

RECEIVED

MAY - 3 2012

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

THE HONORABLE R. KNOX MCMAHON, CIRCUIT COURT JUDGE

CASE NUMBER: 2008-CP-32-2361

William T. Jervey, Jr., Employee Respondent/Petitioner,

v.

Martint Environmental, Inc., Employer, and General Casualty Insurance Company, Carrier
..... Petitioners/Respondents.

APPENDIX

Andrew N. Safran
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689
Attorney for Respondent/Petitioner
William T. Jervey, Jr.

APPENDIX

EXHIBIT 1:	JANUARY 25, 2012 OPINION NO. 4930 OF THE COURT OF APPEALS	Pgs. 1 – 9
EXHIBIT 2:	RESPONDENT'S PETITION FOR REHEARING	Pgs. 10 – 17
EXHIBIT 3:	APPELLANTS' PETITION FOR REHEARING	Pgs. 18 – 19
EXHIBIT 4:	APPELLANTS' MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING	Pgs. 20 – 34
EXHIBIT 5:	APPELLANTS', MARTINT ENVIRONMENTAL, INC. AND GENERAL CASUALTY INSURANCE COMPANY'S, RETURN TO RESPONDENT'S PETITION FOR REHEARING	Pgs. 35 – 41
EXHIBIT 6:	RESPONDENT'S REPLY TO APPELLANTS' RETURN TO PETITION FOR REHEARING	Pgs. 42 – 48
EXHIBIT 7:	RETURN TO APPELLANTS' PETITION FOR REHEARING	Pgs. 49 – 56
EXHIBIT 8:	APPELLANTS' REPLY TO RESPONDENT'S RETURN TO PETITION FOR REHEARING	Pgs. 57 – 65
EXHIBIT 9:	MARCH 20, 2012 ORDERS DENYING PETITIONS FOR REHEARING	Pgs. 66 – 67

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

THE HONORABLE R. KNOX MCMAHON, CIRCUIT COURT JUDGE

CASE NUMBER: 2008-CP-32-2361

William T. Jervey, Jr., Employee Petitioner,

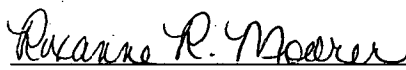
v.

Martint Environmental, Inc., Employer, and General Casualty Insurance Company,
Carrier Respondents.

CERTIFICATE OF SERVICE

I, Roxanne R. Moorner, legal assistant for Andrew N. Safran, Esquire, Attorney for Petitioner, do hereby certify that on the 30th day of April, 2012 I caused to be filed, via first class mail, the original and two (2) copies of the Petitioner's Appendix, with the Clerk of the South Carolina Supreme Court. One (1) copy of the Petitioner's Appendix was furnished to counsel for Respondents via first class mail at the following address:

E. Ros Huff, Jr., Esquire
HUFF LAW FIRM, LLC
Post Office Box 1935
Irmo, South Carolina 29063
Attorney for Appellants


Roxanne R. Moorner
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689

April 30, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

William T. Jervey, Jr.,
Employee,

Respondent,

v.

Martint Environmental, Inc.,
Employer,
and General Casualty
Insurance Company, Carrier,

Appellants.

Appeal From Lexington County
R. Knox McMahon, Circuit Court Judge

Opinion No. 4930
Heard October 31, 2011 – Filed January 25, 2012

AFFIRMED AS MODIFIED

E. Ros Huff, Jr., of Irmo, for Appellants.

Andrew Nathan Safran, of Columbia, for
Respondent.

SHORT, J.: Martint Environmental, Inc. (Martint) and General Casualty Insurance Company (collectively, Appellants) appeal the circuit court's order vacating in part and affirming in part the order of the Appellate Panel of the Workers' Compensation Commission, arguing the court erred in finding: (1) section 42-9-260 of the South Carolina Code is a time bar for raising a defense against compensability; (2) William Jervey could raise both waiver and laches as affirmative defenses; and (3) Jervey suffered from a compensable injury by accident in the course and scope of his employment. We affirm as modified.

FACTS

On January 23, 2006, Jervey was working for Martint when a pipe he was carrying spilled sulfuric acid on his neck, face, and back. The next day, Martint began paying Jervey temporary total disability payments and covering his medical bills.¹ Jervey subsequently developed post-traumatic stress disorder and began having cervical disc problems. Thereafter, on June 29, 2007, he filed a Form 50 seeking treatment for his cervical problems and designation of Dr. Donald Johnson as his authorized treating physician. Martint filed a Form 51 denying Jervey's requested treatment and that he had sustained a compensable injury. Jervey then filed a Form 58, pre-hearing brief, asserting in pertinent part that Martint's claims are "barred by several legal doctrines, including waiver, estoppel and laches." Also, Jervey claimed that, despite knowing all the relevant facts, Martint failed to assert its defense for approximately fifteen months, while it paid him weekly compensation and provided him with treatment.

During a pre-hearing conference, the single commissioner took testimony on the issue of compensability, and Jervey's attorney made a motion asserting Martint could not raise any defenses as to the compensability of the claim because Martint accepted the claim and paid Jervey temporary total disability payments beyond the 150-day time limit established in section 42-9-260 of the South Carolina Code. Jervey claimed the only issue Martint could litigate was Jervey's request for treatment for his

¹ The circuit court found the compensation payments from Martint to Jervey have continued without interruption since January 24, 2006.

cervical problems. The commissioner agreed and ruled Martint could not raise a defense on compensability after 150 days. At that time, Martint stipulated "the medical evidence to date indicate[d] a cervical problem that the doctors [said] is causally related."

In his order, the commissioner reviewed section 42-9-260 of the South Carolina Code, and found the language was explicit:

Section 42-9-260 clearly establishes that an Employer/Carrier: (a) "**may** start temporary disability payments . . . [once] an employee has been out of work due to a work-related injury . . . for eight days"; (b) is afforded a 150-day grace period, during which it may conduct "a good faith investigation" to determine whether any "grounds for denial of the claim" exist; and (c) does not "waive . . . any grounds for good faith denial," **provided the defense is raised within the prescribed period.** This language likewise: (a) limits this grace period to "one hundred fifty days from the date the injury . . . is reported"; and (b) **invokes a "waiver of any grounds for good faith denial" in the event payments are continued beyond expiration of this grace period.**

(Emphasis in original.) The commissioner further found Martint did not attempt to disclaim liability for Jervey's injuries until approximately 450 days after receiving notification of the accident. Moreover, Martint's denial stems from the same allegation that was listed on its January 24, 2006 Form 12-A, in which Martint asserted Jervey was asked not to "touch or dismantle the sulfuric acid system." Therefore, the commissioner's order provided Martint must: (a) continue to pay Jervey weekly compensation at the rate of \$586.11 until such time as this obligation is relieved by further order of the commission or agreement of the parties; (b) accept financial responsibility for all causally-related medical treatments Jervey has received, including those provided by Dr. Johnson; and (c) authorize the additional medical treatments prescribed by Dr. Johnson and Dr. Roger Deal.

Martint subsequently filed a Form 30, appealing the commissioner's order on thirty-four grounds. The Appellate Panel agreed with the commissioner that Jervey was entitled to temporary total disability payments and medical benefits including those provided by Dr. Johnson and Dr. Deal; however, it vacated the commissioner's ruling that the statute of limitations in section 42-9-260 barred Martint's defense, and instead found the doctrines of waiver and laches prohibited Martint's defense. Jervey filed an appeal with the circuit court, arguing the Appellate Panel erred in vacating the commissioner's determination that section 42-9-260 prohibited Martint from asserting its compensability defense. Martint filed its appeal with the circuit court four days later, raising twenty-three points of alleged error, including that the Appellate Panel erred in applying the doctrines of waiver and laches. Following a hearing, the circuit court issued its order affirming the Appellate Panel's order in all respects except for the portion that vacated the single commissioner's legal conclusions concerning the impact of the statute of limitations in section 42-9-260(A). The court also reinstated the award of compensation and medical benefits and dismissed Martint's appeal. This appeal followed.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions by the Appellate Panel of the Workers' Compensation Commission. Fredrick v. Wellman, Inc., 385 S.C. 8, 15-16, 682 S.E.2d 516, 519 (Ct. App. 2009); see Lark v. Bi-Lo, Inc., 276 S.C. 130, 134-35, 276 S.E.2d 304, 306 (1981). Under the scope of review established in the APA, this court may not substitute its judgment for that of the Appellate Panel as to the weight of the evidence on questions of fact, but may reverse or modify the Appellate Panel's decision if the appellant's substantial rights have been prejudiced because the decision is affected by an error of law or is "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." S.C. Code Ann. § 1-23-380(5) (Supp. 2010); see Stone v. Traylor Bros., Inc., 360 S.C. 271, 274, 600 S.E.2d 551, 552 (Ct. App. 2004). Our supreme court has defined substantial evidence as evidence that, in viewing the record as a whole, would allow reasonable minds to reach the same conclusion that the Appellate Panel reached. Lark, 276 S.C. at 135, 276 S.E.2d at 306. "[T]he possibility of

drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984).

LAW/ANALYSIS

I. Statute of Limitations

Martint argues the circuit court erred in finding section 42-9-260 of the South Carolina Code is a time bar for raising a defense against compensability. We agree.

The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature. Blackburn v. Daufuskie Island Fire Dist., 382 S.C. 626, 629, 677 S.E.2d 606, 607 (2009). "In ascertaining legislative intent, 'a court should not focus on any single section or provision but should consider the language of the statute as a whole.'" Gov't Emps. Ins. Co. v. Draine, 389 S.C. 586, 592, 698 S.E.2d 866, 869 (Ct. App. 2010) (quoting Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996)). "Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning." S.C. Coastal Conservation League v. S.C. Dep't of Health and Env't Control, 390 S.C. 418, 425, 702 S.E.2d 246, 250 (2010). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." Id. at 425-26, 702 S.E.2d at 250. If two provisions have an irreconcilable conflict, our courts have used the "last legislative expression rule," which provides "where conflicting provisions exist[], the last in point of time or order of arrangement, prevails." Eagle Container Co. v. Cnty. of Newberry, 379 S.C. 564, 572, 666 S.E.2d 892, 896 (2008) (quoting Ramsey v. Cnty. of McCormick, 306 S.C. 393, 397, 412 S.E.2d 408, 410 (1991)). However, the last legislative expression rule "is purely an arbitrary rule of construction and is to be resorted to only when there is clearly an irreconcilable conflict, and all other means of interpretation have been exhausted." Id. (quoting Feldman v. S.C. Tax Comm'n, 203 S.C. 49, 54, 26 S.E.2d 22, 24 (1943)).

Section 42-9-260(A) of the South Carolina Code provides "[w]hen an employee has been out of work due to a reported work-related injury or occupational disease for eight days, an employer may start temporary disability payments immediately and may continue these payments for **up to one hundred fifty days** from the date the injury or disease is reported **without waiver of any grounds for good faith denial.**" S.C. Code Ann. § 42-9-260(A) (Supp. 2010) (emphasis added). Section 42-9-260(B) states that "[o]nce temporary disability payments are commenced, the payments may be terminated or suspended immediately at any time within the one hundred fifty days if: . . . (3) a good faith investigation by the employer reveals grounds for denial of the claim" S.C. Code Ann. § 42-9-260(B) (Supp. 2010). Section 42-9-260(F) provides: "After the one-hundred-fifty-day period has expired, the commission shall provide by regulation the method and procedure by which benefits may be suspended or terminated for any cause, but the regulation must provide for an evidentiary hearing and commission approval prior to termination or suspension" S.C. Code Ann. § 42-9-260(F) (Supp. 2010).

Martint argues section 42-9-260(F) provides the Commission with the authority to designate procedures for terminating benefits after the 150-day period "for any cause," which includes a good faith defense, and the Commission neglected to adopt a procedure. Although the Commission adopted Regulation 67-506² to establish the procedure for terminating disability benefits after the first 150-days after the employer's notice of the injury, Martint asserts the regulation does not address the procedure for terminating benefits based on a denial of compensability, and the statute's clear "for any cause" language is plain and unambiguous and "must be interpreted to include a good faith defense on the issue of compensability." Thus, Martint contends it can raise the issue of compensability as a good faith defense after the 150-day period has expired.

In Fredrick v. Wellman, Inc., 385 S.C. 8, 682 S.E.2d 516 (Ct. App. 2009), this court addressed the issue. Fredrick argued that when 150 days from the first report of injury have expired, payments may be terminated or

² 25A S.C. Code Ann. Regs. 67-506 (Supp. 2010).

suspended for only those reasons set forth in Regulations 67-505 and -506 and Form 21. Id. at 18, 682 S.E.2d at 521. Fredrick asserted Wellman's fraud defense was not properly before the commissioner because Wellman failed to assert it within 150 days from the date the injury was first reported, and Wellman failed to raise the fraud defense in its Form 21.³ Id. at 17, 682 S.E.2d at 520. This court disagreed and held that section 42-9-260(F) permits an employer to terminate benefits for any cause after the expiration of the 150 days; thus, Wellman's fraud defense was properly before the commissioner. Id. at 19, 682 S.E.2d at 521. Because Fredrick held section 42-9-260(F) permits an employer to terminate benefits for any cause after the expiration of 150 days, we find Martint is not prohibited from asserting its defense. Therefore, the Appellate Panel was correct in vacating the single commissioner's finding that section 42-9-260 is a time bar for raising a defense against compensability.

II. Affirmative Defenses

Martint argues the circuit court erred in finding Jervey could raise both waiver and laches as affirmative defenses. We disagree.

Waiver is the "voluntary and intentional relinquishment or abandonment of a known right." Strickland v. Strickland, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007). The party claiming waiver must show the other party possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they were dependent. Janasik v. Fairway Oaks Villas Horizontal Prop. Regime, 307 S.C. 339, 344, 415 S.E.2d 384, 387-88 (1992). "The doctrine of waiver does not necessarily imply that the party asserting waiver has been misled to his prejudice or into an altered position." Id. at 344, 415 S.E.2d at 388. Laches is an equitable doctrine that our courts have defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 432, 673 S.E.2d 448, 456 (2009) (quoting Hallums v.

³ Wellman asserted Fredrick's concealment of prior back problems vitiated their employment relationship. Id. at 16, 682 S.E.2d at 519-20. Here, there is no allegation of fraud.

Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988)). "[T]o establish laches as a defense, a party must show that the complaining party unreasonably delayed its assertion of a right, resulting in prejudice to the party asserting the defense of laches." Id. "[W]hether laches applies in a particular situation is highly fact-specific, so each case must be judged on its own merits." Muir v. C.R. Bard, Inc., 336 S.C. 266, 297, 519 S.E.2d 583, 599 (Ct. App. 1999).

Martint asserts Jervey did not amend his Form 50 to raise the defense of waiver and laches, and he did not raise it as an issue during the hearing before the single commissioner. Therefore, Martint maintains the issue was not before the commissioner and was waived by Jervey. However, Jervey filed a Form 58, pre-hearing brief, in which he asserted Martint's claims were barred by several legal doctrines, including waiver, estoppel, and laches. In Fredrick, this court found a prehearing brief effectively amended a Form 51 Answer, and the prehearing brief provided Fredrick and the Commission with ample notice of the fraud defense. Fredrick, 385 S.C. at 20, 682 S.E.2d at 522. Martint did not object to Jervey's pre-hearing brief at the October 15, 2007 hearing. Additionally, in its Form 30 appeal to the appellate panel, Martint raised thirty-four issues; however, none of these allege Jervey's waiver and laches arguments were untimely or improper. Instead, Martint only argued the single commissioner erred in concluding its conduct satisfied the criteria for waiver and laches. Therefore, we find Jervey's defenses of waiver and laches were properly before the single commissioner.

Additionally, we find Martint's argument that Jervey did not amend his Form 50 to raise the defense of waiver and laches or raise it as an issue during the hearing before the single commissioner is not preserved for our review because it did not raise the argument to the single commissioner or the Appellate Panel. Pratt v. Morris Roofing, Inc., 353 S.C. 339, 352, 577 S.E.2d 475, 481-82 (Ct. App. 2003) (stating an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the single commissioner or in a request for commission review of the single commissioner's order to be preserved for appellate review). Furthermore, we find because Martint knew of its defense the day of the accident, yet it paid and has continued to pay Jervey disability compensation, and it did not assert the defense until at least 450 days after the accident, the evidence supports

the Appellate Panel's finding that Martint's defense is barred by the doctrine of waiver and laches.⁴

III. Compensable Injury

Martint argues the circuit court erred in finding Jervey suffered from a compensable injury by accident in the course and scope of his employment because he was working outside the scope of his employment when he "was asked not [to] touch or dismantle the sulfuric acid system," and he "did not use [the] provided safety gear." We need not address this issue because we find the doctrines of waiver and laches prohibit Martint from asserting its compensability defense. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of another issue is dispositive of the appeal).

CONCLUSION

Accordingly, the circuit court's order is affirmed as modified, reinstating the Appellate Panel's finding that section 42-9-260 does not prohibit Martint from asserting its compensability defense. However, we find Martint's defense is barred by the doctrine of waiver and laches because Martint knew of its defense the day of the accident, yet it paid and has continued to pay Jervey disability compensation, and it did not assert the defense until at least 450 days after the accident.

AFFIRMED AS MODIFIED.

WILLIAMS and GEATHERS, JJ., concur.

⁴ From our review of the record, Martint did not assert its defense until it filed a Form 51 on July 27, 2007, which was 510 days after the date of the accident.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

THE HONORABLE R. KNOX MCMAHON, CIRCUIT COURT JUDGE

CASE NUMBER: 2008-CP-32-2361

William T. Jervey, Jr., Employee Respondent,

v.

Martint Environmental, Inc., Employer, and General Casualty Insurance Company,
Carrier Appellants.

PETITION FOR REHEARING

Andrew N. Safran, Esquire
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689
Attorney for Respondent, William T. Jervey, Jr.

RECEIVED

FEB 06 2012

SC Court of Appeals

Pursuant to Rules 221 and 224, SCARC, Respondent, William T. Jervey, Jr., hereby petitions this Court to Rehear and Reconsider its ruling in William T. Jervey, Jr., Employee, v. Martint Environmental, Inc., Employer, and General Casualty Insurance Company, Carrier, Op. No. 4930 (S.C. Ct. App. filed January 25, 2012). Mr. Jervey asserts this Court overlooked and/or misapprehended the following points in reversing certain elements of the Circuit Court's rulings:

1) The Court overlooked/misapprehended the legislature's intent to impose a statute of limitations, which preserved the binding impact of the Employer's/Carrier's voluntary payment of compensation, through its 1996 amendment of S.C. Code Ann. Section 42-9-260 (1976, as amended). As a result of this oversight/misapprehension, the Court has inadvertently: (a) ignored the plain language of Section 42-9-260 (A), which clearly limits temporary disability compensation payments to a period not exceeding "**one hundred fifty days** from the date the injury. . . is reported **without waiver of any grounds for good faith denial**"; (b) misconstrued the language of Section 42-9-260 (F) to authorize litigation as to the basic issue of liability well beyond the period "for good faith denial" identified by the legislature"; and (c) disregarded the element of finality relative to the issue of basic liability arising from the extended payment of compensation, a fundamental premise of the South Carolina Workers' Compensation Act.

For decades, compensation was commenced through the parties' execution of an "agreement as to compensation", which was submitted to the Commission for approval. See, S.C. Code Ann. Section 42-17-10 (1976, as amended). Once approved, this agreement became "as binding on the parties as an order, decision or award of the Commission affirmed upon appeal." Singleton v. Young Lumbar Company, 236 S.C. 454, 114 S.E. 2d 837, 841 (1960). Similarly, "the basic issue of liability" could not be retried. Allen v. Benson Outdoor

Advertising Company, 236 S.C. 22, 112 S.E. 2d 722, 723 (1960); McCreery v. Covenant Presbyterian Church, 303 S.C. 271, 400 S.E. 2d 130, 131 (1990).

Additionally, the employer/carrier was obliged to “notify the Commission, in accordance with a form prescribed by the Commission, that payment of compensation ha[d]. . . begun or ha[d]. . . been suspended. . . . See, Section 72-177 of the 1962 Code. As this statute did not specifically address the manner in which compensation could be terminated/suspended, it was amended in 1974 to require: (a) the Commission to “provide by rule the method and procedure by which benefits may be suspended or terminated for any cause”; as well as (b) “an evidentiary hearing and commission approval prior to termination or suspension” absent an employee’s express waiver of this right. See, 1974 Act No. 1059, Section 10.

Given the substantial ramifications of commencing the payment of compensation, employers/carriers became increasingly more reluctant to do so, which: (a) made the denial of claims a more prevalent course of action; and (b) deprived many injured employees of the “swift and sure compensation” the Act was intended to provide. See, Parker v. Williams & Madjnik, Inc., 275 S.C. 65, 267 S.E. 2d 524, 526 (1980); Harrell v. Pineland Plantation, LTD., 337 S.C. 313, 523 S.E. 2d 766, 772 (1999). Recognizing this dilemma was materially compromising one of the basic tenets of workers’ compensation law, the legislature amended Section 42-9-260.

As an inducement to expeditiously commence the payment of temporary disability compensation, the Legislature modified the Allen – Singleton – McCreery rule, to the extent the employer/carrier: (a) “may start temporary disability payments . . . [once] an employee has been out of work due to a work-related injury . . . for eight days”; (b) is afforded a 150 day grace period, during which it may conduct “a good faith investigation” to determine whether any “grounds for denial of the claim” exist; and (c) does not “waive . . . any grounds for good faith

denial”, provided the defense is raised within the prescribed period. However, this subsection unequivocally: (a) limits the grace period to “one hundred fifty days from the date the injury . . . is reported”; and (b) invokes a “waiver of any grounds for good faith denial” in the event payments are continued beyond expiration of the grace period.

Further inspection of this amendment confirms: (a) the particular grounds upon which compensation may either be terminated or suspended during the 150 day period; (b) identification of the procedural responses to termination of compensation within the grace period and attainment of maximum medical improvement; (c) preservation of a 25% penalty provision; and (d) retention of the 1974 language relative to suspension or termination of compensation **in the subsection governing procedure following expiration of the 150 day period.**

“[T]here is a basic presumption the legislature has knowledge of previous legislation as well as judicial decisions construing that legislation when later statutes are enacted concerning related subjects.” Whitner v. State, 328 S.C. 1, 492 S.E. 2d 777, 779 (1997); Russo v. Nationwide Insurance Company, 334 S.C. 455, 513 S.E. 2d 127, 129 (Ct. App. 1999). A similar presumption exists that the general assembly “enact[s]. . . legislation with reference to existing law. . . [and the intention] to achieve a consistent body of law.” See, Abva Equipment, Inc. v. Thomason, 335 S.C. 477, 517 S.E. 2d 235, 238 (Ct. App. 1999); State v. Ramsey, 311 S.C. 555, 430 S.E. 2d 511, 516 (1993).

Additionally, it is axiomatic that “words in a statute must be construed in context. . . [and] the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute.” Southern Mutual Church Insurance Company v. South Carolina Windstorm and Hail Underwriting Association, 306 S.C. 339, 412 S.E. 2d 377, 379 (1991); Eagle Container Co., LLC v. County of Newberry, 379 S.C. 564, 666 S.E. 2d 892, 895-6

(2008). The Supreme Court has also recognized that “[t]he intent of the legislature is determined in light of ‘the overall climate in which the legislation was amended.’” Stardancer Casino, Inc. v. Stewart, 347 S.C. 377, 556 S.E. 2d 357, 361 (2001).

At the time the “for any cause” language was adopted, our Supreme Court had conclusively held the “basic issue of liability” could not be relitigated following payment of compensation pursuant to a duly approved Commission form. The binding effect of the employer/carrier’s voluntary acceptance of a claim, through payment in conjunction with the filing of a Form 15 compensation agreement, was likewise reiterated by the Court long after passage of this 1974 amendment. McCreery, supra.

In response to concerns that employer/carrier hesitation to pay compensation was depriving employees of an essential benefit (“swift and sure compensation”), the legislature amended Section 42-9-260 to allow a 150 day “good faith investigation” period. However, the plain language of the amended statute: (a) restricted the investigatory period “to one hundred fifty days from the date the injury. . . is reported”; (b) simply preserved “any grounds for good faith denial” prior to the expiration of this period; and (c) declined to materially alter or expand the previously enacted language relative to suspension/termination of voluntary compensation payments following expiration of the investigatory period.

Application of the previously-cited rules of construction establishes: (a) the Legislature was presumptively aware that the McCreery ruling had emphatically reiterated the conclusive impact of continued compensation payments per the duly approved Commission form, notwithstanding insertion of the “for any cause” language through its 1974 amendment; (b) given the overall climate in 1996, Section 42-9-260 (A) “must be read to evince a legislative intent” to afford employers/carriers a reasonable opportunity for investigation, while maintaining

the longstanding finality derived from their continuous voluntary payment of compensation; (c) as Section 42-9-260 (F) must be construed in the context of admitted liability claims (which are deemed final adjudications of this issue following expiration of the 150 day investigatory period), it cannot be determined to vest the employer/carrier with greater rights than were present prior to the 1996 amendment; (d) the basic issue of liability cannot be relitigated “[a]fter the one-hundred-fifty-day period has expired”; and (e) the element of finality promoted by the continuous payment of compensation, which is absolutely essential to the administration of the workers’ compensation system, has surely been preserved.

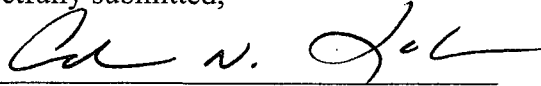
It is equally certain that this Court’s ruling in Frederick v. Wellman, Inc., 385 S.C. 8, 682 S.E. 2d 516 (Ct. App. 2009) is distinguishable from the current circumstances, as it involved a fraud in the application defense which, by its very nature, challenges the existence of subject matter jurisdiction. In this regard, it has been consistently held: (a) “before the provisions of the . . . Act become applicable, the relationship of master and servant or employer and employee must exist.” Cooper v. McDevitt & Street Co., 260 S.C. 463, 196 S.E. 2d 833, 834 (1973); (b) “the relationship of employment [is]. . . a jurisdictional issue for purposes of work[ers’] compensation benefits. . . .” Givens v. Steel Structures, Inc., 279 S.C. 12, 301 S.C. 2d 545, 546 (1983); (c) fraud in the application (as established in Frederick) vitiates the employment relationship. Brayboy v. Workforce, 383 S.C. 463, 681 S.E. 2d 567, 569 (2009); and (d) “[l]ack of subject matter jurisdiction can be raised at any time. . . .” Lake v. Reeder Construction Co., 330 S.C. 242, 498 S.E. 2d 650, 653 (Ct. App. 1998).

While the Frederick decision was premised upon a misconstruction of Section 42-9-260 (F), the result was nonetheless correct because the fraud in the application defense

contested subject matter jurisdiction. However, in this instance, Appellants have not raised a jurisdictional issue.

ACCORDINGLY, Mr. Jervey respectfully requests that this Court grant his Petition, withdraw/amend its prior decision, rehear the matter and issue a new decision affirming the Circuit Court's construction of Section 42-9-260 (A) to prohibit relitigation as to the basic issue of liability following expiration of the 150 day grace period afforded by this statute.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. N. Safran", written over a horizontal line.

Andrew N. Safran, Esquire

Post Office Box 12089

Columbia, South Carolina 29211

(803) 256-6689

Attorney for Respondent, William T. Jervey, Jr.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY

COURT OF COMMON PLEAS

THE HONORABLE R. KNOX MCMAHON, CIRCUIT COURT JUDGE

CASE NUMBER: 2008-CP-32-02361

William T. Jervey, Jr., Employee Respondent,

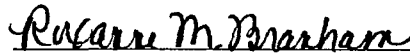
v.

Martint Environmental, Inc., Employer, and General Casualty Insurance Company,
Carrier Appellants.

CERTIFICATE OF SERVICE

I, Roxanne M. Branham, legal assistant for Andrew N. Safran, Esquire, Attorney for Respondent, do hereby certify that on the 6th day of February, 2012 I caused to be filed, via hand delivery, the original and six (6) copies of the Appellant's Petition for Rehearing, with the Clerk of the South Carolina Court of Appeals. One (1) copy of the Petition was furnished to counsel for Appellants via first class mail at the following address:

E. Ros Huff, Jr., Esquire
HUFF LAW FIRM, LLC
Post Office Box 1935
Irmo, South Carolina 29063
Attorney for Appellants


Roxanne M. Branham
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689

February 6, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
R. Knox McMahon, Circuit Court Judge

Case No. 2008-CP-32-2361

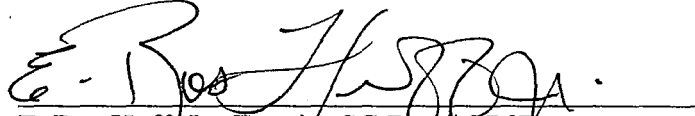
William T. Jervey, Jr., Employee Respondent,
v.
Martint Environmental, Inc., Employer,
and General Casualty Insurance Company, Carrier,..... Appellants.

PETITION FOR REHEARING

The Appellants Martint Environmental Inc. and General Casualty Insurance Company, hereby move the court for a Rehearing in the above referenced matter. The grounds for this Petition as set forth below are discussed in the attached memorandum:

- 1. Did the Court of Appeals err in determining that the waiver or laches exception was untimely raised by Appellant's, the error being that the determination is not supported by the evidence and is an error of law when Respondent abandoned those arguments?**
- 2. Did the Court of Appeals err in determining that the doctrines of waiver and laches apply when that determination is not supported by the evidence and is an error of law?**
- 3. The Due Process rights of the appellants were violated when the Circuit Court ruled and the Court of Appeals affirmed that the Respondent's injury was compensable when the South Carolina Workers Compensation Commission denied Appellants a full evidentiary hearing before the South Carolina Workers Compensation Commission?**

4. Did the Court commit an error of law when determining that the substantial evidence standard applies to mixed questions of equity and law before the Court?



E. Ros Huff, Jr., Esquire SC Bar # 2767
Shelby H. Kellahan, Esquire SC Bar # 74731
HUFF LAW FIRM, LLC
Post Office Box 1935
7244 Woodrow Street
Irmo, South Carolina 29063
(803) 252-2232

Attorney for Appellants, Martint Environmental
Inc. and General Casualty Insurance Company

Irmo, SC
February 9, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
R. Knox McMahon, Circuit Court Judge

Case No. 2008-CP-32-2361

William T. Jervy, Jr., Employee Respondent,
v.
Martint Environmental, Inc., Employer,
and General Casualty Insurance Company, Carrier,..... Appellants.

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

The Petitioner, Martint Environmental, Inc. and General Casualty Insurance Company (Appellants) hereby submit this Memorandum in support of the Petition for Rehearing pursuant to South Carolina Appellate Rule 224 for the reasons as set forth below. The South Carolina Court of Appeals has overlooked and/or misapprehended the facts of the case and pertinent case law. The grounds for this Petition are as follows:

- 1. Did the Court of Appeals err in determining that the waiver or laches exception was untimely raised by Appellant's, the error being that the determination is not supported by the evidence and is an error of law when Respondent abandoned those arguments?**
- 2. Did the Court of Appeals err in determining that the doctrines of waiver and laches apply when that determination is not supported by the evidence and is an error of law?**
- 3. The Due Process rights of the appellants were violated when the Circuit Court ruled and the Court of Appeals affirmed that the Respondent's injury was compensable when the South Carolina Workers Compensation Commission**

denied Appellants a full evidentiary hearing before the South Carolina Workers Compensation Commission?

- 4. Did the Court commit an error of law when determining that the substantial evidence standard applies to mixed questions of equity and law before the Court?**

ARGUMENTS

I. Appellants properly raised their exceptions to the doctrines of waiver and laches before the South Carolina Workers Compensation Commission and their exceptions are preserved for review by this Court because Respondent abandoned these affirmative defenses.

The Court of Appeals erred in affirming the Circuit Court order when it concluded that Appellants are prevented by waiver and laches from raising the defense of compensability because Respondent abandoned these arguments. Waiver and laches were not raised in the respondents' pleadings in the SCWCC Form 50. The first time laches and waiver were presented, was in the Respondent's Form 58 Prehearing Brief, which was filed twenty days prior to a hearing, and after the hearing notices were served on the parties. A complete reading of the Single Commissioner's Hearing Transcript illustrates that the Respondent did not raise waiver and laches as issues at any point during the hearing. (R. p. 84). The Hearing Commissioner states for the record, the following:

The Claimant takes the position he suffered injuries to his neck, left arm, psychological injury, disfigurement and skin loss. He seeks payment of all causally related medical treatment received to date. He seeks an award of compensation for temporary total disability from January 28th 2006 forward and he seeks additional medical treatment through Dr. Johnson, Dr. Peck and Dr. Deal. He further takes the position that the denial of this case comes more than 150 days after the Defendant entered into a Form 15 Agreement

The Defense denies an injury by accident arising out of/in the Course Employment. They take the Position the Form 15 is not binding. They further take the position the Claimant committed a forbidden act. Is that Correct?

Mr. Safran: Your Honor. I think that's correct.

(R. p. 87; lines 3-20)

The Commissioner cites the issues in dispute above, and the respondent never raises the issues of waiver and laches. Therefore, he abandoned them. Respondent goes on to tell the commissioner that the commissioner has stated the issues accurately. (R. 87). If the appellants' attorney were to then raise waiver and laches after the respondent's attorney agreed to the issues in dispute and in effect they abandoned the arguments on waiver and laches, appellants' attorney would not only have alerted respondent's attorney to his error, one could argue that the appellants' attorney would commit malpractice by doing so and could have a grievance filed.

The law in effect at the time of the accident, 23 S.C. Code Ann. Regs 67-610(A) (1976), states "after a request for hearing and answer are filed with the Commission, an "Amended" form must be filed to indicate a change in the nature of the claim, relief requested, or another defense." "Must" is mandatory. Respondent was required by the SCWCC regulation, to amend the Form 50 to raise the issue of laches and waiver when Appellants Form 51 raised the defense of compensability. While it is true that the *Frederick* decision allows a Form 50 to be amended by a prehearing brief, that alone is not sufficient for issue preservation. *Frederick v. Wellman, Inc.*, 385 S.C. 8, 15-16, 682 S.E.2d 516, 519 (Ct. App. 2009). An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority. *See State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554 (Ct. App. 2011). *See also*; *State v. Howard*, 384 S.C. 212, 217, 682 S.E.2d 42, 45 (Ct. App. 2009); *see also State v. Jones*,

344 S.C. 48, 58-59, 543 S.E.2d 541, 546 (2001) (stating that an argument is deemed abandoned on appeal when conclusory and without supporting authority).

It must be noted that the parties in *Frederick* were allowed to amend their Form 21 by their Form 58 in part because their Form 58/prehearing brief was served approximately two months before the hearing, thus giving the parties ample notice of the issues. See *Frederick v. Wellman, Inc.*, 385 S.C. 8, 682 S.E.2d 516, 521-522 (Ct. App. 2009). In the instant case, Claimant's Form 58 was filed on September 26, 2007. This was only twenty days before the October 15, 2007 hearing.

Numerous cases before this court have held that an issue merely being raised in a brief is not enough for issue preservation. See *Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008) (An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.). There is no authority raised by Respondent in the record for waiver or laches, therefore, he abandoned those issues. 24 SC Code Ann. Regs. 67-611(c) (2010) makes it clear that a form 58 cannot constitute evidence or become a part of the record of the hearing.

Under the section entitled legal issues involved, the Respondent, while listing a litany of legal issues, simply states in his Form 58/Prehearing Brief the doctrine names without any legal authority or citation to such authority:

Legal issues involved: entitlement to: (a) continued temporary total disability compensation per S.C. Code Ann. Section 42-9-10 (1976 as amended); and (b) further medical benefits, including treatment through Dr. Johnson, per S.C. Code Ann. Section 42-15-60 (1976 as amended) Additionally, we submit defendants' belated/untimely attempt to deny this claim: (a) has no credible factual basis; (b) is barred by several legal doctrines, including **waiver, estoppel and laches** and (c) appears to be a punitive response to Mr. Jervey's efforts to seek treatment of his cervical

injury component, particularly in view of the circumstances surrounding the assertion of their current position. (R. 149).

Even if Respondent had raised legal authority in his Form 58, he abandoned his argument because he made no arguments for the doctrines or authority before the Hearing Commissioner and agreed that the issue of waiver and laches were not before the hearing Commissioner. (R. pgs. 84-98) *See also; State v. Porter*, 389 S.C. 27, 35-36, 698 S.E.2d 237, 241 (Ct. App. 2010) (holding that where a party cites only to authority that does not support the specific argument raised, and fails to cite to any authority that supports the specific argument, the argument will be deemed abandoned on appeal). Because Respondent abandoned the arguments with regard to waiver and laches, it has been an error since the beginning of this litigation for any tribunal to rule that the doctrines were properly before the Court.

Moreover, Appellants timely made their exceptions to the claimant's arguments concerning waiver and laches because Appellants raised the issue at the first time that it should have been raised, which was in its Form 30. Appellants refer to the Form 30 Addendum and make special reference to number 16:

Did the Hearing Commissioner err in concluding as a matter of law so much of Conclusion of Law No. 7(c), that allowing the requested relief is particularly inappropriate whereas here, Defendants have engaged in a course of conduct which unquestionably satisfies the criteria for both **waiver and laches**, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provision; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
(R. 60)

There was no evidence in this record of what was argued at the Appellate Panel other than the Form 30 because the transcript of that hearing was not a part of the record. However,

Appellants again specifically argued before the Circuit Court that they did not receive due process because the arguments of waiver or estoppel were untimely raised by Respondent (R. pgs. 103-106).

Pursuant to 23 SC Code Ann. Reg. 67-701 (1976, as amended), the grounds for appeal must be set out in detail on the Form 30 in the form of questions presented. Appellants properly set out a violation of a statutory provision and one of the provisions is timeliness. It was error for the court to state that we specifically had to argue that the waiver and laches arguments were “untimely” or “improper” when we clearly raised the defects in those defenses. As stated above in number 16 of the Form 30, we properly raised the issues pursuant to the Administrative Procedures Act.

Because Waiver and Laches are affirmative defenses, Respondent’s attorney should have raised and argued the doctrines before the Hearing Commissioner. Because he did not raise and argue the two, his arguments are deemed abandoned and Appellants timely objected to the Hearing Commissioner’s ruling on those doctrines in their Form 30. The mere attempt to raise Laches and Waiver in a prehearing brief, and then fail to: (1) offer evidence to assert the affirmative defenses, (2) offer legal authority for support of the doctrines, or (3) even mention the doctrines again at a hearing, is an abandonment of the defenses.

II. Even if waiver and laches were properly before the court, the Court erred in finding that waiver and laches applies when there was no evidence to support the findings.

It is axiomatic that the doctrines of waiver and laches must be proven by evidence introduced by the party asserting the affirmative defenses. *See Hoffman v. Greenville*, 242 S.C. 34, 129 S.E.2d 757 (1963) (One who pleads an affirmative defense has the burden of proving it). Not

only are the rulings concerning waiver and laches without a preponderance of the evidence, they are without ANY evidence. The appellants were denied by the hearing commissioner from offering any defense when he ruled that the 150 day language in SC Code Ann. Section 42-9-260 (2010), was a statute of limitations that barred any defense.

Waiver

Because “waiver is a voluntary and intentional abandonment or relinquishment of a known right, generally, the party claiming waiver must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they depended.” *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 415 S.E. 2d 384 (1992). It may be expressed or implied by a party's conduct. *Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994). It was error for the Court to find that waiver applied because there was no evidence of an intentional abandonment or relinquishment of a known right. Respondent, as the party asserting the defenses, had to prove that Martint, the employer, or General Casualty Insurance Company: (1) possessed actual or constructive knowledge of their rights or (2) all of the material facts upon which the employer or carrier depended. Further, the appellant was denied their right to present evidence before the South Carolina Workers Compensation Commission regarding the facts that would or would not support the defense of waiver or laches.

The Court relies on the Form 12A to evidence Appellants alleged “knowledge of waiver of this right (to assert the defense under *Wright v. Bilo* for compensability).” However, there is no evidence that the party who filled out the 12A knew or should have known of the compensability defense. Most importantly, the identity of the party who filled out the 12A is unknown. How can you infer knowledge to an unknown person? To do so would be speculation,

conjecture and surmise. Again, Appellants were not allowed to present a witness to testify as to what they did or did not know.

Workers Compensation is a no fault statute. Just asking an employee not to do something does not take an employee out of his sphere of employment under *Wright v. Bilo*. Basing a decision upon the 12A that appellants have knowledge of the legal defense would be pure surmise, conjecture or speculation.

This court states that “Martint’s denial stems from the same allegation that was listed on its January 24, 2006 Form 12A.” Further, there is no evidence that Martint was the entity that has the authority to make the decision regarding compensability, which is generally a decision that the insurance carrier makes. However, there is no evidence of what basis the claim was denied upon because no witnesses were allowed to testify and Appellants were not allowed to introduce any evidence. Just because an allegation made in Form 12A may or may not support a defense, is not evidence of knowledge of the defense. The Form 12A simply states in the section for a description of the accident that “the employee was **asked not** touch or dismantle the sulfuric acid system” and that “employee dismantled system and did not use provided safety gear.” (R. 142). This document does not identify WHO gave this instruction. It is clear under the *Wright v. Bilo* decision that this person has to have the authority to make that instruction. That instruction could have related to the job duties, but we will never know because the Hearing Commissioner never allowed Appellants to present any evidence. The mere instruction of being asked not to do something does not take the employee out of their sphere of employment. Furthermore, the statements are not enough to show knowledge of the employer, Martint, for the legal defense under *Wright v. Bilo*.

Even if the unknown person who filled out the Form 12A was an agent of the insurance carrier, there is no evidence that Martint, as a separate and distinct entity, had knowledge of the legal defense. There is no evidence that Martint makes compensability decisions.

In order to assert the defense of *Wright v. Bilo*, one has to have facts available to them after conducting an extensive investigation of the incident. As the court in *Wright v. Bilo* states:

Not every violation of an order given to a workman will necessarily remove him from the protection of the Workmen's Compensation Act. . . . Certain rules concern the conduct of the workman within the sphere of his employment, while others limit the sphere itself. A transgression of the former class leaves the scope of his employment unchanged, and will not prevent the recovery of compensation, while a transgression of the latter sort carries the workman outside of the sphere of his employment and compensation will be denied.

See Wright v. Bi-Lo, 314 S.C. 152, 442 S.E.2d 186 (Ct. App. 1994).

Certain rules concern the conduct of how the worker performs his duties while in the course and scope of his employment. Certain rules limit the sphere of employment itself and a violation of that rule carries the worker outside of his employment and therefore, pursuant to SC Code Ann. Section 42-1-160 (1976, as amended), even though the injury arises out of the employment i.e. dismantling the equipment, it does not occur in the course of his employment. BOTH conditions have to be met to be a compensable accident under SC Code Ann. Section 42-1-160 (1976, as amended). The Appellants were not afforded the opportunity to introduce any witness or evidence to prove that both were not met.

It is clear that an insurance agent or adjuster is not allowed to practice law, so imputing knowledge that should only be obtained from legal counsel to the employer, Martint, or the insurance carrier, General Casualty Insurance Company, is improper. *See Linder v. Ins. Claims*

Consultants, Inc., 348 S.C. 477, 560 S.E.2d 612 (2002) (noting that public adjusting does not include any activities which may constitute the unauthorized practice of law).

In addition to the Form 12A, the court also relies on the passage of time –fifteen months—to prove that waiver and laches apply (court of appeals order p. 40). However, evidence has to be introduced to prove that the passage of time was “unreasonable” and unexplained. *See Strickland v. Strickland*, 375 S.C. 76, 650 S.E.2d 465 (2007) (holding that in order to establish laches as a defense, a defendant must show that the complaining party **unreasonably** delayed its assertion of a right, resulting in prejudice to the defendant). There is no evidence to support the finding that the delay was unreasonable or that the Respondent, who received benefits the entire time during the investigation, was prejudiced. As explained above, the *Wright v. Bilo* test is fact intensive and would require substantial investigation in order to determine if the defense is applicable. Moreover, the investigation could only commence after this so called agent would have consulted an attorney to know of whether this is a defense to a claim. Courts have held that “usually, the question of waiver or estoppel is a matter for the jury but when the facts are undisputed and warrant only one reasonable inference, waiver or estoppel becomes a matter of law.” *See American Mut. Fire Ins. Co. v. Green*, 233 S.C. 588, 106 S.E. 2d 265(1958). Because there are no facts to support the ruling that waiver applies in this instance, the Court committed an error of fact and law.

Laches

The record is also devoid of evidence of Laches. The equitable doctrine of Laches is equivalent to the legal doctrine of waiver, which is the voluntary and intentional relinquishment or abandonment of a known right. *Strickland v. Strickland*, 375 S.C. 76, 650 S.E.2d 465 (2007). Both laches and waiver require a party to have known of a right, and know that the party was

abandoning that right. *Id.* Judge Huff , Judge Anderson, and Jude Thomas, in the *Skipper* decision state the following: The party seeking to establish laches must show (1) delay, (2) unreasonable delay, and (3) prejudice. *Skipper v. Perrone*, 382 S.C. 53, 674 S.E.2d 510 (Ct. App. 2009).

Respondents attorney as well as the courts continuously cite to the fifteen month time frame prior to denying the claim as delay. However, there is no evidence of unreasonable delay as discussed above. Moreover, Respondent cannot show and there is no evidence to show that Respondent suffered material prejudice due to Appellants seeking to defend the claim on the issue of compensability. During that time, Claimant has received and continues to receive benefits from the Appellants, including the receipt of weekly temporary total disability checks. Claimant has not suffered any material change in circumstances due to Appellant's assertion the claim is not compensable. Therefore, Claimant has not suffered material prejudice, and cannot prevail on a defense of laches. Moreover, there has been no finding of fact by either the Hearing Commissioner or the Commission's Appellate Panel concerning any alleged prejudice.

The Court's determination that laches and waiver applies is conjectural on what an unknown person may or may not have known about a legal defense when it filled out its Form 12A. The court also speculates that the extended period of time by itself taken to deny the claim was "unreasonable." Because the court's order as to these two doctrines were based upon speculation, conjecture and surmise, it must be reversed.

III. The Due Process rights of Appellants were violated when the Court ruled that the respondents injury was compensable when there was never a full evidentiary hearing before the South Carolina Workers Compensation Commission.

The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the Workers' Compensation Commission. *See Lark v. Bilo, Inc.*,

276 S.C. 130, 276 S.E.2d 374 (1981). The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. S.C. Code Ann. § 1-23-380(5) (1976, as amended). Further, the court may only reverse the decision of the Commission if that decision is affected by an error of law or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. S.C. Ann. § 1-23-380(5)(d)&(e) (1976, as amended). 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.” *Tiller v. National Health Care Center of Sumter*, 334 S.C. 333, 513 S.E. 2d 843 (1999).

South Carolina courts have frequently stated that the burden on is on a claimant to prove the injury is compensable. *Pilgrim v. Eaton*, 391 S.C. 38, 703 S.E.2d 241 (Ct. App. 2010). Because this matter was determined by the Hearing Commissioner by Motion with regard to the Statute of Limitations issue, appellants were barred from participating in a full evidentiary hearing with regard to compensability or any issue.

The appellant’s rights of due process have been denied by a ruling on the compensability issue without allowing Appellants to present evidence that the Claimant did not suffer from a compensable injury pursuant to SC Code Ann. § 42-1-160 (1976, as amended), or present any evidence regarding the defenses of waiver and laches. A reviewing court can reverse or modify the decisions below **“if an appellant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous** in view of the reliable, probative, and substantial evidence on the whole record.” *Id. See also*; S.C. Code Ann. § 1-23-380(A)(6) (2005) (*emphasis added*). How more can a party’s right be substantially prejudiced if not by being barred from submitting any evidence at the evidentiary hearing.

The Appellants' due process rights were violated by the ruling that the claim was compensable due to the fact that the Appellants never had an opportunity to have the issue heard on the merits and will never have the opportunity to be heard on this issue. Under South Carolina's Constitution, due process in the administrative context is established by S.C. Const. Art. I, § 22. *S.C. Ambulatory Surgery Ctr. Ass'n v. S.C. Workers' Comp. Comm'n*, 389 S.C. 380, 699 S.E.2d 146, (S.C. 2010). Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. *S.C. Ambulatory Surgery Ctr. Ass'n v. S.C. Workers' Comp. Comm'n*, 389 S.C. 380, 699 S.E.2d 146, (S.C. 2010). The fundamental requirements of due process under the United States Constitution and the South Carolina Constitution include notice, **an opportunity to be heard** in a meaningful way, and judicial review. *Id.* (emphasis added).

Because the Appellants were never given the opportunity to be heard on the issue of compensability and the courts determined that the claim was compensable without an evidentiary hearing, they committed an error of fact and law.

IV. The Court committed an error of law when determining that the substantial evidence standard applies to mixed questions of equity and law before the Court.

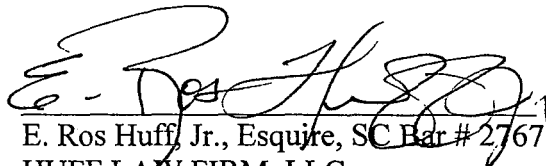
A case with both legal and equitable issues presents a divided scope of review. Thus, a legal question in an equity case receives review as in law. Questions of law may be decided with no particular deference to the trial court. The Court of Appeals of South Carolina may correct errors of law in both legal and equity actions. S.C. Code Ann. § 14-8-200 (1998). *See S.C. DOT v. M & T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 667 S.E.2d 7 (Ct. App. 2008). Because this matter involved issues rooted in both questions of law and equity, the determination with regard

to equitable questions should have been based upon the preponderance of the evidence. When reviewing an action in equity, an appellate court may review the evidence to determine facts in accordancd with the appellate court's own view of the preponderance of the vidence. *Skipper v. Perrone*, 382 S.C. 53, 674 S.E.2d 510 (Ct. App. 2009). Because the review of the evidence with regard to the equitable doctrines of waiver and laches were based upon the substantial evidence standard, this decision must be reversed.

CONCLUSION

Accordingly, the appellants respectfully request that this Court grant their Petition, withdraw/amend its prior decision, rehear the matter and issue a new decision: (1) reversing the lower rulings; (2) ruling that the affirmative defenses of waiver and laches raised by respondent were abandoned before the hearing commissioner for failure to follow through with at the time of the hearing on the record and failure to carry the burden of proof as to each element of the legal defenses; and (3) remanding the case back to the South Carolina Workers Compensation Commission directing that the evidentiary hearing be reconvened and that the appellants defend the claim by presentation of the evidence as to their defense of the Respondent's claim for and entitlement to Workers Compensation benefits.

Respectfully Submitted,



E. Ros Huff, Jr., Esquire, SC Bar # 2767

HUFF LAW FIRM, LLC

Post Office Box 1935

7244 Woodrow Street

Irmo, South Carolina 29063

(803) 252-2232

Attorney for the Appellants

Irmo, SC
February 9, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

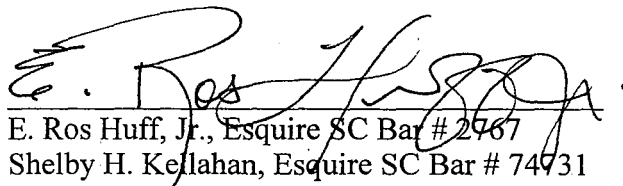
APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
R. Knox McMahon, Circuit Court Judge

Case No. 2008-CP-32-2361

William T. Jervey, Jr., Employee Respondent,
v.
Martint Environmental, Inc., Employer,
and General Casualty Insurance Company, Carrier,..... Appellants.

PROOF OF SERVICE

I certify that I have served the Petition For Rehearing and Memorandum In Support Of Petition For Rehearing to William T. Jervey by depositing a copy of the same in the United States Mail, postage prepaid, on February 9, 2012, addressed to his attorney of record Andrew N. Safran, Post Office Box 12089, Columbia, SC 29211.



E. Ros Huff, Jr., Esquire SC Bar # 2767
Shelby H. Kellahan, Esquire SC Bar # 74731
HUFF LAW FIRM, LLC
Post Office Box 1935
7244 Woodrow Street
Irmo, South Carolina 29063
(803) 252-2232

Attorney for Appellants, Martint Environmental
Inc. and General Casualty Insurance Company

Irmo, SC
February 9, 2012

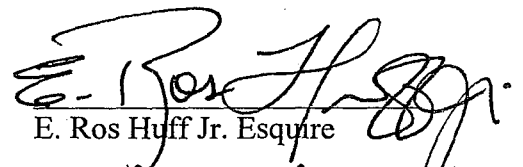
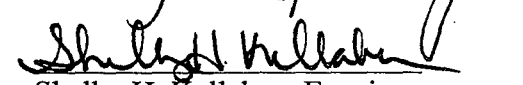
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
R. Knox McMahon, Circuit Court Judge

Case No. 2008-CP-32-2361

William T. Jervey, Jr., Employee Respondent,
v.
Martint Environmental, Inc., Employer,
and General Casualty Insurance Company, Carrier,..... Appellants.

APPELLANT'S RETURN TO RESPONDENT'S PETITION FOR REHEARING


E. Ros Huff Jr. Esquire

Shelby H. Kellahan, Esquire
7244 Woodrow Street
PO Box 1935
Irmo SC 29063
(803)252-2232

Attorneys for Martint and
General Casualty Insurance
Company

In response to Respondent's Petition for Rehearing, the Appellants, Martint and and General Casualty assert the following:

- I. S.C. Code Ann. Section 42-9-260 does not apply to this case as benefits were denied after 150 days on the basis of compensability pursuant to S.C. Code Ann. Section 42-1-160.**
- II. Even if SC Code ann. Section 42-9-260 did apply to the situation, Respondent has misconstrued the statute by indicating that § 42-9-260 establishes a statute of limitation of 150 days in which an employer can pay temporary total disability without waiving grounds for a good faith denial.**
- III. Respondent's citation of case law and its reliance on language in 42-17-10 are inapplicable to this situation.**

Arguments

- I. S.C. Code Ann. Section 42-9-260 does not apply to this case as benefits were denied after 150 days on the basis of compensability pursuant to S.C. Code Ann. Section 42-1-160.**

SC Code. Ann. Section 42-9-260 (1976, as amended) does not apply in this situation. Appellants did not attempt to terminate or suspend temporary total disability benefits. Appellants raised in their Form 51- Employer's Answer to Request for Hearing, that all benefits (disability and medical), pursuant to SC Code Ann. Section 42-1-160 (1976, as amended), should be denied on the basis that the claimant did not suffer a compensable injury because even though the injuries did arise out of the course of his employment under the Wright v. Bilo decision, the injuries are not the result of an accident occurring in the course of his employment.

Section 42-9-260 establishes that Employer/Carrier may unilaterally terminate benefits, whether partial or total, within 150 days of the date the employer gained knowledge of the accident. It further provides that after 150 days, Employer/Carrier may not terminate benefits unilaterally, but rather employer/carrier must go before the commission on an evidentiary hearing to seek Commission approval before suspending or terminating benefits.

Appellants have not unilaterally terminated benefits in the present case. Appellants continue to pay benefits to the Respondent. Appellants wanted to present evidence before the Single Commissioner to terminate benefits on the basis there was not a compensable injury pursuant to S.C. Code Ann. Section 42-1-160 under the ruling of Wright v. Bi-Lo., 314 S.C. 152, 442 S.E.2d 186 (S.C. App. 1994). The raising of this defense, has nothing to do with the good faith investigation under subsection 42-9-260(B) because the denial of benefits occurred AFTER 150 days, and because Appellants denied disability whether temporary or permanent, and medical benefits, and not just temporary benefits pursuant to raising a defense to compensability via Form 51.

