors should receive all benefits due an injured worker who lost the use of a scheduled member...i.e., those who suffered a physical loss, while the dependents of a person totally disabled for another reason, i.e., one who suffered a wage loss compensated under the first paragraph of § 42-9-10, should not. The Legislative distinction between "physical loss" and "wage loss" appears in other workers' compensation statutes as well. (Id., at n/a).

In this case, just as in the Stone case, the Claimant was awarded compensation for a loss in earning capacity under the first paragraph of § 42-9-10. Thus, she was being compensated for her loss of earning power, rather than any loss of use of a specific body member. Therefore, her claim for compensation ceased with her death. As the Claimant has no benefits to pass to her beneficiaries/next of kin dependents, there is no further claim under the Act. *See generally* S.C. Code Ann. § 42-9-280 (Providing for the survival of benefits only for a loss under the second paragraph of § 42-9-10 or under § 42-9-30); Larson, Workers' Compensation Law, § 89 (2001) (“As a general proposition, the right to receive future workers’ compensation benefits is not inheritable.”); and 82 Am.Jur.2d Workers' Compensation § 670 (2003) (“It is generally recognized that upon the death of a worker receiving compensation benefits, the worker’s personal representative has no right to any benefit payments which were not due and payable at the time of the worker’s death.”)

Since Claimant was awarded compensation under the first paragraph of § 42-9-10, her award does not come within the clear and unambiguous terms of § 42-9-280, and her benefits ceased with her death. As the Legislature has enacted no provision for the survivability of benefits in this situation, the award did not survive. Likewise, the general survivability statute does not provide any comfort to Claimant’s beneficiaries, as it does not apply to workers’ compensation benefits.

THE COURT OF APPEALS ERRED IN DETERMINING THAT THE BENEFITS WOULD BE SUBJECT TO S.C. CODE ANN. SECTION 42-9-280, WHEN THIS AWARD SHOULD ABATE, AND EXCEEDED ITS AUTHORITY IN AWARDING THE LUMP SUM BENEFITS WITHOUT A COMMISSION DETERMINATION AS TO WHO THE NEXT OF KIN DEPENDENTS WERE UNDER 42-9-280.

(QUESTIONS PRESENTED #2 AND 3)

The Petitioners contend that the Court of Appeals erred in reversing/vacating the Commission's approval of the potential beneficiaries' settlement agreement. However, as the Court of Appeals correctly states, there was never such an agreement. Neither the Respondent Employer nor the Guaranty Association acknowledged and accepted the beneficiaries' settlement of their respective entitlement to the lump sum proceeds. As the court of appeals states, "there is no such stipulation by Employer's counsel on the record that he had no objection to the manner in which the funds were split."

Moreover, the Court of Appeals found that if this award should not abate, then it is subject to S.C. Code Ann. Section 42-9-280 wherein the proceeds should be split between the next of kin dependents. While it is the Respondents' belief that 42-9-280 does not apply to this situation because Ms. Hudson's award was subject to paragraph one as discussed above, even if this award was subject to 42-9-280, the Court of Appeals exceeded its scope of review when it *sua sponte* awarded the benefits to Ms. Hudson's dependent grandchildren. The SC Workers' Compensation Commission never made a determination of who the next of kin dependents were pursuant to S.C. Code Ann. Section 42-9-280 and the SC Workers Compensation Commission has exclusive jurisdiction to make this finding first. S.C. Code Ann. Section 42-3-180. The Commission also made no finding as to whether the grandchildren (next of kin) were dependent at least three months before Ms. Hudson's accident as required by S.C. Code Ann. Section 42-9-120.

Commissioner Bass' Order of June 3, 2005 awarded benefits payable to Ms. Hudson's beneficiaries, not her next of kin dependents as required by Section 42-9-280

The Court of Appeals, in its substituted order of April 21, 2011 (**Third Opinion**), reversed this decision and instead determined that the unpaid balance of Ms. Hudson's lump sum award should go to her dependent grandchildren rather than to her sons as beneficiaries of the estate pursuant to S.C. Code Section 42-9-280. Respondents assert that neither Commissioner Bass' Order awarding the unpaid benefits to the sons, nor the Court of Appeals order reversing that portion and awarding the benefits to the grandchildren are correct.