II. Even if SC Code ann. Section 42-9-260 did apply to the situation, Respondent has misconstrued the statute by indicating that § 42-9-260 establishes a statute of limitation of 150 days in which an employer can pay temporary total disability without waiving grounds for a good faith denial.

Respondent asserts that pursuant to SC Code Ann. Section 42-9-260 (1976, as amended), this 150 day period in subsection (A) of S.C. Code Ann. Section 42-9-260, is the only time in which the employer can **unilaterally** stop temporary total disability benefits without the need for a hearing before the South Carolina Workers' Compensation Commission. This is an accurate statement. However, as stated above, Appellants did not seek to unilaterally stop Temporary Total Disability Benefits, but rather, they denied the claim as being compensable pursuant to S.C. Code Ann. Section 42-1-160 (1976, as amended) when it raised its defense as to compensability in its Form 51. Moreover, Respondent contends that subsections (A)-(D) of S.C. Code Ann. Section 42-9-260 do apply to this situation. This assertion is without a basis because the Appellants denied a compensability defense outside the 150 days, thus bringing any so called determination under S.C. Code Ann. Section 42-9-260 under subsection (F) only. This is not an accepted workers' compensation claim. While it is true that Appellants began payment of

temporary total disability benefits, Appellants only did so until they obtained legal representation. Upon advice of that legal representation, Appellants' made a reasonable investigation into whether the claimant was acting "in the course of" his employment when he was injured. As their investigation revealed, Appellants reasonably believe that Respondent was in fact not acting "in the course" of his employment. Thus, Appellants had no ability to unilaterally stop payment of benefits under that section, and they did not do so. Pursuant to § 42-9-260 (E) & (F) once the 150 days period has passed, the employer may request a hearing at *any time* and the Commission shall provide by regulation the method and procedure by which benefits may be suspended or terminated for "**any cause**," but the regulation must provide for an evidentiary hearing and commission approval.

Respondent goes on to argue that subsection (F) references grounds for termination in circumstances where liability has been accepted Subsection (F) does not place a restriction and requirement that the subsection only applies to accepted claims. Assuming, arguendo, this is the cause, then Appellants would argue that as a presumably accepted claim, the employer and carrier paid out both temporary total disability benefits and paid for medical treatment, without legal counsel from the date of the injury until January 16, 2007.

The Respondents attempt to distinguish the appellant's reliance on the Frederick decision on the basis that Frederick was about a termination of temporary total benefits for a finding of the fraud in the application defense. First of all, Appellants would again state that this is not a case regarding termination of temporary total disability benefits under 42-9-260(F) as discussed in Frederick. Moreover, the distinction raised by Respondents in their attempt to distinguish Frederick is a distinction without a difference. The Claimant in the Frederick case raised the same argument the Respondent has raised in the present claim: **that the Appellants are barred**

from raising a defense to compensability (fraud in the application) because they paid for benefits past the 150 days time period as indicated in § 42-9-260 . This very Court, Judge Geathers, Judge Short, and Judge Thomas, found that § 42-9-260 (F) specifically allows for suspension or termination of payments after the 150 days have expired for any cause. Interpreting the Frederick decision and Section 42-9-260 in the manner that Respondent requests, would make subsections (E) and (F) of the of the statute purposeless and it is clear that “a court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something.” Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007).

III. RESPONDENT’S CITATION OF CASE LAW AND ITS RELIANCE ON LANGUAGE IN 42-17-10 ARE INAPPLICABLE TO THIS SITUATION.

Respondent relies on the cases of Cooper, Givens, Brayboy and Lake to discredit the Frederick decision on the basis that lack of subject matter jurisdiction can be raised at any time with respect to an employer/employee relationship. These cases are inapplicable to the current situation because benefits were not denied pursuant to 42-9-260(A) as discussed above. Moreover, Appellants have not raised any arguments with respect to subject matter jurisdiction. As such, these cases have no bearing on the court’s determination and its use of the Frederick case in its opinion.

Respondent’s reliance on the McCreery decision and the Form 15 to discredit the any cause language of subsection (F) is also inapplicable. McCreery was decided at a time where the filing of a Form 15 was signed by both the employee and carrier and did in fact show a bilateral agreement between the parties. The Form 15 was then approved by Order of the South Carolina Workers Compensation Commission. See McCreery v. Covenant Presbyterian Church, 400 S.E.2d 130, 303 S.C. 271 (1990) (stating that Respondent Auto Owner’s Insurance Company,

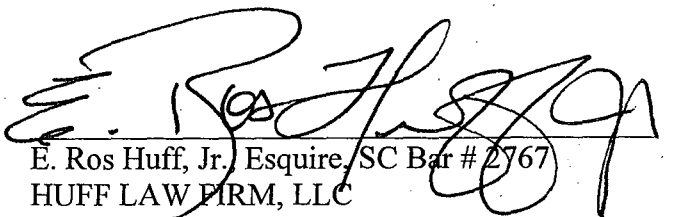
entered into a compensation agreement with McCreery which was submitted to and approved by the Workers' Compensation Commission). However, upon the amendment to S.C. Code Ann. Section 42-17-10 (1976, as amended) and the changes made to the Form 15 in 2004, the form is now filled out by the employer/carrier only and filed with the South Carolina Workers Compensation Commission without a formal Order of approval. As such, Respondent's reliance on the McCreery ruling is misplaced. Moreover, Appellants did not stop temporary total disability benefits in this case on the basis of a good faith denial under S.C. Code Ann. Section 42-9-260, but rather sought to defend the complete claim after an investigation related to compensability issues under S.C. Code Ann. Section 42-1-160.

Therefore, Respondent's reliance on this statute and case law regarding the interpretation of SC Code Ann. Section 42-17-10 are also misplaced.

CONCLUSION

Appellants would respectfully request that Respondent's Petition for Rehearing be denied on the basis that the Court neither misapprehended nor overlooked any law with respect to its determination on the Statute of Limitations issues under SC Code Ann. Section 42-9-260.

Respectfully Submitted,



E. Ros Huff, Jr., Esquire, SC Bar # 2767

HUFF LAW FIRM, LLC

Post Office Box 1935

7244 Woodrow Street

Irmo, South Carolina 29063

(803) 252-2232

Attorney for the Appellants

Irmo, SC
February 15, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

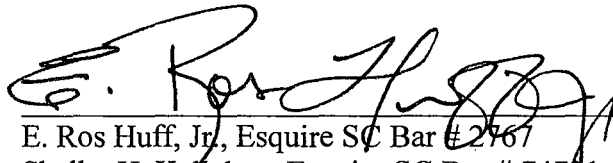
APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
R. Knox McMahon, Circuit Court Judge

Case No. 2008-CP-32-2361

William T. Jervy, Jr., Employee Respondent,
v.
Martint Environmental, Inc., Employer,
and General Casualty Insurance Company, Carrier,..... Appellants.

PROOF OF SERVICE

I certify that I have served the Appellants' Return to Respondent's Petition For Rehearing William T. Jervy by depositing a copy of the same in the United States Mail, postage prepaid, on February 15, 2012, addressed to his attorney of record Andrew N. Safran, Post Office Box 12089, Columbia, SC 29211.



E. Ros Huff, Jr., Esquire SC Bar # 2767
Shelby H. Kellahan, Esquire SC Bar # 74791
HUFF LAW FIRM, LLC
Post Office Box 1935
7244 Woodrow Street
Irmo, South Carolina 29063
(803) 252-2232

Attorney for Appellants, Martint Environmental
Inc. and General Casualty Insurance Company

Irmo, SC
February 15, 2012

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

THE HONORABLE R. KNOX MCMAHON, CIRCUIT COURT JUDGE

CASE NUMBER: 2008-CP-32-2361

William T. Jervey, Jr., Employee Respondent,

v.

Martint Environmental, Inc., Employer, and General Casualty Insurance Company,
Carrier Appellants.

**RESPONDENT'S REPLY TO APPELLANTS'
RETURN TO PETITION FOR REHEARING**

RECEIVED

FEB 28 2012

(FRONT DESK)

SC Workers' Comp Court

Carol Clark

re. J.

Andrew N. Safran, Esquire

Post Office Box 12089

Columbia, South Carolina 29211

(803) 256-6689

Attorney for Respondent, William T. Jervey, Jr.

RECEIVED

FEB 28 2012

SC Court of Appeals

In response to Mr. Jervey's Petition for Rehearing, Appellants initially argue S.C. Code Ann. Section 42-9-260 (1976, as amended) "does not apply to this situation." This is a rather interesting contention, particularly in view of the facts: (a) Section 42-9-260 (A) establishes the mechanism for commencing temporary total disability compensation payments; (b) this statute led to the promulgation of Commission Regulation 67-503, which outlines the manner and effect of filing the "form" referenced in Subsection A; and (c) Appellants actually complied with this procedure through the filing of a WCC Form 15 on February 9, 2006. (See, Record on Appeal, p. 143)

They also maintain this case "is not an accepted workers' compensation claim", despite the Commission's rather explicit findings that: (a) "compensation payments have continued, without interruption, since the January 24, 2006 initiation date"; (b) "... [d]uring the 150-day period commencing on January 23, 2006, both Employer and Carrier engaged in activities which were reflective of the knowing/informed/voluntary acceptance of liability for Claimant's injuries per the Act"; and (c) "... [t]heir course of conduct after the expiration of this 150-day period. . . is likewise wholly consistent with their continued acceptance of liability for [Mr. Jervey's]. . . claim. . . ." (See, Record on Appeal, pp. 29 and 31).

Based upon these facts, it cannot be legitimately disputed that: (a) once Appellants commenced the payment of temporary total disability compensation, Mr. Jervey's claim fell within the purview of Section 42-9-260; and (b) Appellants' knowing/informed/voluntary acceptance of liability "until at least 450 days after the accident" prevented them from raising a previously known defense, to the extent this case remained "an accepted workers' compensation claim." Consequently, the sole issue requiring reconsideration is whether payment beyond the 150 day investigation period afforded by Section 42-9-260 (A) results in the "waiver of any grounds for good faith denial" referenced in this subsection.

As noted in Mr. Jervey's Petition for Rehearing, prior to the 1996 amendment of this statute, temporary total disability compensation was commenced through execution of an "Agreement as to Compensation". Although a previous codification of Section 42-9-260 (Section 72-177 of the 1962 Code) required that the Commission be notified as to the commencement or suspension of this compensation, the Act contained no particular mechanism regulating these actions. This omission prompted a 1974 amendment, which instructed the Commission to "provide by rule the method and procedure for which benefits may be suspended or terminated for any cause". (See, 1974 Act No. 1059, Section 10).

Significantly, **this amendment was passed with the knowledge the Supreme Court had previously construed the "form prescribed by the Commission" (Agreement as to Compensation) to be an essentially irrevocable acceptance of liability.** More importantly, **following passage of this amendment,** the: (a) Commission implemented a regulation relative to the termination of weekly compensation (See, Regulation 67-10, attached hereto; See also, Adams v. Rice Services, 313 S.C. 488, 443 S.E. 2d 391, 392 (1994) ("Rule 67-10 was adopted pursuant to" this legislative directive.)); and (b) **Supreme Court reiterated its prior holdings relative to the conclusive impact of compensation paid through the Commission-approved Form 15.**

When the Legislature revised Section 42-9-260 in 1996, it utilized clear/unambiguous language ("up to one hundred fifty days . . . without waiver of any grounds for good faith denial") reflective of an intent to: (a) allow the Employer/Carrier **only a finite period** to engage in "a good faith investigation" prior to effectively "buying" the claim; while (b) retain the finality as to basic liability secured by payment of compensation pursuant Commission Form 15, consistent with the Supreme Court's prior rulings.

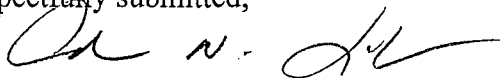
Where a statute has been revised, “the construction given the original statute will be applied to the revised statute, unless the language of the revised statute plainly requires a change of construction.” Chestnut v. South Carolina Farm Bureau Mutual Insurance Company, 298 S.C. 151, 378 S.E. 2d 613, 615 (Ct. App. 1989). Although Subsections A – E are reflective of intended changes, the language of Subsection F: (a) exclusively relates to circumstances arising following expiration of the 150 day grace period; (b) effectively mirrors the prior codification relative to the establishment of a “method and procedure by which benefits may be suspended or terminated for any cause”; and (c) is not indicative of an intent to depart from previous practice.

In this regard, Mr. Jervey respectfully submits that upon revision of Section 42-9-260, the Legislature: (a) was presumptively aware the Supreme Court’s decision in McCreery v. Covenant Presbyterian Church, 303 S.C. 271, 400 S.E. 2d 130, 131 (1990) had reiterated the finality which had long been afforded to the continued payment of temporary total disability compensation in accordance with Commission Form 15; (b) it was likewise aware the Court had adhered to its previous holdings, notwithstanding insertion of the “for any cause” language through passage of the 1974 amendment; and (c) acknowledged its adherence to the sanctity/finality of these extended compensation payments by declining to alter the suspension/termination language currently contained in Subsection F.

He further submits Appellants’ construction of Subsection to somehow stay the 150 day limitation period until the Employer/Carrier retains counsel is obviously erroneous, as it is axiomatic that a litigant is “constructively charged” with knowledge of the law. Young v. Sonoco Products Company, 210 S.C. 146, 41 S.E. 2d 860, 864 (1947); In re Estate of Holden, 343 S.C. 267, 539 S.E. 2d 703, 710 (2000).

ACCORDINGLY, he respectfully requests this Court to grant his Petition, withdraw/amend its prior decision, rehear the matter and issue a new decision affirming the Circuit Court's construction of Section 42-9-260 (A), as to hold otherwise will nullified a decade's old rule which has become a basic tenet of South Carolina Workers' Compensation Law.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. N. Safran", written over a horizontal line.

Andrew N. Safran, Esquire
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689
Attorney for Respondent, William T. Jervey, Jr.

67-10. Discontinuance of Compensation. (Eff. Mar. 1, 1976.)

Compensation cannot be discontinued after an award has been made or an agreement between the parties approved until the full award has been paid, except as herein set forth. Disability will be presumed to continue until the employee returns to work. In the event the insurance carrier or employer desires to stop payment of compensation to the employee, the insurance carrier or employer shall file with the Commission a conditional waiver properly executed by the employee or a request for permission to discontinue compensation payments upon forms prepared by the Commission. The request shall set forth the reasons the insurance carrier or employer desires to discontinue compensation payments, and the request shall be accompanied by a proper medical certificate to certify that the employee is able to return to the same job or other suitable job, and that such job has been provided by the employer, or that the employee has refused medical treatment. The request shall also include evidence of service upon the employee, and his attorney if one be of record, by certified mail of the copy of the request.

Upon receipt of said application to stop payment of compensation, the Commission shall schedule the matter for a hearing which shall be held as soon as practicable.

If the employee has returned to work or agrees that he was able to return to work, the employer shall prepare and present Form 17 (Revised) to the employee for his signature. This form can only be executed by the employee fifteen (15) days after he has returned to work or agrees that he was able to return to work.

The intent and purpose of Form 17 (Revised) is as follows:

- (1) By the employee signing this form temporary total compensation benefits under the agreement as to compensation or the Award previously issued will cease as of the date set forth therein.
- (2) In the event the employee desires reinstatement of temporary total compensation benefits, he shall upon application to the Industrial Commission be entitled to an immediate evidentiary hearing as provided in paragraph B.
- (3) The conditional waiver shall not act as a waiver of claim under any other provision of the Act.
- (4) During the fifteen (15) day period set forth in paragraph C the employer may suspend payment of temporary total compensation benefits.

The Commission shall not entertain any application or any waiver signed by the employee to terminate or suspend benefits unless and until the employer or carrier is current with all payments due.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY

COURT OF COMMON PLEAS

THE HONORABLE R. KNOX MCMAHON, CIRCUIT COURT JUDGE

CASE NUMBER: 2008-CP-32-02361

William T. Jervey, Jr., Employee Respondent,

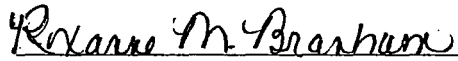
v.

Martint Environmental, Inc., Employer, and General Casualty Insurance Company,
Carrier Appellants.

CERTIFICATE OF SERVICE

I, Roxanne M. Branham, legal assistant for Andrew N. Safran, Esquire, Attorney for Respondent, do hereby certify that on the 28th day of February, 2012 I caused to be filed, via hand delivery, the original and six (6) copies of the Respondent's Reply to Appellants' Return to Petition for Rehearing, with the Clerk of the South Carolina Court of Appeals. One (1) copy of the Petition was furnished to counsel for Appellants via first class mail at the following address:

E. Ros Huff, Jr., Esquire
HUFF LAW FIRM, LLC
Post Office Box 1935
Irmo, South Carolina 29063
Attorney for Appellants


Roxanne M. Branham
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689

February 28, 2012

RECEIVED

FEB 28 2012

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

THE HONORABLE R. KNOX MCMAHON, CIRCUIT COURT JUDGE

RECEIVED
MAR 05 2012
SC Court of Appeals

CASE NUMBER: 2008-CP-32-2361

William T. Jervey, Jr., Employee Respondent,

v.

Martint Environmental, Inc., Employer, and General Casualty Insurance Company,
Carrier Appellants.

**RETURN TO APPELLANTS' PETITION
FOR REHEARING**

Andrew N. Safran, Esquire
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689
Attorney for Respondent, William T. Jervey, Jr.

Pursuant to Rule 240 (SCARC), Respondent, William T. Jervy, Jr., opposes Appellants' Petition for Rehearing relative to the Court's ruling in Jervy v. Martint Environmental, Inc. and General Casualty Insurance Company, Op. No. 4930 (S.C. Ct. App. filed January 25, 2012). Mr. Jervy would respectfully submit Appellants' contentions of error are misplaced and/or legally deficient.

I. MR. JERVEY ADEQUATELY ASSERTED THE DOCTRINES OF WAIVER AND LACHES

Mr. Jervy's timely filed W.C.C. Form 58 asserted Appellants' attempt to disavow liability for his claim was "barred by several legal doctrines, including waiver, estoppel and laches. . . ." (See, Record on Appeal, p. 149). Additionally, he maintained this belated effort to deny his claim was prohibited by S.C. Code Ann. Section 42-9-260 (A) (1976, as amended), which specifically speaks to the "waiver of any grounds for good faith denial" in this context.

As recognized by this Court in Frederick v. Wellman, Inc., 385 S.C. 8, 682 S.E. 2d 516, 522 (Ct. App. 2009), a Pre-Hearing Brief constitutes a sufficient vehicle through which to raise issues to the Commission for adjudication. Further, Mr. Jervy was under no obligation to file an amended Form 50, as neither the nature of his claim nor the relief he had requested changed following Appellants' belated attempt to contest their basic liability for his injury. See, 25A S.C. Code Ann. Regs. 67 – 610 (A) (Supp. 2010); See also, Harbin v. Owens-Corning Fiberglass, 316 S.C. 423, 450 S.E. 2d 112, 115 (Ct. App. 1994) (Exhaustive pleading process is "not required in workers' compensation proceeding. . . ."). Rather, he was merely required to notify the Commission, through filing of the Pre-Hearing Brief, of the contested issues.

Given these facts, the Court properly ruled the Commission was authorized to apply the doctrines of waiver and laches in this instance.

**II. APPELLANTS FAILED TO PRESERVE THEIR CURRENT ARGUMENT
RELATIVE TO THE COMMISSION'S CONSIDERATION OF THE
DOCTRINES OF WAIVER AND LACHES.**

This Court has recognized that Appellants did not: (a) “object to Jervey’s pre-hearing brief at the October 15, 2007 hearing”; and (b) raise an issue as to the timeliness or propriety of “Jervey’s waiver and laches arguments to the appellate panel.”

“It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the. . . [Commission] to be preserved for appellate review.” Pratt v. Morris Roofing, Inc., 353 S.C. 339, 57 S.E. 2d 475, 481 (Ct. App. 2003); Robbins v. Walgreen’s and Broadspire Services, Inc., 375 S.C. 259, 752 S.E. 2d 90, 94 (Ct. App. 2007) (“Because the matter was not argued before the single commissioner or the Appellate Panel, Robbins waived the matter.”)

As Appellants failed to raise this purported issue to either the single commissioner or appellate panel, this Court correctly determined it is not preserved for review.

**III. THE COMMISSION’S FINDINGS OF WAIVER AND LACHES ARE
SUPPORTED BY THE SUBSTANTIAL EVIDENCE OF RECORD.**

Appellants’ denial stems from the same allegation that was listed on its January 24, 2006 Form 12-A, in which Martint asserted Mr. Jervey was asked not to “touch or dismantle the sulfuric acid system.” In this regard, the Commission further found: (a) “[d]uring the 150-day period commencing on January 23, 2006, both Employer and Carrier engaged in activities which were reflective of the knowing/informed/voluntary acceptance of liability for Claimant’s injuries per the Act”; (b) “[t]heir course of conduct after the expiration of this 150-day period. . . is likewise wholly consistent with their continued acceptance of liability for his claim”; and (c) Appellants’ “behavior” resulted in a waiver of their defenses.

Waiver is the “voluntary and intentionally relinquishment or abandonment of a known right.” Strickland v. Strickland, 375 S.C. 76, 650 S.E. 2d 465, 470 (2007); Sanford v. South Carolina State Ethics Commission, 385 S.C. 483, 685 S.E. 2d 600, 607 (2009). “It may be expressed or implied by a party’s conduct. . . .” Parker v. Parker, 313 S.C. 482, 443 S.E. 2d 388, 391 (1994); Pruitt v. South Carolina Medical Malpractice Liability Joint Underwriting Association, 343 S.C. 335, 540 S.E. 2d 843, 846 (2001).

“Laches is the neglect for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done, or neglecting or admitting to do what in law should have been done for an unreasonable and unexplained length of time and in circumstances which afforded opportunity for diligence.” Byars v. Cherokee County, 237 S.C. 548, 118 S.E. 2d 324, 329 (1961); Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 673 S.E. 2d 448, 456 (2009). “The equitable doctrine of laches is equivalent to the legal doctrine of waiver” Strickland, 650 S.E. 2d at 470.

“Wavier is a question of fact for the finder of fact.” Parker, supra.; RWE NUKEM v. ENSR Corporation, 373 S.C. 190, 644 S.E. 2d 730, 734 (2007). “[W]hether laches applies in a particular situation is highly fact-specific”, to the extent the factfinder’s determination will be adopted if supported by substantial evidence. Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E. 2d 583, 599 (Ct. App. 1999). See also, Byrd v. King, 245 S.C. 247, 140 S.E. 2d 158, 166 (1965).

As the Commission’s findings relative to the presence of both waiver and laches are wholly supported by the substantial evidence of record, this Court’s previous determination that Appellants’ “defense is barred by the doctrine of waiver and laches” was appropriate.

IV. APPELLANTS' ALLEGED UNSOPHISTICATION DOES NOT JUSTIFY 450 (+) DAY DELAY IN ASSERTING CURRENT DEFENSE.

Essentially, Appellants argue: (a) assessment as to the viability of their current defense “require[d]. . . substantial investigation”; and (b) this investigation “could only commence after [they] would have consulted an attorney. . . .”

However, this argument conventionally ignores: (a) the fact that they were aware of not only the current allegation, but also any potential witnesses, from the onset; and (b) the legal axiom that a litigant is “constructively charged with knowledge of the law. . . [and obliged to] exercise reasonable care to protect his interest.” Young v. Sonoco Products Company, 210 S.C. 146, 41 S.E. 2d 860, 864 (1947); Smothers v. United State Fidelity and Guarantee Company, 322 S.C. 207, 470 S.E. 2d 858, 860 (Ct. App. 1996).

V. DENIAL OF DUE PROCESS

As previously noted, the Commission’s factual findings verify Appellants engaged in conduct which was “reflective of the knowing/informed/voluntary acceptance of liability for Claimant’s injuries per the Act. . . .” (See, Record on Appeal, p. 31). Once liability had been conditionally accepted during the initial 150-day period prescribed by Section 42-9-260 (A), it could only be contested through **timely** assertion of an appropriate defense.

In this regard, the substantial evidence of record establishes: (a) Appellants were aware of a potentially viable defense shortly after the occurrence of Mr. Jervy’s accident; yet (b) acted in a manner indicative of the “knowing/informed/voluntary acceptance of liability” for at least 450 days.

While Appellants maintain they were never afforded the opportunity to be heard on the issue of compensability, this assertion misapprehends the impact of the doctrines of waiver and laches. Specifically, the failure to timely pursue the current defense prohibited Appellants from

contesting liability for Mr. Jerve's claim. Given this fact: (a) the testimony Appellants intended to submit (which would purportedly show he was injured while performing a prohibited act) was irrelevant at this stage of the proceedings (See, Record on Appeal, p. 95); and (b) refusal to allow proof of a waived defense was not violative of due process).

Consequently, the Court properly determined it did not need to "address this issue because. . . the doctrines of waiver and laches prohibit [appellants]. . . from asserting [their]. . . compensability defense."

VI. STANDARD OF REVIEW

Appellants finally maintain: (a) the equitable nature of the laches issue required utilization of a different standard of review; and (b) application of this standard necessitates reversal of the underlying ruling.

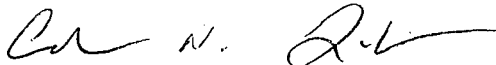
When previously addressing the doctrine of laches in the workers' compensation context, this Court held: (a) "[t]he findings of the commission are presumed correct and will be set aside only if unsupported by substantial evidence." Muir v. C. R. Bard, Inc., 336 S.C. 266, 519 S.E. 2d 583, 591 (Ct. App. 1999); and (b) "[i]n a workers' compensation action, the appellate courts' scope of review extends only to the correction of errors of law." Richey v. Dickinson, 359 S.C. 609, 698 S.E. 2d 307, 309 (Ct. App. 2004).

Based upon these rulings, Mr. Jerve would respectfully submit this Court correctly applied the substantial evidence standard. However, assuming *arguendo*, the preponderance of the evidence standard is applicable, "this broad scope of review does not require an appellate court to disregard the findings below. . . ." Pinckney v. Warren, 344 S.C. 382, 544 S.E. 2d 620, 623 (2001); U.S. Bank Trust National Association v. Bell, 385 S.C. 364, 584 S.E. 2d 199, 204 (Ct. App. 2009).

After thoroughly reviewing the hearing record, this Court found “because Martint knew of its defense the day of the accident, yet it paid and continued to pay Jervey disability compensation, and it did not assert the defense until at least 450 days after the accident, the evidence supports the Appellate Panel’s finding that Martint’s defense is barred by the doctrine of waiver and laches.” In view of this fact, Mr. Jervey respectfully submits: (a) this Court has afforded Appellants an appropriate review of the facts under both the substantial evidence and preponderance of the evidence standards; and (b) application of either scope of review warrants affirmance.

ACCORDINGLY, Mr. Jervey respectfully requests the Court to deny Appellants’
Petition for Rehearing.

Respectfully submitted,



Andrew N. Safran, Esquire
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689
Attorney for Respondent, William T. Jervey, Jr.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

THE HONORABLE R. KNOX MCMAHON, CIRCUIT COURT JUDGE

CASE NUMBER: 2008-CP-32-02361

RECEIVED
MAR 05 2012
SC Court of Appeals

William T. Jervey, Jr., Employee Respondent,

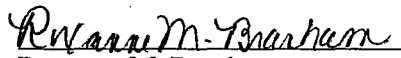
v.

Martint Environmental, Inc., Employer, and General Casualty Insurance Company,
Carrier Appellants.

CERTIFICATE OF SERVICE

I, Roxanne M. Branham, legal assistant for Andrew N. Safran, Esquire, Attorney for Respondent, do hereby certify that on the 5th day of March, 2012 I caused to be filed, via hand delivery, the original and six (6) copies of the Respondent's Return to Appellants' Petition for Rehearing, with the Clerk of the South Carolina Court of Appeals. One (1) copy of the Petition was furnished to counsel for Appellants via first class mail at the following address:

E. Ros Huff, Jr., Esquire
HUFF LAW FIRM, LLC
Post Office Box 1935
Irmo, South Carolina 29063
Attorney for Appellants


Roxanne M. Branham
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689

March 5, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
R. Knox McMahon, Circuit Court Judge

Case No. 2008-CP-32-2361

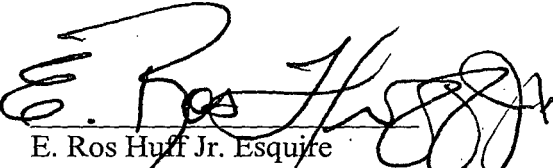
William T. Jervy, Jr., Employee Respondent,
v.
Martint Environmental, Inc., Employer,
and General Casualty Insurance Company, Carrier,..... Appellants.

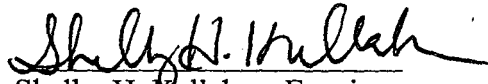
RECEIVED

MAR 26 2012

SC Court of Appeals

**APPELLANT'S REPLY TO RESPONDENT'S RETURN TO APPELLANTS' PETITION
FOR REHEARING**


E. Ros Huff Jr. Esquire
Bar #2767


Shelby H. Kellahan, Esquire,
Bar #74731
7244 Woodrow Street
PO Box 1935
Irmo SC 29063
(803)252-2232

Attorneys for Martint and
General Casualty Insurance
Company

In response to Respondent's Return to Appellant's Petition for Rehearing, the Appellants, Martint and General Casualty assert the following:

- I. Appellants were denied their Due Process rights.**
- II. The Court erred in determining that the doctrines of waiver and laches were applicable.**
- III. The Appellants did properly raise their objections to the waiver and laches defense at the time that it could have been raised.**
- IV. The substantial evidence in the record does not support the Court's finding that waiver and laches applies.**
- V. Appellants alleged un-sophistication of the legal defenses under *Wright v. Bilo* is justification for the delay in asserting the defense.**
- VI. The Standard of Review of the Doctrine of Waiver and Laches was misapplied.**

Arguments

I. Appellants were denied their due process rights

Respondent contends that the mere application of the waiver and laches doctrines are justification for the Appellants never being heard on the issue of compensability. However, Respondent does not assert any legal authority for this specific argument.

Not only have the appellants been denied the opportunity to be heard on the issue of compensability, they were never afforded the opportunity to be heard on the doctrines of waiver of laches. Specifically, Appellants were not allowed the opportunity to present evidence to show that their delay of raising a defense was not unreasonable as required by the equitable doctrines of waiver and laches. *See Strickland v. Strickland*, 375 S.C. 76, 650 S.E.2d 465 (S.C. 2007). This is clearly a denial of their Due Process rights. *See S.C. Ambulatory Surgery Ctr. Ass'n v. S.C. Workers Comp. Commission*, 389 S.C. 380, 699 S.E.2d 146 (2010). (holding that the fundamental requirements of due process under the United States Constitution and the South Carolina Constitution include notice, **an opportunity to be heard in a meaningful way**, and

judicial review). Because the appellants were never given the opportunity to be heard, much less an opportunity to be heard in a **meaningful** way, they were clearly denied their Due Process rights.

II. The Court erred in determining that the doctrines of waiver and laches were applicable

Respondent, William Jervey contends that he adequately asserted the doctrines of waiver and laches because it was raised in his Form 58/Prehearing Brief. While it is true that the Respondent mentions the doctrines in his Form 58/Prehearing Brief, he never cites any authority for the doctrines either legally or factually. Further, at the hearing before the single commissioner, he presented no evidence.

Respondent asserts in his Return that the case of *Harbin v. Owens-Corning Fiberglass*, supports the fact that he does not have to include any facts or legal support for the doctrines. That case states that "the niceties of pleadings and process in the law courts are not required in workers' compensation proceedings." *Harbin v. Owens-Corning Fiberglass*, 316 S.C. 423, 450 S.E.2d 112 (S.C. Ct. App. 1994). However, that case is entirely different from the instant situation because the clamant in that case, checked the "General Disability" box on his Form 50 when filing his claim and the court held that stating that he was asserting any and all rights under the act, could be evidence to support that he raised the issue of Specific Disability. *Harbin v. Owens-Corning Fiberglass*, 316 S.C. 423, 450 S.E.2d 112 (S.C. Ct. App. 1994). This is entirely different from the current situation because the Respondent attempted to raise the doctrines of equity without any support for the same.

The respondent also failed to raise the issues before the commission. (R. pgs. 84-98). Under *State v. Porter*, the court stated that when a party cites only to authority that does not support the

specific argument raised, and fails to cite to any authority that supports the specific argument, the argument will be deemed abandoned on appeal. *See State v. Porter*, 389 S.C. 27, 35-36, 698 S.E.2d 237, 241 (Ct. App. 2010). Because Respondent abandoned the arguments with regard to waiver and laches, it has been an error since the beginning of this litigation for any tribunal to rule that they were applicable doctrines.

Respondent further contends in his Return, that raising S.C. Code Ann. 42-9-260 with regard to “waiver of a good faith denial,” is support for his waiver and laches equitable argument. The standard for waiver and laches in an equitable sense is entirely different from the term “waiver” found in S.C. Code Ann. Section 42-9-260. As such, this is not evidence of legal authority raised in Respondent’s brief.

The mere attempt to raise Laches and Waiver and then fail to: (1) offer evidence to support the affirmative defenses, (2) offer legal authority for support of the doctrines, or (3) even mention the doctrines again at a hearing, is an abandonment of the defenses. Therefore, it was error for any court to rule that they were applicable.

III. The Appellants did properly raise their objections to the waiver and laches defenses at the time that it could have been raised.

Respondent contends that Appellants failed to raise their exceptions to the doctrines of waiver and laches because they did not object to the prehearing brief, or raise an objection at the hearing. An objection was not required because when the Single Commissioner set forth the issues on the record, waiver and laches were not included, and the respondent’s attorney agreed to the issues.

Appellants raised the issue at the first time that it should have been raised, which was in its Form 30. Appellants refer to the Form 30 Addendum and make special reference to numbers 13,

16, 32, and 33 in which Appellants cite errors in the Commissioner's order and preserve these issues for Appellate review. (R. p. 57). Because Waiver and Laches are affirmative defenses, it is the Respondent's responsibility to properly raise and argue the issues and it is not the responsibility of the Appellant to make mention of his failure to raise these issues. Respondent should have raised and argued the doctrines before the Single Commissioner. Because he did not raise and argue the two, his argument is deemed abandoned as discussed above, and Appellants timely objected to the Single Commissioner's ruling on those doctrines or appeal when they were cited in the Single Commissioner's order to find the claim compensable and deny appellants denial of the case.

IV. The substantial evidence in the record does not support the Court's finding that waiver and laches applies.

One who pleads an affirmative defense has the burden of proving the defense with evidence. *See Hoffman v. Greenville*, 242 S.C. 34 (SC 1963). Moreover, the doctrines must be proven by substantial evidence of the record as a whole. *McCuen v. BMW Mfg. Corp.*, 383 S.C. 19, 677 S.E.2d 28 (S.C. Ct. App. 2009). Not only are the rulings concerning waiver and laches without substantial evidence, they are without ANY evidence because there was a never a full hearing before the Single Commissioner. (R. 91). Because "waiver is a voluntary and intentional abandonment or relinquishment of a known right, generally, the party claiming waiver must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they depended." *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 418 S.E. 2d 146 (1992). It (the knowledge of the right) may be expressed or implied by a party's conduct. *Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994).

It was error for the Court to find that waiver applied because there was no evidence of an intentional abandonment or relinquishment of a known right. Jervey, as the party asserting the defenses, had to prove that Martint, the employer: (1) possessed actual or constructive knowledge of his rights or (2) all of the material facts upon which Martint depended. A review of the Record on Appeal would certainly show a lack of evidence of these elements.

The court relies on the passage of time –fifteen months—to prove that waiver and laches apply (Court of Appeals Order p. 40). However, evidence has to be introduced to prove that the passage of time was “unreasonable.” *See Strickland v. Strickland*, 375 S.C. 76, 650 S.E.2d 465 (S.C. 2007). There is no evidence to support the finding that the delay was unreasonable.

Respondent further contends that there was evidence to support laches. However, the record is also devoid of evidence of Laches. The party seeking to establish laches must show (1) delay, (2) unreasonable delay, and (3) prejudice. *Skipper v. Perrone*, 382 S.C. 53, 674 S.E.2d 510 (S.C. Ct. App. 2009). There is no evidence of unreasonable delay as discussed above. Moreover, Respondent cannot show that he suffered material prejudice because he did not introduce any evidence to that fact.

Respondent has received and continues to receive benefits from the appellants, including the receipt of weekly temporary total disability checks. Respondent has not suffered any material change in circumstances due to Appellant’s assertion the claim is not compensable. Therefore, Appellant has not suffered material prejudice, and cannot prevail on a defense of laches. Moreover, there has been no finding of fact by either the Single Commissioner or the Appellate Panel concerning any alleged prejudice.

The Court’s determination that laches and waiver applies is conjectural on what an unknown person may or may not have known about a legal defense when it filled out its Form 12A. The

court also speculates that the extended period of time taken to deny the claim was “unreasonable.” Because the court’s order as to these two doctrines was based upon speculation, it must be reversed. As the court in *Cagle v. Judson Mills* states, while the findings of fact by the Commission will be upheld if there is evidence to support it, “it must be founded on evidence, and cannot rest on surmise, conjecture, or speculation.” See *Cagle v. Judson Mills*, 195 S.C. 346, 11 S.E. 2d 376 (1940).

V. Appellants alleged un-sophistication is justification for the delay in asserting the current defense

Respondent contends that Appellant’s alleged un-sophistication when the unknown individual filled out the Form 12A, is not justification for delay in asserting their compensability defenses.

For Respondent’s argument to be true, there must have been evidence presented that the Form 12A was filled out when the party had “knowledge of waiver of this right (to assert the defense under *Wright v. Bilo* for compensability).” This means that the party would have had legal instruction that this defense even existed. As stated earlier, Appellants did not have the opportunity to offer ANY evidence.

The Form 12A simply states in the section for a description of the accident that “the employee was **asked not** touch or dismantle the sulfuric acid system” and that “employee dismantled system and did not use provided safety gear.” (R. 142). It is clear under the *Wright v. Bilo* decision that this person has to have the authority to make that instruction. The mere instruction of being asked not to do something does not take the employee out of their sphere of employment. Furthermore, the statements are not enough to show knowledge of the employer, Martint, for the legal defense under *Wright v. Bilo*. Even if the unknown person who filled out

the Form 12A was an agent of Southern Guaranty Insurance Company, there is no evidence that Martint, as a separate and distinct entity, had knowledge of the legal defense.

Contrary to Respondent's assertion, the lack of sophistication of the person who filled out the 12A is certainly applicable to this matter as there is no evidence that the person who filled out the 12A was aware of legal defenses. As such, relying on the 12A as evidence under these equitable doctrines to base a ruling is wholly conjectural. "Claimants who assert their right to compensation must establish by the preponderance of the evidence the facts which will entitle them to an award under the Workmen's Compensation Act and such award must not be based on surmise, conjecture or speculation." *Herndon v. Morgan Mills, Inc.*, 246 S.C. 201, 143 S.E.2d 376 (1965). Because each court's reliance on the 12A as evidence is misplaced and conjectural, the courts' decisions are erroneous.

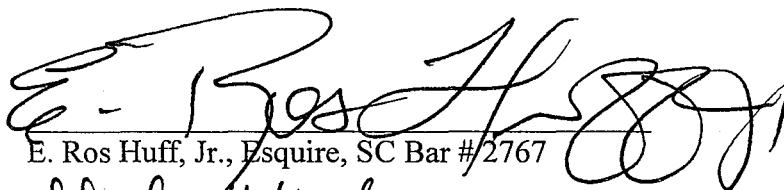
VI. The Standard of Review of the Doctrine of Waiver and Laches was misapplied.

Respondent contends that the substantial evidence standard is the correct standard in questions of equity because the equitable questions in this case, were made in the Workers Compensation context. Regardless of what type of standard is used in Workers Compensation cases, the courts based their decision on equitable grounds and case law. "When reviewing an action in equity, an appellate court may review the evidence to determine facts in accordance with the appellate court's own view of the preponderance of the evidence." *Skipper v. Perrone*, 382 S.C. 53, 674 S.E.2d 510 (Ct. App. 2009). This is clearly a different standard than what was applied by all courts in this matter. As such, the standard of review was erroneous with respect to the equitable determination in this matter.

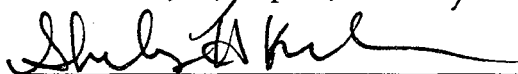
CONCLUSION

Appellants would respectfully request that the Court grant its Petition for Rehearing for the reasons set forth above.

Respectfully Submitted,

A large, stylized handwritten signature in black ink, appearing to read "E. Ros Huff, Jr.", written over a horizontal line.

E. Ros Huff, Jr., Esquire, SC Bar #2767

A smaller, more cursive handwritten signature in black ink, appearing to read "Shelby H. Kellahan", written over a horizontal line.

Shelby H. Kellahan, Esquire, SC Bar # 74731

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

Irmo, SC
March 26, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
R. Knox McMahon, Circuit Court Judge

Case No. 2008-CP-32-2361

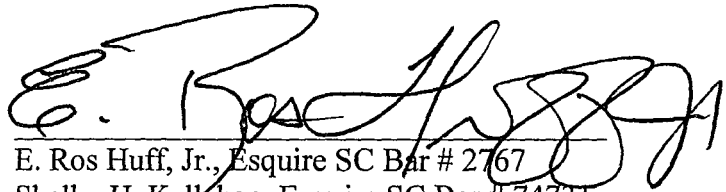
William T. Jervy, Jr., Employee Respondent,
v.
Martint Environmental, Inc., Employer,
and General Casualty Insurance Company, Carrier,..... Appellants.

PROOF OF SERVICE

RECEIVED

MAR 26 2012

I certify that I have served the Appellants' Return to Respondent's Reply to Appellant's Petition For Rehearing on William T. Jervy, by depositing a copy of the same in the United States Mail, postage prepaid, on March 26, 2012, addressed to his attorney of record Andrew N. Safran, Post Office Box 12089, Columbia, SC 29211.



E. Ros Huff, Jr., Esquire SC Bar # 2767
Shelby H. Kellahan, Esquire SC Bar # 74731
HUFF LAW FIRM, LLC
Post Office Box 1935
7244 Woodrow Street
Irmo, South Carolina 29063
(803) 252-2232

Attorney for Appellants, Martint Environmental
Inc. and General Casualty Insurance Company

Irmo, SC
March 26, 2012

The South Carolina Court of Appeals

William T. Jervy, Jr.,
Employee,

Respondent,

v.

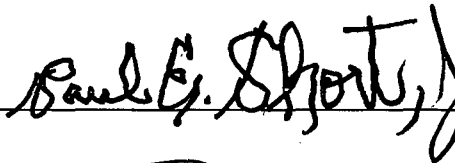
Martint Environmental, Inc.,
Employer, and General
Casualty Insurance Company,
Carrier,

Appellants.

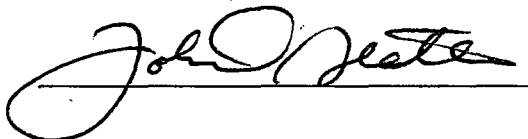
The Honorable R. Knox McMahon
Lexington County
Trial Court Case No. 2008-CP-32-02361

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.


Short, J.


Williams, J.


Geathers, J.

Columbia, South Carolina

cc: E. Ros Huff, Jr, Esquire
Andrew Nathan Safran, Esquire

FILED

30 Mar 2012

The South Carolina Court of Appeals

William T. Jervy, Jr.,
Employee,

Respondent,

v.

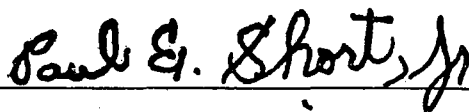
Martint Environmental, Inc.,
Employer, and General
Casualty Insurance Company,
Carrier,

Appellants.

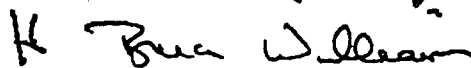
The Honorable R. Knox McMahon
Lexington County
Trial Court Case No. 2008-CP-32-02361

ORDER DENYING PETITIONS FOR REHEARING

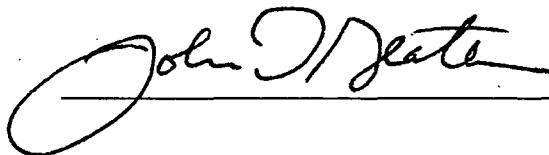
PER CURIAM: After a careful consideration of the Petitions for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petitions for Rehearing be denied.



Short, J.



Williams, J.



Geathers, J.

Columbia, South Carolina

cc: E. Ros Huff, Jr, Esquire
Andrew Nathan Safran, Esquire

FILED

30 March 2012

18175

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2008-CP-32-2361

William T. Jervey, Jr., Employee Respondent;

v.

Martint Environmental, Inc., Employer
and General Casualty Insurance Company, Carrier Appellants

RECORD ON APPEAL

E. Ros Huff, Jr.
Post Office Box 1935
Irmo, South Carolina 29063
(803) 252-2232
Attorney for Appellants

Andrew N. Safran
Post Office Box 12089
Columbia, SC 29211
(803)
Attorney for Respondent

INDEX

ORDERS

Order from the South Carolina Workers' Compensation Commission November 26, 2007	5
Order from the Appellate Panel of the South Carolina Workers' Compensation Commission May 5, 2008	26
Order from the Fifth Judicial Circuit Court March 24, 2009	35

PLEADINGS

Claimant's Form 50	54
Defendants' Form 51	56
Defendants' Form 30 and Addendum	57
Claimant's Petition for Judicial Review	66
Defendants' Petition for Judicial Review	78

TRANSCRIPTS

Hearing Transcript	84
October 15, 2007	
Testimony of William Jervey	88
Direct Examination by Attorney Andy Safran	
Motion by Attorney Andy Safran	91
Response by Attorney Mickey Mauldin	92
Hearing Transcript	
February 2, 2009	99

EXHIBITS

1. Form 12 A	142
January 24, 2006	
2. Form 15	
February 2, 2006	143

3. Form 18 January 22, 2007	144
4. Defendants' Form 58 Pre-Hearing Brief October 2, 2007	145
5. Claimant's Form 58 Pre-Hearing Brief September 26, 2007	148
6. Itemized Statement from Post Trauma Resources September 25, 2007	157
7. Reports from Corvel Corporation December 11, 2006 – June 21, 2007	158
8. Contractor's Significant Incident Report January 24, 2006	213
9. Job Description for Filter Process Operators/General Laborer	218
10. Fax coversheet generated by Kathy Crews, GBO Claims April 7, 2006	219
11. Letter of Mr. Larry Offill, III of Martint Environmental May 1, 2006	220
12. Email Communications by Kathy Crews, GBO Claims April 12, 1006, April 25, 2006, June 16, 2006, June 19, 2006, July 21, 2006, October 4, 2006, and January 12, 2007	221
13. Correspondence between Beth Hagler of Corvel and Mr. Larry Offill, III of Martint Environmental July 31, 2006	229
14. Workers' Compensation Disability Benefit Payment Log February 2, 2006 – September 25, 2007	230
15. Fax Coversheet from Kathy Crews, GBO Claims April 17, 2007	233
16. Fax Coversheet from Beth Hagler to One Call Medical December 5, 2006	234

17. Fax Coversheet from Beth Hagler to One Call Medical

March 15, 2007	235

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NUMBER: 0600334

WILLIAM T. JERVEY, JR., EMPLOYEE, CLAIMANT,

vs.

MARTINT ENVIRONMENTAL, INC., EMPLOYER,

and

GENERAL CASUALTY INSURANCE COMPANY, CARRIER, DEFENDANTS.

HEARING: Held on October 15, 2007 in Columbia,
South Carolina.

APPEARANCES: Claimant represented by Andrew N.
Safran, Esquire, Post Office Box 12089,
Columbia, South Carolina 29211.

Defendants represented by Terry M.
"Mickey" Mauldin, Esquire of The Huff
Law Firm, LLC, Post Office Box 1935,
Irmo, South Carolina 29063.

PURPOSE OF HEARING: To determine issues raised by the filing
of Forms 50 and 51, particularly: (a)
Mr. Jervy's entitlement to further
medical care; and (b) whether
Defendants' attempt to challenge/
disclaim their underlying liability for
this claim was timely.

DECISION AND ORDER BY: The Honorable David W. Huffstetler,
Commissioner.

FILED:

November 26, 2007

STATEMENT OF THE CASE

On January 23, 2006, Claimant, William T. Jervey, Jr., sustained an accident while performing his job duties for Defendant, Martint Environmental, Inc., in Onslow County, North Carolina. Shortly thereafter, this Employer and its Carrier, General Casualty Insurance Company, accepted liability for Mr. Jervey's claim and: (a) commenced the payment of temporary total disability compensation effective January 24, 2006 (through filing of a Form 15 with this Commission); while (b) authorizing his receipt of medical benefits.

By Form 50 dated June 29, 2007, Mr. Jervey sought: (a) treatment for cervical symptoms, which had been attributed to the consequences of his compensable accident; and (b) designation of Dr. Donald R. Johnson, II as his authorized treater relative to this injury component.

Subsequently, per Form 51 dated July 27, 2007, Defendants denied not only Mr. Jervey's entitlement to this medical care, but also maintained he had not "sustained a compensable injury by accident arising out of and in the course of employment."

A hearing relative to this matter was conducted on October 15, 2007. In this regard, during a pre-hearing conference, Mr. Jervey maintained Defendants' attempt to deny the compensability of his claim per S.C. Code Ann. Section 42-1-160 (1976, as amended) was untimely/inappropriate, as: (a) this denial was

founded on allegations which were initially raised in a Form 12-A generated by Martint Environmental, Inc. on January 24, 2006; (b) notwithstanding this contention, Defendants had commenced the payment of temporary total disability compensation through a duly completed Form 15 (which this Commission received on February 9, 2006); (c) he had consistently received this compensation since that time; and (d) the provisions of S.C. Code Ann. Section 42-9-260(A) (1976, as amended) consequently precluded denial of his claim under the present circumstances.

In response, Defendants argued: (a) this statute authorized a denial of basic/underlying liability for a claim at any stage of the proceedings; (b) their failure to raise this defense during the 150 day grace period afforded by Section 42-9-260(A) did not prohibit the current assertion of any defenses relative to the merits of Mr. Jervey's claim; and (c) their belated effort to contest liability in this instance stemmed from this Commission's failure to promulgate appropriate regulations governing circumstances of this nature.

Shortly after commencement of the hearing, Mr. Jervey's counsel, who had previously questioned the need/propriety of introducing rather substantial (and potentially irrelevant) testimony as to the basic compensability of this claim, formally requested a ruling on this issue. At that juncture, the undersigned ruled (as more fully outlined below) that Defendants

were prohibited by the provisions of Section 42-9-260(A) from contesting their basic/underlying liability for this claim.

STIPULATIONS

At the commencement of the hearing, counsel for the respective parties stipulated:

1. The purpose of the hearing was to determine the issues raised by the filing of Forms 50 and 51, particularly whether:
(a) Mr. Jervey was entitled to receive treatment for a cervical injury component, which two physicians had attributed to the consequences of his accident; and (b) Defendants could challenge their basic/underlying liability for the provision of compensation/medical benefits per the Act under the present circumstances. In this regard, Defendants further stipulated the evidence of record wholly established the causal relationship of Mr. Jervey's cervical symptoms to the consequences of his accident, as well as his need for treatment of this injury component.
2. Notice of the hearing was timely and properly served upon the parties of interest.
3. Venue, set in Richland County, was proper per S.C. Code Ann. Section 42-17-20 (1976) in view of the parties' agreement to transfer venue from Lexington County for the purpose of conducting the hearing.

4. Mr. Jervey's average weekly wage for the applicable period preceding his accident date amounted to \$879.13, while his resulting compensation rate equaled \$586.11.

MEDICAL EVIDENCE/APA SUBMISSIONS

The following documents were submitted into evidence pursuant to the Administrative Procedures Act, without objection, by the respective parties:

<u>Exhibit No.</u>	<u>Description</u>	<u>Page Nos.</u>
APA 1:	January 23, 2006 - May 24, 2007 reports/notes from the University of North Carolina Hospitals/ North Carolina Jaycee Burn Center.	1 - 36
APA 2:	May 15, 2007 report of Dr. Donald R. Johnson, II of Southeastern Spine Institute.	37 - 38
APA 3:	March 21, 2007 report of Dr. Lawrence R. Lough.	39
APA 4:	February 27, 2007 - August 7, 2007 reports of Dr. Roger A. Deal of Post Trauma Resources.	40 - 50
APA 5:	June 7, 2006 - September 11, 2007 reports of Nicholas A. Lind, PsyD. of Post Trauma Resources.	51 - 105
APA 6:	March 16, 2006 - November 29, 2006 reports/notes of Dr. Sale A. Estefano.	106 - 113
APA 7:	September 25, 2007 Itemized Billing Statement from Post Trauma Resources.	114 - 117
APA 8:	December 11, 2006 - June 21, 2007 reports (with attachments) from Corvel Corporation.	118 - 217

APA 9:	July 22, 2007 W.C.C. Form 18.	218
APA 10:	Undated photographs of United States Marine Corps Camp LeJeune worksite.	219 - 222
APA 11:	January 24, 2006 Contractor Significant Incident Report generated by Larry G. Offill, III.	223 - 232
APA 12:	Portions of Mr. Jervey's personnel file.	233 - 247
APA 13:	Invoices generated by Amerochem Corporation.	248 - 256
APA 14:	February 9, 2006 - February 13, 2006 billing statements generated by Verizon Wireless relative to account numbers 901376727-00001, 201955616-00001 and 517755763-00001.	257 - 326
APA 15:	Condensed Transcript from May 7, 2007 deposition of William Jervey, Jr.	327 - 348

Additionally, Mr. Jervey submitted, without objection, the following documents obtained from Defendants per Subpoena:

Exhibit 1:	W.C.C. Form 12-A received by General Casualty Insurance Company on January 25, 2006	(1 pg.)
Exhibit 2:	February 2, 2006 W.C.C. Form 15 filed by General Casualty Insurance Company (received on February 9, 2006);	(1 pg.)
Exhibit 3:	July 31, 2006 correspondence between Ms. Beth Haglar of Corvel Corporation and Larry Offill, III of Martint Environmental, Inc.	(1 pg.)

- Exhibit 4: May 1, 2006 letter of Larry Offill, III of Martint Environmental, Inc. (1 pg.)
- Exhibit 5: Undated job description for "filter press operator/general laborer" generated by Martint Environmental, Inc. (1 pg.)
- Exhibit 6: April 7, 2006 fax coversheet generated by "Kathy Crews (GBO claims)". (1 pg.)
- Exhibit 7: April 12, 2006 - February 1, 2007 e-mail communications generated by Ms. Kathy Crews of General Casualty Insurance Company. (12 pgs.)
- Exhibit 8: April 17, 2007 fax coversheet from Ms. "Kathy Crews (GBO claims)". (1 pg.)
- Exhibit 9: W/C Disability Benefit Payment Log for period 2/2/06 through 9/25/07. (3 pgs.)

FINDINGS OF FACT

Based upon the testimony of Mr. Jervey, the documentary evidence submitted by the respective parties pursuant to the Administrative Procedures Act and the Commission file relative to this claim, I FIND AS FACTS:

1. On January 23, 2006, Mr. Jervey sustained multiple compensable injuries while throwing a segment of hose into a dumpster at a jobsite on the Camp LeJeune Marine Corps base in Onslow County, North Carolina. Specifically, this injury occurred when: (a) Mr. Jervey (with the assistance of Mr. Robert

Hinson) was lifting/throwing this hose; and (b) sulfuric acid spilled from the hose onto various parts of his body.

2. At the time he sustained these compensable injuries, Mr. Jervey was performing duties arising out of and within the course and scope of his employment as a filter press operator/general laborer for Martint Environmental, Inc.

3. Shortly after sustaining these injuries, Mr. Jervey was transported, via ambulance, to the University of North Carolina Hospitals/North Carolina Jaycee Burn Center, where he: (a) was admitted for acute care of his acid burn wounds; and (b) subsequently received treatment for various physical symptoms from Dr. Michael Peck of this facility.

4. Per Form 12-A completed on January 24, 2006, Martint Environmental, Inc.: (a) provided all requested information relative to the nature and consequences of Mr. Jervey's accident; while (b) specifically alleging he had been "asked not" to engage in the activity he was performing at the time the accident occurred ("victim was dismantling pump & hose containing residual sulfuric acid. . . Employee was asked not to touch or dismantle the sulfuric acid system"). This document was, in turn, delivered (via facsimile) to General Casualty Insurance Company, which: (a) received it on January 25, 2006; and (b) electronically filed the Form 12-A with this Commission ("filed on EDI") on January 26, 2006.

5. Approximately one week later, this Carrier generated a Form 15(I), which: (a) confirmed temporary total disability compensation had commenced effective January 24, 2006; and (b) was received/processed by this Commission on February 9, 2006. In this regard, a review of the "W/C Disability Benefit Payment Log" produced by General Casualty Insurance Company (in response to Mr. Jervey's discovery requests) unequivocally establishes these compensation payments have continued, without interruption, since the January 24, 2006 initiation date.

6. Additionally, during the ensuing months, this Carrier engaged in various activities which reflected an informed and voluntary acknowledgement of liability for Mr. Jervey's claim, including: (a) instructing its nurse case manager to "remind. . . [him] that if he does not comply with medical treatment. . . [,] his benefits could be stopped" (See, April 7, 2006 fax communication from "Kathy Crews (GBO claims)"); (b) instructing this agent to attend a medical appointment and "have. . . [the] Dr. note how his treatment is related to WC of 1/23/06" (See, April 12, 2006 e-mail transmission of Kathy Crews); (c) authorizing treatment (See, June 19, 2006 and July 21, 2006 e-mail transmissions of Kathy Crews); (d) advising

that at least one course of treatment was authorized to prevent Mr. Jervey from "sitting doing nothing while. . . [it was] paying him" (See, June 19, 2006 e-mail transmission of Kathy

Crews); (e) repeatedly seeking medical opinions relative to Mr. Jervey's capacity to return to work, as well as the anticipated date of maximum medical improvement (See, April 25, 2006, June 16, 2006 and October 4, 2006 e-mail transmissions of Kathy Crews); and (f) admonishing Mr. Jervey's counsel, through the nurse case manager, that it "ha[d]. . . control of the medical & who. . . [he] should treat . . . with" - - a communication which was generated approximately one year post-accident. (See, January 12, 2007 e-mail transmission of Kathy Crews).

7. Martint Environmental, Inc. similarly verified an obvious understanding: (a) Mr. Jervey was "being treated by a psychologist for problems claimed to be related to the accident"; (b) he "remain[ed]. . . out of work" due to injury components attributed to his January 23, 2006 accident; and (c) his resulting receipt of compensation and medical benefits was "adding to the volume of the claim." (See, May 1, 2006 letter of Larry Offill, III).

8. On March 30, 2006, Dr. Sale A. Estefano (Mr. Jervey's treating psychiatrist) noted the presence of "tingling" of the arms "since the accident." When these symptoms persisted, Mr. Jervey underwent diagnostic testing, including a cervical MRI scan, which was interpreted to reveal "a left posterolateral to lateral disc protrusion at C6-7 extending for a few millimeters below the level of the superior endplate of C7." After being

apprised of this finding, Dr. Peck: (a) expressed his belief this disc herniation was "related to Mr. [Jervey's] . . . occupational injury"; and (b) recommended further evaluation by a spine surgeon.

9. On May 15, 2007, Mr. Jervey was evaluated by Dr. Donald R. Johnson, II of Southeastern Spine Institute, who: (a) noted that after being splashed with sulfuric acid, Mr. Jervey "shook violently to try to get the acid off of his face"; (b) recognized this trauma had led to the "develop[ment of] . . . neck pain with radiation down his left arm into his left hand"; (c) interpreted the previously performed MRI scan to identify "a left sided disc protrusion quite lateral at C6-C7. . . [with] some extrusion below the endplate of C-7"; (d) observed Mr. Jervey exhibited not only "weakness of his triceps. . . [and] finger abductors. . . [, but also] loss of muscle tone on the left in the area of the triceps that is not present on the right. . . consistent with his 6-7 distribution"; (e) felt "this difficult disc situation. . . [was] causally related to his work accident"; and (f) determined Mr. Jervey had not reached maximum medical improvement.

10. At this juncture, Mr. Jervey: (a) also continues to receive treatment (including counseling and multiple medications) from Dr. Roger Deal of Post Trauma Resources; (b) remains incapable of working per Dr. Peck; and (c) has not received the recommended treatment for his cervical injury component.

11. After thoroughly reviewing the evidence of record, I specifically find: (a) Martint Environmental, Inc. was notified of Mr. Jervey's compensable injuries on January 23, 2006; (b) on January 24, 2006, this Employer generated a Form 12-A, which alleged this injury occurred while Mr. Jervey was performing an activity he "was asked not" to do; (c) General Casualty Insurance Company was formally notified of not only the circumstances surrounding Mr. Jervey's injury, but also this allegation, by no later than January 25, 2006; (d) on February 2, 2006, this Carrier commenced the payment of temporary total disability compensation (effective January 24, 2006), while filing a Form 15 (I) with this Commission; (e) during the 150 day period commencing on January 23, 2006, both Employer and Carrier engaged ~~in activities which were reflective of the knowing/informed/~~ voluntary acceptance of liability for Mr. Jervey's injuries per the Act; (f) their course of conduct after the expiration of this 150 day period (i.e., payment of disability compensation, authorization of medical care and declaration that "we have control of the medical & who. . . [Mr. Jervey] treat with") is likewise wholly consistent with their continued acceptance of liability for his claim; (g) Defendants did not attempt to disclaim this liability until April 17, 2007, approximately 450 days after they were notified of Mr. Jervey's injury; and (h) their attempted denial stems from the same allegation ("Employee

was asked not. . . [to] touch or dismantle the sulfuric acid system") contained on the face of the January 24, 2006 Form 12-A.

12. I further find that notwithstanding Defendants' conditional stipulation to this effect, the evidence clearly establishes: (a) Mr. Jervey's cervical symptoms proximately result from the consequences of his compensable accident; (b) he requires treatment for this injury component, as well as his causally related psychiatric condition; (c) Mr. Jervey's receipt of treatment for each of these injury components is reasonable, medically necessary and geared toward lessening his ultimate period of disability; (d) he has not yet achieved maximum medical improvement relative to either of these injury components; and (e) Mr. Jervey remains temporarily totally disabled/unable to work as a direct result of his compensable injury and its consequences.

CONCLUSIONS OF LAW

IN VIEW OF THESE FINDINGS OF FACT, I CONCLUDE AS MATTERS OF LAW:

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. On January 23, 2006, Mr. Jervey, an employee within the meaning of S.C. Code Ann. Section 42-1-130 (1976, as amended), sustained multiple compensable injuries (which affect his face,

neck, left arm and skin) within the meaning of S.C. Code Ann. Section 42-1-160 (1976, as amended), while performing duties arising out of and within the course and scope of his employment with Martint Environmental, Inc., an employer within the meaning of S.C. Code Ann. Section 42-1-140 (1976). As a consequence of his physical injuries, Mr. Jervey has also developed psychiatric symptoms, which represent an additional component of his claim per S.C. Code Ann. Section 42-1-160. See, Kennedy v. Williamsburg County, 242 S.C. 47, 131 S.E. 2d 512 (1963); Doe v. South Carolina State Hospital, 285 S.C. 183, 328 S.E. 2d 652 (Ct. App. 1985).

3. S.C. Code Ann. Section 42-9-260 (1976, as amended) provides in pertinent part:

(A) When an employee has been out of work due to a reported work-related injury or occupational disease for eight days, an employer may start temporary disability payments immediately and may continue these payments for up to one hundred fifty days from the date the injury or disease is reported without waiver of any grounds for good faith denial. Upon making the first payment, the employer immediately shall notify the commission, in accordance with a form prescribed by the commission, that payment of compensation has begun. (Emphasis added).

4. This statute further prescribes:

(B) Once temporary disability payments are commenced, the payments may be terminated or suspended immediately at any time within the one hundred fifty days if:

(3) a good faith investigation by the employer reveals grounds for denial of the claim. . . .
(Emphasis added).

5. "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and [this Commission]. . . has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 533 S.E. 2d 578, 581 (2000); Pee v. AVM, Inc., 344 S.C. 162, 543 S.E. 2d 232, 235 (Ct. App. 2001). In this connection, the "[L]egislature is presumed to have fully understood the meaning of the words used in a statute and, unless the meaning is vague or indefinite, intended to use them in their ordinary and common meaning or in their well-defined legal sense." Powers v. Fidelity & Deposit Co. of Maryland, 180 S.C. 501, 186 S.E. 2d 523, 527 (1936); Rorrer v. P.J. Club, Inc., 347 S.C. 560, 556 S.E. 2d 726, 731 (Ct. App. 2001).

6. A review of the rather explicit language of Section 42-9-260 clearly establishes that an Employer/Carrier: (a) "may start temporary disability payments. . . [once] an employee has been out of work due to a work-related injury. . . for eight days"; (b) is afforded a 150 day grace period, during which it may conduct "a good faith investigation" to determine whether any "grounds for denial of the claim" exist; and (c) does not "waive. . . any grounds for good faith denial", provided the defense is

raised within the prescribed period. This language likewise: (a) limits this grace period to "one hundred fifty days from the date the injury. . . is reported"; and (b) invokes a "waiver of any grounds for good faith denial" in the event payments are continued beyond expiration of this grace period.

7. Section 42-9-260 is, on its face, a statute of limitation in the current context. Given the plain and unambiguous language establishing this limitation period, I conclude: (a) failure to enforce its provisions would "do violence to a specific requirement of the Act" Ashe v. Rock Hill Hardware Company, 219 S.C. 159, 64 S.E. 2d 396, 400 (1951); (b) a fundamental premise for the imposition of this limitation period - finality as to the issue of liability - would be thwarted if Defendants were allowed to assert a defense (of which they were obviously aware on the date of accident) at this stage of the proceedings (See, Merchants Mutual Insurance Company v. South Carolina Second Injury Fund, 277 S.C. 604, 291 S.E. 2d 667, 668 ("There must be some finality with a limitation period. . . .")); (c) allowing the requested relief is particularly inappropriate where, as here, Defendants have engaged in a course of conduct which unquestionably satisfies the criteria for both waiver and laches; and (d) Defendants are legally barred from contesting their basic/underlying liability for Mr. Jervey's claim.

8. Defendants also argue: (a) the provisions of Section 42-9-260 (F) are applicable in instance; and (b) this Commission was derelict in its compliance with the obligations imposed by the 1996 amendment of this statute (which created the 150 day grace period), as the regulations implemented in response to this enactment are insufficient. However, a review of the substance of the 1996 amendment indicates otherwise.

9. It is axiomatic that: (a) "there is a basic presumption that the . . . [L]egislature has knowledge of previous legislation as well as judicial decisions construing that legislation when later statutes are enacted concerning related subjects." Whitner v. State, 328 S.C. 1, 492 S.E. 2d 777, 779 (1997); Russo v. Nationwide Insurance Company, 334 S.C. 455, 513 S.E. 2d 127, 129 (Ct. App. 1999)); (b) a similar presumption exists that it "enact[s] . . . legislation with reference to existing law" See, Abba Equipment, Inc. v. Thomason, 335 S.C. 477, 517 S.E. 2d 235, 238 (Ct. App. 1999); and (c) it "must be presumed that the . . . [L]egislature intended to achieve a consistent body of law." Busby v. State Farm Mutual Automobile Insurance Company, 280 S.C. 330, 312 S.E. 2d 716, 719 (Ct. App. 1984); State v. Ramsey, 311 S.C. 555, 430 S.E. 2d 511, 516 (1993).

10. Prior to the 1996 amendment, Section 42-9-260 provided in pertinent part:

Upon making the first payment, the employer shall immediately notify the Commission, in accordance with a

form prescribed by the Commission, that payment of compensation has begun.

The Commission shall provide by rule the method and procedure which benefits may be suspended or terminated for any cause, but such rule must provide for an evidentiary hearing and Commission approval prior to termination or suspension unless such prior hearing is expressed waived in writing by the recipient.

11. Similarly, our Supreme Court had consistently held that payment of compensation pursuant to a pre-amendment Form 15 was conclusive, to the extent: (a) "the basic issue of liability" could not be relitigated. . . ." Allen v. Benson Outdoor Advertising Company, 236 S.C. 22, 112 S.E. 2d 722, 723 (1960); and (b) this acknowledgment of compensability was "not subject to collateral attack." McCreery v. Covenant Presbyterian Church, 303 S.C. 271, 400 S.E. 2d 130, 131 (1990).

12. Although the 1996 amendment altered prior practice, to the extent it afforded the Employer/Carrier an opportunity to pay compensation, without prejudice, while conducting a good faith investigation, the Legislature: (a) specifically limited the duration of the grace period; and (b) maintained the longstanding element of finality by stating that payments could be made "without waiver of any grounds for good faith denial. . . for [only]. . . one hundred fifty days from the date the injury. . . [was] reported. . . ." This intent to preserve the "certainty" aspect of pre-amendment practice is further evidenced by the facts Subsection F: (a) specifically references universally

acknowledged grounds (admitted ability to return to work) for termination of compensation in circumstances where liability for a claim has been accepted; and (b) otherwise mirrors (in all relevant respects) the pre-amendment codification.

13. I consequently conclude: (a) the language upon which Defendants rely in asserting Section 42-9-260 (A) does not impose a statute of limitation (which predated the pertinent amendment by more than a decade) relates solely to admitted liability claims; (b) this Commission's regulations adequately outline "the method and procedure by which benefits may be suspended or terminated" in that context; and (c) Defendants' contention that they may disclaim their basic/underlying liability relative to the provision of compensation or medical benefit per the Act at this stage of the proceedings is meritless.

14. Defendants are financially responsible for the medical treatment, medications, evaluative procedures, physical therapy, etc. which Mr. Jervey has heretofore received/undergone as a result of his compensable injuries, including those provided/prescribed by Dr. Johnson, as these services, medications, and procedures were reasonable, medically necessary and tended to lessen his period of disability within the meaning of S.C. Code Ann. Section 42-15-60 (1976, as amended). They shall similarly accept financial responsibility for the additional treatment, medications, procedures, etc. provided/prescribed by

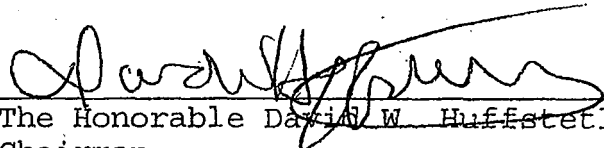
Drs. Johnson and Deal, as these modalities are likewise reasonable, medically necessary and geared toward lessening his ultimate period of disability.

15. I finally conclude: (a) Mr. Jervey remains temporarily totally disabled within the meaning of S.C. Code Ann. Section 42-9-10 (1976, as amended); and (b) as he has not yet achieved maximum medical improvement, the issue relative to his degree of residual disability is not currently ripe for determination.

AWARD

ACCORDINGLY, IT IS HEREBY ORDERED that Defendants shall: (a) continue to pay Mr. Jervey weekly compensation at the rate of \$586.11 until such time as this obligation is relieved by further Order of the Commission or agreement of the parties; (b) accept financial responsibility for all causally related medical modalities which he has heretofore received/undergone, including those provided/prescribed by Dr. Johnson; and (c) authorize the additional medical modalities provided/prescribed by Drs. Johnson and Deal in accordance with the provisions of Section 42-15-60.

IT IS SO ORDERED.


The Honorable David W. Huffstetler
Chairman
South Carolina Workers' Compensation
Commission

CERTIFICATE OF SERVICE

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

This 26 day of November, 2002
By Kurt W. Tolleson
Administrative Assistant to the Commissioner

AS
TM

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 0600334

WILLIAM T. JERVEY, JR.,

EMPLOYEE,
CLAIMANT/RESPONDENT,

- V -

MARTINT ENVIRONMENTAL, INC.,

EMPLOYER,

AND

SOUTHERN PILOT INSURANCE CO.,

CARRIER,
DEFENDANTS/APPELLANTS.

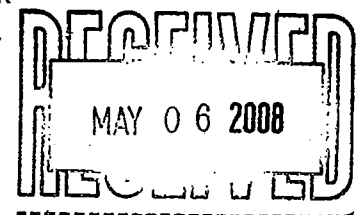
Appellate Panel Review held in Columbia,
South Carolina on March 25, 2008 per notices
timely and properly served on all parties of
interest.

Appellate Panel Decision and Order filed
May 5, 2008.

APPEARANCES:

Claimant/Respondent represented by Andrew
N. Safran, Esquire, of Columbia, South
Carolina.

Defendants/Appellants represented by Patrick
M. Teague, Esquire, of Irmo, South Carolina.



STATEMENT OF CASE

The parties were heard by Commissioner David W. Huffstetler on October 15, 2007 in Columbia, South Carolina. On November 26, 2007, he issued the following Order:

ACCORDINGLY, IT IS HEREBY ORDERED that Defendants shall: (a) continue to pay Mr. Jervey weekly compensation at the rate of \$586.11 until such time as this obligation is relieved by further Order of the Commission or agreement of the parties; (b) accept financial responsibility for all causally related medical modalities which he has heretofore received/undergone, including those provided/prescribed by Dr. Johnson; and (c) authorize the additional medical modalities provided/prescribed by Drs. Johnson and Deal in accordance with the provisions of Section 42-15-60.

Within the statutory period, counsel for the Defendants filed an Application for Review in the case setting forth his reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on March 25, 2008. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration.

By appeal, Defendants respectfully submit the following:

1. Did the single commissioner err in ruling in favor of Claimant's motion that Defendants waived all good faith defenses to compensability by raising them for the first time after 150 days, the error being such a ruling is an error of law?
2. Did the single commissioner err in finding and concluding as a matter of law Claimant suffered a compensable injury, the error being the preponderance of the evidence does not support the finding of a compensable injury?

In an appellate review, the Panel shall, pursuant to S.C. Code Ann. §42-17-50 (1985), 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. Based upon a review of the foregoing, we enter the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On January 23, 2006, Claimant sustained multiple compensable injuries while throwing a segment of hose into a dumpster at a job site on the Camp LeJeune Marine Corps base in Onslow County, North Carolina. Specifically, this injury occurred when: (a) Claimant (with the assistance of Robert Hinson) was lifting/throwing this hose; and (b) sulfuric acid spilled from the hose onto various parts of his body.

2. At the time he sustained these compensable injuries, Claimant was performing duties arising out of and within the course and scope of his employment as a filter press operator/general laborer.

3. Shortly after sustaining these injuries, Claimant was transported, via ambulance, to the University of North Carolina Hospitals/North Carolina Jaycee Burn Center, where he: (a) was admitted for acute care of his acid burn wounds; and (b) subsequently received treatment for various physical symptoms from Dr. Michael Peck of that facility.

4. Per the Form 12A completed on January 24, 2006, Martint Environmental, Inc.: (a) provided all requested information relative to the nature and consequences of Claimant's accident; while (b) specifically alleging he had been "asked not" to engage in the activity he was performing at the time the accident occurred ("victim was dismantling pump & hose containing residual sulfuric acid system"). This document was, in turn, delivered (via facsimile) to General Casualty Insurance Company, which: (a) received it on January 25, 2006; and (b) electronically filed the Form 12A with the Commission ("filed on EDI") on January 26, 2006.

5. Approximately one week later, Carrier generated a Form 15(1), which: (a) confirmed temporary total disability compensation had commenced effective

January 24, 2006; and (b) was received/processed by the Commission on February 9, 2006. In this regard, a review of the "W/C Disability Benefit Payment Log" produced by General Casualty Insurance Company (in response to Claimant's discovery requests) unequivocally establishes these compensation payments have continued, without interruption, since the January 24, 2006 initiation date.

6. Additionally, during the ensuing months, Carrier engaged in various activities which reflected an informed and voluntary acknowledgement of liability for Claimant's claim, including: (a) instructing its nurse case manager to "remind...[him] if he does not comply with medical treatment...[,] his benefits could be stopped" (See, April 7, 2006 fax communication from "Kathy Crews (GBO claims)"); (b) instructing this agent to attend a medical appointment and "have...[the] Dr. note how his treatment is related to WC of 1/23/06" (See, April 12, 2006 e-mail transmission of Kathy Crews); (c) authorizing treatment (See, June 19, 2006 and July 21, 2006 e-mail transmissions of Kathy Crews); (d) advising at least one course of treatment was authorized to prevent Claimant from "sitting doing nothing while...[it was] paying him" (See, June 19, 2006 e-mail transmission of Kathy Crews); (e) repeatedly seeking medical opinions relative to Claimant's capacity to return to work, as well as the anticipated date of maximum medical improvement (See, April 25, 2006, June 16, 2006 and October 4, 2006 e-mail transmissions of Kathy Crews) and (f) admonishing Claimant's counsel, through the nurse case manager, it "ha[d]...control of the medical & who...[he] should treat...with" – a communication which was generated approximately one year post-accident. (See, January 12, 2007 e-mail transmission of Kathy Crews).

7. Martint Environmental, Inc. similarly verified an obvious understanding: (a) Claimant was "being treated by a psychologist for problems claimed to be related to the accident"; (b) he remained[ed]...out of work" due to injury components attributed to his January 23, 2006 accident; and (c) his resulting receipt of

compensation and medical benefits was "adding to the volume of the claim." (See, May 1, 2006 letter of Larry Offill, III).

8. On March 30, 2006, Dr. Sale A. Estefano (Claimant's treating psychiatrist) noted the presence of "tingling" of the arms "since the accident." When these symptoms persisted, Claimant underwent diagnostic testing, including a cervical MRI scan, which was interpreted to reveal "a left posteriolateral to lateral disc protrusion at C6-7 extending for a few millimeters below the level of the superior endplate of C7." After being appraised of this finding, Dr. Peck expressed his belief this disc herniation was "related to Mr. [Jervey's]...occupational injury"; recommended further evaluation by a spine surgeon.

9. On May 15, 2007, Claimant was evaluated by Dr. Donald R. Johnson, II of Southeastern Spine Institute, who: (a) noted that after being splashed with sulfuric acid, Claimant "shook violently to try to get the acid off of his face"; (b) recognized this trauma had led to the "develop[ment of]...neck pain with radiation down his left arm into his left hand"; (c) interpreted the previously performed MRI scan to identify "a left sided disc protrusion quite lateral at C6-C7...[with] some extrusion below the endplate of C-7"; (d) observed Claimant exhibited not only "weakness of his triceps...[and] finger abductors...[, but also] loss of muscle tone on the left in the area of the triceps that is not present n the right...consistent with his 6-7 distribution"; (e) felt "this difficult disc situation...[was] causally related to hid work accident"; and (f) determined Claimant had not reached maximum medical improvement.

10. At this juncture, Claimant: (a) also continues to receive treatment (including counseling and multiple medications) from Dr. Roger Deal of Post Trauma Resources; (b) incapable of working per Dr. Peck; and (c) has not received the recommended treatment for his cervical injury component.

11. After thoroughly reviewing the evidence of record, it is specifically found: (a) Martint Environmental, Inc. was notified of Claimant's compensable injuries

on January 23, 2006; (b) On January 24, 2006, Employer generated a Form 12A, which alleged this injury occurred while Claimant was performing an activity he "was asked not" to do; (c) General Casualty Insurance Company was formally notified of not only the circumstances surrounding Claimant's injury, but also this allegation, by no later than January 25, 2006; (d) On February 2, 2006, Carrier commenced the payment of temporary total disability compensation (effective January 24, 2006), while filing a Form 15(1) with the Commission; (e) During the 150-day period commencing on January 23, 2006, both Employer and Carrier engaged in activities which were reflective of the knowing/informed/voluntary acceptance of liability for Claimant's injuries per the Act; (f) Their course of conduct after the expiration of this 150-day period (i.e., payment of disability compensation, authorization of medical care and declaration "we have control of the medical & who...[Mr. Jervey] treat with") is likewise wholly consistent with their continued acceptance of liability for his claim; (g) Defendants did not attempt to disclaim this liability until April 17, 2007, approximately 450 days after they were notified of Claimant's injury; and (h) Their attempted denial stems from the same allegation ("Employee was asked not...[to] touch or dismantle the sulfuric acid system") contained on the face of the January 24, 2006 Form 12A.

12. It is further found that notwithstanding Defendants' conditional stipulation to this effect, the evidence clearly establishes: (a) Claimant's cervical symptoms proximately result from the consequences of his compensable accident; (b) Claimant requires treatment for this injury component, as well as his causally related psychiatric condition; (c) Claimant's receipt of treatment for each of these injury components is reasonable, medically necessary and geared toward lessening his ultimate period of disability; (d) Claimant has not yet achieved maximum medical improvement relative to either of these injury components; and (e) Claimant remains temporarily disabled/unable to work as a direct result of his compensable injury and its consequences.

13. A Defendant can raise a defense after 150 days; however, this case is still compensable because the doctrines of waiver and laches apply. The Defendants waived these defenses by their behavior. They knew the facts surrounding the defense from the beginning. By paying benefits and providing medical treatment, Defendants have waived the defenses in S.C. Code Ann. § 42-9-260 (1985).

Based upon the findings of fact are the following:

CONCLUSIONS OF LAW

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

2. On January 23, 2006, Claimant, an employee within the meaning of S.C. Code Ann. § 42-1-130 (1985), sustained multiple compensable injuries (which affect his face, neck, left arm and skin) within the meaning of S.C. Code Ann. § 42-1-160 (1985) while performing duties arising out of and within the course and scope of his employment with Martint Environmental, Inc., an employer within the meaning of S.C. Code Ann. § 42-1-140 (1985). As a consequence of his physical injuries, Claimant has also developed psychiatric symptoms, which represent an additional component of his claim per S.C. Code Ann. § 42-1-160 (1985). See Kennedy v. Williamsburg County, 242 S.C. 47, 131 S.E.2d 512 (1963); Doe v. South Carolina State Hospital, 285 S.C. 183, 328 S.E.2d 652 (Ct. App. 1985).

3. Defendants are financially responsible for the medical treatment, medications, evaluative procedures, physical therapy, etc., which Claimant has heretofore received/undergone as a result of his compensable injuries, including those provided/prescribed by Dr. Johnson, as these services, medications, and procedures were reasonable, medically necessary and tended to lessen his period of disability within the meaning of S.C. Code Ann. § 42-15-60 (1985). They shall similarly accept financial responsibility for the additional treatment, medications, procedures, etc., provided/prescribed by Dr. Johnson and Dr. Deal, as these modalities are likewise

reasonable, medically necessary and geared toward lessening his ultimate period of disability.

4. It is concluded (a) Claimant remains temporarily totally disabled within the meaning of S.C. Code Ann. § 42-9-10 (1985); and (b) as he has not yet achieved maximum medical improvement, the issue relative to his degree of residual disability is not currently ripe for determination.

5. As noted by the South Carolina Supreme Court in Johnson v. Life & Casualty Insurance Company of Tennessee, 191 S.C. 96, 3 S.E.2d 805, 807 (1939):

Waiver implies an intention to give up a known right and generally rests in agreement, expressed or implied. But there may be a waiver by estoppel, in which case the conduct of one, inconsistent with a known fact in inducing a belief that such fact would not be asserted, precludes him from asserting that he has not intentionally relinquished the right founded on such fact.

6. In this connection, "the distinction between waiver and estoppel is close, and sometimes the doctrines merge into each other with almost imperceptible gradations." Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384, 399 (1994).

7. Laches is the neglect for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done or neglecting or admitting to do what in law should have been done for an unreasonable and unexplained length of time and in circumstances which afforded opportunity for diligence. Byars v. Cherokee County, 237 S.C. 548, 118 S.E.2d 324, 329 (1961).

8. "The equitable doctrine of laches is equivalent to the legal doctrine of waiver...." Strickland v. Strickland, 375 S.C. 76, 650 S.E.2d 465, 470 (2007).

ORDER

IT IS, THEREFORE, ORDERED Defendants shall: (a) continue to pay Claimant weekly compensation at the rate of \$586.11 until such time as this obligation is relieved by further Order of the Commission or agreement of the parties; (b) accept financial responsibility for all causally related medical modalities which he has heretofore received/undergone, including those provided/prescribed by Dr. Johnson; and (c) authorize the additional medical modalities provided/prescribed by Dr. Johnson and D. Deal in accordance with the provisions of S.C. Code Ann. § 42-15-60 (1985).

AND IT IS SO ORDERED.

S. C. WORKERS' COMPENSATION COMMISSION



G. Bryan Lyndon, Commissioner

AFFIRMATION WITH AMENDMENTS

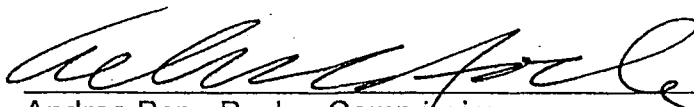
CONCUR:



George N. Funderburk, Commissioner

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

AS
PT



Andrea Pope Roche, Commissioner

(I:\0600334.app.gbl)

This 5 day of May, 2008
By Kim Williams
Administrative Assistant to the Commissioner

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

William T. Jervy, Jr.,)

Employee/Appellant/Respondent,)

vs.)

Martint Environmental, Inc.,)

Employer,)

and)

General Casualty Insurance Company,)

Carrier/Respondents/Appellants.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2008-CP-32-2361

ORIGINAL
FILED

2009 MAR 24 A 11:11

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

ORDER

STATEMENT OF THE CASE

This is an appeal from the May 5, 2008 Order of the South Carolina Workers' Compensation Commission (Commission), which determined: (a) the W.C.C. Form 12-A (First Report of Injury) completed by Respondent/Appellant, Martint Environmental, Inc., on January 24, 2006 contained an allegation Appellant's/Respondent's, William T. Jervy, Jr.'s, January 23, 2006 accident had occurred while performing activities outside the course/scope of his employment; (b) Respondent/Appellant, General Casualty Insurance Company, was also aware of this potential defense by no later than January 25, 2006; (c) Martint/General Casualty had subsequently engaged in a course of conduct which was "reflective of a knowing/informed/voluntary acceptance of liability for" Mr. Jervy's injuries per the... [South Carolina Workers' Compensation Act]"; (d) they "did not attempt to disclaim this liability until April 17, 2007, approximately 450 days after they were notified of" Mr. Jervy's injuries; and (e) Martint/General Casualty were consequently prohibited by "the doctrines of waiver and laches" from denying liability at this stage of the proceedings.

Pursuant to a Petition dated June 9, 2008, Martint/General Casualty sought judicial review of the Commission's rulings, essentially contending: (a) various factual findings contained in the May 5, 2008 Order were not supported by the substantial evidence of record; (b) the Commission erroneously applied the doctrines of waiver and laches to the current circumstances, maintaining these defense[s were]. . . not properly raised" by Mr. Jerve; (c) reliance on these doctrines "depriv[ed]. . . them of their due process"; (d) certain findings/conclusions verifying the compensability of Mr. Jerve's claim, as well as his entitlement to continued compensation and medical benefits per the Act, constituted errors of law; and (e) these findings, as well as several legal conclusions, were not expressed in a statutorily sufficient fashion.

By way of cross-appeal, Mr. Jerve argues the Commission erred as a matter of law in vacating the single commissioner's determinations that: (a) S.C. Code Ann. Section 42-9-260 (1976, as amended) affords "a 150 day grace period, during which . . . [the Employer/Carrier] may conduct 'a good faith investigation' to determine whether any 'grounds for denial of the claim' exist"; (b) this statute "invokes a 'waiver of any grounds for good faith denial' in the event payments are continued beyond expiration of this grace period"; and (c) Martint/General Casualty were "legally barred from contesting their basic/underlying liability for [his]. . . claim" per the provisions of Section 42-9-260.

After thoroughly reviewing the hearing record, as well as the parties' arguments relative to these issues, I: (a) disagree with Martint's/General Casualty's contentions; (b) hold the pertinent provisions of Section 42-9-260 prohibit Martint/General Casualty from denying liability for Mr. Jerve's claim under the present circumstances; (c) modify the May 5, 2008 Order to reinstate the single commissioner's legal conclusions relative to this issue; and (d) affirm the Commission's determination in all other respects.

FACTS

A. CIRCUMSTANCES SURROUNDING INJURY

On January 23, 2006, Mr. Jervey sustained multiple compensable injuries while throwing a segment of hose into a dumpster at a jobsite on the Camp LeJeune Marine Corps base in Onslow County, North Carolina. Specifically, this injury occurred when: (a) he (with the assistance of a co-worker) was lifting/throwing this hose; and (b) sulfuric acid spilled from the hose onto various parts of his body. (See, Finding of Fact No. 1).

Shortly after sustaining these injuries, Mr. Jervey was transported, via ambulance, to the University of North Carolina Hospitals/North Carolina Jaycee Burn Center, where he: (a) was admitted for acute care of his acid burn wounds; and (b) subsequently received treatment for various injuries stemming from this accident. (See, Finding of Fact No. 3).

B. AWARENESS OF ALLEGATIONS WHICH PROVIDE THE BASIS FOR CURRENT ATTEMPT TO DISCLAIM LIABILITY

Per Form 12-A completed on January 24, 2006, Martint: (a) provided all requested information relative to the nature and consequences of Mr. Jervey's accident; while (b) **specifically alleging he had been "asked not" to engage in the activity he was performing at the time the accident occurred ("victim was dismantling pump & hose containing residual sulfuric acid . . . Employee was asked not to touch or dismantle the sulfuric acid system")**. (See, Finding of Fact No. 4) (Emphasis added).

This document was, in turn, delivered (via facsimile) to General Casualty Insurance Company, which: (a) received it on January 25, 2006; and (b) electronically filed the Form 12-A with the Commission on January 26, 2006.

Approximately one week later, General Casualty generated a Form 15(I), which: (a) confirmed temporary total disability compensation had commenced effective January 24, 2006; and (b) was received/processed by the Commission on February 9, 2006. In this regard, a review of the "W/C

Disability Benefit Payment Log” generated by General Casualty establishes these compensation payments have continued, without interruption, since the January 24, 2006 initiation date.

C. VOLUNTARY ACKNOWLEDGMENT OF LIABILITY/WAIVER

During the ensuing months, General Casualty engaged in various activities which the Commission specifically found:

... reflected an informed and voluntary acknowledgement of liability for Mr. Jervey’s claim, including: (a) instructing its nurse case manager to “remind ... [him] that if he does not comply with medical treatment ... [,] his benefits could be stopped” (See, April 7, 2006 fax communication from “Kathy Crews (GBO claims)”); (b) instructing this agent to attend a medical appointment and “have ... [the] Dr. note how his treatment is related to WC of 1/23/06” (See, April 12, 2006 e-mail transmission of Kathy Crews); (c) authorizing treatment (See, June 19, 2006 and July 21, 2006 e-mail transmissions of Kathy Crews); (d) advising that at least one course of treatment was authorized to prevent Mr. Jervey from “sitting doing nothing while ... [it was] paying him” (See, June 19, 2006 e-mail transmission of Kathy Crews); (e) repeatedly seeking medical opinions relative to Mr. Jervey’s capacity to return to work, as well as the anticipated date of maximum medical improvement (See, April 25, 2006, June 16, 2006 and October 4, 2006 e-mail transmissions of Kathy Crews); and (f) admonishing Mr. Jervey’s counsel, through the nurse case manager, that it “ha[d] ... control of the medical & who ... [he] should treat ... with” - - a communication which was generated approximately one year post-accident. (See, January 12, 2007 e-mail transmission of Kathy Crews). (See, Finding of Fact No. 6).

The Commission further found:

Martint Environmental, Inc. similarly verified an obvious understanding: (a) Mr. Jervey was “being treated by a psychologist for problems claimed to be related to the accident”; (b) he “remain[ed] ... out of work” due to injury components attributed to his January 23, 2006 accident; and (c) his resulting receipt of compensation and medical benefits was “adding to the volume of the claim.” (See, Finding of Fact No. 7).

D. IDENTIFICATION OF ISSUES

By Form 50 dated June 29, 2007, Mr. Jervey: (a) sought further medical benefits for various symptoms stemming from a cervical disc herniation, which had been attributed to the consequences of his accident; while (b) maintaining he remained temporarily totally disabled. Subsequently, pursuant to a



Form 51 dated July 27, 2007; Martint/General Casualty: (a) generally denied Mr. Jervy had sustained a compensable accident "[p]ending investigation"; and (b) asserted a number of "special and affirmative defenses. . . ."

After completion of discovery, Mr. Jervy timely served Martint's/General Casualty's counsel with a W.C.C. Form 58 (Pre-Hearing Brief), alleging:

...Additionally, we submit Defendants' belated/untimely attempt to deny this claim: (a) has no credible factual basis; (b) **is barred by several legal doctrines, including waiver, estoppel and laches**; and (c) appears to be a punitive response to Mr. Jervy's efforts to seek treatment for his cervical injury component, particularly in view of the circumstances surrounding assertion of their current position. (See, September 26, 2007 Form 58) (Emphasis added).

This document similarly indicated: (a) Martint/General Casualty had paid temporary total disability compensation for approximately 15 months; and (b) these payments occurred with "full knowledge of all relevant facts."

E. SINGLE COMMISSIONER'S ASSESSMENT OF EVIDENCE

A hearing relative to this matter was held on October 15, 2007. Significantly, review of the resulting transcript establishes Martint/General Casualty made no objection as to the contents of Mr. Jervy's Pre-Hearing Brief, particularly the assertion of the doctrines of waiver and laches. The single commissioner's November 26, 2007 Order likewise contains no mention of either an objection to the positions outlined in Mr. Jervy's Pre-Hearing Brief or Martint's/General Casualty's advancement of a due process argument.

After reviewing the evidence, the single commissioner specifically found:

(a) Martint Environmental, Inc. was notified of Mr. Jervy's compensable injuries on January 23, 2006; (b) on January 24, 2006, this Employer generated a Form 12-A, which alleged this injury occurred while Mr. Jervy was performing an activity he "was asked not" to do; (c) General Casualty Insurance Company was formally notified of not only the circumstances surrounding Mr. Jervy's injury, but also this allegation, by no later than January 25, 2006; (d) on February 2, 2006, this Carrier commenced the payment of temporary total disability

compensation (effective January 24, 2006), while filing a Form 15 (I) with this Commission; (e) during the 150 day period commencing on January 23, 2006, both Employer and Carrier engaged in activities which were reflective of the knowing/informed/ voluntary acceptance of liability for Mr. Jerve's injuries per the Act; (f) their course of conduct after the expiration of this 150 day period (i.e., payment of disability compensation, authorization of medical care and declaration that "we have control of the medical & who... [Mr. Jerve] treat with") is likewise wholly consistent with their continued acceptance of liability for his claim; (g) Defendants did not attempt to disclaim this liability until April 17, 2007, approximately 450 days after they were notified of Mr. Jerve's injury; and (h) their attempted denial stems from the same allegation ("Employee was asked not... [to] touch or dismantle the sulfuric acid system") contained on the face of the January 24, 2006 Form 12-A. (See, Finding of Fact No. 11).

In this regard, he concluded: (a) Section 42-9-260 "afforded a 150 day grace period, during which ... [the Employer/Carrier was allowed to] conduct 'a good faith investigation' to determine whether any 'grounds for denial of the claim' exist[ed]"; (b) this statute "invokes a 'waiver of any grounds for good faith denial' in the event payments are continued beyond expiration of this grace period"; (c) as Martint/General Casualty had not raised a known defense during the 150 day period, they were "legally barred from contesting their basic/underlying liability for Mr. Jerve's claim"; and (d) allowing Martint/General Casualty to disclaim liability at this stage of the proceedings was "particularly inappropriate where, as here, [they]... have engaged in a course of conduct which unquestionably satisfies the criteria for both waiver and laches. ..." (See, November 26, 2007 Order, Conclusion of Law No. 7).

F. APPELLATE PANEL REVIEW

Pursuant to a Form 30 ("Request for Commission Review") dated December 5, 2007, Martint/General Casualty appealed the single commissioner's rulings to an Appellate Panel of the Full Commission. Inspection of this document reveals: (a) 34 contentions of error; (b) an exception to the single commissioner's determination their conduct "unquestionably satisfies the criteria for both waiver and laches" (which generally assigned error in terms of this statutory language); and (c) several



assignments of error addressing the single commissioner's construction of S.C. Code Ann. Section 42-9-260 (F)(1976, as amended). However, these contentions/exceptions neither challenged the timeliness of Mr. Jervey's assertions of waiver and laches nor allege a denial of due process.

While the Appellate Panel agreed Mr. Jervey remained entitled to temporary total disability compensation and causally related medical benefits, it: (a) vacated the single commissioner's rulings relative to the impact of the statute of limitation contained in Section 42-9-260; and (b) premised the rejection of Martint's/General Casualty's attempt to disclaim basic liability in this instance on the doctrines of waiver and laches. These appeals followed.

LEGAL ANALYSIS

A. SCOPE OF REVIEW

S.C. Code Ann. Section 1-23-380(A), which governs judicial review of these matters, provides in pertinent part:

(5) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (c) made upon unlawful procedure;
- (d) affected by other error of law; [or]
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record

" 'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." Lark v. Bi-Lo, Inc., 276 S.C. 136, 276 S.E. 2d 304, 306 (1981); Houston v. Deloach & Deloach, 378 S.C. 543, 663 S.E. 2d 85, 89 (Ct. App. 2008). In this connection, "[t]he possibility of



drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E. 2d 856, 857 (1998); Smith v. NCCL, Inc., 369 S.C. 236, 631 S.E. 2d 268, 273 (Ct. App. 2006).

Similarly, where there is "a conflict in the evidence, either of different witnesses or of the same witness, the findings of fact of the . . . commission, as triers of fact, are conclusive." Cokeley v. Robert Lee, Inc., 197 S.C. 157, 14 S.E. 2d 889, 893 (1941); Anderson v. Baptist Medical Center, 343 S.C. 487, 541 S.E. 2d 526, 528 (2001).

Based upon these authorities, is it clear: (a) "the Commission alone is the ultimate factfinder." Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E. 2d 76, 78 (Ct. App. 1995); Robbins v. Walgreen's and Broadspire Services, Inc., 375 S.C. 259, 652 S.E. 2d 90, 93 (Ct. App. 2007) (Commission "is the ultimate fact finder"); (b) in this context, appellate courts "are limited in their review of the facts to a determination of whether or not there is . . . [substantial] evidence to support the factual findings of the Commission." Greer v. Greenville County, 245 S.C. 442, 141 S.E. 2d 91, 100 (1965); Baxter v. Martin Brothers, Inc., 368 S.C. 510, 630 S.E. 2d 42, 43 (2006) (Appellate Court "must determine whether the . . . [P]anel's findings of fact are supported by substantial evidence in the record . . ."); and (c) "[a] court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Hicks v. Piedmont Cold Storage, Inc., 335 S.C. 46, 515 S.E. 2d 532, 533 (1999); Thompson ex rel. Harvey v. Cisson Construction Co., 377 S.C. 137, 659 S.E. 2d 171, 177 (Ct. App. 2008).

B. IMPACT OF SECTION 42-9-260 (A)

Pursuant to his cross-appeal, Mr. Jervey contends the Commission erred in failing to affirm the single commissioner's determinations that Section 42-9-260 (A): (a) establishes a 150 day grace period for the purpose of allowing an Employer/Carrier to conduct "a good faith investigation"; (b) constitutes a statute of limitation, as "any grounds for good faith denial" are waived in the event payment continues

beyond 150 days; and (c) prohibited Martint/General Casualty from contesting liability nearly one year after the expiration of this grace period. I agree.

Section 42-9-260 provides in pertinent part:

(A) When an employee has been out of work due to a reported work-related injury or occupational disease for eight days, an employer may start temporary disability payments immediately and may continue these payments for up to one hundred fifty days from the date the injury or disease is reported without waiver of any grounds for good faith denial. Upon making the first payment, the employer immediately shall notify the commission, in accordance with a form prescribed by the commission, that payment of compensation has begun. (Emphasis added).

This statute further prescribes:

(B) Once temporary disability payments are commenced, the payments may be terminated or suspended immediately at any time within the **one hundred fifty days if:**

...

(3) **a good faith investigation by the employer reveals grounds for denial of the claim** (Emphasis added).

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and [the Commission] . . . has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 533 S.E. 2d 578, 581 (2000); Pee v. AVM, Inc., 344 S.C. 162, 543 S.E. 2d 232, 235 (Ct. App. 2001). In this connection, the "[L]egislature is presumed to have fully understood the meaning of the words used in a statute and, unless the meaning is vague or indefinite, intended to use them in their ordinary and common meaning or in their well-defined legal sense." Powers v. Fidelity & Deposit Co. of Maryland, 180 S.C. 501, 186 S.E. 2d 523, 527 (1936); Rorrer v. P.J. Club, Inc., 347 S.C. 560, 556 S.E. 2d 726, 731 (Ct. App. 2001).

A review of the rather explicit language of Section 42-9-260 (A) clearly establishes that an Employer/Carrier: (a) "may start temporary disability payments . . . [once] an employee has been out of

work due to a work-related injury . . . for eight days”; (b) is afforded a 150 day grace period, during which it may conduct “a good faith investigation” to determine whether any “grounds for denial of the claim” exist; and (c) does not “waive . . . any grounds for good faith denial”, provided the defense is raised within the prescribed period. This language likewise: (a) limits this grace period to “one hundred fifty days from the date the injury . . . is reported”; and (b) invokes a “waiver of any grounds for good faith denial” in the event payments are continued beyond expiration of this grace period.

Section 42-9-260 is, on its face, a statute of limitation. Given the plain and unambiguous language establishing this limitation period, I conclude the single commissioner correctly ruled: (a) “failure to enforce its provisions would ‘do violence to a specific requirement of the Act’”; (b) “a fundamental premise for the imposition of this limitation period – finality as to the issue of liability – would be thwarted if . . . [Martint/General Casualty] were allowed to assert a defense (of which they were obviously aware on the date of accident) at this stage of the proceedings”; and (c) Martint/General Casualty “are legally barred from contesting their basic/underlying liability for Mr. Jervey’s claim” by this statute of limitation.

C. IMPLICATIONS OF SECTION 42-9-260 (F)

Mr. Jervey next argues: (a) Martint/General Casualty have not preserved the issue relative to the implications of Section 42-9-260 (F) for review by this Court, as their June 9, 2008 Petition contains no exception which raises this argument; and (b) assuming *arguendo* the Court could properly consider this issue, an analysis of the 1996 amendment of Section 42-9-260 confirms their reliance on this subsection to authorize their current denial is misplaced. I agree.

It is axiomatic that this Court, which sits as appellate tribunal in the current context, “can consider only matters that were before the Commission. . . and to which error has been specifically assigned.”

Wall v. C.Y. Thomason Company, 232 S.C. 153, 101 S.E. 2d 286, 288 (1957); Brunson v. Wal-Mart

Stores, Inc., 344 S.C. 107, 542 S.E. 2d 732, 735 (Ct. App. 2001) ("This argument is not preserved for . . . review as . . . [Appellant] did not raise this issue to the circuit court."). Although Martint/General Casualty sought a ruling from the Commission as to the impact of Section 42-9-260 (F), this issue: (a) "was not raised in . . . [their] exceptions to . . . [this C]ourt"; and (b) "[i]s . . . [consequently] not preserved for review." Solomon v. W.B. Easton, Inc., 307 S.C. 518, 415 S.E. 2d 841, 844 (Ct. App. 1992); See also, S.C. Code Ann. Section 42-17-60 (1976, as amended ("Notice of appeal must state the grounds of the appeal or the alleged errors of law.")).

However, assuming *arguendo* this issue had been properly preserved for consideration by the Court, a review of Section 42-9-260 (F), in light of governing rules of construction, validate the single commissioner's ruling. In this connection: (a) "there is a basic presumption that the . . . [L]egislature has knowledge of previous legislation as well as judicial decisions construing that legislation when later statutes are enacted concerning related subjects." Whitner v. State, 328 S.C. 1, 492 S.E. 2d 777, 779 (1997); Russo v. Nationwide Insurance Company, 334 S.C. 455, 513 S.E. 2d 127, 129 (Ct. App. 1999)); (b) a similar presumption exists that it "enact[s] . . . legislation with reference to existing law" See, Abba Equipment, Inc. v. Thomason, 335 S.C. 477, 517 S.E. 2d 235, 238 (Ct. App. 1999); and (c) it "must be presumed that the . . . [L]egislature intended to achieve a consistent body of law." Busby v. State Farm Mutual Automobile Insurance Company, 280 S.C. 330, 312 S.E. 2d 716, 719 (Ct. App. 1984); State v. Ramsey, 311 S.C. 555, 430 S.E. 2d 511, 516 (1993).

Prior to the 1996 amendment, Section 42-9-260 provided in pertinent part:

Upon making the first payment, the employer shall immediately notify the Commission, in accordance with a form prescribed by the Commission, that payment of compensation has begun.

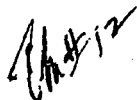
The Commission shall provide by rule the method and procedure by which benefits may be suspended or terminated for any cause, but such rule must provide for an evidentiary hearing and Commission approval prior to termination or suspension unless such prior hearing is expressed waived in writing by the recipient.

Significantly, our Supreme Court had consistently construed this statute to preclude: (a) relitigation of "the basic issue of liability" after approval of a pre-amendment agreement as to compensation. Allen v. Benson Outdoor Advertising Company, 236 S.C. 22, 112 S.E. 2d 722, 723 (1960); or (b) subsequent "collateral attack" of these compensation agreements. McCreery v. Covenant Presbyterian Church, 303 S.C. 271, 400 S.E. 2d 130, 131 (1990).

Although the amendatory language afforded the Employer/Carrier an opportunity to pay compensation, without prejudice, while conducting a good faith investigation, the Legislature: (a) specifically limited this investigatory period; and (b) maintained the longstanding element of finality by stating that payments could be made "without waiver of any grounds for good faith denial . . . for [only] . . . one hundred fifty days from the date the injury . . . [was] reported. . . ." This intent to preserve the "certainty" aspect of pre-amendment practice is further evidenced by the facts subsection F: (a) references universally acknowledged grounds for termination of compensation in circumstances where liability for a claim has been accepted by the Employer/Carrier; and (b) essentially mirrors the pre-amendment language governing the termination of compensation after execution of a binding compensation agreement.

In view of the Legislature's actions, it is clear: (a) subsection (F) relates solely to claims for which liability is admitted/acknowledge; (b) the Commission's regulations adequately outline "the method and procedure for which benefits may be suspended or terminated" in the context of an admitted liability claim; and (c) this construction is wholly consistent with the Legislature's continued recognition of the binding impact/effect of the payment of compensation.

While Martint/General Casualty seek a technical construction of this statutory language, our Appellate Courts have repeatedly held that "[h]owever plain the ordinary meaning of the words used in a statute may be, the courts will reject that the meaning when to accept it would lead to a result so plainly



absurd that it could not possibly be intended by the Legislature or would defeat the plain legislative intention.” Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 440 S.E. 2d 364, 366 (1994); New York Times, Co. v. Spartanburg County School District No. 7, 374 S.C. 307, 649 S.E. 2d 28, 30 (2007); South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control, 280 S.C. 349, 669 S.E. 2d 899, 909 (Ct. App. 2008).

Similarly, “a particular clause in a statute. . . [should not be] construed in isolation, but should. . . [be read] in conjunction with the purpose of the whole statute and the policy of the law.” Branch v. City of Myrtle Beach, 340 S.C. 405, 532 S.E. 2d 289, 292 (2000); Hernandez-Zuniga v. Tickle, 374 S.C. 235, 647 S.E. 2d 691, 697 (Ct. App. 2007); Grinnell Corp. v. Wood, 378 S.C. 458, 663 S.E. 2d 61, 67 (Ct. App. 2008). Further, this “court must presume the [L]egislature. . . did not intend a futile act, but rather intended its statutes to accomplish something.” Denene, Inc. v. City of Charleston, 352 S.C. 208, 574 S.E. 2d 196, 198 (2002); Ellison v. Frigidaire Home Products, 371 S.C. 159, 638 S.E. 2d 664, 666 (2006).

In this connection, adoption of Martint’s/General Casualty’s construction would certainly: (a) thwart a clear legislative intention to provide a limited investigation period prior to binding the Employer/Carrier to a claim through payment of compensation; (b) impermissibly ignore the context of subsection (F), which speaks to claims for which liability has been admitted/acknowledged; and (c) negate the impact of the 1996 amendment to this statute by creating an unqualified/unlimited opportunity to reject liability long after payment of compensation has commenced.

I consequently conclude: (a) the Commission erred as a matter of law in failing to affirm the single commissioner’s ruling on this point; and (b) Martint’s/General Casualty’s reliance on Subsection (F) as a means through which it may now seek to deny Mr. Jervey’s claim is misplaced.

D. DENIAL OF DUE PROCESS

In support of their appeal, Martint/General Casualty primarily claim: (a) the Commission had no authority to apply the doctrines of waiver and laches, as they were not properly pled by Mr. Jervey; and (b) its reliance on these grounds was therefore violative of due process.

In response, Mr. Jervey maintains: (a) Martint/General Casualty did not raise this issue to either the single commissioner or the Full Commission; (b) this alleged lack of notice/denial of due process has not been preserved for appellate review; and (c) notwithstanding this waiver, Martint/General Casualty were adequately notified of his contention relative to the applicability of these doctrines. I agree.

"It is well-settled that an issue cannot be raised for the first time of appeal, but must have been raised to and ruled upon by the. . . [Commission] to be preserved for appellate review." Pratt v. Morris Roofing, Inc., 353 S.C. 339, 57 S.E. 2d 475, 481 (Ct. App. 2003); Peoples v. Henry Company, 364 S.C. 123, 611 S.E. 2d 527, 530 (Ct. App. 2005); South Carolina Coastal Conservation League, 669 S.E. 2d at 914 – 915. In this regard, an issue is waived if it is not raised/argued to the Commission. McCoy v. Easley Cotton Mills, 218 S.C. 350, 62 S.E. 2d 772, 774 – 775 (1950) ("The question was first raised on appeal to the Circuit Court. The objection came too late. It should have been made at the hearing before the full Commission and by failing to do so, appellant waived the right now asserted."); Robbins, 652 S.E. 2d at 94 ("Because the matter was not argued before the single commissioner or the Appellate Panel, Robbins waived the matter.").