Neither the Hearing Commissioner (Bass), nor The Workers' Compensation Commission by the Appellate Panel, determined who the next of kin dependents would be, as required by Section 42-9-280, should the claims as a matter of law not abate. While the Order of the Single Commissioner, which was subsequently affirmed by the Full Commission, named four possible beneficiaries/next of kin dependents, it is not certain that all are entitled to take under the Act. (R.99-108). Keith Hudson and Kenneth Hudson, the Claimant's two biological sons, are personal representatives of the Claimant's estate and are next of kin, but not dependents. Because the Claimant had no surviving spouse under 42-9-110, then those that are wholly dependent at the time of the accident under S.C. Code Ann. Section 42-9-290 take. It must be noted that a living and breathing person must take under 42-9-290, and not an "estate" or beneficiaries, as the Petitioners suggest. Moreover, under 42-9-120, the questions of dependency are determined by facts at the time of the accident and no compensation is allowed unless the person is dependent for three months prior to the accident in accordance with the facts and circumstances. There was never a finding as to who was wholly dependent or partially dependent by the South Carolina Workers Compensation Commission and that

is an issue that must be taken up by it first. Keith Hudson, is not the biological father of Andrew Deese; who is not a grandchild as defined as such under SC Code Ann. § 42-1-70. Andrew is the son of Diane Lynn Deese. Matthew Pope¹ is Keith Hudson's biological son and the biological grandson of the deceased Claimant, Frances Hudson. There are no prior cases exist that have awarded a step-grandchild benefits.

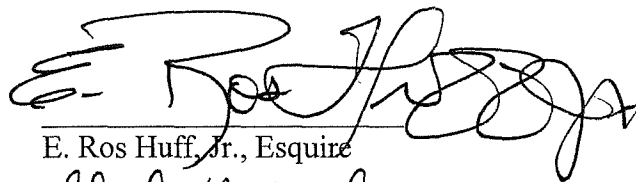
Respondents contend that the award should abate. However, if it is determined that it does not abate, then the next of kin dependents must be determined by the South Carolina Workers Compensation Commission and not by the SC Court of Appeals. The Court of Appeals does not have jurisdictional authority in naming those dependents without a finding first made by the South Carolina Workers Compensation Commission.

¹ The Respondent/Employer would note that Matthew Pope's name is incorrectly represented in the caption of these matters as Matthew Deese.

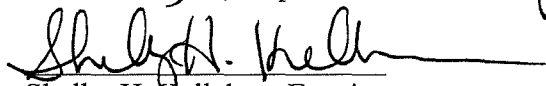
CONCLUSION

For the forgoing reasons, Respondents respectfully asks that this Court to deny Petitioner's Petition for Writ of Certiorari and permit oral arguments on the issues presented in Respondent/Employers Petition for Writ of Certiorari.

Respectfully submitted,



E. Ros Huff, Jr., Esquire



Shelby H. Kellahan, Esquire

HUFF LAW FIRM, LLC,
Post Office Box 1935
7244 Woodrow Street
Irmo, South Carolina 29063
(803) 252-2232

Attorneys for Respondent/Employer, Lancaster
Convalescent Center and Legion Insurance Company

July 21, 2011

**IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

APPEAL FROM LANCASTER COUNTY
COURT OF COMMON PLEAS

Kenneth E. Goode, Circuit Court Judge

Trial Court Case No. 2006-CP-29-955

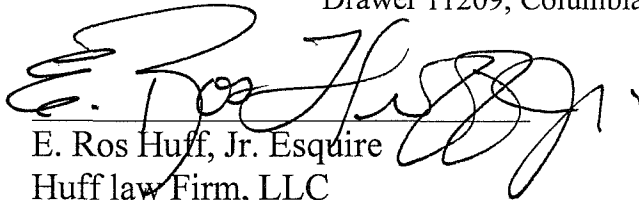
FRANCES S. HUDSON, DECEASED EMPLOYEE, BY KENNETH L. HUDSON AND KEITH B. HUDSON, CO-EXECUTORS OF HER ESTATE, AS WELL AS MATTHEW DEESE AND OR ANDREW DEESE, OF WHOM KENNETH L. HUDSON AND KEITH B. HUDSON ARE PETITIONERS/RESPONDENTS.

v.

LANCASTER CONVALESCENT CENTER, EMPLOYER, AND LEGION INSURANCE COMPANY IN LIQUIDATION THROUGH S.C. PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION CARRIER, RESPONDENTS/PETITIONERS,

CERTIFICATE OF SERVICE

I certify that I have served the Respondent's Return to Petitioner's Petition Writ of Certiorari to Kenneth Hudson and Keith Hudson by depositing a copy of the same in the United States Mail, postage prepaid, on July 21, 2011, addressed to their attorney of record Andrew N. Safran, Post Office Box 12089, Columbia, SC 29211 and Mark Cauthen, PO Box 7217, Columbia SC 29202, attorney for South Carolina Property and Casualty Insurance Guaranty Association, Ann Mickle, 125 Hampton St, Suite 300, Rock Hill, SC 29730 and Pope Johnson, III, Post Office Drawer 11209, Columbia, SC 29211.



E. Ros Huff, Jr. Esquire
Huff law Firm, LLC
7244 Woodrow Street
PO Box 1935
Irmo SC 29063
(803)252-2232

Attorney for Lancaster Convalescent Center and Legion Insurance Company