A review of the record confirms Martint/General Casualty: (a) did not object to Mr. Jervey's assertion of the doctrines of waiver and laches before the single commissioner; and (b) similarly failed to raise this issue to the Appellate Panel through their Form 30 – Request for Commission Review. In view of this fact, I conclude: (a) it would be "improper for [this]. . . Court" to address Martint's/General Casualty's current due process arguments at this stage of the proceedings; and (b) this issue has been waived. Greer, 141 S.E. 2d at 99 (Determination that it was improper for Circuit Court to address issue

where party had failed to make timely objection before Commission). Bickerstaff v. Prevost, ____ S.C. ____, 670 S.E. 2d 660, 662 (Ct. App. 2009) ("Constitutional arguments are no exception to the rule. . . [requiring timely preservation], and if not raised to the trial court are deemed waived on appeal").

Additionally, analysis of Commission Regulation 67-610 (A) verifies an amended "Request for Hearing and Answer. . . must be filed to indicate a **change in the nature of the claim, relief requested or another defense.**" (Emphasis added). Inspection of the Forms 50 and 51 filed by the respective parties, in light of the Commission's Order, indicates: (a) neither the nature of Mr. Jervey's claim nor his request for relief changed during the course of this litigation; (b) the doctrines of waiver and laches were asserted, per Form 58 – Prehearing Brief, at least 10 days prior to the evidentiary hearing conducted by the single commissioner; and (c) these doctrines were raised to highlight the fact Martint's/General Casualty's attempt to assert affirmative defenses was untimely, rather than to "change. . . the nature of. . . [Mr. Jervey's] claim. . . [or the] relief requested" per his Form 50.

Our appellate courts have repeatedly held: (a) "the intention of the Compensation Acts is to provide simplicity of procedure." McDonald v. Palmetto Theaters, 196 S.C. 460, 13 S.E. 2d 602, 604 (1941); (b) "[t]he niceties of pleadings of process in the law Courts, desirable though they may be, cannot be required of the Commission . . . without violating the spirit and philosophy of work[ers'] . . . compensation." King v. Wesner, 198 S.C. 49, 16 S.E. 2d 289, 295 (1941); and (c) an exhaustive pleading process is "not required in workers' compensation proceedings. . . ." Harbin v. Owens-Corning Fiberglas, 316 S.C. 423, 450 S.E. 2d 112, 115 (Ct. App. 1994).

When Regulation 67-610 is considered in light of this longstanding policy, it is clear Mr. Jervey: (a) was not obliged to amend his Form 50 – Request for Hearing to respond to a defense raised by Martint/General Casualty; and (b) timely apprised the Commission, as well as the Employer/Carrier, of his belief the doctrines of waiver and laches precluded assertion of any defenses. I consequently conclude

that assuming *arguendo* Martint/General Casualty had properly raised the notice issue, they were: (a) adequately notified of Mr. Jervey's contention relative to the untimely presentation of their defenses; and (b) afforded due process under the present circumstances.

E. WAIVER AND LACHES

Martint/General Casualty also argue the substantial evidence of record does not support the Commission's determinations: (a) the Form 12-A confirms an essentially immediate awareness of the facts upon which they currently base their allegation Mr. Jervey's injuries occurred outside the course/scope of his employment; and (b) the doctrines of waiver and laches prohibit assertion of this defense. I disagree.

"Waiver is the voluntary and intentional relinquishment of a known right." Provident Life & Accident Insurance Company v. Driver, 317 S.C. 471, 451 S.E. 2d 924, 928 (Ct. App. 1994); Mailsources, LLC v. M.A. Bailey & Associates, Inc., 356 S.C. 370, 588 S.E. 2d 639, 641 (Ct. App. 2003). "It may be expressed or implied by a party's conduct" Parker v. Parker, 313 S.C. 482, 443 S.E. 2d 388, 391 (1994); Pruitt v. South Carolina Medical Malpractice Liability Joint Underwriting Association, 343 S.C. 335, 540 S.E. 2d 843, 846 (2001). "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 355 S.E. 2d 282, 285 (Ct. App. 1987).

As noted by the South Carolina Supreme Court in Johnson v. Life & Casualty Insurance Company of Tennessee, 191 S.C. 96, 3 S.E. 2d 805, 807 (1939):

Waiver implies an intention to give up a known right, and generally rests in agreement, expressed or implied. But there may be a waiver by estoppel, in which case the conduct of one, inconsistent with a known fact in inducing a belief that such fact would not be asserted, precludes him from asserting that he has not intentionally relinquished the right founded on such fact.

In this connection, "the distinction between waiver and estoppel is close, and sometimes the doctrines merge into each other with almost imperceptible gradations." Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E. 2d 384, 388 (1994); Parker, 443 S.E. 2d at 391.

"Laches is the neglect for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done, or neglecting or admitting to do what in law should have been done for an unreasonable and unexplained length of time and in circumstances which afforded opportunity for diligence." Byars v. Cherokee County, 237 S.C. 548, 118 S.E. 2d 324, 329 (1961); Hallums v. Hallums, 296 S.C. 195, 371 S.E. 2d 525 (1988). "The equitable doctrine of laches is equivalent to the legal doctrine of waiver" Strickland v. Strickland, 375 S.C. 76, 650 S.E. 2d 465, 470 (2007).

The Commission emphatically found Martint/General Casualty: (a) were fully aware of the factual allegations relative to this alleged deviation from the course/scope of employment by no later than January 25, 2006; (b) nonetheless commenced the payment of temporary total disability compensation; (c) engaged in various activities during the ensuing months, which were reflective of an informed/voluntary acknowledgement of liability for Mr. Jervey's claim, notwithstanding their unquestioned possession of the same information upon which the current "good faith defense" is premised; and (d) did not attempt to raise this defense until approximately 450 days after they were notified of Mr. Jervey's injury. (See, Finding of Fact Nos. 6 and 11).

As these findings are amply supported by the substantial evidence of record, I conclude the Commission correctly determined the current defense "was clearly waived by" Martint/General Casualty. See, Hatcher v. Harleysville Mutual Insurance Company, 266 S.C. 548, 225 S.E. 2d 181, 184 (1976). I further conclude the substantial evidence similarly validates the Commission's ruling that Martint's/General Casualty's conduct satisfied the criteria for laches, as denial of his claim at this

juncture would: (a) jeopardize Mr. Jervey's continued receipt of necessary medical care, as well as disability compensation; (b) potentially require him to repay substantial sums expended toward his receipt of compensation/medical benefits during the past three years; and (c) undoubtedly result in appreciable prejudice.

F. SUFFICIENCY OF COMMISSION ORDER

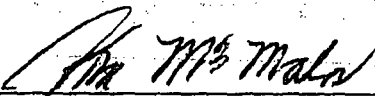
Martint/General Casualty finally contend the Commission's Order is not expressed in a statutorily sufficient fashion. I disagree.

It is axiomatic that "[a]n administrative agency is not required to present its findings of fact and reasoning in any particular format" Porter v. South Carolina Public Service Commission, 333 S.C. 12, 507 S.E.2d 328, 32 (1998); See also, Airco, Inc. v. Hollington, 269 S.C. 152, 236 S.E.2d 804, 808 (1977); Seabrook Island Property Owners Assn. v. South Carolina Public Service Commission, 303 S.C. 493, 401 S.E.2d 672, 674 (1991) ("no particular format required for presentation of findings of fact and conclusions of law"). Rather, they should simply be presented "in an organized and regimented manner [so as]... to enable the reviewing court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings." Porter, supra; Able v. South Carolina Public Service Commission, 290 S.C. 409, 351 S.C.2d 151, 152 (1986); Brayboy v. Clark Heating Company, Inc., 306 S.C. 506, 409 S.E.2d 767, 768 (1991).

The factual findings and legal conclusions outlined in the Commission's Order unquestionably allow this Court to discern the underlying rationale for its factual and legal determinations. I consequently conclude this format complies with the above-cited authorities.

ACCORDINGLY, IT IS HEREBY ORDERED that: (a) the Commission's May 5, 2008 Order is affirmed in all respects, with the exception of the portion vacating the single commissioner's legal conclusions/determinations relative the impact of the statute of limitation contained in Section 42-9-260 (A); (b) this ground, which also compels affirmance of the Commission's ultimate award of compensation/medical benefits, is reinstated; and (c) Martint's/General Casualty's appeal is dismissed.

IT IS SO ORDERED.


The Honorable R. Knox McMahon
Presiding Judge for the Lexington County
Court of Common Pleas

24 MARCH, 2009.

South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 0600334

Carrier File # _____

Carrier Code # _____

Employer FEIN _____

William T. Jervy, Jr.

Claimant's Name

SSN

29072

Address

City

State

Zip

()

Home Phone

Work Phone

Andrew N. Safran, Esquire

Preparer's Name

Martint Environmental, Inc.

Employer's Name

175-B Rich-Lex, Lexington, SC 29072

Address

City

State

Zip

General Casualty Insurance Company

Insurance Carrier

803-256-6689

Phone #

Complete each information blank. To request a hearing, check box 13 b., indicate the kinds of benefits claimed by checking the box(es) at lines 6, 7, 8, and 9, and file this form in duplicate.

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

1. a. The claimant sustained an accidental injury to neck, left arm, skin and psychological component on January 28, 2006 in part of body hurt month day year

Onslow County, State of North Carolina

1. b. Describe briefly how the accident occurred Mr. Jervy sustained physical injuries when he came in contact with acid while performing job duties at the site located on military base.

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

3. The relationship of employer and employee existed at the time of injury.

4. At the time of the injury the claimant was performing services arising out of and in the course of employment.

5. Notice of the accidental injury was given to the employer on _____ in the following manner:
month day year

(Admitted claim).

- ☒ 6. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for _____
☒ (b) additional medical examination and treatment for various symptoms, including cervical disc herniation.
- ☒ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: Current.
- ☐ 8. Due to the injury, the claimant has permanent disability of the following nature and extent: (check one)
☐ (1) General Disability: ☐ Total ☐ (2) Specific Disability: ☐ Total
☐ Partial ☐ Partial
Body part(s) affected are: Premature.
- ☐ 9. Due to the injury, the claimant has a serious bodily disfigurement consisting of To be determined.
10. a. At the time of injury, the claimant was paid weekly wages of \$ Form 20 requested; and demands accounting of days worked and wages earned as provided by law.
10. b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident. Martint Environmental, Inc.
11. a. Further grounds of claim: Designation of Dr. Johnson as treater per S.C. Code Ann. Section 42-15-60 (1976, as amended). Mr. Jervy also seeks satisfaction of all causally related medical expenses, including those incidental to evaluation/treatment of cervical injury component, in accordance with provisions of this statute.
11. b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident: Michael D. Peck, M.D., Chapel Hill, NC; Donald R. Johnson, II, M.D., Mt. Pleasant, SC; Post Trauma Resources, Columbia, SC; A. Sale Estephano, M.D., Columbia, SC; Charles Hultman, M.D., Chapel Hill, NC.
11. c. To the best of your knowledge, did you have any prior permanent disability? No.
If yes, describe: _____
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☐ 13. a. I am filing a claim. I am not requesting a hearing at this time.
- ☒ 13. b. I am requesting a hearing.

Signature of Claimant/Representative

June 29, 2007

Date

Refer to R.67-205, R.67-206, R.67-207, and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

William T. Jervy, Jr.,)

Employee,)

vs.)

Martint Environmental, Inc.,)

Employer,)

and)

General Casualty Insurance Company,)

Carrier.)

BEFORE THE
SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

CERTIFICATE OF SERVICE
WCC FILE NUMBER: 0600334

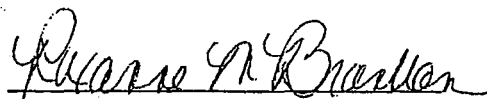
Roxanne M. Branham, being first duly sworn, says that she is a legal assistant for the firm of Andrew N. Safran, LLC Attorney at Law, with offices at Columbia, South Carolina, that on the 29th day of June, 2007 she mailed the documents listed below to the persons listed below, by depositing in the United States mail with sufficient postage affixed thereto.

Documents: Form 50

To: The Honorable Virginia L. Crocker
Judicial Director
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

E. Ros Huff, Jr., Esquire
Post Office Box 1935
Irmo, South Carolina 29063

This 29th day of June, 2007.


Roxanne M. Branham
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WC File # 0600334
Carrier File # W082494-00G09
Carrier Code #
Employer FEIN

William Jervey Jr.
Claimant's Name
City 072 State Zip
957-8733
Home Phone Work Phone

Martint Environmental, Inc
Employer's Name
175-B Rich-Lex Drive Lexington SC 29072
Address City State Zip
Southern Guaranty Insurance Co. o/o General Casualty
Insurance Carrier

E. Ros Huff, Jr., Esquire
Preparer's Name

(803) 252-2232
Phone #

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part.
The employer-insurance carrier in answer to the claim, respectfully shows:

1. It is (denied) that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are: It is denied that the employee sustained a compensable injury by accident arising out of and in the course of employment. Pending investigation.
2. It is (denied) that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: See No. 1.
3. It is (denied) that the relationship of employer and employee existed at the time in question. The reasons for denial are: See No. 1.
4. It is (denied) that at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: See No. 1.
5. It is (denied) that notice of injury was given the employer. The reasons for denial are: See No. 1.
6. It is (denied) that the employee (needs) (is entitled to additional) medical care as a result of injury. The reasons for denial are: It is denied that medical care would tend to lessen the employee's disability, if any.
7. It is (denied) that the employee is entitled to temporary total disability for the period(s) of: It is denied that the employee is temporarily totally disabled.
8. It is (denied) that the employee is permanently disabled. The reasons for denial are: Not an issue on Form 50.
9. It is (denied) that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of \$ Form 20 to be submitted applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are: All special and affirmative defenses allowed by the Act, including the defenses available under Sec. 42-9-60, 42-15-20, 42-15-40, 42-15-60, 42-15-80, 42-17-90, and 42-9-210, Code of Laws of South Carolina, 1976. Defendant/Carrier also reserves the right to amend this Answer. The Defendant/Carrier raises the defense enunciated in Cooper v. McDevitt & Street, regarding a material false statement made in a job application. IF applicable.

I certify that I have served this document pursuant to R.67-212 by delivering a copy to

Andrew N. Safran, Esquire
Name

Andrew N. Safran Post Office Box 12089 1400 Pickens Street, Suite 104, Columbia, SC 29211 and S.C. Workers' Compensation Commission, PO Box 1715, Columbia, SC 29201-1715
Address

on the 27th day of July, 2007 by ☒ first class mail; ☐ personal service; ☐ certified mail.

E. Ros Huff, Jr., Esquire
Preparer's Signature

Attorney for Employer/Carrier
Title

July 27, 2007
Date

Refer to R.67-205 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC Form 0600334
Carrier File # W082494-00G09
Carrier Code #
Employer FEIN

William Jervey Jr.

Claimant's Name SSN

Address City State Zip

957-8733 796-1190

Home Phone Work Phone

Martint Environmental, Inc

Employer's Name

175-B Rich-Lex Drive Lexington SC 29072

Address City State Zip

Southern Guaranty Insurance Co. c/o General Casualty

Insurance Carrier

Terry M. "Mickey" Mauldin, Esquire

Preparer's Name

(803) 252-2232

Phone #

Request for Commission Review by

☐ claimant

☒ employer (check one)

Date of injury: 01/23/06

The undersigned makes application for review of the findings of the Commissioner in the above captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages, if necessary).

See Attached Addendum.

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to

Andrew N. Safran, Esquire-

Name

Post Office Box 12089 Columbia, SC 29211 and S.C. Workers' Compensation Commission, PO Box 1715, Columbia, SC 29201

Address

on the 5th day of December, 2007 by ☒ first class mail; ☐ personal service; ☐ certified mail.

Terry M. "Mickey" Mauldin

Preparer's Signature

Attorney for the Employer/Carrier

Title

December 5, 2007

Date

Check this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701 B. Otherwise, file the original and 4 copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

William Jervey Jr. v. Martint Environmental
WCC File No. 0600334

Form 30 Addendum

1. Did the Hearing Commissioner err in finding as a fact (FOF No. 1) that claimant sustained multiple compensable injuries on January 23, 2006, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
2. Did the Hearing Commissioner err in finding as a fact (FOF No. 2) that claimant was performing duties arising out of and within the course and scope of his employment, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
3. Did the Hearing Commissioner err in finding as fact (FOF No. 6) that the carrier engaged in various activities which reflected an informed and voluntary acknowledgement of liability for claimant's claim, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
4. Did the Hearing Commissioner err in finding as a fact (FOF No. 7) that Martint Environmental, Inc. "similarly verified an obvious understanding....", where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
5. Did the Hearing Commissioner err in finding as a fact (FOF No. 11(a)) that Martint Environmental, Inc., was notified of claimant's compensable injuries, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
6. Did the Hearing Commissioner err in finding as a fact (FOF No. 11(e)) that during the 150 day period commencing on January 23, 2006, both Employer

and Carrier engaged in activities which were reflective of the knowing/informed/voluntary acceptance of liability for claimant's injuries per the Act, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?

7. Did the Hearing Commissioner err in finding as a fact (FOF No. 11(f)) that Defendants' course of conduct is likewise wholly consistent with their continued acceptance of liability for claimant's claim, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
8. Did the Hearing Commission err in finding as a fact (FOF No. 12(a)) that claimant's cervical symptoms proximately result from the consequences of his compensable accident, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
9. Did the Hearing Commission err in finding as a fact (FOF No. 12(e)) that claimant remains temporarily totally disabled/unable to work as a direct result of his compensable injury and its consequences, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
10. Did the Hearing Commissioner err in concluding as a matter of law (so much of Conclusion of Law No. 2) that claimant sustained multiple compensable injuries within the meaning of section 42-1-160, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
11. Did the Hearing Commissioner err in concluding as a matter of law (so much of Conclusion of Law No. 2), that claimant was performing duties arising out of and within the course and scope of his employment, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of

law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?

12. Did the Hearing Commissioner err in Conclusion of Law No. 5, by merely reciting case law without context, meaning or application to any specific fact or legal issue in the underlying matter and is nothing more than self-serving argument inserted into the order by claimant?
13. Did the Hearing Commissioner err in concluding as a matter of law (so much of Conclusion of Law No. 6) that the statutory language invokes a "waiver of any grounds for good faith defense" in the event payments are continued beyond expiration of this grace period, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
14. Did the Hearing Commissioner err in concluding as a matter of law (so much of Conclusion of Law 7(a)) that "failure to enforce its provisions would "do violence to a specific requirement of the Act"," where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
15. Did the Hearing Commissioner err in concluding as a matter of law (so much of Conclusion of Law No. 7(b)) that a fundamental premise for the imposition of this limitation period-finality as to the issue of liability-would be allowed to assert a defense, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
16. Did the Hearing Commissioner err in concluding as a matter of law (so much of Conclusion of Law No. 7(c)), that allowing the requested relief is particularly inappropriate where, as here, Defendants have engaged in a course of conduct which unquestionably satisfies the criteria for both waiver and laches, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
17. Did the Hearing Commissioner err in concluding as a matter of law (so much of Conclusion of Law No. 7(d)) that Defendants are legally barred from

contesting their basic/underlying liability for claimant's claim where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?

18. Did the Hearing Commissioner err in concluding as a matter of law (so much of Conclusion of Law No. 8 (a) and (b)) that section 42-9-260(F) are inapplicable, and that the Commission did not err in compliance with obligations imposed by the Act, that the regulations implemented are sufficient and that a review of the substance supports the Hearing Commissioner's conclusions, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
19. Did the Hearing Commissioner err in Conclusion of Law No. 9 by merely reciting case law without context, meaning or application to any specific fact or legal issue in the underlying manner and is nothing more than self-serving argument inserted into the order by claimant?
20. Did the Hearing Commissioner err in Conclusion of Law No. 10 by merely reciting prior statute without context, meaning or application to any specific fact or legal issue in the underlying matter and is nothing more than self-serving argument inserted into the order by claimant?
21. Did the Hearing Commissioner err in Conclusion of Law No. 11 by merely reciting case law without context, meaning or application to any specific fact or legal issue in the underlying matter and is nothing more than self-serving argument inserted into the order by claimant?
22. Did the Hearing Commissioner err in Conclusion of Law No. 12(a) that the statute specifically limits the duration of the grace period, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
23. Did the Hearing Commissioner err in Conclusion of Law No. 12(b) that the Legislature "maintained the long-standing element of finality by stating that payments could be made "without waiver of any grounds for good faith denial...for [only] ...one hundred fifty days from the date the injury...(was) reported..."This intent to preserve the "certainty" aspect of pre-amendment practice is further evidenced by the facts subsection F: (a) specifically references universally acknowledged grounds and (b) otherwise mirrors the

pre-amendment codification, where such is self-serving argument inserted into the order by claimant and, additionally, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?

24. Did the Hearing Commissioner err in concluding as a matter of law (so much of Conclusion of Law No. 13(a) that the language upon which Defendants rely in asserting section 42-9-260(A) does not impose a statute of limitations (which predated the pertinent amendment by more than a decade) relates solely to admitted liability claims, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
25. Did the Hearing Commissioner err in concluding as a matter of law (so much of Conclusion of Law No. 13(b)) that the Commission's regulations adequately outline "the method and procedure by which benefits may be suspended or terminated" in that context, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
26. Did the Hearing Commissioner err in concluding as a matter of law (so much of Conclusion of Law No. 13(c)) that Defendants' contention that they may disclaim their basic/underlying liability relative to the provision of compensation or medical benefit per the act of this stage of the proceedings is meritless, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
27. Did the Hearing Commissioner err in concluding as a matter of law (Conclusion of Law No. 14) that Defendants are financially responsible for compensation and medical benefits (as specifically enumerated therein) and shall similarly accept financial responsibility for additional benefits (as enumerated therein) where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?

28. Did the Hearing Commissioner err in concluding as a matter of law (so much of Conclusion of Law No. 15(a) and (b)) that claimant remains temporarily totally disabled within the meaning of S.C. Code Ann. Section 42-9-10 and has not yet achieved maximum medical improvement, the issue relative to his degree of residual disability is not currently ripe for determination, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
29. Did the Hearing Commissioner err in ordering (so much of AWARD (a)) that Defendants shall continue to pay claimant weekly compensation at the rate of \$586.11 until such time as relieved by Order of the Commission or agreement of the parties, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
30. Did the Hearing Commissioner err in ordering (so much of AWARD (b)) that Defendants shall accept financial responsibility for all causally related medical benefits (enumerated therein); where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
31. Did the Hearing Commissioner err in ordering that Defendants shall authorize the additional medical benefits (enumerated therein), where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
32. Did the Hearing Commissioner err in granting claimant's motion barring as a matter of law Defendants from asserting a defense to the claim, instant herein, where such is clearly erroneous in view of the reliable, protective and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?
33. Did the Hearing Commissioner err in granting claimant's motion that Defendants can not deny a case after 150 days where such is clearly erroneous in view of the reliable, protective and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or

arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?

34. Did the Hearing Commissioner err in refusing Defendants' proffer of evidence that claimant was prohibited from doing a certain act and that in violation of that prohibition he did the act, and in the course of doing that act, he suffered his injury, where such is clearly erroneous in view of the reliable, probative and substantial evidence upon the whole record; in violation of statutory provisions; affected by other error of law; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?



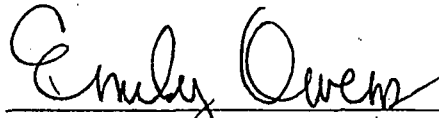
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Form 30 has been served upon the following named individuals indicated below by mailing a copy of the same in the United States mail, with sufficient postage affixed thereto and return address clearly marked on

12/05, 2007

Andrew N. Safran, Esquire
Post Office Box 12089
Columbia, SC 29211

Virginia Crocker
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29201-1715



Emily Owens
Paralegal to Terry M. "Mickey" Mauldin, Esquire
HUFF LAW FIRM, LLC
Post Office Box 1935
7244 Woodrow Street
Irmo, South Carolina 29063
(803) 252-2232

Attorneys for Employer/Carrier

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: _____

William T. Jervey, Jr.,

2008 JUN -5 P 4: 22

Employee/Appellant,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2008CP3202361

vs.

PETITION FOR JUDICIAL REVIEW

Martint Environmental, Inc.,

Employer,

and

General Casualty Insurance Company,

Carrier/Respondents.

Claimant/Appellant, William T. Jervey, Jr., would respectfully show unto the Court:

1) On January 23, 2006, he sustained multiple compensable injuries while throwing a segment of hose into a dumpster at a jobsite on the Camp LeJeune Marine Corps base in Onslow County, North Carolina. Specifically, this injury occurred when: (a) he (with the assistance of Mr. Robert Hinson) was lifting/throwing this hose; and (b) sulfuric acid spilled from the hose onto various parts of his body. (See, Finding of Fact No. 1).

2) Shortly after sustaining these injuries, he was transported, via ambulance, to the University of North Carolina Hospitals/North Carolina Jaycee Burn Center, where he: (a) was admitted for acute care of his acid burn wounds; and (b) subsequently received treatment for various physical symptoms from Dr. Michael Peck of this facility. (See, Finding of Fact No. 3).

3) Per Form 12-A completed on January 24, 2006 co-Respondent, Martint Environmental, Inc.: (a) provided all requested information relative to the nature and consequences of his accident; while (b) specifically alleging he had been "asked not" to engage in the activity he was performing at the time the accident occurred ("victim was dismantling pump & hose containing residual

sulfuric acid. . . Employee was asked not to touch or dismantle the sulfuric acid system"). This document was, in turn, delivered (via facsimile) to co-Respondent, General Casualty Insurance Company, which: (a) received it on January 25, 2006; and (b) electronically filed the Form 12-A with the South Carolina Workers' Compensation Commission ("filed on EDF") on January 26, 2006. (See, Finding of Fact No. 4).

4) Approximately one week later, this Carrier generated a Form 15(I), which: (a) confirmed temporary total disability compensation had commenced effective January 24, 2006; and (b) was received/processed by the Commission on February 9, 2006. In this regard, a review of the "W/C Disability Benefit Payment Log" produced by General Casualty (in response to his discovery requests) unequivocally establishes these compensation payments have continued, without interruption, since the January 24, 2006 initiation date. (See, Finding of Fact No. 5).

5) Additionally, during the ensuing months, General Casualty engaged in various activities which reflected an informed and voluntary acknowledgement of liability for his claim, including: (a) instructing its nurse case manager to "remind. . . [him] that if he does not comply with medical treatment. . . [,] his benefits could be stopped" (See, April 7, 2006 fax communication from "Kathy Crews (GBO claims)";); (b) instructing this agent to attend a medical appointment and "have. . . [the] Dr. note how his treatment is related to WC of 1/23/06" (See, April 12, 2006 e-mail transmission of Kathy Crews); (c) authorizing treatment (See, June 19, 2006 and July 21, 2006 e-mail transmissions of Kathy Crews); (d) advising that at least one course of treatment was authorized to prevent him from "sitting doing nothing while. . . [it was] paying him" (See, June 19, 2006 e-mail transmission of Kathy Crews); (e) repeatedly seeking medical opinions relative to his capacity to return to work, as well as the anticipated date of maximum medical improvement (See, April 25, 2006, June 16, 2006 and October 4, 2006 e-mail transmissions of Kathy Crews); and (f) admonishing his counsel, through the nurse case

manager, that it "ha[d]... control of the medical & who... [he] should treat... with" -- a communication which was generated approximately one year post-accident. (See, January 12, 2007 e-mail transmission of Kathy Crews). (See, Finding of Fact No. 6).

6) Martint Environmental, Inc. similarly verified an obvious understanding: (a) he was "being treated by a psychologist for problems claimed to be related to the accident"; (b) he "remain[ed]... out of work" due to injury components attributed to his January 23, 2006 accident; and (c) his resulting receipt of compensation and medical benefits was "adding to the volume of the claim." (See, May 1, 2006 letter of Larry Offill, III). (See, Finding of Fact No. 7).

7) On March 30, 2006, Dr. Sale A. Estefano (his treating psychiatrist) noted the presence of "tingling" of the arms "since the accident." When these symptoms persisted, he underwent diagnostic testing, including a cervical MRI scan, which was interpreted to reveal "a left posterolateral to lateral disc protrusion at C6-7 extending for a few millimeters below the level of the superior endplate of C7." After being apprised of this finding, Dr. Peck: (a) expressed a belief this disc herniation was "related to [his]... occupational injury"; and (b) recommended further evaluation by a spine surgeon. (See, Finding of Fact No. 8).

8) On May 15, 2007, he was evaluated by Dr. Donald R. Johnson, II of Southeastern Spine Institute, who: (a) noted that after being splashed with sulfuric acid, he "shook violently to try to get the acid off of his face"; (b) recognized this trauma had led to the "develop[ment of]... neck pain with radiation down his left arm into his left hand"; (c) interpreted the previously performed MRI scan to identify "a left sided disc protrusion quite lateral at C6-C7... [with] some extrusion below the endplate of C-7"; (d) observed he exhibited not only "weakness of his triceps... [and] finger abductors... [, but also] loss of muscle tone on the left in the area of the triceps that is not present on the right... consistent with

his 6-7 distribution"; (e) felt "this difficult disc situation. . . [was] causally related to his work accident"; and (f) determined he had not reached maximum medical improvement. (See, Finding of Fact No. 9).

9) By Order dated November 26, 2007, the Honorable David W. Huffstetler specifically found:

(a) Martint Environmental, Inc. was notified of Mr. Jervey's compensable injuries on January 23, 2006; (b) on January 24, 2006, this Employer generated a Form 12-A, which alleged this injury occurred while Mr. Jervey was performing an activity he "was asked not" to do; (c) General Casualty Insurance Company was formally notified of not only the circumstances surrounding Mr. Jervey's injury, but also this allegation, by no later than January 25, 2006; (d) on February 2, 2006, this Carrier commenced the payment of temporary total disability compensation (effective January 24, 2006), while filing a Form 15 (I) with this Commission; (e) during the 150 day period commencing on January 23, 2006, both Employer and Carrier engaged in activities which were reflective of the knowing/informed/ voluntary acceptance of liability for Mr. Jervey's injuries per the Act; (f) their course of conduct after the expiration of this 150 day period (i.e., payment of disability compensation, authorization of medical care and declaration that "we have control of the medical & who. . . [Mr. Jervey] treat with") is likewise wholly consistent with their continued acceptance of liability for his claim; (g) Defendants did not attempt to disclaim this liability until April 17, 2007, approximately 450 days after they were notified of Mr. Jervey's injury; and (h) their attempted denial stems from the same allegation ("Employee was asked not. . . [to] touch or dismantle the sulfuric acid system") contained on the face of the January 24, 2006 Form 12-A. (See, Finding of Fact No. 11).

10) He further found:

(a) Mr. Jervey's cervical symptoms proximately result from the consequences of his compensable accident; (b) he requires treatment for this injury component, as well as his causally related psychiatric condition; (c) Mr. Jervey's receipt of treatment for each of these injury components is reasonable, medically necessary and geared toward lessening his ultimate period of disability; (d) he has not yet achieved maximum medical improvement relative to either of these injury components; and (e) Mr. Jervey remains temporarily

totally disabled/unable to work as a direct result of his compensable injury and its consequences. (See, Finding of Fact No. 12).

11) Additionally, the hearing commissioner concluded:

S.C. Code Ann. Section 42-9-260 (1976, as amended) provides in pertinent part:

(A) When an employee has been out of work due to a reported work-related injury or occupational disease for eight days, an employer may start temporary disability payments immediately and may continue these payments for up to one hundred fifty days from the date the injury or disease is reported without waiver of any grounds for good faith denial. Upon making the first payment, the employer immediately shall notify the commission, in accordance with a form prescribed by the commission, that payment of compensation has begun. (Emphasis added).

This statute further prescribes:

(B) Once temporary disability payments are commenced, the payments may be terminated or suspended immediately at any time within the one hundred fifty days if:

(3) a good faith investigation by the employer reveals grounds for denial of the claim. . . . (Emphasis added).

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and [this Commission]. . . has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 533 S.E. 2d 578, 581 (2000); Pee v. AVM, Inc., 344 S.C. 162, 543 S.E. 2d 232, 235 (Ct. App. 2001). In this connection, the "[L]egislature is presumed to have fully understood the meaning of the words used in a statute and, unless the meaning is vague or indefinite, intended to use them in their ordinary and common meaning or in their well-defined legal sense." Powers v. Fidelity & Deposit Co. of Maryland, 180 S.C. 501, 186 S.E. 2d 523, 527 (1936); Romer v. P.J. Club, Inc., 347 S.C. 560, 556 S.E. 2d 726, 731 (Ct. App. 2001).

A review of the rather explicit language of Section 42-9-260 clearly establishes that an Employer/Carrier: (a) "may start temporary disability payments. . . [once] an employee has been out of work due to a work-related injury. . . for eight days"; (b) is afforded a 150 day grace period, during which it may conduct "a good faith investigation" to determine whether any "grounds for denial of the claim" exist; and (c) does not "waive. . . any grounds for good faith denial", provided the defense is raised within the prescribed period. This language likewise: (a) limits this grace period to "one hundred fifty days from the date the injury. . . is reported"; and (b) invokes a "waiver of any grounds for good faith denial" in the event payments are continued beyond expiration of this grace period.

Section 42-9-260 is, on its face, a statute of limitation in the current context. Given the plain and unambiguous language establishing this limitation period, I conclude: (a) failure to enforce its provisions would "do violence to a specific requirement of the Act" Ashe v. Rock Hill Hardware Company, 219 S.C. 159, 64 S.E. 2d 396, 400 (1951); (b) a fundamental premise for the imposition of this limitation period – finality as to the issue of liability – would be thwarted if Defendants were allowed to assert a defense (of which they were obviously aware on the date of accident) at this stage of the proceedings (See, Merchants Mutual Insurance Company v. South Carolina Second Injury Fund, 277 S.C. 604, 291 S.E. 2d 667, 668 ("There must be some finality with a limitation period. . .")); (c) allowing the requested relief is particularly inappropriate where, as here, Defendants have engaged in a course of conduct which unquestionably satisfies the criteria for both waiver and laches; and (d) Defendants are legally barred from contesting their basic/underlying liability for Mr. Jervay's claim. (See, Conclusion of Law Nos. 3 – 7).

12. In addressing Respondents' arguments that the provisions of Section 42-9-260 (F) were inapplicable in this instance, as well as their contention the Commission had somehow failed to comply with the obligations imposed by the 1996 amendment of this statute, Commissioner Huffstetler held:

It is axiomatic that: (a) "there is a basic presumption that the. . . [L]egislature has knowledge of previous legislation as well as judicial decisions construing that legislation when later statutes are enacted concerning related subjects." Whitner v. State, 328

S.C. 1, 492 S.E. 2d 777, 779 (1997); Russo v. Nationwide Insurance Company, 334 S.C. 455, 513 S.E. 2d 127, 129 (Ct. App. 1999)); (b) a similar presumption exists that it "enact[s] . . . legislation with reference to existing law" See, Abba Equipment, Inc. v. Thomason, 335 S.C. 477, 517 S.E. 2d 235, 238 (Ct. App. 1999); and (c) it "must be presumed that the . . . [L]egislature intended to achieve a consistent body of law." Busby v. State Farm Mutual Automobile Insurance Company, 280 S.C. 330, 312 S.E. 2d 716, 719 (Ct. App. 1984); State v. Ramsey, 311 S.C. 555, 430 S.E. 2d 511, 516 (1993).

...

Prior to the 1996 amendment, Section 42-9-260 provided in pertinent part:

Upon making the first payment, the employer shall immediately notify the Commission, in accordance with a form prescribed by the Commission, that payment of compensation has begun.

The Commission shall provide by rule the method and procedure which benefits may be suspended or terminated for any cause, but such rule must provide for an evidentiary hearing and Commission approval prior to termination or suspension unless such prior hearing is expressed waived in writing by the recipient.

...

Similarly, our Supreme Court had consistently held that payment of compensation pursuant to a pre-amendment Form 15 was conclusive, to the extent: (a) "the basic issue of liability" could not be relitigated. . . ." Allen v. Benson Outdoor Advertising Company, 236 S.C. 22, 112 S.E. 2d 722, 723 (1960); and (b) this acknowledgment of compensability was "not subject to collateral attack." McCreery v. Covenant Presbyterian Church, 303 S.C. 271, 400 S.E. 2d 130, 131 (1990).

...

Although the 1996 amendment altered prior practice, to the extent it afforded the Employer/Carrier an opportunity to pay compensation, without prejudice, while conducting a good faith investigation, the Legislature: (a) specifically limited the duration of the grace period; and (b) maintained the longstanding element of finality by stating that payments could be made "without waiver of any grounds for good faith denial. . . for [only]. . . one hundred fifty days from the date the injury. . . [was] reported. . . ." This intent to preserve the "certainty" aspect of pre-amendment practice is further evidenced by the facts Subsection F: (a) specifically

references universally acknowledged grounds (admitted ability to return to work) for termination of compensation in circumstances where liability for a claim has been accepted; and (b) otherwise mirrors (in all relevant respects) the pre-amendment codification.

I consequently conclude: (a) the language upon which Defendants rely in asserting Section 42-9-260 (A) does not impose a statute of limitation (which predated the pertinent amendment by more than a decade) relates solely to admitted liability claims; (b) this Commission's regulations adequately outline "the method and procedure by which benefits may be suspended or terminated" in that context; and (c) Defendants' contention that they may disclaim their basic/underlying liability relative to the provision of compensation or medical benefit per the Act at this stage of the proceedings is meritless. (See, Conclusion of Law Nos. 9 - 13).

13. Based upon these factual findings and legal conclusions, he determined:

On January 23, 2006, Mr. Jerve, an employee within the meaning of S.C. Code Ann. Section 42-1-130 (1976, as amended), sustained multiple compensable injuries (which affect his face, neck, left arm and skin) within the meaning of S.C. Code Ann. Section 42-1-160 (1976, as amended), while performing duties arising out of and within the course and scope of his employment with Martint Environmental, Inc., an employer within the meaning of S.C. Code Ann. Section 42-1-140 (1976). As a consequence of his physical injuries, Mr. Jerve has also developed psychiatric symptoms, which represent an additional component of his claim per S.C. Code Ann. Section 42-1-160. See, Kennedy v. Williamsburg County, 242 S.C. 47, 131 S.E. 2d 512 (1963); Doe v. South Carolina State Hospital, 285 S.C. 183, 328 S.E. 2d 652 (Cl. App. 1985).

Defendants are financially responsible for the medical treatment, medications, evaluative procedures, physical therapy, etc. which Mr. Jerve has heretofore received/undergone as a result of his compensable injuries, including those provided/prescribed by Dr. Johnson, as these services, medications, and procedures were reasonable, medically necessary and tended to lessen his period of disability within the meaning of S.C. Code Ann. Section 42-15-60 (1976, as amended). They shall similarly accept financial responsibility for the additional treatment, medications, procedures, etc. provided/prescribed by Drs. Johnson and Deal, as

these modalities are likewise reasonable, medically necessary and geared toward lessening his ultimate period of disability.

I finally conclude: (a) Mr. Jervy remains temporarily totally disabled within the meaning of S.C. Code Ann. Section 42-9-10 (1976, as amended); and (b) as he has not yet achieved maximum medical improvement, the issue relative to his degree of residual disability is not currently ripe for determination. (See, Conclusion of Law Nos. 2, 14 and 15).

14. Pursuant to a Form 30 dated December 5, 2007, Respondents appealed Commission Huffstetler's rulings to an Appellate Panel of the Full Commission. Subsequently, by Order dated May 5, 2008, the Panel: (a) essentially adopted Commissioner Huffstetler's factual findings; (b) agreed the current claim was "still compensable because the doctrines of waiver and laches apply"; and (c) affirmed Commissioner Huffstetler's award of temporary total disability compensation, as well as further medical benefits, while amending the above-outlined legal rulings.

15. In this regard, the Appellate Panel: (a) found that although "[a] Defendant can raise a defense after 150 days. . . [they] waive these defenses by their behavior"; and (b) deleted the legal conclusions which construed Section 42-9-260 (particularly Subsections A and B) as a statute of limitation.

Mr. Jervy hereby appeals the Appellant Panel's (Commission's) decision to the Lexington County Court of Common Pleas, pursuant to the provisions of S.C. Code Ann. Sections 1-23-380 (1976, as amended) and 42-17-60 (1976, as amended), based upon the following exceptions:

a) The Commission erred in deleting Conclusion of Law Nos. 3 and 4 because these conclusions of law accurately identify the portions of S.C. Code Ann. Section 42-9-260 (1976, as amended) which are pertinent to the current litigation of Mr. Jervy's claim.

b) The Commission erred in deleting Conclusion of Law No. 5 because the contents of this conclusion of law accurately outline the controlling legal authorities relative to statutory construction in this context.

c) The Commission erred in deleting Conclusion of Law No. 6 because the analysis/ruling capsulized therein accurately construes the legislative intent and impact of Section 42-9-260 (particularly Subsections A and B).

d) The Commission erred in deleting Conclusion of Law No. 6 because the analysis/ruling outlined therein correctly applies the pertinent portions of Section 42-9-260, especially in light of the governing rules of statutory construction.

e) The Commission erred in deleting Conclusion of Law No. 7 because the analysis/ruling contained therein correctly characterizes Section 42-9-260 as "a statute of limitation in the current context".

f) The Commission erred in deleting Conclusion of Law No. 7 because the analysis/ruling contained therein correctly apply the controlling legal authorities, to the extent it holds the "failure to enforce its provisions would 'do violence to a specific requirement of the Act'".

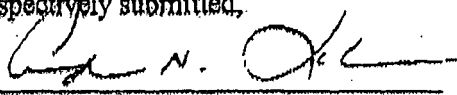
g) The Commission erred in deleting Conclusion of Law No. 7 because the analysis/ruling contained therein correctly applies the controlling legal authorities, to the extent it holds "a fundamental premise for the imposition of this limitation period – finality as to the issue of liability – would be thwarted if Defendants were allowed to assert a defense (of which they were obviously aware on the date of accident) this stage of the proceedings".

h) The Commission erred in deleting Conclusion of Law No. 8 because the statements contained therein accurately reflect Respondents' contentions relative to the identified issues.

- i) The Commission erred in deleting Conclusion of Law No. 9 because the contents of this conclusion of law accurately analyze the governing/applicable rules of statutory construction.
- j) The Commission erred in deleting Conclusion of Law No. 10 because this conclusion of law accurately identifies/states the pertinent language contained in S.C. Code Ann. Section 42-9-260 (1976, as amended) prior to the 1996 amendment of this statute.
- k) The Commission erred in deleting Conclusion of Law No. 11 because the statements and legal citations outlined therein accurately identify/analyze the governing authorities.
- l) The Commission erred in deleting Conclusion of Law No. 12 because this conclusion of law correctly analyzes the impact of the 1996 amendment to S.C. Code Ann. Section 42-9-260 (1976, as amended) in light of the governing/controlling rules of statutory construction.
- m) The Commission erred in deleting Conclusion of Law No. 12 because the rulings/analysis contained therein correctly apply the controlling legal authorities in this context.
- n) The Commission erred in deleting Conclusion of Law No. 13 because the rulings/holdings expressed therein correctly analyze the impact of S.C. Code Ann. Section 42-9-260 (1976, as amended) in the current context.
- o) The Commission erred in deleting Conclusion of Law No. 13 because the contents of this Conclusion of Law correctly analyze the language of S.C. Code Ann. Section 42-9-260 (1976, as amended), per the applicable rules of construction, in holding: (a) this statute was one of limitation; and (b) Respondents were legally precluded from denying "basic/underlying liability relative to the provision of compensation or medical benefit[s]. . . per the Act at this stage of the proceedings. . ."
- p) The Commission erred in deleting Conclusion of Law Nos. 3 – 13 because the statements/analysis/holdings contained therein: (a) are clearly controlling in this instance; (b) provide an

additional basis for rejecting Respondents' attempt to disclaim liability per the South Carolina Workers' Compensation Act under the present circumstances; and (c) reflect the only legally tenable construction of S.C. Code Ann. Section 42-9-260 (1976, as amended).

Respectively submitted,



Andrew N. Safran, Esquire
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689
Attorney for Employee/Appellant

June 4, 2008

COPY

Lexington/JPB
COUNTY OF RICHLAND
STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS FOR
THE ELEVENTH JUDICIAL CIRCUIT

2008 JUN -9 P 12:20

William T. Jervey,

Employee/Claimant,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

WCC File No. 0600334

vs.

Martint Environmental, Inc.,

Employer,

and

General Casualty Insurance Company.,

Carrier/Defendants.

PETITION FOR JUDICIAL REVIEW

2008CP3202383

Employer/Carrier/Defendant/Appellant would respectfully appeal the Order of the South Carolina Workers' Compensation Commission filed May 5, 2008, served by Certificate of Service of May 5, 2008 and received pursuant to South Carolina Workers Compensation Commission regulations five days thereafter. Upon the following grounds:

Pursuant to Section 42-17-50 and WC Regulation 67-213, the Workers' Compensation Commission appeal panel is the ultimate finder of fact. The appeal panel by its Order dated May 5, 2008, the Finding of Facts and Conclusion of Laws as set forth in the appellate panel decision is not supported by the substantial evidence and the record as a whole and contains errors of law as follows:

1. Did the appellate panel by its Order filed May 5, 2008 and Finding of Fact No. 1 commit an error of law, the error being that pursuant to Section 42-1-160 the claimant did not sustain an injury by accident arising out of and in the course of the law as set forth and defined by said Statute?

2. Did the appellate panel by its Order filed May 5, 2008 err in finding that at the time of the accident that it was in the course of his employment, the error being as a matter of law he was outside the sphere of his employment based upon the facts as presented? (Finding of Fact No. 2)
3. The appellate panel by its Order filed May 5, 2008 err in Finding of Fact No. 4 regarding the completion and filing of the 12A First Report of Injury, the error being that the substantial evidence in the record as a whole does not support said finding of fact?
4. Did the appellate panel by its Order filed May 5, 2008 err in Finding of Fact No. 5 regarding the generating, completion and filing of the Form 15, the error being that the substantial evidence in the record as a whole does not support said finding of fact?
5. Did the appellate panel by its Order filed May 5, 2008 err in Finding of Fact No. 6 that the carrier engaged in various activities reflecting an informed and voluntary acknowledgement of liability for the Claimant's claim based upon various activities as listed in sub-paragraphs (a) through (f)? The error being that the substantial evidence in the record as a whole does not support said finding of fact.
6. Did the appellate panel by its Order filed May 5, 2008 err in Finding of Fact No. 7 that the employer verified an obvious understanding as set forth in Finding of Fact 7 sub-paragraphs (a) through (c), the error being that the substantial evidence in the record as a whole does not support said finding of fact?
7. Did the appellate panel by its Order filed May 5, 2008 err in Finding of Fact No. 11 by not separately setting forth each Finding of Fact as required by the Workers'

Compensation Act and Administrative Procedures Act, thereby rendering the Order defective?

8. Did the appellate panel by its Order filed May 5, 2008 err in Finding of Fact No. 11 (c) that the carrier was formerly notified of the circumstances of the accident and the allegations set forth, the error being that the substantial evidence in the record as a whole does not support said finding of fact?
9. Did the appellate panel by its Order filed May 5, 2008 err in Finding of Fact No. 11 (e) that during the 150 day period commencing January 23, 2006 both employer and carrier engaged in activities which were reflective of the knowing, informed, voluntary acceptance of liability for claimant's injuries, the error being that the substantial evidence in the record as a whole does not support said finding of fact?
10. Did the appellate panel by its Order filed May 5, 2008 err in Finding of Fact No. 11 (f) that the course and conduct of the employer/carrier after the expiration of the 150 day period is consistent with their continued acceptance of liability of the claim, the error being that the substantial evidence in the record as a whole does not support said finding of fact?
11. Did the appellate panel by its Order filed May 5, 2008 err in Finding of Fact No. 11 (h) that the Defendants did not attempt to disclaim liability until April 7, 2007, the error being that the substantial evidence in the record as a whole does not support said finding of fact?
12. Did the appellate panel by its Order filed May 5, 2008 err in all Finding of Facts as contained in paragraph 12, the error being the substantial evidence in the record as a whole does not support the finding of fact?

13. Did the appellate panel by its Order filed May 5, 2008 err in Finding of Fact No. 13 whereby it states that the case is still compensable because the doctrines of waiver and laches apply and further that the Defendants waived these defenses by their behavior in that they knew the facts surrounding the defense from the beginning, by paying benefits and providing medical treatment the Defendants have waived the defenses in SC Code Section 42-9-260, the error being that the substantial evidence in the record as a whole does not support said finding of fact?
14. Did the appellate panel by its Order filed May 5, 2008 in paragraph 13 commingle Finding of Facts and Conclusion of Laws, and the Order is defective and further there is an error of law that the Defendants waived their defenses as set forth in 42-9-260?
15. Did the appellate panel by its Order filed May 5, 2008 committed an error of law in finding and concluding that 42-9-260 is applicable in this claim?
16. Did the appellate panel by its Order filed May 5, 2008 err in Conclusion of Law No. 2 in that it is setting forth numerous legal conclusions and pursuant to the Administrative Procedures Act and Workers' Compensation Act each conclusion of law shall be separately stated?
17. Did the appellate panel by its Order filed May 5, 2008 err in Conclusion of Law No. 2 thereby concluding pursuant to 42-1-160 that the claimant sustained an injury by accident arising out of and in the course of his employment, the error being that pursuant to 42-15-160 this Conclusion of Law is based upon an error of law and interpretation by the Commission?
18. Did the appellate panel by its Order filed May 5, 2008 err in Conclusion of Law No. 3 that the Defendants are responsible for medical treatment and evaluation pursuant to

42-15-60, the error being that this is an error of law and the factual basis does not support this Conclusion of Law?

19. Did the appellate panel by its Order filed May 5, 2008 err in Conclusion of Law No. 4 that the Claimant remains temporarily totally disabled within the meaning of 42-9-10, the error being that the substantial evidence does not support this Conclusion of Law and it is based upon an error of law based upon its interpretation of 42-9-10?

20. Did the appellate panel by its Order filed May 5, 2008 err in Conclusion of Law No. 5 that based upon the doctrine of waiver as set forth in Johnson vs. Life & Casualty Insurance Company of Tennessee applies, the error being that waiver was not plead and was not proper before the Commission? Any sui sponte ruling by the Commission is improper and outside their jurisdiction

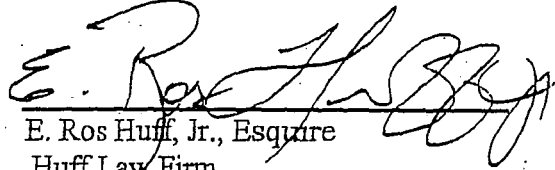
21. Did the appellate panel by its Order filed May 5, 2008 err in Conclusion of Law No. 6 that the distinction between waiver and estoppel is close, and sometimes the doctrines merge into each other with almost imperceptible gradations, the error being that this is a proper citing of the law however, set forth above, waiver was not properly plead and notice was not properly given to the Defendants thereby depriving them of their due process so this was an error of law for the Commission to consider the doctrine of waiver.

22. Did the appellate panel by its Order filed May 5, 2008 err in Conclusion of Law No. 7 that laches would apply thereby citing Byars v. Cherokee County, the error being that the doctrine of laches was not raised properly by the pleadings and proper notice was not given to the Defendants to defend this legal defense thereby depriving them of

their due process and was an error for the Commission to sui sponte address the issue of laches.

23. Did the appellate panel by its Order filed May 5, 2008 err in Conclusion of Law No.8 that the equitable doctrine of laches is equivalent to the legal doctrine of waiver, is a proper distinction of the issue of laches and waiver was not properly raised before the Commission and therefore it was an error of law for it to be considered by the Single and Full Commission.

Respectfully Submitted,



E. Ros Huff, Jr., Esquire
Huff Law Firm

Post Office Box 1935
7244 Woodrow Street
Irmo, South Carolina 29063-1935
Attorney for the Defendants

June 9th, 2008
Irmo, South Carolina

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WILLIAM JERVEY, EMPLOYEE,)
)
CLAIMANT,)
)
VS.)
)
MARTINT ENVIRONMENTAL, INC.,)
EMPLOYER, AND)
SOUTHERN PILOT INSURANCE CO.,)
CARRIER,)
)
DEFENDANTS.)
-----)

WCC #: 0600334

COPY

HEARING WAS HELD ON OCTOBER 15, 2007, IN
COLUMBIA, SOUTH CAROLINA, COMMENCING AT 11:55 A.M.
BEFORE COMMISSIONER DAVID W. HUFFSTETLER.

APPEARANCES

FOR THE CLAIMANT: ANDREW N. SAFRAN, ESQUIRE
COLUMBIA, SOUTH CAROLINA
FOR THE DEFENDANTS: TERRY M. MAULDIN, ESQUIRE
IRMO, SOUTH CAROLINA

SUBJECT OF HEARING

TO DETERMINE ISSUES AS SET FORTH ON FORMS 50 AND 51.

SKYLET A. KEAN
532 MEADOWBROOK DRIVE
COLUMBIA, SOUTH CAROLINA 29223
(803) 462-0074

INDEX

FOR THE CLAIMANT:

PAGE

WILLIAM JERVEY

DIRECT EXAMINATION BY MR. SAFRAN..... 5

EXHIBITS

(NONE)

PROCEEDINGS

THE COURT: THIS IS WORKERS' COMPENSATION
FILE NO. 0600334, THE CASE OF THE CLAIMANT, WILLIAM
JERVEY, VERSUS THE EMPLOYER, MARTINT ENVIRONMENTAL
INCORPORATED, AND THE CARRIER IS SOUTHERN PILOT
INSURANCE COMPANY. THE CLAIMANT IS PRESENT. HE'S
REPRESENTED BY ATTORNEY ANDREW SAFRAN. THE
EMPLOYER/CARRIER IS REPRESENTED BY ATTORNEY TERRY M.
MAULDIN. THE CASE IS SET TO CONSIDER ISSUES OUTLINED
IN FORMS 50 AND 51. THE AVERAGE WEEKLY WAGE IS
\$879.13 WITH A COMPENSATION RATE OF \$586.11. THE
DATE OF THE ACCIDENT IS JANUARY 28TH, 2006.

ANY OBJECTION TO THOSE ITEMS, JURISDICTION,
VENUE OR ANY OF THE APA SUBMISSIONS?

MR. MAULDIN: YOUR HONOR, I WOULD NOTE
THAT THE DATE OF THE ACCIDENT ACCORDING TO ALL THE
OTHER RECORDS IS THE JANUARY 23RD. THOSE ARE THE
MEDICAL RECORDS AND THE INCIDENT REPORT.

THE COURT: WELL, I HAVE ONE FORM 58 THAT
SAYS JANUARY 28TH. THE OTHER SAYS JANUARY 23RD.

MR. SAFRAN: THE 23RD WOULD BE FINE, YOUR
HONOR. WE STIPULATE TO THAT.

THE COURT: THANK YOU.

WITHOUT OBJECTION THE COMMISSION FILE BECOMES A

1 PART OF THE RECORD WITH THE EXCEPTION OF SELF-SERVING
2 DECLARATIONS AND UNSTIPULATED MEDICAL REPORTS.

3 THE CLAIMANT TAKES THE POSITION HE SUFFERED
4 INJURIES TO HIS NECK, LEFT ARM, PSYCHOLOGICAL INJURY,
5 DISFIGUREMENT AND SKIN LOSS. HE SEEKS PAYMENT OF ALL
6 CAUSALLY RELATED MEDICAL TREATMENT RECEIVED TO DATE.
7 HE SEEKS AN AWARD OF COMPENSATION FOR TEMPORARY TOTAL
8 DISABILITY FROM JANUARY 28TH, 2006 FORWARD AND HE
9 SEEKS ADDITIONAL MEDICAL TREATMENT THROUGH
10 DR. JOHNSON, DR. PECK AND DR. DEAL. HE FURTHER TAKES
11 THE POSITION THAT THE DENIAL OF THIS CASE COMES MORE
12 THAN 150 DAYS AFTER THE DEFENSE ENTERED INTO A
13 FORM 15 AGREEMENT.

14 THE DEFENSES DENIES AN INJURY BY ACCIDENT
15 ARISING OUT OF/IN THE COURSE EMPLOYMENT. THEY TAKE
16 THE POSITION THE FORM 15 IS NOT BINDING. THEY
17 FURTHER TAKE THE POSITION THE CLAIMANT COMMITTED A
18 FORBIDDEN ACT. IS THAT CORRECT?

19 MR. SAFRAN: YOUR HONOR, I THINK THAT'S
20 CORRECT.

21 MR. MAULDIN: YES, COMMISSIONER.

22 THE COURT: SIR, RAISE YOUR RIGHT HAND.

23 WILLIAM JERVEY,

24 HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 THE COURT: STATE YOUR NAME, PLEASE.

1 THE WITNESS: WILLIAM T. JERVEY, JR.

2 THE COURT: SIR, HAVE YOU RECEIVED ANY
3 WEEKLY PAYMENTS FROM THE INSURANCE CARRIER IN THIS
4 CASE?

5 THE WITNESS: YES, SIR.

6 THE COURT: YOU'VE BEEN RECEIVING THOSE UP
7 UNTIL NOW?

8 THE WITNESS: YES, SIR.

9 THE COURT: THANK YOU. MR. SAFRAN.

10 DIRECT EXAMINATION
11 BY MR. SAFRAN:

12 Q. HAVE YOU ALSO RECEIVED AUTHORIZED MEDICAL
13 CARE SINCE THE DATE OF THE ACCIDENT FROM -- THAT HAS
14 BEEN PAID BY THE WORKERS' COMP CARRIER?

15 A. YES, SIR.

16 Q. AND THAT WAS THROUGH SEVERAL PLACES
17 INCLUDING CHAPEL HILL BURN CENTER UP AT THE
18 UNIVERSITY OF NORTH CAROLINA; IS THAT CORRECT?

19 A. THAT'S CORRECT. YES, SIR.

20 Q. AND YOU'VE BEEN THERE MULTIPLE TIMES?

21 A. YES, SIR.

22 Q. HAS THE WORKERS' COMPENSATION OR THE
23 WEEKLY BENEFITS THE COMMISSIONER ASKED YOU ABOUT,
24 HAVE THEY BEEN PAID CONSISTENTLY GOING BACK TO THE
25 DATE OF YOUR INJURY THROUGH TODAY?

1 A. YES, SIR.

2 Q. MR. JERVEY, LET ME JUST ASK YOU A LITTLE
3 BIT OF INFORMATION. YOU LIVE IN LEXINGTON?

4 A. YES, SIR.

5 Q. HOW OLD ARE YOU?

6 A. I AM 40 YEARS OLD.

7 Q. AND ARE YOU MARRIED?

8 A. YES, SIR.

9 Q. AND HAVE CHILDREN?

10 A. YES, SIR. I HAVE A THREE-YEAR OLD
11 DAUGHTER.

12 Q. WHAT'S JUST THE LAST LEVEL OF EDUCATION
13 THAT YOU HAVE?

14 A. I HAVE A TWO-YEAR DEGREE FROM MIDLANDS
15 TECH.

16 Q. AND BASICALLY YOUR GENERAL WORK
17 BACKGROUND, I THINK YOU HAVE OPERATED HEAVY
18 EQUIPMENT?

19 A. YES, SIR.

20 Q. YOU WERE HIRED BY MARTINT IN DECEMBER OF
21 2005?

22 A. THAT'S CORRECT.

23 Q. AND BASICALLY I THINK YOU'VE KNOWN ONE OF
24 THE PRINCIPALS IN THIS COMPANY MR. WATKINS FOR QUITE
25 A PERIOD OF TIME?

1 A. YES, SIR.

2 Q. DID YOU GET ANY TYPE OF ORIENTATION PER SE
3 AT THE TIME YOU WERE HIRED?

4 A. NO, SIR.

5 Q. WHEN YOU ACTUALLY WERE ASSIGNED TO A JOB,
6 WAS IT ALWAYS BASICALLY ONE PROJECT?

7 A. YES, SIR.

8 Q. WHERE WAS THAT?

9 A. CAMP LEJEUNE, NORTH CAROLINA.

10 Q. NOW, THERE'S A GENTLEMAN SITTING ACROSS
11 THE TABLE. THAT'S MR. OFFILL?

12 A. YES, SIR.

13 Q. DID YOU EITHER ACCOMPANY HIM OR MEET HIM
14 UP AT THAT PROJECT WHEN YOU FIRST STARTED WORKING?

15 A. YES, SIR.

16 Q. AND DID YOU ASSIST HIM IN PUTTING TOGETHER
17 SOMETHING KNOWN AS A SULFURIC ACID TANK SYSTEM?

18 A. YES, SIR.

19 Q. DID YOU GET SOME INSTRUCTION AS TO WHAT
20 THE PURPOSE OF THAT SYSTEM WAS?

21 A. YES, SIR.

22 Q. DID YOU ALSO, I GUESS, GET TAUGHT OR TOLD
23 AS TO WHAT THE PURPOSE OF THE MECHANISM OF THE
24 PIECES, HOW THEY WENT TOGETHER OR HOW THEY WORKED?

25 A. YES, SIR.

1 Q. DID YOU LEARN HOW TO CONNECT AND
2 DISCONNECT THOSE?

3 A. YES, SIR.

4 Q. AT SOME POINT WERE YOU DOING I GUESS
5 AROUND THE CLOCK SHIFTS? NOT YOU PER SE BUT THE
6 COMPANY AT THAT SITE?

7 A. YES, SIR.

8 Q. AND AT THE TIME THAT YOU WERE WORKING
9 SHIFT WORK, WERE YOU DAY OR NIGHT?

10 A. AT THE TIME I WAS WORKING?

11 Q. YEAH.

12 A. I WAS WORKING NIGHT SHIFT.

13 Q. AND WERE YOU WORKING WITH ANOTHER
14 GENTLEMAN IN TANDEM, I GUESS?

15 A. YES, SIR.

16 Q. IS THAT WITH MR. SWAGGERT AT FIRST?

17 A. THAT'S CORRECT.

18 MR. SAFRAN: YOUR HONOR, BEFORE WE GO ANY
19 FURTHER, I THINK WE HAD TALKED OFF THE RECORD AND I
20 CERTAINLY NEGLECTED TO DO THIS. BUT I WOULD LIKE TO
21 PUT A MOTION ON THE RECORD JUST FOR PURPOSES OF
22 PRESERVATION. I BELIEVE THAT THE STATUTE, 42-9-260,
23 IS EXPLICITLY CLEAR ABOUT THIS SITUATION. I THINK
24 THAT WE WOULD TAKE THE POSITION THERE'S REALLY NO
25 AMBIGUITY AS FAR AS THE LANGUAGE THAT THERE'S 150-DAY

1 GRACE PERIOD THAT WOULD BE AFFORDED TO THE DEFENDANTS
2 IN ORDER TO DENY A CASE AFTER A GOOD FAITH
3 INVESTIGATION. THAT WE'RE OBVIOUSLY SITTING HERE
4 TODAY IN OCTOBER OF 2007 NEARLY TWO YEARS AFTER THIS
5 ACCIDENT OCCURRED. AND, FRANKLY, I THINK THE FIRST
6 WHISPER WE HEARD ABOUT THERE BEING ANY ISSUE HERE
7 WOULD HAVE BEEN SOMETIME AROUND APRIL OF 2007;
8 PROBABLY THREE TIMES THE 150-DAY PERIOD, IF NOT
9 GREATER. WE DON'T EVEN THINK THAT THERE IS A BASIS
10 TO DENY HERE AND THAT REALLY THE ONLY ISSUE THAT
11 OUGHT TO BE ON THE TABLE WOULD BE THE ENTITLEMENT TO
12 MEDICAL TREATMENT THROUGH DR. JOHNSON. AND, FRANKLY,
13 THE EVIDENCE THAT THE PARTIES HAVE SUBMITTED IS
14 UNILATERAL IN THE RESPECT OF THE CAUSAL RELATIONSHIP
15 AND THE NEED FOR THE TREATMENT. WE THINK THAT AS A
16 MATTER OF LAW THERE CAN BE A RULING THAT THAT'S THE
17 ONLY ISSUE THAT WE COULD ADDRESS. AND, FRANKLY,
18 AGAIN, I THINK IT'S ONE-SIDED IN TERMS OF THAT. I'M
19 PREPARED TO GO FORWARD AND COMPLETE A RECORD BUT JUST
20 WANTED TO PUT THAT ON THE RECORD FOR THE PURPOSES OF
21 TODAY.

22 THE COURT: MR. MAULDIN, DO YOU HAVE A
23 REPLY?

24 MR. MAULDIN: YES, SIR, I DO. 42-9-260,
25 OF COURSE, DEALS NOTHING OTHER THAN SUSPENDING

1 PAYMENTS ONCE THEY HAVE BEGUN. AND, OF COURSE, WE
2 WANT TO ENCOURAGE EMPLOYERS TO DO IT. AND SO IT
3 ALLOWS THEM TO START PAYMENTS AND THEN THEY CAN STOP
4 WITHOUT A HEARING, WITHOUT ANY RIGHTS BEING CONCERNED
5 IN THE FIRST 150 DAYS.

6 THE STATUTE FURTHER SAYS THAT THE COMMISSION
7 WILL DESIGNATE AFTER THAT 150 DAYS PROCEDURES FOR
8 TERMINATING THOSE TYPE THINGS FOR ANY CAUSE. ANY
9 CAUSE. AND THE COMMISSION HAS NOT DONE THAT. THE
10 COMMISSION PROVIDES NO PROVISION TO ALLOW YOU TO
11 PROCEED AFTER THE 150 DAYS. AND IF GOOD CAUSE IS A
12 FACTUAL -- IF GOOD CAUSE IS FACTUAL, THEN IT CANNOT
13 BE A MATTER OF LAW. IT CANNOT BE A MATTER OF TIME.
14 IT'S GOT TO BE A MATTER OF FACT. SO I THINK THE
15 STATUTORY INTERPRETATION HAS TO BE INCORRECT.

16 MR. SAFRAN: YOUR HONOR, IF I COULD HAND
17 ONE THING THAT I THINK WOULD --

18 THE COURT: IF I COULD ASK A QUESTION?

19 MR. SAFRAN: SURE.

20 THE COURT: I'M LOOKING AT REGULATION
21 67-506 TERMINATING TEMPORARY COMPENSATION AFTER THE
22 FIRST 150 DAYS AFTER THE EMPLOYER'S NOTICE OF AN
23 INJURY. YOU SAY THE COMMISSION HAS NOT PROVIDED A
24 MEANS FOR THAT. YOU DON'T BELIEVE THAT REGULATION --

25 MR. MAULDIN: NOT FOR A GOOD CAUSE, NO,

1 SIR. IF YOU LOOK AT THE CONDITIONS UNDER THERE, THEY
2 ARE NOT SPECIFIED. A DEFENSE OF THE CLAIM ITSELF --

3 THE COURT: DO YOU TAKE THE POSITION THAT
4 YOU CAN DENY THE CASE AFTER THE 150 DAYS WITHOUT
5 FOLLOWING -- THAT YOU CAN DENY IT OUTRIGHT AFTER 150
6 DAYS?

7 MR. MAULDIN: SIR, THE COMMISSION'S
8 REGULATION --

9 THE COURT: IS THAT YOUR POSITION?

10 MR. MAULDIN: YES, SIR.

11 MR. SAFRAN: YOUR HONOR, IF I CAN HAND UP
12 ONE THING JUST FOR THE RECORD. THIS IS A COPY OF --

13 THE COURT: AND THERE'S NO QUESTION
14 COMPENSATION HAS BEEN PAID AND CONTINUES TO BE PAID?

15 MR. MAULDIN: SIR, THE RECORD SPEAKS FOR
16 ITSELF.

17 MR. SAFRAN: NONE WHATSOEVER. YOUR
18 HONOR --

19 THE COURT: I'M GOING TO GRANT YOUR
20 MOTION. DO WE HAVE ANYTHING ELSE?

21 MR. SAFRAN: THEN I'M JUST GOING TO SIMPLY
22 ASK HIM TO TESTIFY BRIEFLY AS TO CAUSAL RELATIONSHIP
23 IN THE MEDICAL AND THAT'S IT.

24 THE COURT: THANK YOU.

25 BY MR. SAFRAN:

1 Q. MR. JERVEY, LET ME JUST ASK YOU A COUPLE
2 OF QUICK QUESTIONS.

3 MR. MAULDIN: YOUR HONOR, I'D STIPULATE
4 WITHOUT ANY FURTHER TESTIMONY THAT THE MEDICAL
5 EVIDENCE TO DATE INDICATES A CERVICAL PROBLEM THAT
6 THE DOCTORS SAY IS CAUSALLY RELATED.

7 THE COURT: DO WE HAVE ANYTHING ELSE?

8 MR. SAFRAN: IF HE'LL STIPULATE TO THAT, I
9 THINK WE HAVE -- WE'LL REST ON THE MEDICAL.

10 MR. MAULDIN: COMMISSIONER, I WOULD
11 PROFFER -- I WOULD PROFFER THE TESTIMONY WHICH WILL
12 SHOW THAT THE CLAIMANT WAS PROHIBITED FROM DOING A
13 CERTAIN ACT AND IN VIOLATION OF THAT PROHIBITION HE
14 DID THAT ACT; AND IN THE COURSE OF DOING THAT ACT, HE
15 SUFFERED HIS INJURY. AND AS A RESULT --

16 THE COURT: BUT YOUR QUESTION SEEMS TO
17 BE --

18 MR. MAULDIN: YES, SIR.

19 THE COURT: -- WHETHER OR NOT YOU CAN DENY
20 A CASE AFTER THE 150 DAYS? THAT'S WHAT THE MOTION IS
21 ABOUT AS I UNDERSTAND IT.

22 MR. SAFRAN: YES, SIR.

23 THE COURT: I UNDERSTAND YOUR ARGUMENT.
24 BUT IT SEEMS TO ME THAT WOULD BE THE ARGUMENT IF THE
25 COURTS SAY THAT I AM WRONG IN GRANTING HIS MOTION.

1 AND IF THEY SAY THAT AND THEY REMAND THE CASE BACK
2 FOR A NEW HEARING, THEN I THINK THAT WOULD BE --

3 MR. MAULDIN: YES, SIR.

4 THE COURT: -- THE ARGUMENT MADE AT THAT
5 TIME. IT SEEMS TO ME THAT THE ISSUE NOW IS THAT I
6 HAVE GRANTED YOUR MOTION AND AM I IN ERROR IN
7 GRANTING THE MOTION. AND I EXPECT THE FULL
8 COMMISSION AND THE COURT WILL SPEAK TO THAT.

9 MR. MAULDIN: AND I WOULD JUST PROFFER THE
10 EVIDENCE ON THAT FACTUAL ISSUE AT THIS HEARING.

11 THE COURT: HOW IS IT RELEVANT TO THE
12 MOTION?

13 MR. MAULDIN: WE'RE HERE ON THE FORM 50/51
14 AND IT'S RELEVANT TO THE POSITION WE TOOK ON THE 51.

15 THE COURT: YES, SIR. I HAVE GRANTED HIS
16 MOTION SAYING THAT YOU CANNOT DENY THE CASE ONCE
17 YOU'VE ACCEPTED IT AND STARTED PAYING BENEFITS AFTER
18 150 DAYS. THE POINT I'M TRYING TO MAKE IS THAT'S THE
19 ISSUE.

20 MR. MAULDIN: SIR, I UNDERSTAND. I WAS
21 JUST TRYING TO PRECLUDE THE PROBLEM.

22 THE COURT: BUT IF THE COURT SAYS THAT I
23 AM WRONG IN THAT --

24 MR. MAULDIN: YES, SIR.

25 THE COURT: -- AND THEY SEND IT FOR A

1 HEARING, THEN IT WOULD SEEM THAT ALL THOSE ARGUMENTS
2 WOULD BE MADE AT THAT HEARING.

3 MR. MAULDIN: AND I UNDERSTAND. I WAS
4 JUST TRYING TO --

5 THE COURT: DO WE HAVE ANYTHING ELSE?

6 MR. SAFRAN: NO, SIR. WE WOULD JUST ASK
7 THE ORDER --

8 THE COURT: IF NOT, THEN THAT CONCLUDES
9 THE HEARING.

10

11 (WHEREUPON, THE HEARING WAS CONCLUDED AT 12:09 P.M.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

I, SKYLET A. KEAN, COURT REPORTER AND NOTARY PUBLIC, FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE TRANSCRIPT OF THE FOREGOING HEARING IS A STENOGRAPHIC REPORT AND WAS TRANSCRIBED THROUGH COMPUTER-AIDED TRANSCRIPTION; THAT THE FOREGOING TRANSCRIPT CONTAINS A TRUE RECORD OF THE PROCEEDINGS IN THE FOREGOING HEARING.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO NOR EMPLOYED BY ANY OF THE PARTIES CONNECTED TO THE ACTION, NOR AM I FINANCIALLY INTERESTED IN THE ACTION.

WITNESS MY HAND AT COLUMBIA, SOUTH CAROLINA,
THIS 22ND DAY OF OCTOBER, 2007.



SKYLET A. KEAN
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMM. EXPIRES JUNE 22, 2014

VOES A S TCO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE CIVIL COURT

WILLIAM JERVEY, JR.,	)	
Respondent,	)	TRANSCRIPT OF RECORD
-vs-	)	
MARTINT ENVIROMENTAL,	)	08-CP-32-2361
Appellant.	)	

February 2, 2009
Lexington, South Carolina

B E F O R E:

HONORABLE R. KNOX MCMAHON, Judge.

A P P E A R A N C E S:

ANDREW N. SAFRAN, Esquire
Attorney for the Respondent

E. ROS HUFF, JR., Esquire
Attorney for the Appellant

L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

INDEX

Motion Hearing 02/02/09	3
Certificate	43

INDEX OF WITNESSES

(Court Reporter's Note: There was no direct or cross examination of any witnesses).

INDEX OF EXHIBITS

(Court Reporter's Note: No exhibits were marked or received into evidence).

1 (The following proceedings are reported on
2 February 2, 2009.).

3 THE COURT: This is 08-CP-32-2361, Jervey
4 versus Martint Environmental; is that correct?

5 MR. HUFF: Yes, sir. It will take me a minute
6 to unpack all this law.

7 THE COURT: Certainly. Let me know when you
8 are ready.

9 (Pause).

10 MR. HUFF: Whenever you are, Your Honor.

11 THE COURT: All right.

12 MR. HUFF: Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 MR. HUFF: May it please the Court. This is a
15 worker's compensation appeal. Today I am here
16 representing the employer, insurance carrier. My
17 learned counsel, Andy Safran, is representing the
18 employee.

19 The facts in this case are rather simple.
20 Mr. Jervey was a employee of Martint, the employer there
21 up in North Carolina. He moved a unit that had a hose
22 on it. It had sulphuric acid in it.

23 The acid splashed out on him and, of course,
24 it burned him because he had no protective equipment on.
25 There was some psychological problems and he was getting

1 psychological treatment.

2 Later on there was an alleged -- that the
3 cervical spine was injured when he jerked back from the
4 acid. The insurance company, without legal
5 representation -- I went through all their work -- they
6 looking, at the facts of the case and South Carolina
7 being a no-fault state, started paying benefits.

8 There came a point in time that they needed
9 legal representation on the matter. They engaged me and
10 I looked at it. At that time I think there was a legal
11 defense in that he was outside the sphere of his
12 employment. He was told specifically not to do
13 something.

14 Now, what makes this case interesting is that
15 when we went before the single commissioner, he would
16 not let us put up any defense whatsoever. That is the
17 unusualness of this case.

18 Mr. Safran made a motion. He said pursuant
19 to 42-9-260, a copy of which I have handed up to you,
20 Your Honor, he said that there was -- he alleged that
21 there was a 150-day rule that you must do a good faith
22 investigation and deny a claim and then 150 days if
23 you don't, and you can't come back in and raise any
24 defense.

25 That is not what the law says. But the

1 commissioner bought the argument and because of that
2 argument would not let us put up any evidence
3 whatsoever, any defense, any witness whatsoever, period.
4 We could put up nothing.

5 It went on appeal to the full commission. The
6 full commission ruled that we do have a right to put up
7 a defense; however, the defense would be of no value
8 because of waiver or estoppel.

9 You might have to turn to that. I handed up
10 to the Court the May 5, 2008, order of the appeal panel.
11 They basically concluded -- and if I can turn to
12 that...

13 THE COURT: What page would that be?

14 MR. HUFF: It's on page 7 of the order,
15 finding of fact number 13, Your Honor. It says a
16 defendant can raise a defense after 150 days. That's
17 their interpretation of the statute. However, this case
18 was still compensable because the doctrine of waiver and
19 laches applied.

20 The Defendant waived these defenses by their
21 behavior. They knew the facts surrounding the defense
22 from the beginning by paying benefits and providing
23 medical treatment. The Defendants have waived the
24 defenses, Section 42-9-260.

25 What I have also handed up to Your Honor, and

1 it's the first thing, there is a thing called a hearing
2 notice. I am holding it up so you can see it. It's in
3 my package. I have them in order.

4 It's the work comp hearing notice. It says,
5 The subject -- I will wait until you get it, Your
6 Honor.

7 THE COURT: All right.

8 MR. HUFF: It says in the middle of the page,
9 Subject of hearing, to determine the issues as set forth
10 on forms 50 and 51. That's the hearing notice. That's
11 important because I have also handed up to you code law
12 that deals with -- regulation 67-6-07.

13 It says, Each party is afforded at least 30
14 days notice of the hearing. The commission issued a
15 hearing notice to the parties, which includes the date,
16 place, time, and purpose of the hearing. That's the due
17 process. We get 30 days notice of a hearing under
18 67-607.

19 Also, under the Administrative Procedures Act
20 which controls administrative hearings, 1-23-320 (a), In
21 a contested case, all parties must be afforded an
22 opportunity for a hearing after notice of not less than
23 30 days, except proceedings before the Employment
24 Security Commission.

25 The notice shall include a statement of the

1 time, place, and nature of hearing, the statement of the
2 legal authority and jurisdiction, a reference to the
3 particular sections of the statutes and rules involved,
4 and a short, plain statement of the matter asserted.

5 That is to give due process to any party as to
6 what issues they have to prepare for. The reason I say
7 that is the commission then issued their hearing notice
8 to be in conformity with A.P.A. and their own
9 regulations.

10 If you look at the next document that is
11 numbered on the bottom, Your Honor, it's a Form 50. In
12 the work comp arena, a Form 50 is your complaint. A
13 Form 51 is your answer. That's how we do things at the
14 commission. Everything is done by a Workers'
15 Compensation Commission form.

16 On this Form 50, a claim is filed. There is
17 no allegation regarding any waiver or estoppel or laches
18 or anything. We did a 51. In our 51 we then raised the
19 fact that we are denying the case or denying that there
20 was an injury by accident.

21 If it is the claimant's position that we
22 waived the right to deny under 42-9-260, then under the
23 commission's own regulations, there is a provision --
24 and I will cite that to you, Your Honor. Give me one
25 second.

1 It's regulation 610, so it should be in that
2 group I gave you hopefully. Let me turn to it. I may
3 not have gotten 610. May I approach with a copy of the
4 code section?

5 THE COURT: Yes, sir.

6 MR. HUFF: Thank you, Your Honor.

7 (Hands to Court).

8 MR. HUFF: Basically once a 50 is filed and a
9 51 is filed, if there is a change, then you have to
10 amend your Form 50 to allege any new defense. We handed
11 up to you some case law that says waiver and any type of
12 estoppel or latches is an affirmative defense that you
13 have to raise. You have to give us notice of that so we
14 can prepare for that.

15 I have also handed up copies of the cases.
16 They are clipped together. The one on the top is the
17 Green case. Green versus City of Columbia, 427 S.E.2d
18 685. In that ruling the Court stated, Due process
19 requires that litigants receive notice of the issue to
20 be met on trial, hearing or appeal.

21 Only issues within the application for review
22 under 42-17-50, which is the appellate statute for the
23 Work Comp Act are preserved for appeal to the
24 commission.

25 Basically what that holds is you have got to

1 give me notice. Only what is in that notice am I
2 required to come in and to defend. The hearing notice
3 says this is a Form 50, 51 hearing. Nowhere is there
4 waiver or estoppel.

5 We get to the hearing, waiver and estoppel is
6 being alleged. Now, our position is what we want this
7 Court to do -- that's the bottom line -- is that we want
8 you to remand the case back to the Workers' Compensation
9 Commission so that we can have a hearing so that we can
10 now put in our defenses that the full commission says we
11 have a right to do, to put in the witness that will
12 testify that he was told specifically not to do this.

13 Now, the first reported injury that was handed
14 up to you by Mr. Safran says or that he's going to argue
15 that the insurance company was aware of all of this, and
16 they could have denied the case and not accepted the
17 case and thus their conduct, they waived it.

18 But, again, that argument is only good if
19 waiver was given to us, notice of that was given to us.
20 But it says on the 12-A that he was asked not to do it.
21 It's not that he was told not to do it, not that he was
22 directed not to do it, not that he was informed that he
23 is not supposed to do this and thus take him out of the
24 sphere of employment.

25 Our whole argument is we never got a chance to

1 come in and put our defense in. I think we have a right
2 to put that defense in. Section 42-9-260, if you look
3 at the code section that I handed up or if you want to
4 turn to it in the book, Your Honor, the title of that
5 code section is, Notice to Commission when payments have
6 begun, suspension or termination of payments.

7 It tells you under the code section and then
8 by regulation 67-504, 505, and 506 how you start
9 temporary total disability payments, how you must notify
10 the commission that you started so they can administer
11 the Work Comp Act.

12 If you terminate it within the first 150 days,
13 you can do it unilaterally without a hearing. You just
14 do it. You file the appropriate forms and you do it.
15 It gives you five grounds upon which you can do that.
16 One of those is a good faith investigation.

17 But then that code section goes on to say, If
18 you don't do it in the first 150 days, then you have got
19 to ask for a hearing and get permission and get an order
20 from the Work Comp Commission to do that.

21 It says you must have an evidentiary hearing
22 to show why. So that good faith investigation, if you
23 want to unilaterally stop it, it has nothing to do with
24 a Statute of Limitations upon which you must make a
25 decision to either accept or deny it, and then if you

1 don't do it, you lose it.

2 The statute doesn't say that. That is
3 strictly starting and stopping temporary total. It has
4 nothing to do with anything else. Our position is there
5 is not a 150-day rule, that when the Form 50 was filed
6 seeking further benefits for the neck, the cervical
7 problem, it was denied.

8 At that time we alleged it. From when the
9 first pleading was filed, the appropriate defense, that
10 this does not arise out of it. It is under the several
11 cases which I handed you which I don't think you really
12 need to read because we are not on the issue of whether
13 or not it was outside the sphere.

14 The whole issue here is were we entitled to
15 have a hearing, and did we have a right to put up our
16 defense? The full commission ruled that we did have a
17 right to do it after the 150 days, but their error of
18 law is that laches and estoppel applied.

19 Our position is it wasn't raised. It was
20 raised in a Form 58. A Form 58, Your Honor, which is in
21 the back of that code section, is what is known as the
22 prehearing brief.

23 The moving party must file a prehearing brief
24 15 days before the hearing setting forth who the
25 witnesses are going to be, what medical evidence they

1 would have, what are the legal issues and factual issues
2 and if there is anything unusual in the case.

3 On the 58 there is a statement that waiver or
4 estoppel should apply. Understand something, the law is
5 clear. It's not subject to interpretation. It's not
6 ambiguous or overly broad. I must be given 30 days, at
7 least 30 days notice of the issues to litigate.

8 This came 15 days before the hearing. There's
9 weekends involved. So I really didn't get the full 15
10 days. Even the 15 days does not meet the statute of 30
11 days notice.

12 Also, the regulation says that the prehearing
13 brief is not part of the record. It is not evidence.
14 It's just a document the commission uses to help them
15 narrow the issues when we go to a prehearing conference,
16 like we do in the court sometimes.

17 The proper way to raise waiver or estoppel was
18 in the pleadings by the regulation 67-610, I think I
19 quoted. If the issues change, you must amend your
20 pleadings. It wasn't done. We never got notice of it.

21 All we want this Court to do is to remand it
22 back and say, The commission was right. We have a right
23 to put a defense in. We have a right to due process, 30
24 days notice of all issues.

25 Let me have my hearing. Let me put my

1 evidence in. They may rule against me. They may say,
2 Mr. Huff, you didn't carry your burden of proof that he
3 was told. The man may get on the stand and say, He
4 never told me not to mess with that acid. We don't
5 know. I never got my day in court.

6 With that being said, I would be more than
7 happy to answer any question that you may have, Your
8 Honor.

9 THE COURT: What I'm hearing is if you would
10 have been given the 30 days notice, in other words, the
11 amended Form 50, that they were going to raise defenses
12 of waiver and laches --

13 MR. HUFF: Yes, sir.

14 THE COURT: -- then the hearing officer could
15 have decided waiver and laches applied, and you would
16 not have gotten your hearing. They would have complied
17 with the time notice, 30-day notice.

18 MR. HUFF: Well, the thing about laches or
19 estoppel, you have got to make a finding of fact. I
20 have got to be able to put evidence in. He has got to
21 put in evidence of prejudice and all these other things.
22 None of that was ever done.

23 THE COURT: Thank you.

24 MR. HUFF: Thank you.

25 THE COURT: Mr. Safran.

1 MR. SAFRAN: Your Honor, let me start by
2 saying that I am sitting here listening to this and
3 wondering if Mr. Huff and I are talking about the same
4 case. Frankly he has given you some stuff up there that
5 I think frankly takes the legs out of his argument
6 completely.

7 Let me start really by just giving you a
8 little background, and then I think I can point out the
9 legal errors or inadequacies of Mr. Huff's argument.
10 Basically we had a gentleman who was working out of
11 state. He had, as Mr. Huff said, some acid fall on him,
12 and he had multiple problems as a result of it.

13 The thing that I handed up and I think
14 certainly bears some scrutiny at the very top is a
15 document that is known as Form 12-A. It's the first
16 report of injury.

17 Your Honor, if you will look at the
18 highlighted portion on there, you will see it says,
19 Employee was asked not to touch or dismantle the
20 sulfuric acid system. So that is obviously the same
21 ground that Mr. Huff is now coming in some, I guess
22 year and a half after all this happened, and trying to
23 raise.

24 The time sequence was: The gentleman got hurt
25 on the 23rd of January. That document that I just drew

1 your attention to was filled out on the 24th of January,
2 the next day. It was in turn faxed up to the insurance
3 company on the following day, the 25th.

4 It was then sent to the commission.

5 Compensation began as of, I believe, the 31st of
6 January, effective all the way back, I think, to the
7 23rd or 24th. The proper form was filed showing the
8 commission that they had commenced payment.

9 During the next several months, and I don't
10 think this is anything that can be overlooked and the
11 commission made specific findings of fact about this,
12 that the carrier engaged in a course of conduct that
13 showed it was obviously accepting the case, that it
14 acknowledged liability.

15 Let me just give you a few of the particulars.
16 They are cited in finding of fact number six. If you
17 don't comply with treatment, benefits will be stopped.
18 Obviously if you are not accepting liability for the
19 claim, you don't even get to the compliance with
20 treatment.

21 How is his treatment related to the Workers'
22 Compensation claim of 1/23/06? Well, if there is no
23 liability, why should you care whether or not it's
24 related to the accident. Get the doctor to sign off on
25 the return to work and job description.

1 Well, again, the reason that is being done is
2 to see if you can put him back to work and stop the
3 compensation. If there is no liability, there's no need
4 to do this.

5 Your Honor, these are coming from documents
6 that I subpoenaed that came directly from the adjustor
7 who was handling this case. Another one, Once you get
8 the work status, go back to the employer and see if they
9 have got a job for him.

10 Again, it's completely inconsistent with the
11 notion that they don't owe the money because the only
12 way they recognize by the statement that they are going
13 to stop comp is if they put him back to work.

14 I don't want this man getting -- this man
15 sitting doing nothing while we are paying him. Again,
16 they are sitting there telling them -- this is as of
17 June of '06 -- we owe him the money. If he is going to
18 get it, I want him doing something with physical
19 therapy. That's what the context of that was.

20 They go on further -- and I'm not going to
21 tell you every one -- but here is another one that is
22 quite striking, I need to know when the doctor expects a
23 return to work and maximum medical improvement in
24 reference to, quote, our injury.

25 Your Honor, it was a litany of documents that

1 the commission, and I think anybody who would look at it
2 objectively said, This is clear that they have
3 acknowledged this case.

4 This is clear they have accepted liability.
5 They are paying him all along, and they are making
6 reference over and over and over again to their
7 obligation to pay and provide medical.

8 Now, the significance of all this is really
9 simple. Section 42-9-260 was amended back in 1996, and
10 so you will understand, I guess, why it's so important
11 is up to that date, if you -- if the carrier signed off
12 and issued what is known as a Form 15, agreement to
13 compensation, they were unquestioningly bound,
14 irrevocably bound, to pay compensation, regardless of
15 what they may have found out later.

16 In 1996 the statute was amended to provide
17 them a grace period, so that by agreeing to pay money --
18 because frankly when you issued or signed that
19 agreement, that was confirming you were paying that
20 weekly compensation. So once those things happened, you
21 were stuck with the case.

22 What this amendment allowed was a grace period
23 of 150 days so that you could start paying and not be
24 irrevocably bound during that 150-day grace period. How
25 do I come to that conclusion?

1 Frankly, look at the language of the statute,
2 and I quote to you and I think it's very plain and
3 unambiguous: May continue these payments for up to 150
4 days from the date the injury is reported without waiver
5 of any grounds for good faith denial.

6 What does that say? I think it's very obvious
7 that it does say, You can start. You have got a grace
8 period of 150 days where you don't lose any of your
9 defenses. However, once that grace period is over with,
10 that safe harbor is gone.

11 Now, why is it really the only way you can
12 interpret it? The whole purpose of the Form 15 has
13 historically been you start the money, and there is some
14 element of finality.

15 Now, if the legislature meant that you could
16 come in at any time later and raise those same defenses
17 that you were discovering during your grace period and
18 just chose not to anything about, where would the
19 finality be?

20 What would stop somebody from having defense
21 after defense they knew about from the get-go and
22 waiting until they have paid comp for three, four, five
23 years where you are talking about potentially hundreds
24 of thousands of dollars and, Oh, by the way, we are
25 going to deny the case, and we want all of our money

1 back.

2 In the law, Your Honor, there are statutes of
3 limitation, and there is a reason for it. Because it
4 establishes finality between the parties. Again, as I
5 cited in the brief I handed up to you, there was always
6 finality in a Form 15 and payment of the money.

7 It more or less established in cement
8 basically that the claim was accepted and commenced.
9 The legislature amended that slightly to give the
10 Defendants an opportunity to at least make an effort to
11 discover with reasonable diligence -- that's why they
12 gave them 150 days, about five months -- whether they
13 had a good faith reason to deny the case, and if they
14 had started it, they could stop it.

15 What can't be lost here is the very defense
16 that they come in, not 150 days later, not 250 days
17 later, not 350 days later, 450 days later, and want to
18 allege the same defense that is on the face of the
19 document that the carrier received two days after the
20 accident.

21 It's not something that was fraudulent. It's
22 not something that was concealed. It's not something
23 that was in any way hidden or obstructed. It's the same
24 thing that was on the face of that document I have
25 handed you.

1 I think the way you approach this is, number
2 one, I don't think there is any doubt -- and this is
3 where I filed an appeal -- that the commission erred as
4 a matter of law in not construing that statute to say
5 what it says.

6 Your Honor, I have cited a number of rules of
7 construction, but first and foremost, look at the plain
8 language. I think it's very clear. The other thing we
9 cannot lose sight of is we have to consider this
10 language in the context of the law.

11 What was existing? They are presumed to know
12 what the existing law is -- they meaning the
13 legislature. They are presumed to know what prior law
14 was. They are presumed to know judicial interpretations
15 of that law.

16 So obviously they are presumed to know that
17 prior to this amendment exactly how Forms 15 and paying
18 that compensation is being construed, which was, You are
19 bound.

20 They are also presumed to know that this is
21 somewhat of a departure, but yet we also have to presume
22 that they are trying to develop a consistent body of
23 law.

24 So how do we have that consistency, i.e., that
25 finality that has always been there with this if we

1 effectively disregard the language of the statute and
2 say, Oh, you can come in, God knows, when the cows come
3 home. You can wait five, years, six years. It doesn't
4 matter.

5 These folks waited 450 days, which is roughly,
6 what, about a year and 18 months, and sat on a
7 particular defense that they had absolutely clear
8 indication of from the very beginning.

9 I think when you look at their actions, I
10 think as a matter of law that statute resolves it.
11 Frankly, in this context before the Court today, I
12 believe it's an additional sustaining ground.

13 The commission in and of itself found, looking
14 at the evidence that was in the record -- which they
15 can't dispute. This is stuff that came out of their
16 file. This is not somebody coming in and embellishing
17 on it. It's not somebody trying to take any kind of
18 poetic license with what was said.

19 This is stuff out of their file. This is
20 their own actions. What they said was, Waiver, which is
21 something that is a voluntary relinquishment of a known
22 right and that can be implied or inferred from conduct,
23 waiver was obvious here because what did they do?

24 They kept on paying despite having full
25 knowledge of what this defense was from the very

1 beginning. They engaged in conduct, particularly these
2 statements and these different actions, that were
3 clearly inconsistent with a denial of the case.

4 They were embracing the dang thing, and
5 essentially, Your Honor, they were in these statements
6 asserting their rights, i.e., If you don't go to the
7 doctor, we can stop you.

8 We have got a right to control your medical.
9 I don't want you sitting at home while I'm paying you.
10 We need to know whether you can go back to work or not
11 so we can stop this comp.

12 How is any of that consistent with the notion
13 Mr. Huff comes in today and says, Oh, my God, we knew
14 from the very beginning we didn't have any liability in
15 this case whatsoever?

16 Laches effectively says the same thing. You
17 are sitting on your rights. They had this right.
18 Again, this is not something that was concealed. This
19 was the employer wrote it on the face of that document
20 from the very beginning.

21 I know Mr. Huff made this comment, and let me
22 just say this, he's a sharp guy. This ain't his fault.
23 The carrier is the one that did it. It's just like you
24 said to the young lady that was in here a little bit
25 earlier, When you take on a case and want to handle it

1 without assistance of counsel, to a point you are
2 responsible for your actions.

3 If you've got requests to admit that are due
4 and you don't comply with it, you are stuck with it.
5 Mr. Huff didn't get this case for a year and a half.
6 Well, you know what? He came in wanting to try to pick
7 up the pieces.

8 The problem is these people have made a bed
9 they cannot get out of. I mean, they have got to lie in
10 it at this point because their actions speak pretty dang
11 loud that they sat on their rights, they waived any
12 opportunity to say anything by going this length of
13 time, and on top of that statutorily they had their 150,
14 and they went well beyond it.

15 Let me point out now why I think a lot of what
16 was said is basically a good lawyer's attempt to try to
17 help the client, but again it seems to be running
18 contrary to the law, and here is why.

19 The very case that Mr. Huff handed up to you,
20 that Green case, that is a case where the commission or
21 the Court said the full commission could not come in and
22 change something that was not excepted to that occurred
23 at the lower level, i.e., if you got a ruling by the
24 single commissioner and you don't except to that ruling
25 to them as part of your appeal, right, wrong or

1 indifferent, it's the law of the case.

2 Your Honor, I handed up there a Form 30, which
3 is the appeal that was filed to the full commission. I
4 will sit here and tell you today, the best I can read
5 it, there is not one word about notice. There is not
6 one word about objecting to any kind of allegation of
7 waiver or laches or estoppel or anything else. There is
8 not one word about due process.

9 Frankly, it's inappropriate to come to this
10 Court and raise for the first time issues that were not
11 properly perfected to the full commission. I don't
12 consider myself to necessarily be a technocrat when it
13 comes to this argument.

14 I am not trying to put anybody, you know, and
15 hang them unnecessarily, but my point is these are all
16 capable folks. At this stage we have got to kind of
17 live with what we have more or less created up to now.

18 I hand that up because these are arguments
19 that Mr. Huff -- because I saw it in his petition and I
20 knew he was going to make -- and the problem is they are
21 not perfected appropriately to even be raised to this
22 Court.

23 There is nothing in there -- the other thing I
24 think I point out to you is he handed you up the
25 transcript, and I appreciate him doing that. If you

1 look at the transcript from the single commissioner's
2 hearing, there is not one peep raised about notice.
3 There is not one objection made about waiver. There is
4 not a word said about estoppel, laches or anything
5 else.

6 As you well know, from all the years you did
7 trial work, I think it's across the board, you've got to
8 make an objection in order for you to perfect your
9 grievance for the record. There is nothing there. They
10 have no objection to any of that stuff.

11 Frankly, like I say, I understand somebody
12 coming in trying to kind of pull the ox out of the
13 ditch, but I don't think it's possible at this point.
14 Because, again, we have by way of just our judicial
15 system rules that say you have got to object at the
16 first, you have got to except at the second, you can't
17 come to the third and start bringing up stuff that was
18 never raised as objections or exceptions.

19 That's why I handed that up to you. They are
20 not there. Now, let me say this. It was not a cursory
21 form that was filled in. There must be, I believe,
22 about 30 exceptions on there.

23 The problem is they don't raise these issues,
24 and as a result, it is clearly not appropriate to allow
25 them to come up today at this stage, which is now the

1 third level, and bring up things that have not been
2 preserved up to now.

3 Your Honor, basically I think I will sum it up
4 this way, and I want to just point out really quickly a
5 couple of things that Mr. Huff has said. He wanted to
6 talk about summons and complaints, Your Honor, in
7 worker's comp -- and there is a case that's cited in my
8 brief -- there is clearly not a requirement of all the
9 niceties that we have in law courts.

10 We don't have all these requirements of all
11 this pleading back and forth. Frankly, as the claimant
12 who is seeking benefits, I don't have an obligation to
13 raise defenses. I think basically I can request my
14 relief, and if I have a basis to raise, frankly I am
15 allowed to raise it.

16 I mean, if we want to take it to that extreme,
17 and I haven't heard this argued today, I don't think I
18 put in my Form 50 that there was this statutory
19 prohibition under 260. I haven't heard a word about
20 that. It's not required.

21 Basically it's a summary type of pleading,
22 and as a result, I don't have to go back and forth with
23 him doing my second and third and fourth amended Form
24 50. That just doesn't occur, and I think we both know
25 that.

1 As a result, all these things that he has
2 brought up today -- and I think in a vacuum they sound
3 great -- but you can't bring up notice today about, I
4 didn't get sufficient notice and I have lost due process
5 because it has never been raised before.

6 You can't bring up this whole thing about, I
7 didn't get my day in court, because, again, I don't
8 think that was the issue. I really don't think at this
9 stage it matters because there were no exceptions to the
10 crucial points, to this notice thing he raises, to
11 anything about due process or for that matter to
12 anything that had to do with this whole idea of
13 basically waiver and laches, which is what the
14 commission grasped.

15 There is nothing in there about that. Yet
16 they were on notice, clearly because Mr. Huff candidly
17 told you that prehearing brief was sent to them 15 days
18 before the hearing.

19 It wasn't like I showed up and said for the
20 first time, Oh, y'all have got problems on these
21 grounds. Again, look at the transcript. Counsel at the
22 time -- and it wasn't Mr. Huff -- but counsel at the
23 time didn't say anything. He didn't object to anything.

24 So let me just kind of -- and I know I have
25 probably taken longer than I would like to, but I don't

1 want you to think that somehow there has been this
2 egregious perversion of the system that I was hearing
3 kind of from what Mr. Huff was saying.

4 This was a normal case. The only thing
5 different is that basically the evidence was so solid in
6 these areas that I moved as a matter of law for the
7 commissioner to decide it.

8 Now, the legal point is what it is. But,
9 again, I don't want to understate that everything that
10 the commission in its ultimate order relied on to find
11 laches and waiver is undisputed.

12 What purpose is served by going back and
13 bringing in -- and I will tell you honestly. They were
14 going to bring in all these witnesses. If they are
15 coming in to testify about what amounts to a legally
16 dead and abandoned issue, what purpose does it serve?

17 If as a matter of law they are barred by
18 statute, what purpose does it serve? Frankly, if the
19 substantial evidence, as I have cited in my brief,
20 clearly says that there was waiver and laches, which is
21 on the face of this case, I mean, what good does do it
22 for somebody bringing in these guys to say, Oh, he was
23 told this or he was told that?

24 I could admit that to you and it wouldn't
25 matter. Again, you have got all these things that show

1 they knew about it and did nothing about it. They let
2 this money run on and on and on.

3 Basically here we are now in 2009, three years
4 after the accident, and they are now coming in saying,
5 We want to go back and start from square one even though
6 we basically knew what this story was from the very
7 get-go.

8 I think it smacks against just common sense,
9 and it certainly is not a fair thing. So I would ask
10 that you, number one, affirm the commission's finding
11 based upon substantial evidence, as well the applicable
12 law on waiver and laches.

13 Number two, reverse them to extent that an
14 additional sustaining ground would, in fact, be that the
15 statute in and of itself bars them coming in and being
16 able to say anything on a defense after 150 days,
17 particularly one that they knew about in the handwriting
18 of the owner from the very beginning.

19 THE COURT: Thank you. Thank you very much,
20 Mr. Safran. Mr. Huff.

21 MR. HUFF: Your Honor, I will try to be brief.
22 I really will try to be brief as I can. The problem is
23 with all due respect, I don't know which rabbit to chase
24 that Mr. Safran has thrown out here today. There is a
25 bunch of them running around.

1 Let me say this to you if I could. This is at
2 the hearing, and it's on page 4 of the transcript of
3 record which we have given you, what we do, Your Honor,
4 is we have a prehearing conference where we try to
5 narrow the issues.

6 Then we go on the record and the commissioner
7 cites, These are the issues that we have narrowed.
8 These are the issues that we are going to litigate
9 today. Okay?

10 If you don't have a copy, I would be more than
11 happy to give it to you, but there should be one up
12 there. I got one for both you and your clerk. It's
13 page 4 of the transcript. It's only 14 pages. Have you
14 got it, Your Honor?

15 THE COURT: Yes, sir.

16 MR. HUFF: It says the following: Part of the
17 record, with the exception of self-serving declarations
18 and unstipulated medical reports, that's what the
19 commission filed as part of the record.

20 The claimant takes the position he suffered
21 injuries to his neck, left arm, psychological injuries.
22 The stigma is skin loss. He seeks payment of all
23 causally related medical treatment received to date.

24 He seeks an award of compensation for
25 temporary total from January 28, 2006, and forward. He

1 seeks additional medical treatment from Dr. Johnson,
2 Dr. Keck (phonetic), and Dr. Hill. He further takes the
3 position that the denial of this case comes more than
4 150 days after the defense entered into a Form 15
5 agreement.

6 Now, the defenses: Denied an injury by
7 accident arising out of and in the course of employment.
8 They take the position that a Form 15 is not binding.
9 They further take the position that claimant committed a
10 forbidden act. Is that correct?

11 Mr. Safran: Your Honor, I think that is
12 correct.

13 Mr. Mauldin: Yes, Commissioner.

14 Tell me anywhere where Mr. Safran says, I'm
15 raising waiver. I'm raising estoppel. I'm raising
16 laches. It's not there. Does it get any plainer?
17 No, Your Honor. He forgot about laches and estoppel
18 and waiver and all these other things. He didn't do
19 that.

20 Then he goes over on the record, after he
21 starts asking some questions, and there has been no
22 ruling that we have no right to come in and defend it.
23 Then on page -- I think it's page 8, Your Honor.

24 On page 8 Mr. Safran says, Before we go any
25 further, I think we talked off the record and I

1 certainly neglected to do this, but I would like to put
2 a motion on the record just for the purpose of
3 preservation.

4 I believe that statute 42-9-60 --

5 COURT REPORTER: An you slow down a little
6 bit, please.

7 MR. HUFF: I'm so sorry. I lived in New York
8 for a while and learned to talk fast. I apologize.
9 Thank you.

10 I think we can take the position that there is
11 no ambiguity as far as the language is concerned, and he
12 didn't want to let us put up any defense. Then he asked
13 my co-counsel, Mickey Mauldin, What are you talking
14 about?

15 Then he gave his argument. Then the
16 commissioner ruled basically that, You cannot put up a
17 defense. I am going to grant your motion. It's pretty
18 much you can't put up a defense. It's a summary
19 judgment motion. That's the best I can liken it to.

20 Then regulation 67-215 (b) (2) says, We will
21 not entertain or address a motion for summary judgment,
22 67-2-15 (b) (2), but he did and would not let us put up
23 a single, solitary defense.

24 Now, Mr. Safran also says on our Form 30 we
25 never talked about laches and we never talked about

1 these things. It's ground number 16. Did the hearing
2 commissioner err in concluding as a matter of law that
3 so much of conclusion of law number 7 (c) about allowing
4 the request for relief is particularly inappropriate,
5 whereas here, the Defendants have engaged in a course of
6 conduct which unquestionably satisfies the criteria for
7 both waiver and laches.

8 We raised that argument before the commission,
9 clearly raised it in number 16. He never raised it in
10 his pleadings. He is right. There is no necessity or
11 nicety that you have in the court system, but still you
12 have got to tell me what I am going to have to address
13 and what I have to defend.

14 Yes, we have witnesses to come in to say what
15 happened. Now, realize what the 12-A -- may I approach
16 again to make sure you have one? Do you have one? Do
17 you see that? If not, I have got an extra one. Let me
18 give you one.

19 When this first report of injury was put out
20 by the employer, do they know the law? No. Are they
21 bound by the law? Yes. Do they know the law and all
22 the niceties of the law? No, they don't.

23 What they said was, The employee was asked not
24 to touch. That's what they said, was asked not to
25 touch. Now, does that rise to the level of a prohibited

1 act that takes you outside the sphere of employment? We
2 don't know. We never got to put up a single, solitary
3 witness.

4 The law says, under Pratt versus Morris
5 Reuben, 594 S.E.2d 272, the controlling question in this
6 case is whether petitioner left the scope of his
7 employment by violating employer's direct instruction
8 not to drive the company vehicle, a direct instruction.
9 This says, Was asked. We don't know. We never got to
10 put up a defense.

11 Wade versus Berkeley County, 498 S.E.2d 684:
12 In workers' compensation claims if substantial evidence
13 shows an employee acted against express prohibition of
14 employer, the employee would have exceeded the scope of
15 his employment and would be barred from receiving work
16 comp benefits. We never got to put up a witness. The
17 commission wouldn't let us.

18 Under the case of Wright versus Bi-Lo, 442
19 S.E.2d 186, The controlling question in the present case
20 is whether Wright stepped outside the scope of his
21 employment by violating the store's rule on shoplifting.

22 Your Honor, it says the following -- and this
23 is why it's a finding of fact, and we have the right to
24 put up evidence -- not every violation of an order given
25 to a workman will necessarily remove him from the

1 protection of the Work Comp Act.

2 Certain rules concern the conduct of the
3 workman within his sphere of his employment, while
4 others limit the sphere itself. A transgression of the
5 former class leaves the scope of his employment
6 unchanging and will not prevent the recovery of
7 compensation.

8 While a transgression of the latter sort
9 carries the workman outside the sphere of his employment
10 and compensation will be denied, when an employer limits
11 the sphere of employment by specific prohibitions,
12 injuries incurred while violating these prohibitions are
13 not in the scope of employment and therefore not
14 compensable. We never got a chance.

15 Also, if you look at 42-9-260 and you look at
16 the full code section, there is another part of it, too.
17 That code section talks about the first 150 days on how
18 you can stop it unilaterally.

19 But then it goes on to say, (f), after the
20 150-day period has expired, the commission shall provide
21 by regulation the method and procedure by which benefits
22 may be suspended or terminated -- and here it is -- for
23 any cause.

24 It could be a good faith denial cause. It can
25 be any cause after the 150 days. So we are not limited

1 by the first 150. That rule -- we admit we did not do
2 it with the first 150 days, and we couldn't stop it. We
3 are under the (f) part of it.

4 He says we had proof or had knowledge from the
5 get-go that we were prohibited about this prohibition
6 given to the employee, not really. The 12-A says,
7 Employee was asked not to dismantle. What does that
8 mean?

9 This is a no-fault state. You get worker's
10 comp. There are very small limits or exceptions. The
11 exception is when you have got a specific prohibition
12 that takes you outside the sphere of that employment.
13 We never got the right to put up evidence.

14 Also, understand something, too, 42-9-260 only
15 deals with compensation benefits under the Work Comp
16 Act. There are other benefits under the Work Comp Act,
17 such as medical benefits, prosthetic benefits, death
18 benefits.

19 There's all types of benefits -- survivor
20 benefits. There's all types of different benefits.
21 There is only dealing with compensation benefits. It's
22 not the totality of the act.

23 I don't know how you get around Regulation
24 67-610, after a request for hearing, Form 50, and
25 answer, Form 51, which you have a copy of Your Honor,

1 are filed with the commission, an amended form must be
2 filed. Must is mandatory, like the word shall.

3 You have no option. It's not something you
4 may do. It says you must file to indicate a change in
5 the nature of the claim, relief requested or another
6 defense.

7 When we denied the claim arising out of and in
8 the course of employment and he wanted to raise waiver,
9 estoppel, laches, any of these defenses he wanted to
10 raise, he must do it by a Form 50.

11 He doesn't have to file five or ten of these
12 things. He files one. We then see it. We then file an
13 amended 51 saying why waiver, latches or estoppel may
14 not be involved, and then we get a notice of a hearing
15 on the 50 and 51, and we go forth and try it.

16 If you look at the order of the commissioner
17 and the full commission, there's certain elements you
18 have to prove on waiver, estoppel or laches. None of
19 the findings of fact say that, that he met all of these
20 things, that there was prejudice, et cetera or changed
21 his position.

22 As a matter of fact, he has never changed his
23 position and there is no prejudice, and I will tell you
24 why, Your Honor. To this day he is still getting
25 medical treatment. He is still getting compensation.

1 Nothing has changed. There has been no prejudice on his
2 part.

3 My whole argument to you would be to remand it
4 back for a hearing, let me put up my defenses. Whether
5 I win or loose, I don't know. I have the right to put
6 up a defense, and 42-9-260 is not a Statute of
7 Limitations. All these other things that have been said
8 to you are just honestly, with all due respect, are
9 rabbits running down the hill.

10 I would like to hand up to you and I may have
11 handed it up, but I want to make sure you have it, Your
12 Honor, the case of Clyde versus Bradford, Whitehead
13 versus State, and Strickland versus Strickland. These
14 are three cases that says if you are going to raise an
15 affirmative defense, you have to raise it.

16 I have nothing further, Your Honor.

17 THE COURT: Here is your book.

18 MR. HUFF: Yes, sir. Thank you, Your Honor.

19 THE COURT: Thank you very much.

20 MR. SAFRAN: Your Honor, as these are cross
21 appeals, I guess I need to respond very quickly to that,
22 and I will put my clock on myself. Let me just make
23 some quick points.

24 Mr. Huff pointed to Number 16. That exactly
25 validates what I was arguing to you. If you read the

1 exception, it excepts to the fact that the commission
2 acknowledged those doctrines with saying that it was
3 inapplicable.

4 However, Your Honor, the bottom line is it did
5 not -- and this is what I told you before -- it doesn't,
6 the transcript doesn't, say in any type of language:
7 Your Honor, I object to you considering the doctrines of
8 waiver, laches because they were not properly raised.
9 That wasn't in the transcript, and that's not in the
10 exceptions.

11 That's my point, as I told you from the
12 beginning. This is an acknowledgment that they
13 understood they were on the table, but they disagreed
14 with their application. Again, I think that validates
15 what I said.

16 The other thing, Your Honor, that I want to
17 point out, the 67-610 that he keeps arguing, there is
18 nowhere in the transcript or in the exceptions to the
19 full commission where that was raised. It wasn't
20 brought up.

21 The other thing I would point out to you is
22 this, and this is in my brief because I anticipated his
23 argument. His argument where he comes in and is trying
24 to say, Read down in the rest of the statute 260 where
25 it says for any reason, two things.

1 Number one, that wasn't raised to the full
2 commission either. It was raised to the single
3 commissioner, and I will say that. It was not raised to
4 the full commission. Again, it's not appropriate for
5 this level.

6 But beyond that, as I say in my brief, we have
7 to presume the legislature was trying to achieve a
8 consistent body of law. How on the one hand are they
9 basically saying in the first part of the statute that
10 you got 150 days.

11 If you believe this argument that Mr. Huff is
12 making, go to the later part of the statute and say, Oh,
13 we really didn't mean that. You can come in at any time
14 and raise it.

15 I mean, those two things are as obviously
16 conflicting as anything you can imagine. They are at
17 polar ends of the spectrum. I put in my brief exactly
18 why you have -- because you have to look at the
19 historical context.

20 Lastly, despite what my friend says, waiver
21 doesn't require prejudice. That's not an essential
22 element. On the other hand, laches, if prejudice is, in
23 fact, a prerequisite, I think what is getting lost in
24 the mix here -- and don't think for a minute it's not
25 going to happen -- my gentleman has probably been paid

1 as of right now somewhere in the range of between 75 and
2 a hundred thousand dollars worth of weekly money.

3 His medical bills, because he had burns
4 remember, are probably in the neighborhood in the tens
5 of thousands. Do you think for one minute that if they
6 were to find a way to be able to deny this case, they
7 are not going to be looking for him to pay it all back?

8 That's in my brief, too. I don't think we can
9 ignore that fact. Certainly the delay that went on is
10 highly prejudicial. Your Honor, basically the full
11 commission went into a discussion in their conclusions
12 of law about the doctrine of laches and waiver.

13 It made that conclusion. If the substantial
14 evidence supports it, I think in that issue it should
15 be affirmed, and I would ask the same relief I already
16 did.

17 THE COURT: Thank you. Thank you, Mr. Safran.
18 Do y'all have proposed orders, Mr. Huff, Mr. Safran?

19 MR. SAFRAN: I think I handed it up in the
20 brief, but I can convert it.

21 MR. HUFF: We can prepare one for Your Honor.

22 THE COURT: Will you just e-mail them to my
23 law clerk, please.

24 MR. HUFF: I will tell you that 67-701
25 regulation, you do not have errors or assignments

1 anymore. You do questions presented is what they do
2 now. Thank you, Your Honor.

3 THE COURT: Thank y'all very much.

4 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

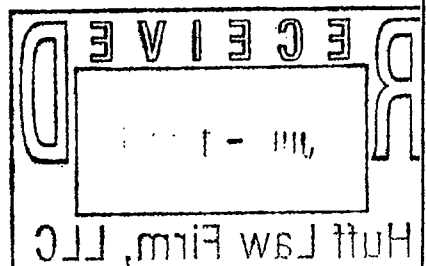
I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Civil Court for Lexington County, South Carolina on the 2nd day of February, 2009.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 28, 2009

L Coconut Pantsari

Court Reporter



REPRINTED WITH PERMISSION OF ILABO

01/25/2006 11:30 AM

12,000
28,550

South Carolina Workers' Compensation Commission
P. O. Box 1715, 1612 Marion Street
Columbia, South Carolina 29202-1715
(803)737-5700

WC File # 0600334
Carrier File # W082494-G09
Carrier Code # 0335
Employer FEIN 562102809

WILLIAM JERVEY

Claimant's Name

SSN

Address Lexington SC 29072

Home Phone # (803) 957-8733

Work Phone #

Preparer's Name

KATHY L. CREWS

Phone #

MARTINT ENVIRONMENTAL

Employer's Name

Address 175-B RICH-LEX DR LEXINGTON SC 29072

Insurance Carrier GENERAL CASUALTY INSURANCE CO

Phone #

(336) 412-3300

Date of Injury: 1/23/2006

Date of Notice to Employer of Injury: 1/23/2006

1. Payment of Temporary Compensation (choose A, B, or C) Check one: ☒ Initial period ☐ Additional period ☐ Corrected compensation rate

A. Temporary Total at the compensation rate of \$586.11 per week. For this period of disability, disability began on 1-24-06 and the date of first payment was 1-31-06

B. Temporary Partial at the compensation rate of _____ per week. Note: When Temporary Partial compensation rate will vary, report first payment here.

Supplement throughout the period of Temporary Partial compensation by filing Form 16S with the Form 18, which shall be filed six months after the date of injury and each six months thereafter until the file is closed. For this period of disability, disability began on _____ and the date of first payment was _____

Calculation of Temporary Partial rate:

Average weekly wage before injury _____
Current weekly wage _____
Difference in wages before injury and now _____
x .6667 x _____
Temporary Partial Compensation Rate _____

C. Salary in lieu of temporary total / temporary partial (circle one) compensation in the amount of _____ began on _____ and the date of first payment of salary in lieu of temporary compensation was _____

THIS SECTION MAY BE USED ONLY WITHIN 150 DAYS AFTER NOTICE TO EMPLOYER OF THE INJURY.
ATTACH DOCUMENTATION AS TO THE REASON FOR THE TERMINATION.

11. Termination of Temporary Compensation Temporary compensation payments were stopped on _____ for the following reason:

- ☐ Claimant has returned to work at least 15 days and no temporary partial compensation is due
☐ Claimant agrees he/she is able to return to work and has signed a Form 17.
☐ Based on a good faith investigation, the claim is denied. Reason for denial: _____
☐ Claimant has been released to return to work without restrictions and employment has been offered.
☐ Claimant has been released to return to work at limited duty and employer has provided limited duty work consistent with the terms upon which the Employee has been released.
☐ Claimant has refused medical treatment, examination, or evaluation. Note: Benefits must be resumed if claimant accepts the treatment, examination, or evaluation. Additional report must be filed if compensation is resumed.

I certify that this form has been served on the claimant per R.67-21 1.

KATHY L. CREWS

Signature of Claims Administrator

S.C. WORKERS' COMP. COMM.

2/2/06

Date

111. Notice to Injured Worker or Legal Representative when Temporary Compensation Has Been Stopped:

The employers representative may stop temporary compensation within 150 days of the date of notice of injury for the above reasons. However, if you believe that temporary compensation should not have been stopped, you may request a hearing by signing below and returning this form to the SCWCC Judicial Department at the address at the top of the form. A hearing will be held within 60 days of receipt of your request to determine if temporary compensation has been properly terminated.

MY SIGNATURE BELOW INDICATES THAT I DO NOT AGREE WITH THE TERMINATION OF TEMPORARY COMPENSATION. I REQUEST A HEARING TO DETERMINE WHETHER I AM ENTITLED TO FURTHER TEMPORARY COMPENSATION PAYMENTS.

Check one: Form 115(1) ☐ has ☐ has not been received.

Signature of claimant or legal representative

Date

Employers representative must complete and file Form 16 with Claims Department within ten days after compensation begins or is terminated. Employers representative must serve the Form 15 on the claimant when compensation begins per R.67-21 1. Employers representative must prepare and serve Form 20 within thirty days of beginning compensation per R.67-1603. Employers representative must serve per R.67-211 two copies of the Form 15 on claimant immediately on termination of compensation with documentation attached as to the reason for the termination. Injured worker may contest termination of compensation by completing section III of the Form 15 and filing it with Judicial Department.

WCC FORM # 15 REV. DATE 3/97

TEMPORARY COMPENSATION REPORT

02/17/2006 10:05 AM

South Carolina Workers' Compensation Commission
P.O. Box 1715 -1612 Marion Street
Columbia, South Carolina 29202-1715
(803)737-5700

File # 0600334
Carrier File # Q082494-G09
Carrier Code # 0335
Employer FEIN 562105809

WILLIAM JERVEY

Claimant's Name

Address 803-957-8733 City State Zip 29072
Home Phone # 803-796-1190

Work Phone #
KATHY L. CREWS
Preparer's Name

MARTINT ENVIRONMENTAL

Employer's Name

Address 175-B RICH-LEX DR LEXINGTON SC 29072
City State Zip
GENERAL CASUALTY INSURANCE CO
Insurance Carrier

336-412-3322
Phone #

1 - Date of Injury: JAN 23, 2006
month day year

2. Total Weeks of Compensation Paid: 78

3. Type of Compensation Paid (TP or TT)/Periods of Payment:

Type: TTD From: 1-24-06 To: 7-23-07
Type: From: To:
Type: From: To:

4. Date of First Payment: 2-2-06
month day year

5. Total Amount Paid (a) Compensation: \$45,716.58
(b) Medical (Include Nursing, Hospital Drugs, Etc.)- \$39,716.04

6. Informal Conference is Requested: ☐ yes ☒ no
(check one)

7. Use these lines to send a memo to the Commission:

KATHY L. CREWS 336-412-3322
Employer's Representative Phone#

7-22-07
Date

SCWCC
JUL 27 2007
JUDICIAL

Type or print all information. File this form 6 months after the alleged injury date and each 6 months until the Commission's File is closed. Form 18 must be filed whether or not compensation is ongoing. Check "yes" after number 6 to request an informal conference. Refer to R.67-413, R.67-507, and R.67-804 for further information.

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 0600334

Carrier File #

Carrier Code #

Employer FEIN

William Jervey Jr.
Claimant's Name

SSN

29072

Address City State Zip

957-8733 796-1190

Home Phone Work Phone

Martint Environmental, Inc
Employer's Name

175-B Rich-Lex Drive Lexington SC 29072

Address City State Zip

Southern Guaranty Insurance Co. c/o General Casualty

Insurance Carrier

Terry M. "Mickey" Mauldin, Esquire Huff Law Firm-P.O. Box 1935, Irmo, South Carolina 29063

Preparer's Name

Address

(803) 252-2232

Phone #

Provide the information requested in the space provided. Use an additional sheet, if necessary. Type or print all information.

☒ Injury by Accident ☐ Occupational Disease ☐ Both Injury by Accident and Disease ☐ Other

1. Date of accident: 01/23/06 2. AWW: \$879.13 Comp. Rate: \$586.11

3. Type of injury and body part(s) Alleged neck, left arm, skin, psychological component

4. Facts in controversy: Whether the Claimant sustained a compensable injury; if so, the extent of such injuries; Whether claimant is entitled to further medical care; Whether the claimant is entitled to temporary total disability; Whether Claimant's injury arose out of and in the course of his employment

5. Legal issues involved See No. 4.

6. Unusual problems:

7. Witnesses (designate if expert)* The following may be called to testify: Larry Offill, III, Clay Watkins, Eric Caughman, Clyde Wafford, Robert Hinson, Clint Wilkie, Any other Representative(s) of the Employer/Carrier; The Claimant; Any witness 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: Photographs of work site, Contractor significant incident report (CSIR), Claimant's Personnel/Pay Records/Reports, Invoices of Amerochem Corporation, Verizon Wireless Usage Detail Records, Claimant's deposition transcript

9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance) Defendants rely on medical records submitted by the Claimant.

10. Name, address, and specialty, if any, of the treating physician: Dr. Robert Deal-Columbia, SC; Dr. Michael Peck-Chapel Hill, NC

11. Impairment rating(s); body part(s); physician and date of opinion:

SIGNATURE Terry M. "Mickey" Mauldin, Esquire

DATE October 2, 2007

DATE OF HEARING: October 9, 2007

TIME OF HEARING: 10:30AM

On behalf of ☐ Claimant ☒ Employer/Carrier

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. Commissioners reserve the right to admit expert witnesses at hearings.

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

William Jervey, Jr.,

Claimant,

vs.

Martint Environmental,

Employer,

and

Southern Guaranty Insurance Co.
c/o General Casualty,

Carrier.

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

WCC FILE NO. 0600334

NOTICE OF WITNESSES AND
WRITTEN REPORT(S)/PHYSICIAN
OR OTHER EVIDENCE TO BE
INTRODUCED ON BEHALF OF
THE EMPLOYER/CARRIER

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
ANDREW N. SAFRAN, ESQUIRE, ATTORNEY FOR CLAIMANT:

YOU ARE HEREBY NOTIFIED THAT THE employer/carrier, pursuant to the
provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section
1-23-330 (1976, as amended), herewith submits the following reports/physicians or other
evidence on behalf of the employer/carrier, to wit:

Medical Provider	Date	Page No.

Exhibits:

1. Photographs of work site
2. Contractor significant incident report (CSIR)
3. Claimant's Personnel/Pay Records/Reports
4. Invoices of Amerochem Corporation
5. Verizon Wireless Usage Detail Records
6. Claimant's deposition transcript

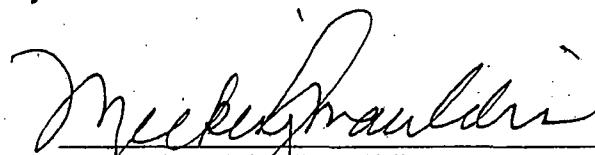
YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-
examination; and, should you desire to exercise said right, you are to forthwith schedule the

deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER HEREBY NOTIFIED that a copy of said reports are served on the opposing counsel/party herewith on behalf of the Defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the employer/carrier:

Larry Offill, III
Clay Watkins
Eric Caughman
Clyde Watford
Robert Hinson
Clint Wilkie
Any Other Representative(s) of the Employer/Carrier
The Claimant
Any witness listed by the Claimant



Terry M. "Mickey" Mauldin
HUFF LAW FIRM, LLC
Post Office Box 1935
7244 Woodrow Street
Irmo, South Carolina 29063
(803) 252-2232

Attorneys for Defendant(s)

October 2, 2007

ANDREW N. SAFRAN, LLC
ATTORNEY AT LAW
1400 PICKENS STREET, SUITE 104
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE 803 256 6689
FACSIMILE 803 799 1003

MAILING ADDRESS:
POST OFFICE BOX 12089
COLUMBIA, SOUTH CAROLINA 29211

September 26, 2007

HAND DELIVERED

The Honorable David W. Huffstetler
Chairman
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

RE: William T. Jervy, Jr. v. Martint Environmental, Inc. and
General Casualty Insurance Company
W.C.C. File No.: 0600334
Date of Hearing: October 9, 2007 (10:30 a.m.) - Columbia

Dear Commissioner Huffstetler:

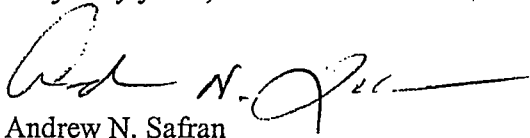
Enclosed please find the Claimant's Pre-Hearing Brief and APA Submission Form relative to the above-captioned matter, which is currently scheduled for a hearing on Tuesday, October 9, 2007 at 10:30 a.m. in Columbia, South Carolina. As you will note, the primary issues requiring your determination relate to Mr. William T. Jervy, Jr.'s entitlement to: (a) further medical treatment for a cervical injury component which his authorized treater, as well as Dr. Donald R. Johnson, II, have attributed to the consequences of his compensable injury; and (b) continued temporary total disability compensation. Additionally, while Defendants are now attempting to disavow liability for Mr. Jervy's claim, we respectfully submit this belated/untimely position is neither factually nor legally viable.

By copy of this letter, I am serving copies of the enclosed forms, as well as the documents identified therein, on Mickey Mauldin, counsel for Defendants. As always, in the event he has any questions or comments concerning this matter, I invite him to contact me.

Thank you for your cooperation.

With kindest regards, I am

Very truly yours,


Andrew N. Safran

ANS/rmb

Enclosures

Cc: Terry M. "Mickey" Mauldin, Esquire

South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 0600334

Carrier File # _____

Carrier Code # _____

Employer FEIN _____

William T. Jervey, Jr.

Claimant's Name

SSN

Martint Environmental, Inc.

Employer's Name

Address

City

C 29072

State

Zip

175-B Rich-Lex, Lexington, SC 29072

Address

City

State

Zip

()
Home Phone

()
Work Phone

General Casualty Insurance Company
Insurance Carrier

Andrew N. Safran, Esquire
Preparer's Name

Post Office Box 12089, Columbia, SC 29211
Address

803-256-6689
Phone #

Provide the information requested in the space provided. Use an additional sheet, if necessary. Type or print all information.

☒ Injury by Accident ☐ Occupational Disease ☐ Both Injury by Accident and Disease ☐ Other

1. Date of accident January 28, 2006 2. AWW: \$To be determined. Comp. Rate: \$To be determined.
3. Type of injury and body part(s) Exposure to acid, which has produced: (a) cervical injury (including left radicular symptoms) requiring further treatment; (b) psychological injury component; and (c) scarring and/or skin loss.
4. Facts in controversy: Whether Mr. Jervey: (a) requires continued treatment for these causally related injury components [We say he does per Drs. Johnson, Peck and Deal]; (b) remains temporarily total disabled [We say he does per Dr. Peck]; and (c) has satisfied his burden of proof relative to the causal relationship of his cervical component to the consequences of his compensable injury [We say he has given opinions expressed by Drs. Peck and Johnson]?
5. Legal issues involved: Entitlement to: (a) continued temporary total disability compensation per S.C. Code Ann. Section 42-9-10 (1976, as amended); and (b) further medical benefits, including treatment through Dr. Johnson, per S.C. Code Ann. Section 42-15-60 (1976, as amended). Additionally, we submit Defendants' belated/untimely attempt to deny this claim: (a) has no credible factual basis; (b) is barred by several legal doctrines, including waiver, estoppel and laches; and (c) appears to be a punitive response to Mr. Jervey's efforts to seek treatment of his cervical injury component, particularly in view of the circumstances surrounding assertion of their current position.
6. Unusual problems: Defendants failed/declined to identify current defense for approximately 15 months (paying weekly disability compensation and providing treatment through several specialists), despite full knowledge of all relevant facts. This belated/untimely effort will necessarily extend the length of the upcoming hearing.
7. Witnesses (designate if expert)* Mr. Jervey; Mr. Clyde Wofford; We reserve the right to call any witness referenced in previously subpoenaed documents or discovery depositions of employer's principals. We similarly reserve right to submit any documents obtained in response to these subpoenas.
8. Exhibits: Medical evidence identified in #9; 7/22/07 Form 18 (APA)(1 pg.); 9/25/07 itemized statement from Post Trauma Resources (APA)(4 pgs.); 12/11/07 - 6/21/07 reports (with attachments) from CorVel Corporation (APA)(100 pgs.).
9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance) 1/23/06 - 5/24/07 reports/notes from University of North Carolina Hospitals/North Carolina Jaycee Burn Center (APA)(36 pgs.); 5/15/07 report of Dr. Donald R. Johnson, II of Southeastern Spine Institute (APA)(2 pgs.); 3/21/07 report of Dr. Lawrence R. Lough (APA)(1 pg.); 2/7/07 - 8/7/07 reports of Dr. Deal (APA)(11 pgs.); 6/7/06 - 9/11/07 reports of Nicholas Lind, PsyD. (APA)(55 pgs.); 3/16/06 - 11/29/06 reports/notes of Dr. Sale A. Estefano (APA)(8 pgs.).
10. Name, address, and specialty, if any, of the treating physician: Michael D. Peck, M.D., UNC Hospitals, Chapel Hill, NC (burn specialist); Roger A. Deal, M.D., Post Trauma Resources, Columbia, SC (psychiatrist).
11. Impairment rating(s); body part(s); physician and date of opinion: Premature.

SIGNATURE

Ad N. Def

DATE OF HEARING: October 9, 2007

TIME OF HEARING: 10:30 a.m.

On behalf of ☒ Claimant ☐ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.

* Commissioners reserve the right to admit expert witnesses at hearings.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
William T. Jervey, Jr.,)
)
Employee,)
)
vs.)
)
Martint Environmental, Inc.,)
)
Employer,)
)
and)
)
General Casualty Insurance Company,)
)
Carrier.)
)

BEFORE THE
SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

CERTIFICATE OF SERVICE
WCC FILE NUMBER: 0600334

Roxanne M. Branham, being first duly sworn, says that she is a legal assistant for the firm of Andrew N. Safran, LLC Attorney at Law, with offices at Columbia, South Carolina, that on the 26th day of September, 2007 she mailed the documents listed below to the persons listed below, by depositing in the United States mail with sufficient postage affixed thereto.

Documents: Pre-Hearing Brief and APA Submission Form

To: **HAND DELIVERED**
The Honorable David W. Huffstetler
Chairman
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Terry M. "Mickey" Mauldin, Esquire
Huff Law Firm, LLC
Post Office Box 1935
Irmo, South Carolina 29063

This 26th day of September, 2007.


Roxanne M. Branham
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

William T. Jervy, Jr.,)

Employee,)

vs.)

Martint Environmental, Inc.,)

Employer,)

and)

General Casualty Insurance Company,)

Carrier.)

BEFORE THE
SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NUMBER: 0600334

NOTICES OF WITNESSES AND
WRITTEN REPORT(S) OF PHYSICIAN
OR OTHER EVIDENCE TO BE
INTRODUCED ON BEHALF OF
WILLIAM T. JERVEY, JR.

**TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION and
TERRY M. "MICKEY" MAULDIN, ESQUIRE, ATTORNEY FOR DEFENDANTS:**

YOU ARE HEREBY NOTIFIED that the Claimant, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330 (1976, as amended), herewith submits the following reports/physician or other evidence on behalf of the Claimant, to wit:

<u>NAME OF REPORT(S)/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORT</u>	<u>PAGE NOS.</u>
APA 1: Reports/notes from University of North Carolina Hospitals/North Carolina Jaycee Burn Center.	1/23/06 – 5/24/07	1 – 36
APA 2: Report of Dr. Donald R. Johnson, II	5/15/07	37 – 38
APA 3: Report of Dr. Lawrence R. Lough	3/21/07	39
APA 4: Reports of Dr. Roger A. Deal	2/7/07 – 8/7/07	40 – 51
APA 5: Reports of Nicholas Lind, PsyD.	6/7/06 – 9/11/07	52 – 106
APA 6: Reports/notes of Dr. Sale A. Estefano	3/16/06 – 11/29/06	107 – 114

APA 7: Itemized Statement from Post Trauma
Resources

9/25/07

115 – 118

APA 8: Reports (with attachments) from Corvel
Corporation

12/11/07 – 6/21/07

119 – 218

APA 9: Form 18

7/22/07

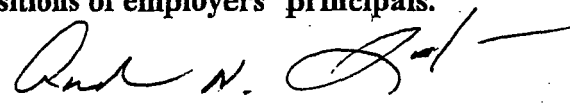
219

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred herein, or photocopies received from said physician/others, will be submitted to the South Carolina Workers' Compensation Commission at the time of the hearing on this claim for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant:

Mr. Jervey; Mr. Clyde Holford; We reserve the right to call any witness referenced in previously subpoenaed documents or discovery depositions of employers' principals.

By: 

ANDREW N. SAFRAN

P.O. Box 12089

Columbia, S.C. 29211

Phone: (803) 256-6689

ATTORNEY FOR CLAIMANT

Columbia, South Carolina
September 26, 2007

INVOICE

Post Trauma Resources
1700 Laurel Street
Columbia, SC 29201

Date: 09/25/2007

Client: William Jervy Jr
Diagnosis: 309.81
Provider Name: Nick Lind
Provider Tax Id: 670805600
Provider License: PhD

William Jervy Jr

Lexington, SC 29072

Date	Charges And Credits	Amount	Your Portion
05/18/2006	Psychiatric diagnostic interview examination	208.00	
05/18/2006	Report Preparation and Writing	250.00	
05/18/2006	Psychological Testing(3 hours)	285.00	
05/18/2006	Payment made by General Casualty (Ref #: 270320)	-888.70	
05/18/2006	Adjustment	-74.30	
06/07/2006	Individ. psych., insight oriented; 45-50 minutes	138.00	
06/07/2006	Payment made by General Casualty (Ref #: 270320)	-124.20	
06/07/2006	Adjustment	-13.80	
06/14/2006	Individ. psych., insight oriented; 45-50 minutes	138.00	
06/14/2006	Psychiatric diagnostic interview examination	300.00	
06/14/2006	Payment made by General Casualty (Ref #: 71708)	-124.20	
06/14/2006	Adjustment	-13.80	
06/20/2006	Individ. psych., insight oriented; 45-50 minutes	138.00	
06/20/2006	Payment made by General Casualty (Ref #: 273167)	-124.20	
06/20/2006	Adjustment	-13.80	
06/29/2006	Individ. psych., insight oriented; 45-50 minutes	138.00	
06/29/2006	Payment made by General Casualty (Ref #: 273167)	-124.20	
06/29/2006	Adjustment	-13.80	
07/21/2006	Payment made by General Casualty (Ref #: 1724)	-208.00	
	DOS 06-14-06		
07/21/2006	Insurance Writeoff	-92.00	
08/10/2006	Individ. psych., insight oriented; 45-50 minutes	138.00	
08/10/2006	Payment made by General Casualty (Ref #: 278101)	-124.20	
08/10/2006	Adjustment	-13.80	
08/17/2006	Individ. psych., insight oriented; 45-50 minutes	138.00	
08/17/2006	Payment made by General Casualty (Ref #: 278101)	-124.20	

INVOICE

William Jervey Jr (Page 2)

09/17/2006	Adjustment	-13.80
09/23/2006	Individ. psych., insight oriented; 45-50 minutes	138.00
09/23/2006	Payment made by General Casualty (Ref #: 278824)	-124.20
09/23/2006	Adjustment	-13.80
09/07/2006	Individ. psych., insight oriented; 45-50 minutes	138.00
09/07/2006	Payment made by General Casualty (Ref #: 279712)	-124.20
09/07/2006	Adjustment	-13.80
09/15/2006	Individ. psych., insight oriented; 45-50 minutes	138.00
09/15/2006	Payment made by General Casualty (Ref #: 285648)	-124.20
09/15/2006	Adjustment	-13.80
09/21/2006	Individ. psych., insight oriented; 45-50 minutes	138.00
09/21/2006	Payment made by General Casualty (Ref #: 282648)	-124.20
09/21/2006	Adjustment	-13.80
10/05/2006	Individ. psych., insight oriented; 45-50 minutes	138.00
10/05/2006	Payment made by General Casualty (Ref #: 284103)	-124.20
10/05/2006	Adjustment	-13.80
10/19/2006	Individ. psych., insight oriented; 45-50 minutes	138.00
10/19/2006	Payment made by General Casualty	-124.20
10/19/2006	Adjustment	-13.80
10/27/2006	Individ. psych., insight oriented; 45-50 minutes	138.00
10/27/2006	Payment made by General Casualty (Ref #: 284900)	-124.20
10/27/2006	Adjustment	-13.80
11/02/2006	Individ. psych., insight oriented; 45-50 minutes	138.00
11/02/2006	Payment made by General Casualty (Ref #: 286857)	-124.20
11/02/2006	Adjustment	-13.80
11/09/2006	Individ. psych., insight oriented; 45-50 minutes	138.00
11/09/2006	Payment made by General Casualty (Ref #: 286756)	-124.20
11/09/2006	Adjustment	-13.80
11/13/2006	Individ. psych., insight oriented; 45-50 minutes	138.00
11/13/2006	Payment made by General Casualty (Ref #: 288052)	-124.20
11/13/2006	Adjustment	-13.80
12/07/2006	Individ. psych., insight oriented; 45-50 minutes	138.00
12/07/2006	Payment made by General Casualty (Ref #: 288986)	-124.20
12/07/2006	Adjustment	-13.80
12/20/2006	Individ. psych., insight oriented; 45-50 minutes	138.00
12/27/2006	Individ. psych., insight oriented; 45-50 minutes	138.00
12/27/2006	Payment made by General Casualty (Ref #: 291387)	-248.40
	12-20 & 12-27-06	
12/27/2006	Adjustment	-27.60
01/03/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
01/23/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
02/07/2007	Payment made by General Casualty (Ref #: 292680)	-124.20
	01-03-07	
02/07/2007	Adjustment	-13.80
02/07/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
02/07/2007	Indiv. psych. insight orient, 45-50 min w/ med eval	225.00
02/19/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
02/26/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
03/06/2007	Payment made by General Casualty (Ref #: 295144)	-124.20
	01-23-07	
03/06/2007	Adjustment	-13.80

INVOICE

William Jervey Jr (Page 3)

03/13/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
03/20/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
03/20/2007	Indiv. psych. insight orient, 45-50 min w/ med eval	225.00
03/27/2007	Payment made by General Casualty (Ref #: 297762) 02-07-07	-149.00
03/27/2007	Adjustment	-76.00
03/27/2007	Payment made by General Casualty (Ref #: 29772) 02-07 & 02-19-07	-248.40
03/27/2007	Adjustment	-27.60
04/03/2007	Payment made by General Casualty (Ref #: 298118) 02-26-07	-124.20
04/03/2007	Adjustment	-13.80
04/03/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
04/11/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
04/11/2007	Indiv. psych. insight orient, 45-50 min w/ med eval	225.00
04/19/2007	Payment made by General Casualty (Ref #: 299938) 03-13-07	-124.20
04/19/2007	Adjustment	-13.80
04/19/2007	Adjustment	-13.80
04/24/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
04/24/2007	Indiv. psych. insight orient, 45-50 min w/ med eval	225.00
05/08/2007	Payment made by General Casualty (Ref #: 302157) 03-20-07	-124.20
05/08/2007	Adjustment	-13.80
05/08/2007	Payment made by General Casualty (Ref #: 302164) 03-20-07	-149.00
05/08/2007	Adjustment	-76.00
05/16/2007	Indiv. psych. insight orient, 45-50 min w/ med eval	225.00
05/16/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
05/18/2007	Payment made by General Casualty (Ref #: 302947) 04-03-07	-124.20
05/18/2007	Adjustment	-13.80
06/06/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
06/06/2007	Indiv. psych. insight orient, 45-50 min w/ med eval	225.00
06/12/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
06/13/2007	Payment made by General Casualty (Ref #: 305402) 04-11 & 04-24-07	-298.00
06/13/2007	Adjustment	-152.00
06/13/2007	Payment made by General Casualty (Ref #: 305398) 04-11 & 04-24-07	-248.40
06/13/2007	Adjustment	-27.60
06/19/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
06/26/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
06/29/2007	Indiv. psych. insight orient, 45-50 min w/ med eval	225.00
07/11/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
07/16/2007	Payment made by General Casualty (Ref #: 309012) 05 16 07	-124.20
07/16/2007	Adjustment	-13.80
07/16/2007	Payment made by General Casualty (Ref #: 309019) 05 16 07	-149.00
07/16/2007	Adjustment	-76.00

INVOICE

William Jervey Jr (Page 4)

07/17/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
07/17/2007	Indiv. psych. insight orient, 45-50 min w/ med eval	225.00
07/20/2007	Payment made by General Casualty (Ref #: 309415)	-149.00
	06 06 07	
07/20/2007	Adjustment	-76.00
07/24/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
08/01/2007	Payment made by General Casualty (Ref #: 310668)	-124.20
	06 06 07	
08/01/2007	Adjustment	-13.80
08/07/2007	Payment made by General Casualty (Ref #: 311758)	-149.00
	06 28 07	
08/07/2007	Adjustment	-76.00
08/07/2007	Payment made by General Casualty (Ref #: 311753)	-124.20
	06 28 07	
08/07/2007	Adjustment	-13.80
08/07/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
08/07/2007	Indiv. psych. insight orient, 45-50 min w/ med eval	225.00
08/21/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
08/28/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
09/11/2007	Individ. psych., insight oriented; 45-50 minutes	138.00
09/17/2007	Payment made by General Casualty (Ref #: 315725)	-149.00
	08 07 07	
09/17/2007	Adjustment	-76.00

Total	\$1,433.20	\$0.00

Please Pay		\$0.00

THANK YOU FOR USING POST TRAUMA RESOURCES

CORVEL

FOR CONFIDENTIAL USE ONLY

TO: Kathy Crews
General Casualty / Greensboro, NC
717 Green Valley Drive
Greensboro, NC 27408

FROM: CorVel Corporation
8601 Six Forks Road
The Forum, Suite 100
Raleigh, NC 27615

REPORT PERIOD ENDING: 12-11-06

CLAIMANT:	William Jervey, Jr.	CASE MGR:	Beth Hagler
ADDRESS:		TEL. NO:	336-996-4894
CT/ST:	Lexington, SC 29072	EMPLOYER:	Martint
TEL. #:	803-957-8733	OCCUPATION:	Operator
S.S. #:		DOB:	02/22/1967
CLAIM #:	W082494-G09	CORVEL #:	960003395-1
REFERRED:	3-20-06.	DOI:	1-23-06
DIAGNOSIS:	Status post 11 % TBSA Sulfuric Acid burns, face, left neck, right shoulder, arm and chest. Post Traumatic Stress Disorder, Dr. Estefano	PROJECTED	One year from date of injury, per Dr. Peck (1-23-07)
Physician/ Telephone Number	Micheal Peck, MD UNC Hospital Burn Center 919-966-3693 Dr. Estefano, MD, Psychiatrist, 803-779-7500, Dr. Nicholas Lind, PhD, Post Trauma Resources 803-765-0700	MMI:	Dr. Estefano: Undetermined
		PPD:	Undetermined

PROGRESS REPORT

Claimant's Status and Current Treatment Plan:

During this report period, Mr. Jervey remains out of work. He continues to receive psychotherapy with Dr Lind, Post Trauma Resources and psychiatric care with Dr. Estefano for Post Traumatic Stress Disorder in

South Carolina. Mr. Jervy also continues treatment with Dr. Peck, UNC Jaycee Burn Center at UNC Hospital in Chapel Hill.

On 11-11-06, I was notified that Mr. Jervy was represented by Mr. Safran, Attorney at Law, in South Carolina. I contacted Mr. Safran and I informed him that I provide telephonic medical case management for Mr. Jervy's psychological care in South Carolina with Dr. Lind and Dr. Estefano, and attend his visits to the Burn Clinic; he gave me permission to continue medical case management for Mr. Jervy and to attend his visits with Dr. Peck at UNC Hospital.

On 11-21-06, I traveled to Dr. Peck's office and met with Dr. Peck's nurse practitioner, Dr. Peck and Mr. Jervy. Dr. Peck advised that Mr. Jervy reported continued limited range-of-motion in the left ring and little finger with decreased ability to touch these fingers to his thumb and play a guitar cord. Dr. Peck advised that he would order an EMG test to determine nerve damage from his burn to the left upper arm. We were given an order and advised this could be performed outside of the medical center in South Carolina to prevent Mr. from traveling 4-½ hours one way. Mr. Jervy was advised to follow-up following the test. The carrier authorized the EMG and requested for this to be arranged through One Call Medical. The attorney was contacted and he requested that I notify him with the name of the physician who would be performing the EMG prior to On Call Medical scheduling the test; he also requested to view their list of physicians.

On 11-27-06, One Call Medical notified this case manager that Dr. David Redmond, MD, and Alaric Van dam, MD, were physicians that they would be able to schedule the EMG with in Columbia, SC. The attorney was provided with the names given by One Call Medical. On 12-05-06, Mr. Saffron contacted this case manager and advised that, while he did not prefer either physician, he requested that Dr. Van Dam perform the EMG. One Call Medical was notified.

Current Physical Restrictions:

- Per Dr. Peck, UNC Health Care on 7-24-06, agrees with the FCE and advised that Mr. Jervy is able to work modified duty 4-hour days when released by Dr. Estefano.
- Per Dr. Estefano, currently unable to work.

Physician's Estimated Length of Disability:

- Dr. Peck advised that Mr. Jervy may return to modified work on 7-24-06.
- Dr. Estefano is unable to project return to work.
- On 6-29-06, Dr. Lind recommended tentative goal of return to work to abbreviated shifts on 7-10-06.

Current Work Status:

Out of work.

The employer has been updated with Mr. Jervey's work capabilities and has notified this case manager that they do not have a current position for Mr. Jervey.

Projected Return to Work Status

Mr. Jervey will be able to return to work when released by Dr. Estefano.

Case Activity:

11-14-06 - Received Dr. Lind's report, 3 pages.

Emailed to carrier via general mailbox.

11-16-06 - Message received from Mr. Andy Safran.

Called the adjuster; she confirmed that Mr. Jervey has legal representation, Mr. Andy Safran, and he is sending a letter of representation; she will send this to me.

Called Mr. Safran, 803-256-6689; spoke with staff; Mr. Safran is on the phone, I left a message that I called and that I will try and call back at a later time.

Called Mr. Safran again as above; he is unavailable.

Called Mr. Safran; spoke with administrative staff and left my contact information.

11-20-06 - Called Mr. Safran's office left a message for call back and that Mr. Jervey has an appointment tomorrow.

Call from Mr. Safran; he left a message to call him back.

Called Mr. Safran and he gave me permission to meet with Dr. Peck and Mr. Jervey; he had concerns about pain in his arm from his back and wondered if a disc was involved; he also had concerns about whether his therapy was approved. I informed him that I have verified with the adjuster continued therapy is approved and in the beginning of treatment; the psychologist had projected 3 months of treatment and I had verified with the adjuster continued psychotherapy was approved. He requested a follow-up call after the visit. I requested to call back to the office for his email and fax number; he agreed.

Call to Ms. Crews; informed her the attorney gave me permission to attend his appointment with Dr. Peck tomorrow.

Call to Mr. Safran; spoke with staff; obtained fax as 803-799-1003; email is msa6631@aol.com.

Emailed the attorney.

11-21-06 - Traveled to UNC Hospital.

Mileage is 150 miles.

Waited to meet with Mr. Jervey and Dr. Peck.

Met with Mr. Jervey and his father; he advised that he has not gone to the gym in a while due to childcare and that he only sleeps during the day. I informed him that I spoke with his attorney and he would have a private exam. Mr. Jervey and his father insisted repeatedly that I remain in the room with him and his father; he advised that his attorney just did not want me to meet with the physician without Mr. Jervey being present. Mr. Jervey was very pleasant and advised he continued to have some limited range-of-motion in the left ring and little finger with decreased ability to touch these fingers to his thumb and play a guitar cord.

Mr. Jervey was examined by the nurse practitioner.

Met with Dr. Peck and Mr. Jervey following his exam with the Nurse Practitioner and he ordered an EMG test to determine nerve damage from his burn to the left upper arm. We were given an order and advised this could be performed outside of the medical center in South Carolina to prevent Mr. from traveling 4-½ hours one way. Mr. Jervey was advised to follow-up following the test. I informed all parties that I would request authorization from the carrier and notify Mr. Jervey with the test date and location; he agreed.

Met with office staff and Mr. Jervey; obtained a copy of the order for the EMG and the work note to remain out of work.

Met with Mr. Jervey and his father; I informed them that I would request authorization from the carrier and notify all parties; he agreed.

Called the attorney; spoke with staff and left a message with summary of visit.

Emailed attachments and order to the carrier.

Copied the attorney.

11-22-06 - Email from the attorney; he requested a call back regarding the EMG and nurses signature.

Called the attorney; held very lengthy amount of time; staff advised he was unavailable.

Call from the attorney; wanted to know the facility that One Call will use for the EMG prior to this being scheduled; requested a list of facilities that would perform the EMG; wanted to be able to review this and to talk with One Call Medical. 803-799-1003. I informed him that I would send the medicals when received to him and the carrier.

Phoned Dr. Calvert; requested medicals from last visit in August and yesterday; gave fax number.

Received 6 pages of medicals.

Emailed the medicals to the attorney.

Copied the carrier.

11-27-06 - Contact with the carrier; she approved the EMG and requests to use One Call.

Called One Call and gave demographic information; she advised that Dr. David Redmond, MD, and Alaric Van dam, MD, Moore Orthopedics, Columbia, are their closest physicians.

Called Mr. Safran and spoke with his secretary; gave the above names for the EMG.

11-29-06 - Call from One Call Medical; need follow-up for the EMG.

Called Mr. Safran and spoke with staff; left a message with a request for call back; gave names of the two physicians that were given by One Call.

Call from Mr. Safran received; he left a message with a request to return his call.

11-30-06 - Called Mr. Safran; he will leave me a message regarding which physician will do the EMG.

Called One Call Medical, 800-872-2875; informed them that the attorney will contact me with the preferred physician.

12-04-06 - Called Mr. Safran's office; spoke with the administrative staff and was advised Mr. Safran would call me back.

12-05-06 - Call from Mr. Safran; he left a message and stated that he did not prefer either physician, but to use Dr. Van Dam.

Called One Call Medical and requested Dr. Van Dam.

Prepared and faxed the order to One Call Medical; copied the adjuster.

Copied the attorney.

Emailed update to the attorney.

Copied the carrier.

12-11-06 - Call from One Call Medical; she has scheduled EMG with Dr. David Redmond for tomorrow. I informed her that, of the two physicians, the attorney stated that he wanted to use Dr. Van Dam. She advised that she did see that information and had made an error; she will call Attorney Mr. Safran, advise him of her error and request if she could keep the appointment with Dr. Redmond. She stated she would inform him that I did request for the procedure to be scheduled with Dr. Van Dam. She stated she would call all parties and call me back with an update.

Message received from One Call; the appointment will be scheduled with Dr. Van Dam as requested by the attorney for 1-17-06.

Reviewed and updated the case management plan.

Prepared the progress report.

Recommendations:

1. Ms. Crews and Mr. Safran will receive a copy of this report.
2. I will continue to coordinate getting medical records from Dr. Peck's office, Dr. Estefano and Dr. Lind, PhD.
3. I will maintain contact with all parties over the next 30 days.
4. I will be notified of the schedule date for the EMG and notify all parties.
5. I will call and schedule Mr. Jervy's follow-up appointment with Dr. Peck to review the results.
6. I will continue to follow Mr. Jervy's psychological care in South Carolina telephonically.

Respectfully Submitted By:

Beth Hagler, ADN, RN/skw

Beth Hagler, RN
Medical Case Manager, CRP
CorVel Corporation
336-996-4894

Kari Altman, RN, BSN, CRRN, CCM
CorCase Supervisor, QRP
919-790-2260

Attachments:

11-20-06, 11-21-06 and 12-05-06 Email to the Attorney and Adjuster
11-22-06 Email from the Attorney
12-05-06 Fax to One Call Medical

cc Andrew Safran, Attorney at Law
Mr. Andrew N. Safran, LLC
1400 Pickens Street, Ste 104
Columbia, SC 29201
Fax: 803-799-1003

CORVEL

FOR CONFIDENTIAL USE ONLY

TO: Kathy Crews
General Casualty / Greensboro, NC
717 Green Valley Drive
Greensboro, NC 27408

FROM: CorVel Corporation
8601 Six Forks Road
The Forum, Suite 100
Raleigh, NC 27615

REPORT PERIOD ENDING: 1-11-07

CLAIMANT: William Jervey, Jr.

ADDRESS:

CT/ST: Lexington, SC 29072

TEL. #: 803-957-8733

S.S. #:

CLAIM #: W082494-G09

REFERRED: 3-20-06.

DIAGNOSIS: Status post 11 % TBSA
Sulfuric Acid burns, face,
left neck, right shoulder,
arm and chest.

Physician/
Telephone
Number

Post Traumatic Stress
Disorder, Dr. Estefano
Micheal Peck, MD
UNC Hospital Burn Center
919-966-3693
Dr. Estefano, MD,
Psychiatrist, 803-779-7500

Dr. Nicholas Lind, PhD,
Post Trauma Resources
803-765-0700

CASE MGR:

Beth Hagler

TEL. NO:

336-996-4894

EMPLOYER:

Martint

OCCUPATION:

Operator

DOB:

02/22/1967

CORVEL #:

960003395-1

DOI:

1-23-06

PROJECTED

One year from date of injury, per
Dr. Peck (1-23-07)

MMI:

Dr. Estefano: Undetermined

PPD:

Undetermined

PROGRESS REPORT

Claimant's Status and Current Treatment Plan:

During this report period, Mr. Jervey remains out of work. He continues to receive psychotherapy with Dr. Lind, Post Trauma Resources. Mr. Jervey also continues treatment with Dr. Peck, UNC Jaycee Burn

Center at UNC Hospital in Chapel Hill. The attorney and the carrier receive copies of my reports, and any medical records received; all communication is simultaneous.

On 12-12-06, I confirmed that Mr. Jervy's EMG was scheduled through One Call Medical with Dr. Van Dam for 1-10-07; all parties were notified. I scheduled Mr. Jervy's follow-up appointment with Dr. Peck for 1-25-07 @ 11:00 am and notified all parties.

On 1-10-07, I contacted Dr. Estefano's office to obtain the medical reports and received a message that Dr. Estefano had retired as of 11-30-06. I notified the adjuster and contacted the attorney and left a message with a request for an update. I was contacted by Ms. Catherine Calvert, Rehab Counselor for the Burn Clinic, and informed that Dr. Peck would not be in the Clinic on 1-25-07, and that I needed to obtain an alternate appointment date. This was obtained for 2-6-07 @ 11:30 and all parties were notified.

Current Physical Restrictions:

- Per Dr. Peck, UNC Health Care on 7-24-06, agrees with the FCE and advised that Mr. Jervy is able to work modified duty 4-hour days when released by Dr. Estefano.
- Per Dr. Estefano, currently unable to work.

Physician's Estimated Length of Disability:

- Dr. Peck advised that Mr. Jervy may return to modified work on 7-24-06.
- Dr. Estefano is unable to project return to work.
- On 6-29-06, Dr. Lind recommends tentative goal of return to work to abbreviated shifts on 7-10-06.

Current Work Status:

Out of work.

The employer has been updated with Mr. Jervy's work capabilities and has notified this case manager that they do not have a current position for Mr. Jervy.

Projected Return to Work Status

Mr. Jervy will be able to return to work when released by Dr. Estefano.

Case Activity:

12-12-06 Call from One Call Medical, she has schedule date for EMG scheduled with Dr. David Redmond for tomorrow. I informed her that, out of the two physicians, the attorney stated that he wanted to use Dr. Van Dam. She advised that she did see that information and had made an error; she will call Attorney Saffron and request if she could keep the appointment with Dr. Redmond and advise him of her

error. She stated she would inform him that I did request for the procedure to be scheduled with Dr. Van Dam. She stated she would call all parties and call me back with an update.

Message received from One Call; the appointment will be scheduled with Dr. Van Dam as requested by the attorney for 1-17-06.

Call from One Call; left a message to call back.

Called One Call; staff gave date of EMG as 1-10-07 with Dr. Van Dam; results would be available within 48 hours; she stated that Mr. Jervey was called and on the line when the appointment was made with Dr. Van Dam's office.

12-13-06 Called UNC Hospital Burn Clinic and obtained a follow-up appointment with Dr. Peck and Mr. Jervey for 1-25-07 @ 11:00 am.

Called Dr. Estefano's office; left a message and requested the medical report.

Call from One Call Medical; they requested that I fax the order to Dr. Van Dam for the EMG.

Prepared and faxed the order to Dr. Van Dam's office.

Copied the attorney and the adjuster.

12-14-06 Received and reviewed 3 pages of medicals from the carrier from Dr. Estefano for 3-16-06 – 11-29-06.

Prepared and faxed a memo with the medicals from 3-16-06 – 11-29-06 to the attorney.

Called Dr. Lind's office and requested the medicals for November; I advised that the last note I received was from 11-2-06; requested dates of his appointments. Staff advised the following appointment dates: 12-7-06, 12-20-06 @ 3:15 pm; she will fax Dr. Lind's medical reports.

12-19-06 Called Dr. Estefano's office, 803-779-7500; reached answering service and hung up.

Called One Call Medical and verified the date for the EMG with Dr. Van Dam as 1-10-07 @ 4:15 pm; Dr. Van Dam's address is 14 Medical Park, Columbia, SC, 29203; phone is 803-227-8229.

Prepared and mailed Mr. Jervey a letter regarding the above dates.

Copied the attorney and carrier.

12-29-06 Received and reviewed 3 pages of medicals from Dr. Lind.

Emailed the 12-27-06 report from Dr. Lind to the attorney.

Copied the carrier.

1-4-07 Received Dr. Lind's medical report from 1-3-07, 3 pages.

Emailed the report to the attorney.

Copied the carrier.

1-11-07 Called Dr. Estefano's; held for several minutes and received a message that Dr. Estefano retired as of 11-30-06 and is no longer in the practice.

Called Mr. Jervey, 803-957-8733; left a message for a call back.

Called the attorney, 803-256-6689; left a message with the secretary; I requested information on whether Mr. Jervey is presently treating with another psychiatrist.
Requested call back.

Called and left a message with the adjuster.

Call from Catherine Calvert; she advised need for appointment change due to Dr. Peck will be out of the office that day and she knew that I was the case manager; she gave clinic phone number as 919-966-2225 for scheduling.

Called the above number regarding the appointment; held very lengthy amount of time; obtained appointment with Dr. Peck for 2-6-07 @ 11:30 am.

Called Mr. Jervey and left a message.

Called Mr. Jervey and spoke with his wife; I gave information about the appointment.

Emailed update to the attorney.

Copied the carrier.

Mailed updated letter regarding appointment change to Mr. Jervey.

Copied the attorney.

Copied the carrier.

Email from the attorney that he is trying to find a psychiatrist for Mr. Jervey. Emailed response; copied the adjuster.

Reviewed and updated the case management plan.

Prepared the progress report.

Recommendations:

1. Ms. Crews and Mr. Safran will receive a copy of this report.
2. I will continue to coordinate getting medical records from One Call Medical, Dr. Peck's office, and Dr. Lind, PhD.
3. I will maintain contact with all parties over the next 30 days.
4. I will attend Mr. Jervey's follow up appointment with Dr. Peck on 2-6-07 @ 11:30 am.
5. I will continue to follow Mr. Jervey's psychological care in South Carolina telephonically.
6. I will contact the adjuster regarding a treating psychiatrist in South Carolina

Respectfully Submitted By:

Beth Hagler, ADN, RN/skw

Beth Hagler, RN
Medical Case Manager, CRP
CorVel Corporation
336-996-4894

Kari Altman, RN, BSN, CRRN, CCM
CorCase Supervisor, QRP
919-790-2260

Attachments:

MDR Dr. Lind 1-4-07 and 12-27-06
Fax to Dr. Van Dam 12-13-06
Fax to the Attorney 12-14-06
Letter to Mr. Jervey 12-19-06 and 1-11-07
Email to the Attorney 1-4-07 and 1-11-07

cc: Andrew Safran, Attorney at Law
Mr. Andrew N. Safran, LLC
1400 Pickens Street, Ste 104
Columbia, SC 29201
Fax: 803-799-1003

C O R V E L

January 11, 2007

William Jervey, Jr.
224 Teesdale Court
Lexington, SC 29072

Date of Injury: 01-23-2006
Carrier: General Casualty / Greensboro, NC
Claim #: W082494-G09
Employer: Martint
CorVel #: 960003395-1

Dear Mr. Jervey,

I was notified by Catherine Calvert that Dr. Peck would not be in the clinic on January 25, 2007, and that you needed to obtain a different appointment. I was able to arrange another appointment for you for **02-06-07 @ 11:30 am**. I will meet you at this appointment.

The goal of my involvement in your case is to ensure that you receive timely, effective, and high-quality medical care that will facilitate your resumption of gainful employment. I am here to assist you in any way that I can, and I encourage you to call me at any time if you have a change of condition, a problem, or a question regarding your medical progress or care. Please also continue to call me if your appointment dates change with your physician.

Sincerely,

Beth Hagler RN/dm

Medical Case Manager
919-790-2260
336-996-4894

Kari Altman, RN, BSN, CRRN, CCM
Unit Manager, QRP
919-790-2260

cc: Kathy Crews, Adjuster

Mr. Andrew N. Safran, LLC
1400 Pickens Street, Ste. 104
Columbia, SC 29201
Fax: 803-799-1003

CORVEL

Facsimile Transmittal

CorVel Corporation
www.corvel.com

8601 Six Forks Road
Suite 100
Raleigh, NC 27615

919.790.2280 phone
919.790.1522 fax

Date: 12/13/2006

To ☐ Dr. Van Damm/ Moore Orthopedics
Fax Number: 803-227-8035

From ☐ Beth Hagler, RN CorVel Corporation
336-996-4894
Fax: 919-277-1570
Medical Case Manager

Copy To: Kathy Crews - 336-412-3311
Attorney Andy Saffron: 803-799-1003

Pages Including Cover: 2

Regarding ☐ *Mr. William Jervey, WO82494-G09, General Casualty*

Attached order for the EMG scheduled with Dr. Van Damm for 01-10-07
by One Call Medical.

Thank you,
Beth Hagler

Privileged and Confidential:

All information transmitted hereby is intended only for the use of the addressee(s) named above. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient(s), please note that any distribution or copying of this communication is strictly prohibited. Anyone who receives this communication in error should notify us immediately by telephone and destroy all copies of this communication and any attachment(s).

CORVEL

Facsimile Transmittal

CorVel Corporation
www.corvel.com

8801 Six Forks Road
Suite 100
Raleigh, NC 27616

919.790.2260 phone
919.790.1522 fax

Date: 12/14/2006

To ▶ Attorney Andy Saffron:

Fax Number: 803-799-1003

From ▶ Beth Hagler, RN CorVel Corporation
336-996-4894
Fax: 919-277-1570

Medical Case Manager

Copy To: Kathy Crews – 336-412-3311

Pages Including Cover: 11

Regarding ▶ Mr. William Jervey, WO82494-Go9, General Casualty

Please see medicals from Dr. Estefano that I received from the adjuster.

Thank you,
Beth Hagler

Privileged and Confidential:

All information transmitted hereby is intended only for the use of the addressee(s) named above. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient(s), please note that any distribution or copying of this communication is strictly prohibited. Anyone who receives this communication in error should notify us immediately by telephone and destroy all copies of this communication and any attachment(s).

CORVEL

Facsimile Transmittal

CorVel Corporation
www.corvel.com

8801 Six Forks Road
Suite 100
Raleigh, NC 27615

919.790.2280 phone
919.790.1622 fax

Privileged and Confidential:

All information transmitted hereby is intended only for the use of the addressee(s) named above. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient(s), please note that any distribution or copying of this communication is strictly prohibited. Anyone who receives this communication in error should notify us immediately by telephone and destroy all copies of this communication and any attachment(s).

CORVEL

FOR CONFIDENTIAL USE ONLY

TO: Kathy Crews
General Casualty / Greensboro, NC
717 Green Valley Drive
Greensboro, NC 27408

FROM: CorVel Corporation
8601 Six Forks Road
The Forum, Suite 100
Raleigh, NC 27615

REPORT PERIOD ENDING: 2-9-07

CLAIMANT: William Jervey, Jr.

ADDRESS:

CT/ST: Lexington, SC 29072

TEL. #: 803-957-8733

S.S. #:

CLAIM #: W082494-G09

REFERRED: 3-20-06.

DIAGNOSIS:

CASE MGR:

TEL. NO:

EMPLOYER:

OCCUPATION:

DOB:

CORVEL #:

DOI:

PROJECTED

MMI:

Beth Hagler

336-996-4894

Martint

Operator

02/22/1967

960003395-1

1-23-06

One year from date of injury, per
Dr. Peck (1-23-07)

Dr. Estefano: Undetermined

Status post 11 % TBSA
Sulfuric Acid burns, face,
left neck, right shoulder,
arm and chest.
Post Traumatic Stress
Disorder, Dr. Estefano

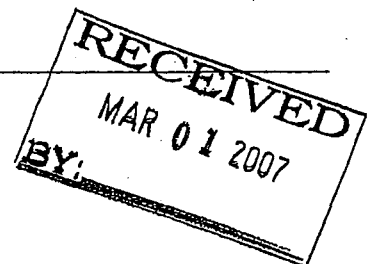
Physician/
Telephone
Number

Micheal Peck, MD UNC
Hospital Burn Center
919-966-3693
Dr. Estefano, MD,
Psychiatrist, 803-779-7500,
Dr. Deal, MD, Psychiatrist

PPD:

Undetermined

Dr. Nicholas Lind, PhD,
Post Trauma Resources
803-765-0700



PROGRESS REPORT

Claimant's Status and Current Treatment Plan:

During this report period, Mr. Jervey remains out of work. He continues to receive psychotherapy with Dr. Lind, Post Trauma Resources, and the carrier requested that Dr. Deal, MD, Psychiatrist with Post Trauma Resources, provide psychiatric care as Dr. Estefano has retired. I forwarded Dr. Estefano's medical notes to Dr. Deal; Mr. Jervey was seen by Dr. Deal on 2-7-07.

On 2-6-07, I met with Dr. Peck, Catherine Calvert and Mr. Jervey following his private exam. Dr. Peck advised that he did not receive the EMG. I gave him a copy of the EMG, which he reviewed. He advised that the EMG was normal and that the physician performing the EMG recommended an MRI. Dr. Peck advised that he is not sure what is wrong with the hand and is referring him for Occupational Therapy at UNC Hospital today for a Sims Weinstein test, which is a sensory test. Dr. Peck also advised that he is referring Mr. Jervey to Dr. Holtman, plastic surgeon hand specialist at UNC Hospital, for a hand evaluation and believes this should be done prior to an MRI. He advised that he is unable to release Mr. Jervey until the issue of the left hand is resolved. Mr. Jervey is to remain out of work until he is seen by Dr. Holtman, or returns in 3 months. A copy of a work note to remain out of work was obtained and a return visit scheduled for 5-1-07 @ 11:30 am.

On 2-6-07, I met with Mr. Jervey and the occupational therapist for the Sims Weinstein test. The therapist advised that, per the sensory test, Mr. Jervey has decreased sensation and has diminished light touch at the median nerve distribution, half of ring finger, middle finger, index finger and thumb, right side.

The attorney for the carrier, the adjuster and Mr. Jervey's attorney were all provided with a summary of the appointment and the work note. The carrier approved the referral to Dr. Holtman and all parties were notified.

Current Physical Restrictions:

- Per Dr. Peck, UNC Health Care on 7-24-06 agrees with the FCE and advised that Mr. Jervey is able to work modified duty 4 hour days when released by Dr. Estefano.
- Per Dr. Estefano unable to work.
- 2-6-07 Unable to work per Dr. Peck until his left hand is evaluated by Dr. Holtman, Plastic Surgeon with the Burn Unit.

Physician's Estimated Length of Disability:

- Dr. Peck advised that Mr. Jervey may return to modified work on 7-24-06.
- Dr. Estefano is unable to project return to work.
- On 6-29-06 Dr. Lind recommends tentative goal of return to work to abbreviated shifts on 7-10-06.

Current Work Status:

Out of work.

Projected Return to Work Status:

Mr. Jervey will be able to return to work when released by Dr. Deal and Dr. Peck.

Case Activity:

1-16-07 - Received the EMG report, 3 pages reviewed.

Phone with the carrier; she is reviewing the file regarding psychiatrists for Mr. Jervey and will call me.

1-19-07 - Emailed the EMG report to the attorney.

Copied the carrier.

1-22-07 - Called the carrier; confirmed that she will only approve for Dr. Deal to treat Mr. Jervey. We reviewed the file and confirmed his follow-up appointment with Dr. Peck on 2-6-07.

1-23-07 - Emailed Mr. Safran that Ms. Crews will only approve for Mr. Jervey to treat with Dr. Deal.

1-31-07 - Called UNC Hospital and confirmed Mr. Jervey's appointment for 2-6-07 @ 11:30 am.

Called Mr. Jervey, 803-957-8733; left a message requested a call back; reminded him of the appointment with Dr. Peck, gave date

Emailed update to the attorney.

Copied the carrier.

2-1-07 - Email from the attorney; agreed to Dr. Deal treating Mr. Jervey; requested that I set up an appointment.

Called and notified the adjuster.

Called Dr. Lind's office and spoke with Lakrisha; requested an appointment with Dr. Deal for psychiatric care. Obtained an appointment for 2-7-07 with Dr. Deal @ 2:45 pm; she advised that he will see Dr. Lind that day and she would move his appointment to 2:00 pm. She will call Mr. Jervey.

Called the attorney; spoke with his secretary; she advised Mr. Safran was unavailable.

Prepared a letter to Dr. Deal requesting he address MMI and return to work.

Emailed a letter to Mr. Safran requesting if he would approve for the letter to be sent. Gave the appointment information.

Copied the carrier.

Contact with the carrier to copy carrier attorney on all information. Contact information given as: Ross Huff, Attorney at Law Huff Law Firm, LLC; address is 7244 Woodrow Street, PO Box 1935 Irmo, SC, 29063. Phone: 803-252-2232. Fax: 803-252-2231.

Forwarded email sent to the attorney for Mr. Jervey to Mr. Huff, carrier attorney.

Copied Mr. Safran, Mr. Jervey's attorney.

2-2-07 - Called Mr. Safran to follow-up regarding the proposed letter to Dr. Deal. His secretary advised that he was unavailable and he would call me to follow-up. I informed her that I would be out the office and that I would just check my email and phone messages by Monday.

2-6-07 - Traveled to Dr. Peck's office; travel prorated with another carrier file.

Mileage prorated with another file.

Waited to meet with Mr. Jervey and Dr. Peck.

Met with Mr. Jervey; he was accompanied by his father. He advised that he has continued itching and takes Zyrtec at times as prescribed, but only a couple of times a week. He confirmed that he will attend his visit with Dr. Lind and Dr. Deal tomorrow as scheduled.

Met with Dr. Peck, Catherine Calvert and Mr. Jervey following his private exam. Dr. Peck advised that he did not receive the EMG; I gave him a copy of the EMG, which he reviewed. He advised that he is not sure what is wrong with the hand. He is referring him to OT today for a Sims Weinstein test, which is a sensory test, and also to Dr. Holtman, plastic surgeon hand specialist at UNC Hospital. He would prefer this consult prior to an MRI. He advised that he is unable to release Mr. Jervey until the issue of the left hand is resolved. Mr. Jervey is to remain out of work until he is seen by Dr. Holtman or returns in 3 months.

A copy of a work note to remain out of work was obtained and a return visit for 5-1-07 @ 11:30 am.

Waited with Mr. Jervey's father while he had a consult with the therapist.

Met with Mr. Jervy and the occupational therapist for the Sims Weinstein test. The therapist advised that, per the sensory test, Mr. Jervy has decreased sensation, has diminished light touch at the median nerve distribution, half of ring finger, middle finger, index finger and thumb, right side.

Met with Mr. Jervy; he advised that he was concerned about the wait for a referral to a psychiatrist and wanted to know why it took so long. I informed him that I did not know Dr. Estefano was retired until January and his attorney wanted to approve his physician. I stated that he has not called me with an update; he advised that his attorney informed him that he would communicate with this case manager, not Mr. Jervy, but that it was approved for me to attend his visits with his physician at UNC. I informed Mr. Jervy that I was not aware of this request. Mr. Jervy asked again why he was not allowed to see Dr. Deal; he was concerned because he thought he was not going to have a psychiatrist and was thankful he was able to continue to treat with Dr. Lind. I informed him that he should speak with his attorney about legal matters.

Emailed update to the carrier.

Copied the attorney.

Copied the carrier attorney.

2-7-07 - Contact with adjuster; approved referral to hand specialist.

Called the attorney; spoke with the secretary; she advised that he was unavailable and that he had responded regarding approval for the letter to Dr. Deal. I informed her that I have not received anything at this time, and would just send the medicals from Dr. Estefano to Dr. Deal today; have already sent these to Mr. Safran. I also stated that the carrier approved referral to hand specialist.

Faxed Dr. Estefano's medicals to Dr. Deal, 11 pages.

Copied the attorney.

Copied the carrier attorney.

Copied the adjuster.

2-8-07 - Call to the adjuster; we reviewed the file and I informed her that I would schedule the consult with Dr. Holtman.

Called Dr. Holtman's office, 919-966-4131; left a message with the appointment secretary for Dr. Holtman for an appointment, very lengthy phone call; held several minutes.

2-9-07 - Received and reviewed 3 pages of medicals for the 2-7-07 visit with Dr. Lind from Dr. Lind.

Emailed the 2-7-07 notes to the attorney.

Emailed the 2-7-07 notes to the carrier attorney.

Copied the carrier.

Reviewed and updated the case management plan.

Prepared the progress report.

Recommendations:

1. Ms. Crews and Mr. Safran and Mr. Huff will receive a copy of this report.
2. I will continue to coordinate getting medical records from Dr. Peck's office, Dr. Lind, PhD and Dr. Deal.
3. I will maintain contact with all parties over the next 30 days.
4. I will arrange an appointment with Mr. Jervey with Dr. Holtman at UNC Plastic Surgery Center
5. I will continue to follow Mr. Jervey's psychological care in South Carolina telephonically.

Respectfully Submitted By:

Beth Hagler, ADN, RN/skw

Beth Hagler, RN
Medical Case Manager, CRP
CorVel Corporation
336-996-4894

Kari Altman, RN, BSN, CRRN, CCM
CorCase Supervisor, QRP
919-790-2260

cc: Andrew Safran, Attorney at Law
Mr. Andrew N. Safran, LLC
1400 Pickens Street, Ste 104
Columbia, SC 29201
Fax: 803-799-1003

Ross Huff, Attorney at Law
Huff Law Firm, LLC
7244 Woodrow Street, PO Box 1935I
Irmo, SC 29063.
Fax: 803-252-2231

Attachments:

EMG

Email to the adjuster and attorney 1-19-07

Email to the adjuster and attorney 1-23-07

Email to the adjuster and attorney 1-31-07

2-1-07 email from the attorney

Letter prepared to mail to Dr. Deal, (not mailed)

2-1-07 Email to the attorney and adjuster, attached letter to Dr. Deal

Email to Attorney Huff 2-1-07

2-6-07 work note

Email to the adjuster and attorney 2-6-07

Fax to Dr. Deal medical records from Dr. Estefano 2-7-07

From: Hagler, Beth
Sent: Tuesday, January 23, 2007 8:44 AM
To: msa6631@aol.com
Cc: US-BOX SR-GB0-WorkComp
Subject: W082494-G09 secure
Bill Jervey

Dear Mr. Safran,

I spoke with Kathy Crews and she will only approve for Dr. Deal to provide psychiatric care.

Thank you,

Beth

Beth Hagler, RN
Medical Case Manager, CRP
CorVel Corporation
Phone: 336-996-4894, 919-790-2260
Fax: 919-277-1570

C O R V E L

February 2, 2007

Dr. Roger Deal
Post Trauma Resources
1709 Laurel Street
Columbia, SC 29201.

Re: William Jervey, Jr.
Date of Injury: 01/23/2006
Carrier: General Casualty / Greensboro, NC
Claim #: W082494-G09
Employer: Martint
CorVel #: 960003395-1

Dear Dr. Deal:

Please allow this to serve as a formal introduction. I am a Medical Case Manager with CorVel Corporation. My services have been requested by General Casualty / Greensboro, NC to aid William Jervey, Jr. in his medical recovery.

I am handling his file telephonically and would appreciate your addressing the following at his next visit.

1. What is his current diagnosis?
2. What are your objective findings?
3. What are your treatment recommendations?
4. What are Mr. Jervey's Work Capabilities?
5. What is Mr. Jervey's Target date for MMI?

CORVEL

Billing for this appointment should be sent to:

Kathy Crews
General Casualty / Greensboro, NC
717 Green Valley Drive
Greensboro, NC 27408
Phone #: 336-412-3300

I look forward working with you to assist Mr. Jervey, Jr. in his medical recovery.

Sincerely,

Beth Hagler RN/dm

Medical Case Manager
919-790-2260

Kari Altman, RN, BSN, CRRN, CCM
Unit Manager, QRP
919-790-2260

cc: Kathy Crews, Adjuster
Andy Safran, Attorney at Law

CORVEL

FOR CONFIDENTIAL USE ONLY

TO: Kathy Crews
General Casualty / Greensboro, NC
717 Green Valley Drive
Greensboro, NC 27408

FROM: CorVel Corporation
8601 Six Forks Road
The Forum, Suite 100
Raleigh, NC 27615

REPORT PERIOD ENDING: 3-11-07

CLAIMANT: William Jervey, Jr.
ADDRESS:
CT/ST: Lexington, SC 29072
TEL. #: 803-957-8733
S.S. #:
CLAIM #: W082494-G09
REFERRED: 3-20-06.
DIAGNOSIS: Status post 11 % TBSA
Sulfuric Acid burns, face,
left neck, right shoulder,
arm, and chest.
Post Traumatic Stress
Disorder, Dr. Estefano
Micheal Peck, MD UNC
Hospital Burn Center
919-966-3693
Dr. Estefano, MD,
Psychiatrist, 803-779-7500,
Dr. Deal, MD, Psychiatrist

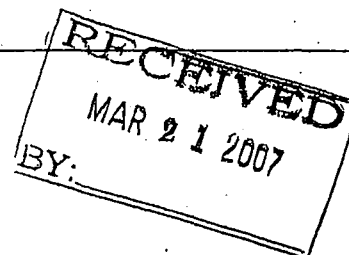
Physician/
Telephone
Number

Dr. Nicholas Lind, PhD,
Post Trauma Resources
803-765-0700

CASE MGR: Beth Hagler
TEL. NO: 336-996-4894
EMPLOYER: Martint
OCCUPATION: Operator
DOB: 02/22/1967
CORVEL #: 960003395-1
DOI: 01-23-2006
PROJECTED: One year from date of injury, per
MMI: Dr. Peck (1-23-07)

Dr. Estefano: Undetermined

PPD: Undetermined



PROGRESS REPORT

Claimant's Status and Current Treatment Plan:

During this report period Mr. Jervey remains out of work. He continues to receive psychotherapy with Dr. Lind and psychiatric care with Dr. Deal, MD; both providers are with Post Trauma Resources in Columbia, SC. Telephonic Case Management services are provided for Mr. Jervey's care received in South Carolina, with on site attendance of medical appointments to the UNC Hospital Burn Clinic. The Adjuster, Mr. Safran, Attorney for Mr. Jervey, and the Carrier Attorney continue to receive copies of my reports and all communication is simultaneous.

At the last clinic visit on 02-07-07, Dr. Peck referred Mr. Jervey to a hand specialist, Dr. Hultman, for numbness in his left hand. This referral was approved by the adjuster. On 02-13-07 the UNC Plastic Surgery Clinic contacted me with an appointment for Mr. Jervey to see Dr. Hultman for 03-14-07 @ 12:00 pm. Dr. Hultman's office called again and advised that Dr. Hultman would need to see Mr. Jervey at 8:00 am instead of 12:00 pm. I requested a later time to allow for travel and the appointment was changed to 03-14-07 @ 10:00 am. I notified Mr. Safran of the appointment time and requested that he contact Mr. Jervey.

On 02-28-07 I spoke with Mr. Safran and requested to send an introductory letter to Dr. Deal requesting for him to address the diagnosis, objective findings, projections for maximum medical improvement and return to work in his medical report. Mr. Safran would not allow me to send the letter to Dr. Deal. Mr. Safran also informed me that he would determine if I am able to attend Mr. Jervey's consult visit with Dr. Hultman on 03-14-07. He requested that I contact him the week of the appointment for his decision. I notified the adjuster.

Current Physical Restrictions:

- Per Dr. Peck, UNC Health Care on 07-24-06 agreed with the FCE and advised that Mr. Jervey is able to work modified-duty 4-hour days when released by Dr. Estefano.
- Per Dr. Estefano - unable to work
- 02-06-07 Unable to work per Dr. Peck until his left hand is evaluated by Dr. Hultman, Plastic Surgeon with the Burn Unit.

Physician's Estimated Length of Disability:

- Dr. Peck advised that Mr. Jervey may return to modified work on 07-24-06
- Dr. Estefano is unable to project return to work
- On 06-29-06 Dr. Lind recommends tentative goal of return to work to abbreviated shifts on 07-10-06

Current Work Status:

Out of work.

Projected Return to Work Status:

Mr. Jervey will be able to return to work when released by Dr. Deal and Dr. Peck.

Case Activity:

2-13-2007 - Call received from UNC Plastic Surgery Center, Dr. Hultman's office. I spoke with his scheduling secretary, she received a referral from Dr. Peck, and Mr. Jervey has an appointment for 03-14-07 @ 12:00 pm with Dr. Hultman, she gave fax number as 919-966-3814. She advised she has all medicals from Dr. Peck; these were sent by Catherine Calvert. She advised a letter will be sent to Mr. Jervey regarding this appointment.

Called Mr. Safran, spoke with office staff, and gave the appointment date and time. I requested a call back regarding my proposed letter to Dr. Deal.

Call from Dr. Hultman's office, need to change the time to 8:00 am that same day. She advised to call Ms. Calvert regarding the time. I informed her Mr. Jervey travels from South Carolina.

Called and left a message with Ms. Calvert requesting different appointment time due to travel distance for Mr. Jervey.

Emailed the appointment time and summary of calls to UNC hospital regarding request for alternative times to Mr. Safran.

Copied the carrier attorney.

Copied the carrier.

02-14-2007 - Message received from Ms. Calvert that she changed Mr. Jervey's appointment to 3-14-07 @ 10:00 am to allow for travel time for Mr. Jervey

02-15-2007 - Emailed Mr. Safran the new appointment time. Requested approval for letter to Dr. Deal.

Copied the carrier attorney

Copied the carrier

02-27-2007 - Called the attorney's office and requested to speak with Mr. Safran. Staff advised he was not available and to call back.

Called Mr. Safran; was advised he is not available.

02-28-2007 - I called Mr. Safran and he advised that he is aware that the carrier has an attorney on the file and he has not been contacted by the carrier attorney or the carrier. Mr. Safran asked me why there is an attorney for the carrier and I informed him that I was provided with his contact information and requested to copy Mr. Huff on all correspondence and reports. Mr. Safran advised that he will not allow for me to send Dr. Deal a letter at this time and he is unsure if I am able to attend the appointment with Dr. Hultman at UNC Hospital. He requested that I contact him that same week for permission. Mr. Safran did advise that he will allow me to contact Dr. Deal's office to confirm appointments and request medicals only.

Called the carrier and gave an update and that the attorney will not allow me to send Dr. Deal a letter.

03-06-2007 - Called Dr. Lind's office, 803-765-0700, spoke with staff and confirmed the appointments with Dr. Lind @ 10:15 am on 03-13-07, and he is to be worked in that same day with Dr. Deal. She advised he was scheduled to see Dr. Deal today; however, Mr. Jervy had car trouble. I requested the medical reports for Dr. Lind and Dr. Deal.

Received and reviewed 5 pages of medicals from Dr. Lind 02-19-07 and 02-26-07.

Emailed these to the attorney, noted the new appointment times with Dr. Lind and Dr. Deal.

Copied the adjuster.

Copied the carrier attorney.

03-11-2007 - Reviewed and updated the Case Management Plan

Prepared the progress report.

Recommendations:

1. Ms. Crews and Mr. Safran and Mr. Huff will receive a copy of this report.
2. I will continue to coordinate getting medical records from Dr. Peck's office and Dr. Lind, PhD and Dr. Deal.
3. I will maintain contact with all parties over the next 30 days.
4. If approved by Mr. Safran, I will attend Mr. Jervy's appointment with Dr. Hultman and obtain information regarding his diagnosis, objective findings, and any treatment recommendations.
5. I will continue to follow Mr. Jervy's psychological care in South Carolina telephonically.

Respectfully Submitted By:

Beth Hagler, RN/dm

Medical Case Manager, CRP

CorVel Corporation

336-996-4894

Kari Altman, RN, BSN, CRRN, CCM

CorCase Manager, QRP

919-790-2260

cc: Andrew Safran, Attorney at Law

Andrew N. Safran, LLC

1400 Pickens Street, Ste 104

Columbia, SC 29201

Fax: 803-799-1003

Ross Huff, Attorney at Law

Huff Law Firm, LLC

7244 Woodrow Street, PO Box 1935I

Irmo, SC 29063.

Fax: 803-252-2231

Attachments: 02-13-07 email to the attorney and adjuster

02-15-07 email to the attorney and the adjuster

5 pages of medicals from Dr. Lind 02-19-07 and 02-26-07

03-6-07 email to the attorney and the adjuster

CORVEL

FOR CONFIDENTIAL USE ONLY

TO: Kathy Crews
General Casualty / Greensboro, NC
717 Green Valley Drive
Greensboro, NC 27408

FROM: CorVel Corporation
8601 Six Forks Road
The Forum, Suite 100
Raleigh, NC 27615

REPORT PERIOD ENDING: 3-23-07

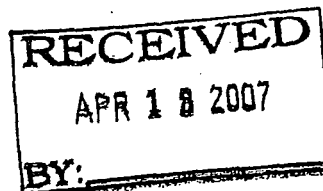
CLAIMANT: William Jervey, Jr.
ADDRESS: [REDACTED]
CT/ST: Lexington, SC 29072
TEL. #: 803-957-8733
S.S. #: [REDACTED]
CLAIM #: W082494-G09
REFERRED: 3-20-06
DIAGNOSIS: Status post 11 % TBSA
Sulfuric Acid burns, face,
left neck, right shoulder,
arm and chest.
Post Traumatic Stress
Disorder, Dr. Estefano

CASE MGR: Beth Hagler, RN
TEL. NO: 336-996-4894
EMPLOYER: Martint
OCCUPATION: Operator
DOB: 02/22/1967
CORVEL #: 960003395-1
DOI: 1-23-06
PROJECTED: One year from date of injury, per
MMI: Dr. Peck (1-23-07)

Dr. Estefano: Undetermined

Physician/
Telephone
Number Micheal Peck, MD UNC
Hospital Burn Center
919-966-3693
Dr. Estefano, MD,
Psychiatrist, 803-779-7500
Dr. Deal, MD, Psychiatrist
Dr. Nicholas Lind, PhD,
Post Trauma Resources
803-765-0700

PPD: Undetermined



PROGRESS REPORT

Claimant's Status and Current Treatment Plan:

During this report period, Mr. Jervy remains out of work. He continues to receive psychotherapy with Dr. Lind and psychiatric care with Dr. Deal, MD; both providers are with Post Trauma Resources in Columbia, SC. Telephonic case management services are provided for Mr. Jervy's care received in South Carolina, with onsite attendance of medical appointments to the UNC Hospital Burn Clinic. The adjuster, Mr. Safran, attorney for Mr. Jervy and the carrier attorney continue to receive copies of my reports and all communication is simultaneous.

On 3-13-07, I met with Mr. Jervy and the nurse practitioner following the consult with Dr. Hultman and was informed that Dr. Hultman was unable to meet with me. The nurse practitioner advised the Carpal Tunnel test is negative. They are ordering an MRI because the neurologist who performed the EMG recommended the MRI; the EMG was normal; the Sims Weinstein test done at the last appointment by the Occupational Therapist at UNC Hospital showed decreased sensation in the left fingers and they are unable to relate his symptoms to their findings. She advised he is going to receive a wrist splint today to wear at night for decreased sensation in his left hand. The nurse practitioner advised that we are to call back for a follow-up appointment after the MRI is scheduled.

On 3-19-07, I called UNC Burn Clinic and spoke with appointment clerk; was informed next available with Dr. Hultman would be 5-2-07. I informed her that he had an appointment with Dr. Peck on 5-1-07 and would it be possible to see both on the same day. She referred me to Ms. Calvert. I called Ms. Calvert and left a voice message requesting appointment in April with Dr. Hultman or if Mr. Jervy could be seen on the same day as the appointment with Dr. Peck.

On 3-23-07, the MRI and Dr. Lind's medical report were received. The MRI was faxed to Dr. Peck and Ms. Calvert, UNC Hospital and all parties were copied. I emailed Dr. Lind's report to all parties.

Current Physical Restrictions:

- Per Dr. Peck, UNC Health Care on 7-24-06, agrees with the FCE and advised that Mr. Jervy is able to work modified duty 4 hour days when released by Dr. Estefano.
- Per Dr. Estefano unable to work.
- 2-6-07 Unable to work per Dr. Peck until his left hand is evaluated by Dr. Hultman, Plastic Surgeon with the Burn Unit.

Physician's Estimated Length of Disability:

- Dr. Peck advised that Mr. Jervy may return to modified work on 7-24-06.
- Dr. Estefano is unable to project return to work.
- On 6-29-06, Dr. Lind recommends tentative goal of return to work to abbreviated shifts on 7-10-06.

Current Work Status:

Out of work.

Projected Return to Work Status

Mr. Jervey will be able to return to work when released by Dr. Deal and Dr. Peck.

Case Activity:

3-13-07 Called the attorney, 803-256-6689; spoke with staff member and left a message requesting if he would authorize my attendance at the visit with Mr. Jervey and Dr. Hultman at UNC Hospital.

Called the attorney and requested authorization to attend the appointment with Dr. Hultman. He gave me permission and requested I only meet with the physician and Mr. Jervey. He advised he would remind Mr. Jervey.

Called and left a message for the adjuster that I would attend the visit.

3-14-07 Called Dr. Hultman's office and confirmed the appointment; held several minutes.

Met with Dr. Hultman's staff at the ACC building and was informed the appointment was in the Main Hospital, the Burn Clinic.

Travel Traveled to Dr. Hultman's office; travel extended due to traffic/Mileage.

Waited to meet with Mr. Jervey and Dr. Hultman.

Met with Mr. Jervey; he reported that he did not meet with Dr. Deal yesterday because of the office computer problem. He thinks he will see Dr. Deal on 3-23-07; he continues on Amitriptyline, Ambien and Klonopin for sleep, but is only able to sleep 5 hours; he wakes up 3-4 times a night and it takes him a while to go back to sleep. Mr. Jervey was accompanied by his father, who drove him to the appointment.

Met with Catherine Calvert; she approached me in the waiting room and requested a copy of the EMG. Given.

Met with Catherine Calvert for Dr. Hultman and Mr. Jervey following his private exam and she advised that Dr. Hultman left the clinic; he ordered an MRI to rule out left Carpal Tunnel versus nerve damage. Ms. Calvert asked the nurse practitioner, who also attended the visit, to come to the room to discuss the findings.

Met with the nurse practitioner; she advised the Carpal Tunnel test is negative. They are ordering an MRI because the neurologist who performed the EMG recommended the MRI; the EMG was normal; the Sims

Weinstein test done at the last appointment by the Occupational Therapist at UNC Hospital showed decreased sensation in the left fingers and they are unable to relate his symptoms to their findings. She advised he is going to receive a wrist splint today to wear at night for decreased sensation in his left hand. The nurse practitioner advised that we are to call back for a follow-up appointment after the MRI is scheduled.

Met with the office staff and Mr. Jervy and obtained copies of the prescriptions given today, the MRI order, and also a copy of the work note that noted Mr. Jervy is to remain out of work. Ms. Calvert gave me a copy of the first page of the Sims Weinstein Test and informed me she is unable to print out the other copies.

I met with Mr. Jervy and his father. Mr. Jervy reviewed his symptoms and explained that he now has left lower pain and his ability to extend his fingers on his left hand has worsened.

Prepared a summary and emailed this along with all the attachments to the adjuster.

Copied the carrier attorney.

Copied Mr. Safran.

Called Dr. Deal's office and confirmed the next appointment with Dr. Deal as 3-20-07 @ 3:00 pm. I requested the medicals from Dr. Deal for the last visit.

3-15-07 Received authorization from the adjuster for the MRI; I am to use One Call Medical.

Called One Call Medical and placed the order; gave all demographic.

Faxed the order to One Call Medical, 2 pages.

Copied the attorney.

Copied the adjuster.

Call from One Call Medical; requested clarification for contact number for the physician; given.

3-19-07 Call from One Call Medical; MRI is scheduled for Health Vision 3-21-07 @ 8:45 am.

Called UNC Burn Clinic and spoke with appointment clerk. Held several minutes and was informed next available with Dr. Hultman would be 5-2-07. I informed her that he had an appointment with Dr. Peck on 5-1-07 and would it be possible to see both on the same day. She referred me to Ms. Calvert.

Called Ms. Calvert and left a voice message requesting appointment in April with Dr. Hultman or if Mr. Jervy could be seen on the same day as the appointment with Dr. Peck.

Emailed the attorney the update and that I would follow-up next week with Ms. Calvert.

Copied the adjuster.

Copied the carrier attorney.

3-23-06 Received Dr. Lind's report, 2 pages.

Emailed this to the carrier.

Copied the attorney.

Copied the carrier attorney.

Received a copy of the MRI.

Faxed to Dr. Peck.

Faxed to the attorney.

Faxed to the adjuster.

Faxed to the attorney for the carrier.

Reviewed the case management plan.

Prepared the progress report.

Recommendations:

1. Ms. Crews and Mr. Safran and Mr. Huff will receive a copy of this report.
2. I will continue to coordinate getting medical records from Dr. Peck's office, and Dr. Lind, PhD, and Dr. Deal.
3. I will maintain contact with all parties over the next 30 days.

4. I will follow-up with Ms. Calvert and obtain a follow-up appointment for Mr. Jervey and Dr. Hultman and notify all parties.
5. I will continue to follow Mr. Jervey's psychological care in South Carolina telephonically.

Respectfully Submitted By:
Beth Hagler, RN/skw
Medical Case Manager, CRP
CorVel Corporation
336-996-4894

Kari Altman, RN, BSN, CRRN, CCM
CorCase Supervisor, QRP
919-790-2260

cc: Andrew Safran, Attorney at Law
Mr. Andrew N. Safran, LLC
1400 Pickens Street, Ste 104
Columbia, SC 29201
Fax: 803-799-1003

Ros Huff, Attorney at Law
Huff Law Firm, LLC
7244 Woodrow Street, PO Box 1935I
Irmo, SC 29063.
Fax: 803-252-2231

Attachments:

Fax to Dr. Peck 3-23-07

MDR Dr. Lind

MRI 3-21-07

Email to Attorney, Carrier Attorney and Adjuster 3-14-07

Fax to One Call Medical 3-15-07

3-19-07 Email to Attorney and Adjuster

CORVEL

FOR CONFIDENTIAL USE ONLY

TO: Kathy Crews
General Casualty / Greensboro, NC
717 Green Valley Rd
Greensboro, NC 27405

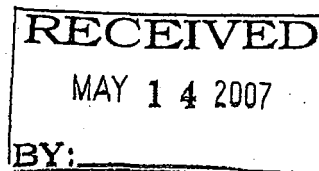
FROM: CorVel Corporation
8601 Six Forks Road
The Forum, Suite 100
Raleigh, NC 27615

REPORT PERIOD ENDING: 5/11/2007

CLAIMANT:	William Jervey, Jr.	CASE MGR:	Hagler, Beth, RN, MSN, CRP
ADDRESS:	224 Teesdale Court	TEL. NO:	919-465-2150
CT/ST:	Lexington, SC 29072	EMPLOYER:	Martint
TEL. #:	0000000000	OCCUPATION:	
S.S. #:	251459253	DOB:	02/22/1967
CLAIM #:	W082494-G09	CORVEL #:	960003395
REFERRED:	03/20/2006	DOI:	01/23/2006
DIAGNOSIS:	Status post 11 % TBSA Sulfuric Acid burns, face, left neck, right shoulder, arm and chest. Post Traumatic Stress Disorder	PROJECTED	To be determined
PHYSICIAN:	Dr. Estefano	MMI:	
TEL. NO:	803-765-0700 Micheal Peck, MD UNC Hospital Burn Center 919-966-3693	PPD:	To be determined

Dr. Deal, MD, Psychiatrist

Dr. Nicholas Lind, PhD,
Post Trauma Resources



PROGRESS REPORT**Claimant's Status and Current Treatment Plan:**

During this report period, Mr. Jerve remains out of work. He continues to receive psychiatric care from Dr. Deal with Post Trauma Resources in Columbia, SC, and psychological counseling from Dr. Lind, Post Trauma Resources. The medical dictations of Drs. Estefano, Lind and Deal have been faxed to Dr. Peck and all parties have been copied. Mr. Jerve is to return to see Dr. Peck at The Jaycee Burn Center in Chapel Hill, NC, on 5-1-07 for follow-up.

On 3-30-07, I received a call from Ms. Catherine Calvert, Rehabilitation Counselor for The Jaycee Burn Center, stating that she showed Mr. Jerve's MRI film to Dr. Hultman; he advised that he does not have to see Mr. Jerve and is referring him to a neurosurgeon. I notified all parties and Mr. Safran emailed a request to assist with the referral to the neurosurgeon. On 4-16-07, the carrier notified me that the referral to a neurosurgeon is denied and I notified Mr. Safran. Mr. Safran requested copies of the FCE and previous medical reports from Dr. Deal; he notified me that he did not receive an email that I sent with attached medical dictation from Dr. Deal and Dr. Lind. I prepared a new memo, attached all dictation requested and faxed this to Mr. Safran; copied the carrier attorney and the defense attorney.

On 4-23-07, I received notification from Mr. Safran that he did not receive my emails form 4-10-07 and 4-16-07, and also that he did not receive the faxed documents. I prepared and re-sent to Mr. Safran the 4-16-07 fax memo along with all the requested medical reports, and copied all parties.

Current Physical Restrictions:

- Per Dr. Peck, UNC Health Care on 7-24-06, agrees with the FCE and advised that Mr. Jerve is able to work modified duty 4-hour days when released by Dr. Estefano.
- Per Dr. Estefano, unable to work.
- 2-6-07 Unable to work per Dr. Peck until his left hand is evaluated by Dr. Hultman, Plastic Surgeon with the Burn Unit.

Physician's Estimated Length of Disability:

Dr. Deal: Undetermined

Dr. Peck: Undetermined

Current Work Status:

- During this report period Mr. Jerve is not working following the work-related accident.

Projected Return to Work Status (Light- or Full-Duty):

- Undetermined

Case Activity:

Late entries 4/4/07

On 3-30-07

- Call from Catherine Calvert; she showed Dr. Hultman the MRI and he referred Mr. Jervey to a Neurosurgeon; he does not need to see Mr. Jervey.
- Emailed this to the attorney and copied the carrier attorney.
- I received this email message from Mr. Safran, attorney for Mr. Jervey: "I appreciate your apprising me of this development. Given the presence of cervical pathology which explains Mr. Jervey's arm pain, referral to a spine specialist is a reasonable course of action. In this regard, I want to be involved in identifying a mutually acceptable physician. I look forward to hearing from you."
- I replied to Mr. Safran.
- I copied the carrier.
- I copied the carrier attorney.

4/10/2007

- Received Dr. Lind's report from 4-3-07; reviewed 2 pages.
- Emailed the report to the attorney.
- Copied the carrier and the carrier attorney.
- I called Dr. Deal's office, 803-765-0700; spoke with staff and requested the medical report.

4/13/2007

- Called the carrier regarding the authorization for the referral to a neurosurgeon; left message.
- Reviewed 3 pages of medicals from Dr. Lind from 4-11-07.
- Emailed these to the attorney; copied the carrier and the defense attorney.

4-16-07

- Email from the carrier that she did not get my communications regarding the referral to a neurosurgeon and this is not approved.
- Reviewed previous email to the attorney regarding the treatment plan and found that the carrier was not copied, only the carrier attorney; copied my response to the attorney to the carrier.
- I called Catherine Calvert, UNC, and requested the report. She agreed to fax; contact number given.
- Called the carrier and she informed me the referral to a neurosurgeon is denied.
- Called the attorney, 803-256-6689; held lengthy amount of time and left a message with the administrative assistant that the referral to a neurosurgeon is denied by the carrier.
- Received the Dr. Hultman's medical report from 3-14-07, 3 pages.

April 23, 2007

- Emailed the report to the attorney, copied the carrier and the carrier attorney.
- Prepared a memo, attached dictation from Drs. Estefano, Lind and Deal; faxed this to Catherine Calvert.
- Copied the attorney, the adjuster and the carrier attorney.
- Received call from the attorney; requested a call back.

Phone call to Mr. Safran; he confirmed that the carrier has denied the referral to the neurosurgeon. We had a lengthy conversation; he stated that I am no longer able to work the file. He informed me that he did not receive the email that I sent today. We reviewed the medical notes and the MRI. I informed him that I would email this and also send him a fax. Mr. Safran then advised that I may stay on the file and he will notify me with any changes. I informed him that I sent Dr. Peck a fax with reports from Drs. Estefano, Deal and Lind; he asked me why I sent these and I informed him that Dr. Peck initially referred Mr. Jervey for psychological care.

- I re-sent the email to Mr. Safran; copied the carrier and the carrier attorney.
- I prepared a memo and attached all UNC medicals in my file, included the FCE, and sent this to Mr. Safran.
- I copied the carrier and the carrier attorney.

4/17/2007

- Phone contact with the carrier; she informed me that all treatment is denied for Mr. Jervey except the follow-up appointment with Dr. Peck. She advised that all physicians have been contacted and the attorney would receive notification from their attorney.
- Call from Dr Lind; he requested reason for denial and I referred him to the carrier.

4-23-07

- Received call from Attorney Safran; he requested a call back; he did not receive my fax or emails.
- Returned call to Mr. Safran's office and spoke with his administrative staff; I left a message for Mr. Safran that I received his call and I would re-fax the information.
- Phone call to the CorVel office and discussed my email and fax to Attorney Safran.
- Re-faxed the 4-16-07 fax to Attorney Safran and also sent him a copy of the fax sent to Dr. Peck.
- Copied the carrier and Attorney Huff.
- Reviewed a 4-22-07 email from Mr. Safran requesting a call regarding the faxes he did not receive.
- Emailed a response to Mr. Safran.
- Copied the carrier and Attorney Huff.
- Contact with the carrier; medical care will continue with Drs. Peck, Lind and Deal.
- The case management plan was reviewed and updated.
- The progress report was prepared.

Case Management Plan:

April 23, 2007

Through medical case management, as directed by Dr. Peck, it is anticipated that Mr. Jervey will need continued medical case management services to assist with the coordination of his medical care and return to work.

Recommendations:

1. I will attend the appointment with Dr. Peck on 5-1-07 @ 11:30 if approved by his attorney. At this appointment we will discuss the diagnosis, objective findings and treatment plan.
2. I will continue to coordinate getting and medical records from Drs. Lind, Deal and Peck.
3. I will maintain contact with all parties over the next 30 days.

Respectfully Submitted By:

Beth Hagler, RN/skw

Medical Case Manager, CRP

336-996-4894

Kari Altman, RN, BSN, CRRN, CCM

CorCase Manager, QRP

919-790-2260

cc: Andrew Safran, Attorney at Law

Mr. Andrew N. Safran, LLC

1400 Pickens Street, Ste 104

Columbia, SC 29201

Fax: 803-799-1003

Ros Huff, Attorney at Law

Huff Law Firm, LLC

7244 Woodrow Street, PO Box 1935I

Irmo, SC 29063.

Fax: 803-252-223

Attachments:

3-30-07 Email to the Attorney
3-30-07 Email Message from Mr. Safran
3-30-07 Email to the Attorney
Dr. Lind's Report from 4-3-07,
4-10-07 Email to the Attorney
4-13-07 Email to the Attorney
MDR Dr. Lind 4-11-07
4-16-07 Email to Mr. Safran
4-16-07 Email to Mr. Safran
4-16-07 Fax to Mr. Safran
4-22-07 Email from Mr. Safran
4-23-07 Email to Mr. Safran
4-23-07 Fax to Mr. Safran
3-21-06 MDR Peck
8-24-06 MDR Peck
11-21-06 MDR Peck
3-14-07 MDR Hultman
7-13-06 MDR Peck
7-5-06 FCE

CORVEL

FOR CONFIDENTIAL USE ONLY

TO: Kathy Crews
General Casualty / Greensboro, NC
717 Green Valley Rd
Greensboro, NC 27405

FROM: CorVel Corporation
8601 Six Forks Road
The Forum, Suite 100
Raleigh, NC 27615

REPORT PERIOD ENDING: 6/12/2007

CLAIMANT: William Jervy, Jr.
ADDRESS: 224 Teesdale Court
CT/ST: Lexington, SC 29072
TEL. #: 0000000000
S.S. #: 251459253
CLAIM #: W082494-G09
REFERRED: 03/20/2006
DIAGNOSIS: Status post 11 % TBSA
Sulfuric Acid burns, face,
left neck, right shoulder,
arm and chest.
Post Traumatic Stress
Disorder, Dr. Estefano

PHYSICIAN: 803-765-0700 Micheal
TEL. NO: Peck, MD UNC Hospital
Burn Center
919-966-3693

Dr. Deal, MD, Psychiatrist

Dr. Nicholas Lind, PhD,
Post Trauma Resources

CASE MGR: Hagler, Beth, RN, MSN, CRP
TEL. NO: 919-465-2150
EMPLOYER: Martint
OCCUPATION:
DOB: 02/22/1967
CORVEL #: 960003395
DOI: 01/23/2006
PROJECTED: To be determined
MMI:

PPD: To be determined

PROGRESS REPORT**Claimant's Status and Current Treatment Plan:**

During this report period, Mr. Jervey remains out of work. He continues to receive psychiatric care from Dr. Deal with Post Trauma Resources in Columbia, SC, and psychological counseling from Dr. Lind, Post Trauma Resources.

On 5-1-07, I traveled to Dr. Peck's office and met with Mr. Jervey and Dr. Peck following his private exam. Dr. Deal advised that he would not release Mr. Jervey until he is seen by a Neurosurgeon for his cervical problems found on the MRI. Dr. Peck confirmed that Mr. Jervey will see a neurosurgeon in Charleston, South Carolina, which was arranged for Mr. Jervey by his attorney. Mr. Jervey was advised to return on 5-24-07 @ 11:00 am to follow-up with Dr. Peck. I provided a summary to all parties. The adjuster did not approve the referral to the neurosurgeon.

Current Physical Restrictions:

- Unable to work per Dr. Peck.

Physician's Estimated Length of Disability:

Dr. Deal: Undetermined.

Dr. Peck: Undetermined until follow-up with a neurosurgeon for his cervical problems.

Current Work Status:

- During this report period, Mr. Jervey, Jr. is not working following the work-related accident.

Projected Return to Work Status (Light- or Full-Duty):

- Undetermined

Case Activity:

4-24-07 I received a call from Catherine Calvert; she requested a call back regarding referral to a neurosurgeon.

Emailed the attorney regarding call from Ms. Calvert and requested if I am able to contact her.

Copied Defense Attorney.

Copied the Carrier.

4-25-06 Reviewed 4-24-07 email response from Mr. Safran to contact him by phone today regarding my email.

Called the attorney and was informed he was on a phone conference and unavailable.

Called the adjuster and she confirmed coverage for Dr. Lind, Dr. Peck and Dr. Deal; requested that I attend the next appointment with Dr. Peck and address MMI. I informed her of my call from Ms. Calvert and that the attorney has emailed me that he is sending Mr. Jervey to a Spine physician. Ms. Crews advised she is not authorizing a neurosurgeon.

Called back to Mr. Safran's office; held lengthy amount of time and was given contact as 803-422-9838.

Called Mr. Safran on his cell phone as above and he advised that I could call Catherine Calvert back; he requested I inform her that he arranged an appointment with a neurosurgeon in South Carolina. He stated that he would let me know if I am able to attend the visit on 5-1-07 by Friday.

Called Ms. Calvert and left a message with my call back information; informed that the adjuster has not approved the referral and Mr. Safran is setting up an appointment for Mr. Jervey in South Carolina.

Call from Ms. Calvert she received my message and confirmed the adjuster has not approved a referral to a neurosurgeon, which the attorney is sending Mr. Jervey to a spine specialist in South Carolina. We confirmed the next appointment date as 5-1-07 @ 11:30 am.

4-30-07 I called Attorney Safran's office and spoke with his administrative staff; left a message for Mr. Safran asking if I am allowed to attend the appointment with Dr. Peck on 5-1-07.

I called Dr. Peck's office and confirmed the appointment as 5-1-07 @ 11:30 am. Their phone number is: 919-966-2225.

I called the attorney and he gave permission for me to attend and requested I notify the physician he is arranging an appointment with a spine specialist.

5-1-07 I traveled to Dr. Peck's office.

Mileage is 150 miles.

I waited to meet with Mr. Jervey and Dr. Peck.

Catherine Calvert met with me and requested the MRI results; they forgot to bring these to the clinic.

I called the CorVel office and requested a copy to be faxed.

I met with Dr. Peck and Mr. Jervey; he was accompanied by his father. Dr. Peck advised that he had a disc protrusion at C 5-6 and C 6-7 and he would not be releasing him at MMI for the work injury until he had a follow-up with a neurosurgeon. He stated that he does not need further treatment for the burns; however, he would not release him until the cervical problem is addressed and he has the results. He informed me that Mr. Jervey will see a spine specialist in Charleston this month. Mr. Jervey confirmed this and informed me that the appointment was arranged by his attorney. Mr. Jervey discussed that the insurance had denied the referral.

I met with Mr. Jervey and he and his father discussed that he had some hand problems at the time of the FCE and he wondered why this was not caught sooner. He also had questions about why he was not aware of his treatment plan. I informed him that I have provided updates to his attorney and he confirmed this. He discussed his evaluations by the therapist at UNC Hospital. I confirmed this was ordered by Dr. Peck.

I met with Ms. Calvert and Mr. Jervey; she advised for Mr. Jervey to return on 5-24-07 to see Dr. Peck to review the results of the appointment with the spine specialist. She gave me a copy of the last medical report and an order for a referral to a neurosurgeon and a note for Mr. Jervey to remain out of work until the next follow-up appointment.

I met with Mr. Jervey and the office staff and obtained a return appointment for 5-24-07 @ 11:00 am.

I met with Mr. Jervey following the visit and we had a lengthy conversation. I informed him that I would update all parties.

I called the adjuster and left a message with an update regarding the visit.

I prepared a memo summarizing the visit and emailed this to the attorney.

I copied the carrier.

I copied the defense attorney.

I prepared and faxed the work note, the 3-14-07 dictation and the referral to the neurosurgeon to the carrier.

I copied the defense attorney.

I copied Mr. Safran.

5-9-07 The adjuster advised that she did not approve the referral.

5-22-07 I emailed an update to the attorney.

I copied the adjuster.

I copied the defense attorney.

5-21-07 I reviewed and updated the case management plan.

I prepared the progress report.

Case Management Plan:

Through medical case management, as directed by Dr. Peck and Dr. Deal, it is anticipated that Mr. Jervey will need continued medical case management services to assist with the coordination of his medical care and return to work.

Recommendations:

1. I will attend the appointment with Dr. Peck on 5-24-07, if approved by his attorney. At this appointment, we will discuss the diagnosis, objective findings and treatment plan.
2. I will continue to coordinate getting and medical records from Dr Lind, Dr. Deal and Dr. Peck.
3. I will maintain contact with all parties over the next 30 days.

Respectfully Submitted By:

Beth Hagler, RN/skw

Medical Case Manager, CRP

336-996-4894

Kari Altman, RN, BSN, CRRN, CCM

CorCase Supervisor, QRP

919-790-2260

cc: Andrew Safran, Attorney at Law
Mr. Andrew N. Safran, LLC
1400 Pickens Street, Ste 104
Columbia, SC 29201
Fax: 803-799-1003

Ros Huff, Attorney at Law
Huff Law Firm, LLC
7244 Woodrow Street, PO Box 1935I
Irmo, SC 29063.
Fax: 803-252-223

Attachments:

Emails 4-24-07 to the Adjuster and Attorney
Emails 5-1-07 to the Adjuster and Attorney
Emails 5-11-07 to the Adjuster and Attorney
Fax 5-1-07 to the Attorney and Adjuster

CORVEL

TO: Kathy Crews
General Casualty / Greensboro, NC
717 Green Valley Rd
Greensboro, NC 27405

FROM: CorVel Corporation
8601 Six Forks Road
The Forum, Suite 100
Raleigh, NC 27615

REPORT PERIOD ENDING: 6-21-07

CLAIMANT:	William Jervay, Jr.	CASE MGR:	Hagler, Beth, RN, CRP
ADDRESS:		TEL. NO:	919-790-2260
CT/ST:	Lexington, SC 29072	EMPLOYER:	Martint
TEL. #:	0000000000	OCCUPATION:	Operator
S.S. #:		DOB:	02/22/1967
CLAIM #:	W082494-G09	CORVEL #:	960003395
REFERRED:	03/20/2006	DOI:	01/23/2006
DIAGNOSIS:	Status post 11 % TBSA Sulfuric Acid burns, face, left neck, right shoulder, arm and chest. Post Traumatic Stress Disorder, Dr. Estefano	PROJECTED	To be determined
PHYSICIAN:	Micheal Peck, MD, UNC	MMI:	
TEL. NO:	Hospital Burn Center 919-966-3693	PPD:	
	Dr. Deal, MD, Psychiatrist and Dr. Nicholas Lind, PhD - Psychotherapist, Post Trauma Resources 803-765-0700		

CLOSURE REPORT

NARRATIVE SUMMARY:

During this report period, Mr. Jervay continues to treat with Dr. Peck, MD, at the NC Jaycee Burn Clinic, UNC Hospital, Chapel Hill, NC, and he has not been released at Maximum Medical Improvement. He also continues to treat with Dr. Deal, MD, a psychiatrist with Post Traumatic Resources in Columbia, SC,

for Post Traumatic Stress Disorder, and also receives psychotherapy with Dr. Nick Lind, PhD, also with Post Traumatic Resources. Mr. Safran, attorney for Mr. Jervy, the defense attorney and the carrier have received copies of my reports and all communication has been simultaneous.

Mr. Jervy had an EMG and a 3-14-07 consult with Dr. Hultman, a hand specialist at UNC Hospital, as ordered by Dr. Peck. Dr. Hultman ordered an MRI to rule out left Carpal Tunnel versus nerve damage. The nurse practitioner explained that Mr. Jervy's Carpal Tunnel test was negative. She stated that an MRI was needed because the neurologist who performed the EMG recommended the MRI; the EMG was normal; the Sims Weinstein test showed decreased sensation in the left fingers, and they are unable to relate his symptoms to their findings. The MRI was performed on 3-21-07, and Ms. Catherine Calvert, Rehabilitation Counselor for the Burn Clinic, notified me that Dr. Hultman had reviewed the results and recommended a referral to a neurosurgeon. This referral was not approved by the carrier. Mr. Jervy was seen by Dr. Peck on 5-1-07, and Dr. Peck advised that he had a disc protrusion at C 5-6 and C 6-7, and that he would not be releasing him at MMI for the work injury until he had a follow-up with a neurosurgeon; he does not need further treatment for the burns; however, he would not release him until the cervical problem is addressed and he has the results. He informed me that Mr. Jervy will see a spine specialist in Charleston this month.

On 5-24-07, I met with the nurse practitioner, Ms. Birmingham for Dr. Peck, and Mr. Jervy following his private exam. She advised that Mr. Jervy's burns look fine; she recommends sunscreen, Eucerin Cream and protective clothing. She advised that he has been seen by Dr. Johnson, a spine specialist in South Carolina, for his neck. We reviewed the report that Mr. Jervy brought to the appointment from Dr. Johnson, and Mr. Jervy stated he had a herniated disc at C6 - C7. Ms. Birmingham advised that Mr. Jervy will not be released from the Burn Center at Maximum Medical Improvement until he is released for his neck and psychiatric care. She also stated that he is unable to work and should return following clearance by Dr. Deal and Dr. Johnson. All parties were provided with a summary of the visit and recommendations per Ms. Birmingham. The carrier requested the file be closed following receipt of the medical dictation from the treating physicians.

On 6-21-07, I notified the carrier that I was unable to obtain a copy of Ms. Birmingham's report from 5-24-07, as a new HIPPA Form was needed. She approved for the file to be closed. All parties were notified. This file will now be closed as no further case management will be needed by the carrier. Thank you for the opportunity to assist with Mr. Jervy's medical recovery.

RETURN TO WORK

Mr. Jervy is unable to work per Dr. Peck; he has not been released to return to work by Dr. Deal. Dr. Estefano diagnosed Mr. Jervy with Post Traumatic Stress Disorder and advised he was unable to return to work.

RECOMMENDATIONS:

I will close the file as no further case management services will be needed by the carrier.

ATTACHED DOCUMENTATION:

- MDR Dr. Lind and Dr. Deal, 4-5-07 – 5-16-07
- 5-15-07 MDR Dr. Johnson
- 5-23-07 Fax to Adjuster and Attorney
- 5-24-07 Fax to Adjuster and Attorney
- 5-24-07 Work Note
- 5-1-07 MDR Dr. Peck
- 5-24-07 Email to Attorney and Adjuster
- 5-24-07 Email to Attorney and Adjuster
- 5-24-07 Email from Mr. Safran
- 5-24-07 Response Email to Mr. Safran
- 6-7-07 HIPPA
- 6-7-07 Fax to Attorney and Adjuster
- 6-20-07 Email to Attorney and Adjuster
- 6-21-07 Fax to Attorney and Adjuster
- Dr. Lind and Dr. Peck, MDR 5-30-07 and 6-6-07

CONTACT LIST:

5-22-07

- Reviewed an email from the adjuster from 5-18-07, asking about a prescription from Dr. Ryan.
- I called Dr. Lind's office and requested the medical reports for April and May, and also requested Dr. Deal's reports. She advised that the appointments with Dr. Lind and Dr. Deal were 4-11-07 and 4-24-07, and 5-16-07 respectively; she will send the reports. She advised that he is scheduled with Dr. Lind on 5-23-07 @ 3:00 pm. She advised that he will see Dr. Deal on 6-6-07.
- I called the attorney, 803-256-6689; held several minutes. I spoke with the office staff and left a message asking if he approves my attending the visit at UNC on Thursday.
- I called the adjuster and informed her that I was unsure if Mr. Jervy was seen by a Dr. Ryan at UNC Hospital. I explained that, sometimes, patients are given prescriptions and I don't always receive a copy. I informed her that I would forward the medicals when received.

5-23-06

- I called the physician office and confirmed the appointment.
- Received and reviewed 8 pages of medicals from Dr. Lind and Dr. Deal.
- Prepared and faxed these to the adjuster.
- I copied the plaintiff and defense attorney.

- Phone call to Mr. Safran and asked if I am able to attend the appointment. I spoke with his administrative staff; she advised she asked him and he agreed for me to attend.

5-24-07

- I traveled to Dr. Peck's office to attend the scheduled appointment with Mr. Jervy. I waited to meet with Mr. Jervy and Dr. Peck while he had a private exam.
- I met with the nurse practitioner, Ms. Birmingham, and Mr. Jervy. He was accompanied by his father. The nurse practitioner advised that Mr. Jervy's burns looked fine; she recommends sunscreen, Eucerin Cream and protective clothing. She advised that he has been seen by Dr. Johnson, a spine specialist in South Carolina, for his neck. We reviewed the report that Mr. Jervy brought to the appointment from Dr. Johnson; Mr. Jervy advised that he had a herniated disc at C6 - C7. Ms. Birmingham advised that Mr. Jervy would not be released from the Burn Center at Maximum Medical Improvement until he is released for his neck and psychiatric care. She also stated that he is unable to work and should return following clearance by Dr. Deal and Dr. Johnson.
- Two pages of 5-15-07 medicals from Dr. Johnson, Spine Specialist, were reviewed, along with Dr. Peck's report from 5-1-07, 2 pages.
- I met with Mr. Jervy, the office staff and Ms. Calvert. We received copies of the last medical report per Dr. Peck and the prescriptions given today for sun block wash (solution to wash clothes in to provide sun block), Eucerin cream and sunscreen.
- I met with Mr. Jervy and his father. We had a lengthy conversation. Mr. Jervy and his father had questions about why his insurance company was not approving the referral to the neurosurgeon, and he discussed that he had problems obtaining his medication from the pharmacy, given per Dr. Deal. I referred him to the attorney to discuss legal issues and that I would send all medical reports to the adjuster for review. I informed him that I have faxed Dr. Deal's and Dr. Lind's reports to the attorney and the adjuster. I requested that he contact Dr. Deal to inform him about not being able to obtain his prescribed medication and gave general information about medication usage. He agreed and stated he has 4 days worth of samples. I reminded him that this was a holiday weekend and recommended he contact Dr. Deal today or tomorrow.
- The adjuster and provided an update. She requested that I close my file with receipt of the final report.
- Mr. Safran was contacted and provided an update that I gave Ms. Calvert for Dr. Peck a copy of Dr. Deal's and Dr. Lind's reports from April and May. I informed him the carrier requested that I close my file with receipt of the final report. I informed him that I did not receive a copy of the work note and would call Ms. Calvert for a copy. He agreed for me to call Ms. Calvert.
- I called Ms. Calvert; she advised there is a work note and I must not have received a copy. She agreed to fax this.
- Received and reviewed the work note, 2 pages including a fax cover.
- Prepared and faxed a summary of the visit and the notes from Dr. Johnson, Spine Specialist, and Dr. Peck from 5-1-07, copies of the work note.
- I copied Mr. Safran.

- I copied Mr. Huff.
- I emailed an update regarding problems Mr. Jervey had obtaining his prescriptions to Ms. Crews.
- I copied the plaintiff and defense attorney.
- Received an email that my message was undeliverable to Mr. Huff, defense attorney.
- I reviewed my contact list and resent a copy of the message to Mr. Huff to roshuff@colalaw.com.
- I copied Mr. Safran and copied the adjuster.
- Received an email from Mr. Safran that he received 3 emails.
- I emailed Mr. Safran that I had the wrong address for Mr. Huff and had to resend and this was the reason for the additional email he received.
- I copied the carrier, and the defense attorney.

6-7-07

- I prepared a new HIPAA form.
- Prepared a memo and emailed this to Attorney Safran; requested review of form and signature in order to obtain the medical report from UNC for 5-24-07, attached the new form, old form and also the proposed fax to UNC Hospital.
- I copied the defense attorney.
- I copied the adjuster.

6-20-07

- I called Dr. Lind's office and requested the medical reports from May for Dr. Lind and dictation for appointments following the 5-16-07 appointment for Dr. Deal.
- I called the adjuster and she requested for the file to be closed.
- I emailed the attorney that the file would be closed.
- I copied the adjuster, defense attorney.

6-21-07

- I received the medical reports from Dr. Lind and Dr. Deal, reviewed 5 pages.
- Prepared a memo and faxed these to the adjuster, plaintiff and defense attorney.
- Prepared cost savings.
- Prepared the closure report.

Respectfully Submitted by;
Beth Hagler, RN/skw
Medical Case Manager, CRP
336-996-4894

Kari Altman, RN, BSN, CRRN, CCM
CorCase Supervisor, QRP
919-790-2260

cc: Andrew Safran, Attorney at Law
Mr. Andrew N. Safran, LLC
1400 Pickens Street, Ste 104
Columbia, SC 29201
Fax: 803-799-1003

Ross Huff, Attorney at Law
Huff Law Firm, LLC
7244 Woodrow Street, PO Box 19351
Irmo, SC 29063.
Fax: 803-252-223

- ☐ Initial Report
☒ Follow-up Report
☐ Final Report

Contractor Significant Incident Report (CSIR)

1. General Information		
Contracting Activity/ROICC Office: <u>Marine Corp. Base ESC - Camp Lejeune</u>		
Accident Classification: ☒ Injury ☐ Fatality ☐ Environment ☐ Procedural Issues ☐ Lessons Learned ☐ Illness ☐ Property Damage ☐ Other <u> </u>		
Involving: ☒ Confined Space ☐ Equip/Mrt Ver/Mat Handling (Heavy Construction Equip.) ☐ Hazardous Material ☐ Crane and Rigging ☒ Equip/Mrt Ver/Mat Handling (Material Handling) ☐ Trenching/Excavation ☐ Diving ☐ Equip/Mrt Ver/Mat Handling (Man-Lift/Elevated Platform) ☐ Waterfront/Marine ☐ Demolition/Renovation ☐ Fall from Ladder ☐ Fall from Scaffold ☐ Other <u> </u> ☒ Electrical ☐ Fall from Roof ☐ Fire		
2. Personal Information		
Name (Last, First, MI): <u>Jervey Jr. William T.</u>		Age: <u>38</u>
Sex: <u>M</u>		
Job Title/Description: <u>Operator</u>	Employed By: <u>Martint Inc.</u>	
Supervisor Name (Last, First, MI) & Title: <u>Caughman, Eric S.</u> <u>Technical Service</u>	Was the person trained to perform this activity/task? ☒ Yes ☐ No	
What type of training was received (OJT, classroom, etc)? <u>Group Safety Meeting w/discussion</u>	Date of the most recent formal training and topics discussed? <u>location of safety gear 1-23-06</u>	
3. Witness Information		
Witness #1: Name (Last, First, MI): <u>Watford, Clyde</u>	Job Title/Description: <u>Operator</u>	
Employed By: <u>Martint Inc.</u>	Supervisor Name (Last, First, MI): <u>Caughman, Eric S.</u>	
Witness #2: Name (Last, First, MI): <u>Hudson, Robert</u>	Job Title/Description: <u>Operator</u>	
Employed By: <u>Martint Inc. / 1099</u>	Supervisor Name (Last, First, MI): <u>Caughman, Eric S.</u>	
Additional Witnesses: (List any additional witnesses on a separate sheet and attach.) ☐ Yes ☒ No		

4. Contract Information**Type of Contract:**

☐ A/E ☐ BOS ☐ CLEAN ☐ Construction ☐ Design Build ☐ FSCC ☐ FSSC
☐ JOC ☐ RAC ☒ Service ☐ Other _____

Contract Number & Title:

N6247002A3415-#20

Industrial Group & Industrial Type:

Heavy Industrial - Environmental

Prime Contractor Name/Address/Phone & Fax No:**Safety Manager (Last, First, MI):****Insurance Carrier:****Sub Contractor Name/Address/Phone & FAX No:**

Martint Inc
175 B Rich-Lex Drive
Lexington SC 29072
(803) 796-1190 Fax: (803) 796-1171

Safety Manager (Last, First, MI):

Caughman, Eric S.

Insurance Carrier: Southern Guaranty Ins Co.**5. Accident Description****Date of Accident:**

1-23-06

Time of Accident:

Approx 14:45

Exact Location of Accident:

Advanced Wastewater Treatment

Describe the accident in detail in your words: (Use the back of page if you need additional space)

Victim was dismantling pump and hose containing residual sulfuric acid. Open end of hose being handled by victim drained residual and splashed on victim's face, neck, shoulder and arm.

Direct Cause(s) of Accident:

Victim was handling acid without using provided safety equipment. Victim and Clyde Watford were told by phone by Eric Caughman on 1-21-06 at 14:30 not to handle the dismantling of the acid pump and that Eric himself would take care of the pump and hose dismantling.

Victim was warned by Clyde Watford to use safety gear on 1-23-06 prior to accident.

Victim and Clyde Watford were warned by Clay Watkins (president) by phone on 1-21-06 at 10:00 (approx) to use the provided safety gear.

Indirect Cause(s) of Accident:

None recognized

Action(s) taken to prevent re-occurrence or provide on-going corrective actions:

The job site has been dismantled and this situation on this job site cannot occur again. Martint is evaluating further safety education for employees.

Corrective Action Beginning Date:

N/A

Anticipated Completion Date:

N/A

Personal Protective Equipment:

☐ Available and used

☒ Available and not used

☐ Not Required

☐ Not related to Mishap

☐ Wrong PPE for Job

List PPE Used: Available and not used.

TYVEK Suits (acid resistant)

full face shield

safety glasses

elbow-high gloves

full apron

knee-high rubber boots

Type of Construction Equipment (Make, Model, Serial #, VIN#) Involved:

N/A

Was Hazardous Material Spilled/Released?

Yes

☒ No

Please List Hazardous Material(s) Involved:

Sulfuric acid

Who provided first aid or cleanup of mishap site?

Witnesses: Clyde Watford and Robert Hinson assisted victim in washing acid burns and transportation to hospital on base.

Any blood-borne pathogen exposure, other than EMTs?

Yes

☒ No

Who?

List OSHA and WM-385-1-1 standards that were violated:

Failure to wear PPE.

Was site secured and witness statements taken immediately?

☒ Yes

No

By Whom?

Corporate officers of Martint were notified by 15:00 and after victim's condition was established Larry Offill (V.P.) and Clay Watkins (President) began to take statements.

6. Injury/Illness/Fatality Information

Severity of Injury/Illness:

- ☐ Fatality ☒ Lost Workday Case Involving Days Away From Work
☐ Temporary Disability ☐ Recordable Workday Case Involving Restricted Duty
☐ Permanent Total Disability ☐ Other Recordable Case ☐ Recordable First Aid Case
☐ Permanent Partial Disability ☐ Non-Recordable Case ☐ No Injury

Estimated Days Lost:

Unknown at this time

Estimated Days Hospitalized:

3 days

Estimated Days Restricted Duty:

Unknown at this time

List Primary Body Part Affected:

Face, Neck, Shoulder

List Other Body Part(s) Affected:

Arms

Nature of Injury/Illness for Primary Body Part (Examples: Amputation, Burn, Hernia):

Sulfuric Acid Burns - Liquid Chemical Corrosive

Type of Accident (Examples: Fall same level, Lifting, Bitten, Exerted):

Exposure of sulfuric acid to skin.

Source of Accident (Examples: Crane, Carbon Monoxide, Ladder, Welding Equipment):

Residual drainage from open end of sulfuric acid hose

7. Casual Factors (Explain answers on supplementary sheet)

• Design – Design of facility, workplace, or equipment was a factor?	Yes ☒ No
• Inspection/Maintenance – Inspection & Maintenance procedures were a factor?	Yes ☒ No
• Persons Physical Condition – In your opinion, the physical condition of the person was a factor?	Yes ☒ No
• Operation Procedures – Operating procedures were a factor?	Yes ☒ No
• Job Practices – One or more job safety/health practices not being followed when the accident occurred contributed to the accident?	☒ Yes ☐ No
• Human Factors – One or more human factors, such as a person's size or strength contributed to the accident?	Yes ☒ No
• Environmental Factors – Heat, cold, dust, sun, glare, etc., contributed to the accident?	Yes ☒ No
• Chemical and Physical Agent Factors – Exposure to chemical agents, such as dust, fumes, mist, vapors, or physical agents such as noise, radiation, etc., contributed to the accident?	☒ Yes ☐ No
• Office Factors – Office setting such as lifting office furniture, carrying, stooping, contributed to the accident?	Yes ☒ No
• Support Factors – Inappropriate tools/resources were provided to perform the task?	Yes ☒ No
• PPE – Improper selection, use or maintenance of PPE contributed to the accident?	Yes ☒ No
• Drugs/Alcohol – In your opinion, were drugs or alcohol a factor?	Yes ☒ No
• Job Hazard Analysis – The lack of an adequate (IAW-EM-385-1-1 Sec 01.A) activity hazard analysis was a contributing factor.	Yes ☒ No
• Job Hazard Analysis – JHA was not site specific and/or did not address the type of work/operations performed when the mishap occurred.	Yes ☒ No
• Management – A lack of adequate supervision contributed to the accident.	Yes ☒ No
• Management – Inadequate information was provided at pre con meeting.	Yes ☒ No

8. OSHA Information			
Date OSHA was Notified:	Date(s) of Investigation:	Date of citation: (Attach Copy)	Dollar amount of Penalties:
Not Notified			
9. Report Preparer			
Name (Last, First, MI):		Date of Report:	
Off III Larry G.		01-24-06	
Title:	Signature:		
Vice President	Larry Off III		
Employer:			
Martini Inc.			
Phone #:			
(803) 796-1190			

FILTER PRESS OPERATOR/GENERAL LABORER

Duties include: hooking up pump hoses, mixing lime slurries, opening plates and dumping sludge from filter press, driving backhoe/bucket loader, machine maintenance.

general casualty

Fax

To	BETH HAGLER	Fax 919-9277-1570
From	Kathy Crews (GBO claims)	Phone 336-412-3322
		Fax 336-412-3311
Pages	2 (this page included)	
Date	Apr 7 2006	

Please report incomplete transmission by calling phone number listed above.

Insured Name: MARTINT ENVIRONMENTAL
Claim Number: W082494 - 00G09
EMPLOYEE: WILLIAM T JERVEY JR
DOI: 1-23-06

LARRY AWFUL WILL FAX JOB DESCRIPTION TO YOU; I COULD NOT GET UP WITH EMPLOYEE; BUT PLEASE REMIND EE THAT IF HE DOES NOT COMPLY WITH MEDICAL TREATMENT; HIS BENEFITS COULD BE STOPPED. PLEASE HAVE HIM CALL ME. THANKS!

05/30/2006 11:45 AM

MARTINT

175B Rich-Lex Drive Lexington, SC 29072 USA

Business: (803) 796-1190 facsimile: (803) 796-1171 www.martintenvironmental.com

May 1, 2006

Corvel
Attn: Beth Hagler
8601 Six Forks Road
Suite 100
Raleigh NC 27615

REC'D MAY - 8 2006

Re: Workers Comp. Claim W082494-G09, William Jervey

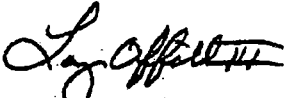
Ms. Hagler,

Our company is concerned that William Jervey is currently being treated by a psychologist for problems claimed to be related to the accident.

The fact Mr. Jervey remains out of work based on psychological issues is adding to the volume of the claim.

Mr. Jervey has a long history of psychological treatment prior to this accident and it is Martint's position that this should be taken into consideration.

Sincerely,



Larry Offill III
Vice President

1220060616103930781KCREWS10.TXT

To: beth_hagler@corvel.com;
From: KCREWS
Cc:
Bcc:
Subject: WILLIAM JERVEY/MARTINIT ENVIRONMENTAL
Date/Time Sent: 6/16/2006 10:39 AM

=====BEGINNING OF MESSAGE=====

Drawer: GCLM
FileNo: W082494-G09

JUST GOT YOU VM FROM 6-15-06; ONCE YOU GET LIGHT DUTY/FULL DUTY RETURN TO
WORK RESTRICTIONS FROM DOCTORS; PLEASE GET IN WRITING FROM EMPLOYER IF
THEY CAN OR CANNOT PUT EMPLOYEE BACK TO WORK WITHIN THE RESTRICTIONS.
THANKS!

=====END OF MESSAGE=====

Attached Files:
IR110000.pdf

1220060619130657491KCREWS10.TXT

To: BETH_HAGLER@CORVEL.COM;
From: KCREWS
Cc:
Bcc:
Subject: WILLIAM JERVEY/MARTINT ENVIRONMENTAL
Date/Time Sent: 6/19/2006 1:06 PM

=====BEGINNING OF MESSAGE=====

Drawer: GCLM
FileNo: W082494-G09

AUTHORIZE 12 VISITS OF PT; I DON'T WANT THIS MAN SITTING DOING NOTHING WHILE
WE ARE PAYING HIM. THANKS!

=====END OF MESSAGE=====

Attached Files:
IR110000.pdf

1220060721103143177KCREWS10.TXT

To: BETH_HAGLER@CORVEL.COM;
From: KCREWS
Cc:
Bcc:
Subject: WILLIAM JERVEY/MARTINT ENVIRONMENTAL
Date/Time Sent: 7/21/2006 10:30 AM

=====BEGINNING OF MESSAGE=====

Drawer: GCLM
FileNo: W082494-G09

DISCUSSED FILE WITH MY SUPERVISOR; EE IS TO CONTINUE TO TREAT WITH DR LIND; &
DR LIND & DR E ARE TO COMMUNICATE WITH EACH OTHERS; WE DO NOT FEEL WE
SHOULD CHANGE DRS @ THIS POINT; IF YOU HAVE ANY QUESTIONS, PLEASE LET ME ;
THANKS!

=====END OF MESSAGE=====

Attached Files:
IR110000.pdf

1220061004104318635KCREWS10.TXT

To: beth_hagler@corvel.com;

From: KCREWS

Cc:

Bcc:

Subject: WILLIAM JERVEY JR/MARTINT ENVIRONMENTAL

Date/Time Sent: 10/4/2006 10:43 AM

=====BEGINNING OF MESSAGE=====

Drawer: GCLM

FileNo: W082494-G09

I AM NOT GETTING ANY NOTES FROM DR ESTEFANO; DID HE EVER ANSWER THESE
QUESTIONS?; I NEED TO KNOW WHEN HE EXPECTS RTW & MMI IN REFERENCE TO OUR
INJURY; I NEED THIS INFORMATION BEFORE THE END OF OCTOBER; THANKS!

=====END OF MESSAGE=====

Attached Files:

IR110000.pdf

1220070112103240166KCREWS10.TXT

To: beth_hagler@corvel.com;
From: KCREWS
Cc:
Bcc:
Subject: WILLIAM JERVEY/MARTINT ENVIRONMETAL
Date/Time Sent: 1/12/2007 10:32 AM

=====BEGINNING OF MESSAGE=====

Drawer: GCLM
FileNo: W082494-G09

WE HAVE CONTROL OF THE MEDICAL & WHO IW SHOULD TREATS WITH; IF IW STILL
NEEDS TO TREAT WITH A PSYCHIATRIST, SEND A LIST TO IW'S ATTY FOR THEM TO PICK
ONE & LET'S GET THIS IW IN & SEE IF WE CAN GET HIM RELEASED & BACK TO WORK

=====END OF MESSAGE=====

Attached Files:
IR110000.pdf

1220070112124645098KCREWS10.TXT

To: beth_hagler@corvel.com;
From: KCREWS
Cc:
Bcc:
Subject: WILLIAM JERVEY
Date/Time Sent: 1/12/2007 12:46 PM

=====BEGINNING OF MESSAGE=====

Drawer: GCLM
FileNo: W082494-G09

I WONDER IF PSYCHOTHERAPIST WOULD RELEASE TO RTW IF WE SENT HIM A LETTER
EXPLAINING PSYCHIATRIST HAS NOW RETIRED & WE NEED HIS OPINION ON RTW? CALL
ME TO DISCUSS; THANKS!

=====END OF MESSAGE=====

Attached Files:
IR110000.pdf

1220060412140558208KCREWS10.TXT

To: BETH_HAGLER@CORVEL.COM;
From: KCREWS
Cc:
Bcc:
Subject: WILLIAM T JERVEY, JR/MARTINT ENVIRONMENTAL
Date/Time Sent: 4/12/2006 2:05 PM

=====BEGINNING OF MESSAGE=====

Drawer: GCLM
FileNo: W082494-G09

IN REF TO YOUR V/M & MR AWFUL'S PHONE CALL TO YOU; PLEASE MAKE SURE THAT YOU ATTEND PSY VISIT OF 4-13-06 & HAVE DR NOTE HOW HIS TREATMENT IS RELATED TO WC OF 1-23-06; WE ALSO NEED TO KNOW WHEN MMI & RTW IS EXPECTED; THANKS!

=====END OF MESSAGE=====

Attached Files:
IR110000.pdf

1220060425101539359KCREWS10.TXT

To: BETH_HAGLER@CORVEL.COM;
From: KCREWS
Cc:
Bcc:
Subject: WILLIAM T JERVERY, JR/MARTINT ENVIRONMENTAL
Date/Time Sent: 4/25/2006 10:14 AM

=====BEGINNING OF MESSAGE=====

Drawer: GCLM
FileNo: W082494-G09

PLEASE ARRANGE TASK ASSIGNMENT FOR NURSE CASE MANAGER TO GO ON SITE APPT
TO PSY APPT. TO GET DR TO SIGN OFF ON RTW/JOB DESCRIPTION; OPEN YOUR FILE FULL
ASSIGNMENT UNTIL WE GET EE BACK TO WORK; THANKS!

=====END OF MESSAGE=====

Attached Files:
IR110000.pdf

W/C DISABILITY BENEFIT PAYMENT LOG

PHONE _____

INSURED _____

EMPLOYER: MARTINT ENVIRONMENTALADDRESS: 175-B RICH LEX DR LEXINGTON, SC 29072

INJURED EMPLOYEE _____ ADDRESS: _____

PHONE _____

WILLIAM JERVEY, JRSC 29072

CLAIM NO: _____ POLICY NUMBER: _____

UNEMPLOYMENT TAX ID NO: _____

W082424-C09 WCA33809DATE OF ACCIDENT: 1-26-06 DATE OF DISABILITY: 1-24-06AWW: 879.18ACW: 586.11

DAILY RATE _____

FACTS OF INJURY:

FACE, NECK, SHOULDER & ARMS

COMP WAGE					COMP WAGE				
DATE PAID	FROM	THRU	AMOUNT	TOTAL TO DATE	DATE PAID	FROM	THRU	AMOUNT	TOTAL TO DATE
2-2-06	1-31-06	2-6-06	586.11 (1)	586.11	6-6-06	6-6-06	6-12-06	586.11 (1)	11,722.20
2-7-06	2-7-06	2-13-06	586.11 (1)	1,172.22	6-13-06	6-13-06	6-19-06	586.11 (1)	12,308.31
2-14-06	2-14-06	2-20-06	586.11 (1)	1,758.33	6-20-06	6-20-06	6-26-06	586.11 (1)	12,894.42
2-14-06	1-24-06	1-30-06	586.11 (1.67)	2,344.44	6-27-06	6-27-06	7-3-06	586.11 (1)	13,480.53
2-21-06	2-21-06	2-27-06	586.11 (1)	2,930.55	6-27-06	7-4-06	7-10-06	586.11 (1)	14,066.64
2-28-06	2-28-06	3-6-06	586.11 (1)	3,516.66	7-11-06	7-11-06	7-17-06	586.11 (1)	14,652.75 (F18)EW
3-7-06	3-7-06	3-13-06	586.11 (1)	4,102.77	7-18-06	7-18-06	7-24-06	586.11 (1)	15,238.86
3-14-06	3-14-06	3-20-06	586.11 (1)	4,688.88	7-25-06	7-25-06	7-31-06	586.11 (1)	15,824.97
3-21-06	3-21-06	3-27-06	586.11 (1)	5,274.99	8-1-06	8-1-06	8-7-06	586.11 (1)	16,411.08
3-28-06	3-28-06	4-3-06	586.11 (1)	5,861.10	8-8-06	8-8-06	8-14-06	586.11 (1)	16,997.19
4-4-06	4-4-06	4-10-06	586.11 (1)	6,447.21	8-15-06	8-15-06	8-21-06	586.11 (1)	17,583.30
4-11-06	4-11-06	4-17-06	586.11 (1)	7,033.32	8/22/06	8/22/06	8/28/06	586.11 (1)	18,169.41
4/18/06	4/18/06	4/24/06	586.11 (1)	7,619.43	8-29-06	8-29-06	9-4-06	586.11 (1)	18,755.52
4-25-06	4-25-06	5-1-06	586.11 (1)	8,205.54	9-5-06	9-5-06	9-11-06	586.11 (1)	19,341.63
5/2/06	5/2/06	5/8/06	586.11 (1)	8,791.65	9-12-06	9-12-06	9-18-06	586.11 (1)	19,927.74
5-9-06	5-9-06	5-15-06	586.11 (1)	9,377.76	9-19-06	9-19-06	9-25-06	586.11 (1)	20,513.85
5-16-06	5-16-06	5-22-06	586.11 (1)	9,963.87	9-26-06	9-26-06	10-2-06	586.11 (1)	21,099.96
5-23-06	5-23-06	5-29-06	586.11 (1)	10,549.98	10-3-06	10-3-06	10-9-06	586.11 (1)	21,686.07
5/30/06	5/30/06	6/05/06	586.11 (1)	11,136.09	10-10-06	10-10-06	10-16-06	586.11 (1)	22,272.18

W/C DISABILITY BENEFIT PAYMENT LOG

PHONE

INSURED PAGE 2

EMPLOYER: MARTINT ENVIRONMENTAL

ADDRESS: 176 B RICH LEX DR LEXINGTON, SC 29072

INJURED EMPLOYEE

ADDRESS:

PHONE

WILLIAM JERVEY, JR

SC 29072

CLAIM NO:

POLICY NUMBER

UNEMPLOYMENT TAX ID NO:

W082494-009

WCA83808

DATE ACCIDENT: 1-23-06

DATE DISABILITY:

1-24-06

AWW: 879.13

AGW: 586.11

DAILY RATE

FACTS OF INJURY:

FACE, NECK, SHOULDER & ARMS

COMP WAGE

COMP WAGE

DATE PAID	FROM	THRU	AMOUNT	TOTAL TO DATE	DATE PAID	FROM	THRU	AMOUNT	TOTAL TO DATE
10-17-06	10-17-06	10-23-06	586.11 (1)	22,858.29	2-27-07	2-27-07	3-5-07	586.11 (1)	33,994.38
10-24-06	10-24-06	10-30-06	586.11 (1)	23,444.40	3-6-07	3-6-07	3-12-07	586.11 (1)	34,580.49
10-31-06	10-31-06	11-6-06	586.11 (1) (VR)DW	24,030.51	3-13-07	3-13-07	3-19-07	586.11 (1)	35,166.60
11-7-06	11-7-06	11-13-06	586.11 (1)	24,616.62	3-20-07	3-20-07	3-26-07	586.11 (1)	35,752.71
11-14-06	11-14-06	11-20-06	586.11 (1)	25,202.73	3-27-07	3-27-07	4-2-07	586.11 (1)	36,338.82
11-16-06	11-21-06	11-27-06	586.11 (1)	25,788.84	4-3-07	4-3-07	4-9-07	586.11 (1)	36,924.93
11-28-06	11-28-06	12-4-06	586.11 (1)	26,374.95	4-10-07	4-10-07	4-16-07	586.11 (1)	37,511.04
12-5-06	12-5-06	12-11-06	586.11 (1)	26,961.06	4-17-07	4-17-07	4-23-07	586.11 (1)	38,097.15
12-12-06	12-12-06	12-18-06	586.11 (1)	27,547.17	4-24-07	4-24-07	4-30-07	586.11 (1)	38,683.26
12-19-06	12-19-06	12-25-06	586.11 (1)	28,133.28	5-1-07	5-1-07	5-7-07	586.11 (1)	39,269.37
12-19-06	12-26-06	1-1-07	586.11 (1)	28,719.39	5-8-07	5-8-07	5-14-07	586.11 (1)	39,855.48
1-2-07	1-2-07	1-8-07	586.11 (1)	29,305.50	5-15-07	5-15-07	5-21-07	586.11 (1)	40,441.59
1-9-07	1-9-07	1-15-07	586.11 (1)	29,891.61	5-22-07	5-22-07	5-28-07	586.11 (1)	41,027.70
1-16-07	1-16-07	1-22-07	586.11 (1)	30,477.72 (F18)DW	5-29-07	5-29-07	6-4-07	586.11 (1)	41,613.81
1-23-07	1-23-07	1-29-07	586.11 (1)	31,063.83	6-5-07	6-5-07	6-11-07	586.11 (1)	42,199.92
1-30-07	1-30-07	2-5-07	586.11 (1)	31,649.94	6-12-07	6-12-07	6-18-07	586.11 (1)	42,786.03
2-6-07	2-6-07	2-12-07	586.11 (1)	32,236.05	6-19-07	6-19-07	6-25-07	586.11 (1)	43,372.14
2-13-07	2-13-07	2-19-07	586.11 (1)	32,822.16	6-26-07	6-26-07	7-2-07	586.11 (1)	43,958.25
2-20-07	2-20-07	2-26-07	586.11 (1)	33,408.27	7-3-07	7-3-07	7-9-07	586.11 (1)	44,544.36

PHONE _____

EMPLOYER: MARTINE ENVIRONMENTAL

PHONE

NSC 22072

UNEMPLOYMENT TAX ID NO:

WCA88808

DATE
ACCIDENT 1/23/06

DISABILITY: 1/24/03

AWW: 879-13

AQW: 586.11

**DAILY
RATE**

FACTS OF INJURY:

[illegible]

Fax

To	DR HULTMAN	Fax 919193665732
From	Kathy Crews (GBO claims)	Phone 336-412-3322
		Fax 336-412-3311
Pages	2 (this page included)	
Date	Apr 17 2007	

Please report incomplete transmission by calling phone number listed above.

Insured Name: MARTINT ENVIRONMENTAL
Claim Number: W082494 - 00G09
EMPLOYEE: WILLIAM JERVEY
DOI: 1-23-06

PLEASE BE ADVISED NO FURTHER MEDICAL TREATMENT WILL BE
AUTHORIZED @ THIS TIME. THANK YOU. IF YOU HAVE QUESTIONS,
PLEASE CALL ME @1-800-334-0241 X3322

CORVEL

Facsimile Transmittal

CorVel Corporation
www.corvel.com

8601 Six Forks Road
Suite 100
Raleigh, NC 27615

919.790.2280 phone
919.790.1622 fax

Date: 12/5/2006

To ☐ One Call Medical
Fax Number: 800-653-2147

From ☐ Beth Hagler, RN CorVel Corporation
336-996-4894

Fax: 919-277-1570

Medical Case Manager

Copy To: Kathy Crews – 336-412-3311
Attorney Andy Saffron: 803-799-1003

Pages Including Cover: 2

Regarding ☐ *Mr. William Jervey, WO82494-G09, General Casualty*

Attached, order for the EMG and this is to be scheduled with Dr. Alaric Van Dam, Moore Orthopedic Clinic, Columbia SC.

Thank you,
Beth Hagler

Privileged and Confidential:

All information transmitted hereby is intended only for the use of the addressee(s) named above. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient(s), please note that any distribution or copying of this communication is strictly prohibited. Anyone who receives this communication in error should notify us immediately by telephone and destroy all copies of this communication and any attachment(s).

CORVEL

Facsimile Transmittal

CorVel Corporation
www.corvel.com

8601 Six Forks Road
Suite 100
Raleigh, NC 27615

919.790.2260 phone
919.790.1522 fax

Date: 3/15/2007

To ☐ One Call Medical
Fax Number: 800-653-2147

From ☐ Beth Hagler, RN CorVel Corporation
336-996-4894
Fax: 919-277-1570
Medical Case Manager

Copy To: Kathy Crews – 336-412-3311
Attorney Andy Saffron: 803-799-1003

Pages Including Cover: 2

Regarding ☐ *Mr. William Jervey, WO82494-Go9, General Casualty*

Attached order for the MRI.

Thank you,
Beth Hagler

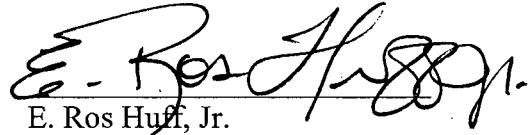
Privileged and Confidential:

All information transmitted hereby is intended only for the use of the addressee(s) named above. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient(s), please note that any distribution or copying of this communication is strictly prohibited. Anyone who receives this communication in error should notify us immediately by telephone and destroy all copies of this communication and any attachment(s).

Certificate of Counsel

In compliance with Rule 210, the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 22, 2010

A handwritten signature in black ink, appearing to read "E. Ros Huff, Jr.", written over a horizontal line.

E. Ros Huff, Jr.
HUFF LAW FIRM, LLC
Post Office Box 1935
Irmo, South Carolina 29063
(803) 252-2232

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

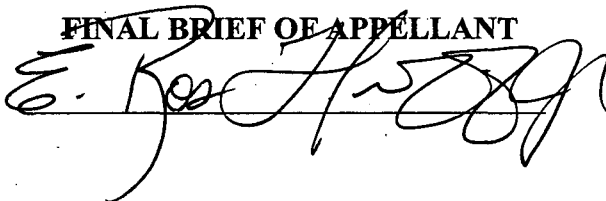
Case No. 2008-CP-32-2361

William T. Jervy, Jr., Employee Respondent,

v.

Martint Environmental, Inc., Employer
and General Casualty Insurance Company, Carrier.....Appellants

FINAL BRIEF OF APPELLANT



E. Ros Huff, Jr.
Post Office Box 1935
Irmo, South Carolina 29063
(803) 252-2232
Attorney for Appellants

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	iv
Statement of the Case	5
Arguments	
1. S.C. Code Ann. § 42-9-260 DOES NOT ACT AS A STATUTE OF LIMITATIONS AND AS SUCH THE CIRCUIT COURT ERRED IN FAILING TO AFFIRM THE COMMISSION'S ORDER FINDING THAT § 42-9-260 IS NOT A TIME BAR FOR RAISING A DEFENSE	8
2. THE CIRCUIT COURT ERRED IN AFFIRMING THE COMMISSION'S ORDER IN WHICH IT WAS FOUND THAT THE CLAIMANT'S COULD RAISE BOTH WAIVER AND LACHES AS AFFIRMATIVE DEFENSES	11
3. THE CLAIMANT DID NOT SUFFER FROM A COMPENSABLE INJURY BY ACCIDENT IN THE COURSE AND SCOPE OF HIS EMPLOYMENT	14
Conclusion	15

TABLE OF AUTHORITIES

CASES

Byars v. Cherokee County, 237 S.C. 548, 118 S.E.2d 324 (1961)	4
City of Columbia vs. Am. Civil Liberties Union of South Carolina, Inc., 323 S.C. 384, 475 S.E.2d 747, 749 (1996)	6
Cooper v. McDevitt & Street Co., 260 S.C. 463, 196 S.E.2d 833, 835 (1973)	6
Green v. City of Columbia, 311 S.C. 78, 427 S.E.2d 685, 687 (Ct. App. 1993)	10
Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940)	10
Joann Fredrick v. Wellman, Inc., 2009-SC-0729.549	6
Johnson vs. Life & Casualty Insurance Company of Tennessee, 191 S.C. 96, 3 S.E.2d 805 (1939)	4
Lark v. Bilo, Inc., 276 S.C. 130 (1981)	11
Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999)	9
Richey v. Dickinson, 359 S.C. 609, 598 S.E.2d 307 (S.C. App. 2004)	9
SC Coastal Conservation League v. S.C. Dep't of Health and Env'tl. Control, 380 S.C. 349, 669 S.E.2d 899 (Ct. App. 2008)	7
Stono River Env. Protection Ass'n v. South Carolina Department of Health & Env. Control, 305 S.C. 90, 406 S.E.2d 340 (1990)	10
Smith v. South Carolina Department of Mental Health, 329 S.C. 485, 494 S.E.2d 630 (1997)	10
Tiller v. National Health Care Center of Sumter, 334 S.C. 333 (S.C. 1999)	11
Wright v. Bi-Lo., 314 S.C. 152, 442 S.E.2d 186 (S.C. App. 1994)	7,11

STATUTES

S.C. Code Ann. § 1-23-380	11
S.C. Code Ann. § 1-23-320	10
S.C. Code Ann. § 42-1-160	3, 11
S.C. Code Ann. § 42-9-260	2,3,4,5, 6,7,8,12

OTHER AUTHORITIES

S.C. Workers' Compensation Regulation 67-505	7
S.C. Workers' Compensation Regulation 67-506	5,6
S.C. Workers' Compensation Regulation 67-603	9
S.C. Workers' Compensation Regulation 67-610	9
S.C. Workers' Compensation Regulation 67-607	10

STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court err in vacating the Commission's Order in which it was found and concluded that S.C. Code Ann. § 42-9-260 does not act as a statutory of limitations prohibiting Defendants from denying a claim after the initial 150 days from the date of the accident?
2. Did the Circuit Court err in affirming the Commission's Order in which it was found and concluded that the Claimant's could raise both waiver and laches as an affirmative defense?
3. Did the Circuit Court err in affirming the Commission's Order in which it was found and concluded that the Claimant suffered from a compensable work related injury, therefore Defendants are responsible for both temporary total disability benefits and the payment of causally related medical treatment?

STATEMENT OF THE CASE

This case arises from an accident that took place on January 23, 2006. Claimant was working for Martint Environmental, Inc. ("Employer") on a work site at Camp LeJune in Onslow County, North Carolina. Claimant and another employee were discarding a piece of pipe when sulfuric acid spilled out of the pipe onto Claimant's neck, face, and back. (R. p. 12). He subsequently developed post traumatic stress disorder and began having cervical problems.

Defendants provided temporary total disability payments beginning on January 31, 2006, and also paid Claimant's medical bills. Claimant sought additional treatment for cervical problems which Defendant's denied. A Form 50 was then filed on June 29, 2007 seeking treatment for cervical symptoms and designation of Dr. Donald R. Johnson, II as his authorized treating physician for the cervical symptoms. (R. p. 54). Defendants filed a Form 51 denying Claimant's entitlement to this treatment and denying Claimant had sustained any compensable injuries. (R. p. 56).

A hearing was held on October 15, 2007 in Columbia, SC before the Single Commissioner. The hearing was to determine issues as set on the Form 50 and Form 51. A pre-hearing conference was held and then the Commissioner went on the record and took testimony on the issue of compensability. In the middle of testimony, the Claimant's attorney made a Motion. (R. p. 91 lines 18-25) Claimant's attorney moved Defendant's could not raise any defenses as to the compensability of the claim due to Claimant's having previously accepted the claim and continued payment of temporary total disability payments beyond the 150 day time limit established in § 42-9-260. Claimant took the position the only issue that could be litigated by Defendant's was the additional medical treatment for the cervical symptoms. The Single

Commissioner ruled in favor of Claimant's motion, finding Defendants could not raise a defense on compensability after 150 days. (R. p. 94 lines 19-20). At that time, Defendant's stipulated the medical records to date indicated a cervical problem that the doctors found to be causally related. The hearing concluded at that point. (R. p. 5).

Thereafter, Defendants filed a Form 30 Request for Commission Review, appealing thirty-four grounds to include the following issues: Did the Single Commissioner err in ruling in favor of Claimant's motion that Defendants waived all good faith defenses to compensability by raising them for the first time after 150 days, the error being such a ruling is an error of law? Did the Single Commissioner err in concluding that the Defendants have met the criteria for both waiver and laches, when this is in violation of statutory provision, affected by an error of law? Did the Single Commissioner err in finding and concluding as a matter of law Claimant suffered a compensable injury, the error being the preponderance of the evidence does not support the finding of a compensable injury? (R. p. 57).

In an Order dated May 5, 2008, the Commission ordered that the Defendants shall continue to pay the Claimant temporary total disability benefits until further Order of the Commission or agreement of the parties, shall accept financial responsibility for all causally related medical modalities including those provided by Dr. Johnson, and authorize additional medical treatment by Dr. Johnson. (R. p. 26). It is from this Order that the Defendants appealed to the Circuit Court based on multiple grounds, to include the following: the appellate panel committed an error of law in that pursuant § 42-1-160 the Claimant did not sustain an injury by accident, the appellate panel erred in finding that the carrier engaged in various activities reflecting an informed and voluntary acknowledgement of liability for the Claimant's claim based upon various activities as listed in sub-paragraphs (a) through (f), the appellate panel erred

in Finding of Fact No. 11 (e) that during the 150 day period commencing January 23, 2006 both employer and carrier engaged in activities which were reflective of the knowing, informed, voluntary acceptance of liability for claimant's injuries, the appellate panel erred in Finding of Fact No. 11 (f) that the course and conduct of the employer/carrier after the expiration of the 150 day period is consistent with their continued acceptance of liability of the claim, the appellate panel erred in Finding of Fact No. 13 whereby it states that the case is still compensable because the doctrines of waiver and laches apply and further that the Defendants waived these defenses by their behavior in that they knew the facts surrounding the defense from the beginning, by paying benefits and providing medical treatment the Defendants have waived the defenses in SC Code Section 42-9-260, the appellate panel committed an error of law in finding and concluding that 42-9-260 is applicable in this claim, the appellate panel erred in Conclusion of Law No. 5 that based upon the doctrine of waiver as set forth in Johnson vs. Life & Casualty Insurance Company of Tennessee applies, the error being that waiver was not plead and was not proper before the Commission, the appellate panel erred in Conclusion of Law No. 6 that the distinction between waiver and estoppel is close, and sometimes the doctrines merge into each other with almost imperceptible gradations, the error being that this is a proper citing of the law however, set forth above, waiver was not properly plead and notice was not properly given to the Defendants that they had to be prepared to address waiver or estoppel, thereby depriving them of their due process, the appellate panel erred in Conclusion of Law No. 7 that laches would apply thereby citing Byars v. Cherokee County, the error being that the doctrine of laches was not raised properly by the pleadings and proper notice was not given to the Defendants to defend this legal defense thereby depriving them of their due process and was an error for the Commission to sui sponte address the issue of laches, and the appellate panel erred in Conclusion of Law

No.8 that the equitable doctrine of laches is equivalent to the legal doctrine of waiver, is a proper distinction of the issue of laches and waiver was not properly raised before the Commission and therefore it was an error of law for it to be considered by the Single and Full Commission. (R. p. 78).

A hearing was held before the Circuit Court and Judge McMahon issued his order on March 24, 2009 indicating that the Commission's May 5, 2008 Order is affirmed in all respects with the exception of the portion vacating the single commissioner's legal conclusions/determinations relative to the impact of the statute of limitations contained in § 42-9-260(A), the award of compensation and medical benefits is reinstated and the Defendants' appeal is dismissed. (R. p. 35). It is from this Order that Defendants have now filed their appeal to this Court.

ARGUMENTS

I. Section 42-9-260 does not act as a statute of limitations, and as such the Circuit Court erred in failing to affirm the Commission's order finding that §42-9-260 is not a time bar for raising a defense.

The Circuit Court erred in failing to affirm the portion of the Commission's order finding that § 42-9-260 is not a time bar for raising a defense against compensability.

Claimant's attorney argued Defendants could not raise a defense to compensability because it was outside of the 150 days to terminate benefits under § 42-9-260 and Regulation 67-506. Defendants in turned argued § 42-9-260(F) provides that the Commission is to designate procedures for terminating benefits "for any cause" which includes a good faith defense and the Commission has failed to adopt such a procedure. Further, Defendants argued the language "for any cause" is a factual determination and cannot be determined as a matter of law and must be

determined after all evidence is presented. § 42-9-260(F) states "After the one-hundred fifty-day period has expired, "the commission shall provide by regulation the method and procedure by which benefits may be suspended or terminated for any cause, but the regulation must provide for an evidentiary hearing and commission approval prior to termination or suspension..."

The Commission has adopted Regulation 67-506 to establish the procedure for terminating disability benefits after 150 days but the Commission's regulation does not address the situation presented here. The regulation only speaks to accepted claims. It does not address the procedure for terminating benefits based on a denial of compensability. The South Carolina Legislature was clear in stating the Commission must provide a regulation to suspend or terminate benefits for any cause. If the language in the statute is plain and unambiguous, there is no need to resort to rules of statutory interpretation. City of Columbia vs. Am. Civil Liberties Union of South Carolina, Inc., 323 S.C. 384, 387, 475 S.E.2d 747, 749 (1996). The statute's language "for any cause" is plain and unambiguous and must be interpreted to include a good faith defense on the issue of compensability. Therefore, the issue of compensability can be raised after the 150 day period and the Full Commission must allow Defendants to present a good faith defense to the issue of compensability.

This Court issued a recent opinion, Joann Fredrick v. Wellman, Inc. Opinion No. 4599 which speaks to this very issue. In the Fredrick case, the claim was accepted, a Form 21 request for stop payment was filed, and during the pendency of the hearing Defendants learned that Ms. Fredrick suffered from a prior back injury. Thus, Defendants indicated on their Form 58 Pre Hearing Brief that they were raising a Cooper v. McDevitt Street defense. The Claimant argued that Defendants' fraud defense was not properly before the Commission because it was not raised on the original Form 21. However, this Court found that the Form 58 Pre-Hearing Brief

was sufficient because the first hearing was rescheduled for approximately **two months** after the filing of the Form 58 which provided the parties with ample notice. The Single Commissioner denied benefits based on the fact that the Claimant lied on her employment application, and this order was subsequently affirmed by the Full Commission and again at the Circuit Court. The Claimant argued that Defendants were barred from raising a defense to compensability because they paid for benefits past the 150 day time period as indicated in § 42-9-260. However, the Court specifically states that § 42-9-260 allows suspension or termination of payments after the 150 days have expired for **any cause**. In addition, they went on to say that the fact that Regs 67-505 through 506 and the Form 21 list only certain grounds for termination or suspension of payments is more of a curiosity than a binding statement of exclusive grounds for termination or suspension of payments – it is beyond the question that the plain language of the enabling statute is controlling. See SC Coastal Conservation League v. S.C. Dep't of Health and Envtl. Control, 380 S.C. 349, 375, 669 S.E.2d 899, 912 (Ct.App. 2008). Thus the Defendants timely raised their defense as § 42-9-260 does not act as a statute of limitations.

It can be further argued that § 42-9-260 is not applicable to the present case. Section 42-9-260 establishes Defendants may unilaterally terminate workers' compensation benefits within 150 days of the date the employer gained knowledge of the accident. It further provides after 150 days, Defendants may not terminate benefits unilaterally. Defendants must go before the commission on an evidentiary hearing to seek Commission approval before terminating benefits. S.C. Code Ann. § 42-9-260(F). Defendants have not unilaterally terminated benefits in the present case. Defendants continue to pay benefits to the Claimant. Defendants wanted to present evidence before the Single Commissioner to terminate benefits on the basis there was not a compensable injury under the ruling of Wright v. Bi-Lo., 314 S.C. 152, 442 S.E.2d 186 (S.C.

App. 1994). Therefore, the Commission erred in ruling § 42-9-260 barred Defendants from defending the claim as non-compensable.

Claimant argues that Defendants' course of conduct prior to and after the 150 day period established in § 42-9-260 is consistent with acceptance of this claim. (R. p 91 lines 18 - 25). Defendants do not deny payment of compensation and medical benefits beyond 150 days. Defendants' position is these actions do not prevent Defendants' from presenting a good faith defense on the issue of compensability. Section 42-9-260(F) clearly states the commission is to provide regulations to determine the method and procedure to suspend or terminate benefits "for any cause" after 150 days. The legislature could have used limiting language to establish specific events that would allow termination of benefits after 150 days. The legislature did not do so and the Commission has not established a regulation prescribing the procedure to terminate compensation after 150 days addressing good faith defenses to compensability. This claim appeared to have been compensable, thus benefits were paid, however upon further investigation it was found that the Claimant was injured outside the sphere of his employment. Defendants sought to prove that the Claimant did not suffer from a compensable claim, however the Single Commissioner denied Defendants their due process by failing to permit Defendants to enter evidence.

II. The Circuit Court erred in affirming the Commission's Order in which it was found that the Claimant's could raise both waiver and laches as affirmative defenses.

The Claimant argued that the doctrine of laches prevents Defendants from denying compensability after the initial 150 days from the date of the accident. In order for Claimant to prevail on a laches argument, Claimant must show negligence on the part of the Defendants in

failing to act sooner that resulted in material prejudice to Claimant. Richey v. Dickinson, 359 S.C. 609, 598 S.E.2d 307 (S.C. App. 2004). Further, the Claimant has the burden of proving that there is negligence, the opportunity to act sooner, and material prejudice. Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999). Claimant cannot show he suffered material prejudice due to Defendants seeking to defend the claim on the issue of compensability. Defendants denied additional medical treatment less than two years after the date of accident. During that time, Claimant has received and continues to receive benefits from the Defendants. Claimant has not suffered any material change in circumstances due to Defendants' assertion the claim is not compensable. Therefore, Claimant has not suffered material prejudice, has not proved negligence, has not incurred unnecessary expenses, and cannot prevail on a defense of laches.

The Circuit Court erred in affirming the finding and conclusion that Defendants are prevented by waiver and laches from raising the defense of compensability because waiver and laches were not raised in the pleadings/SCWCC Form 50. The first time laches and waiver were presented was in the Single Commissioner's order. A complete reading of the Single Commissioner's Hearing Transcript illustrates that the Claimant did not raise this as an issue at any point in the hearing. (R. p. 84). Regulation 67-610(A) states "after a request for hearing and answer are filed with the Commission, an "Amended" form must be filed to indicate a change in the nature of the claim, relief requested, or another defense." Claimant was required, by regulation, to amend the Form 50 to raise the issue of laches and waiver when Defendant's Form 51 raised the defense of compensability. Claimant did not do so and because of Claimant's failure to do so, the issue was not properly before the Commissioner and it is waived.

Further, the Regulations of the South Carolina Workers' Compensation Commission requires that the Employer's attorney fully state its position and defenses, if any, replying to each specification in the Form 50 and file the Form 51 and a proof of service with the Commission's Judicial Department within thirty days of service of the Form 50 and serve the Claimant a copy of the Form 51. S.C. Code Ann. Regs. 67-603 (2006). Therefore, had the Claimant raised these issues in the Form 50 the Defendants could have responded appropriately and they would have been properly before the Commission. Administrative agencies are required to meet minimum standards of **due process**. Stono River Env. Protection Ass'n v. South Carolina Department of Health & Env. Control, 305 S.C. 90, 406 S.E.2d 340 (1990) *as cited in* Smith v. South Carolina Department of Mental Health, 329 S.C. 485, 500, 494 S.E.2d 630, 638 (1997). Due process requires that litigants receive notice of the issues to be met on trial, hearing or appeal. Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940) *as cited in* Green v. City of Columbia, 311 S.C. 78, 80, 427 S.E.2d 685, 687 (Ct. App. 1993). All litigants must give timely notice to each party of the issues to be heard at trial. S.C Code Ann 1-23-320(a)(2006); *see also* Reg. 67-607. The Claimant did not raise the issue of doctrine of waiver or laches in his pleading, therefore should be barred from raising this and the Circuit Court erred in affirming the Commission's Order finding and concluding it was applicable. Therefore, Defendants were not given proper notice as required under the 1-23-320(a) and Regulation 67-607 and the Circuit Court erred in affirming an award as it's a violation of due process. Green v. City of Columbia, 311 S.C. 78, 427 S.E.2d 685 (S.C.App. 1993).

III. The Claimant did not suffer from a compensable injury by accident in the course and scope of his employment.

The Commission erred in finding Claimant suffered a compensable injury under the Workers' Compensation Act. Claimant has the burden of proving, by substantial evidence, an injury by accident arising out of and in the course of employment. When an employer limits sphere of employment by specific prohibitions, injuries incurred while violating these prohibitions are not in scope of employment and, therefore, not compensable under workers' compensation law. Wright v. Bi-Lo, 314 S.C. 152, 442 S.E.2d 186 (S.C. App. 1994).

The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the Workers' Compensation Commission. *See Lark v. Bilo, Inc.*, 276 S.C. 130 (1981). The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. S.C. Code Ann § 1-23-380(5). Further, the court may only reverse the decision of the Commission if that decision is affected by an error of law or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. S.C. Ann § 1-23-380(5)(d)&(e). Further, 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." Tiller v. National Health Care Center of Sumter, 334 S.C. 333 (S.C. 1999).

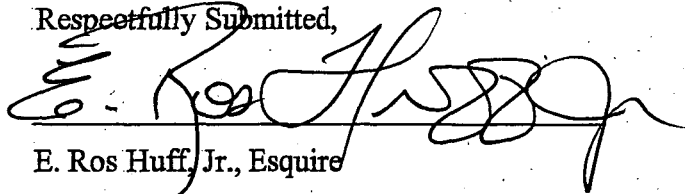
In this case, the Claimant has failed to meet his burden of proof to show that he suffered from a compensable work related injury. There is substantial evidence to show that the Claimant was working outside the scope of his employment, thus pursuant to § 42-1-160 he did not suffer from a compensable work related accident. However, Defendants were not permitted to put up any evidence regarding compensability. This is a denial of the Defendants' due process rights,

and as such this claim should be remanded to the Single Commission for an evidentiary hearing on the issue compensability.

CONCLUSION

Based on the above cited arguments, Defendants would respectfully request that the Circuit Court Order be vacated, that this Court find that § 42-9-260 is not a statute of limitations, therefore the Defendants can deny the Claimant's claim for injuries sustained. Further, that the Claimant is barred from raising the doctrine of waiver and laches as they were not properly plead, thus Defendants' were not afforded due process. As such, this claim is hereby remanded to the Commission for a hearing on the issue of compensability.

Respectfully Submitted,



E. Ros Huff, Jr., Esquire

HUFF LAW FIRM, LLC

Post Office Box 1935

Irmo, South Carolina 29063-1935

(803) 252-2232

Attorneys for Appellants

Irmo, South Carolina

February 22, 2010

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

THE HONORABLE R. KNOX MCMAHON, CIRCUIT COURT JUDGE

CASE NUMBER: 2008-CP-32-2361

William T. Jervey, Jr., Employee Respondent

v.

Martini Environmental, Inc., Employer, and General Casualty Insurance Company,
Carrier Appellants

RESPONDENT'S FINAL BRIEF

Respectfully submitted,

Andrew N. Safran, Esquire
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689
Attorney for Respondent

INDEX

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	3
ARGUMENT I.....	10
ARGUMENT II	17
ARGUMENT III.....	20
CONCLUSION.....	24
CERTIFICATE OF SERVICE	26
CERTIFICATE OF COUNSEL	27

TABLE OF AUTHORITIES

CASES

<u>Abba Equipment, Inc. v. Thomason</u> , 335 S.C. 477, 517 S.E. 2d 235 (Ct. App. 1999)	12
<u>Allen v. Benson Outdoor Advertising Company</u> , 236 S.C. 22, 112 S.E. 2d 722 (1960)	13, 15, 16
<u>Anderson v. Baptist Medical Center</u> , 343 S.C. 487, 541 S.E. 2d 526 (2001)	21
<u>Baxter v. Martin Brothers, Inc.</u> , 368 S.C. 510, 630 S.E. 2d 42 (2006)	21
<u>Bickerstaff v. Prevost</u> , 380 S.C. 521, 670 S.E. 2d 660 (Ct. App. 2009)	18
<u>Branch v. City of Myrtle Beach</u> , 340 S.C. 405, 532 S.E. 2d 289 (2000)	14
<u>Brunson v. Wal-Mart Stores, Inc.</u> , 344 S.C. 107, 542 S.E. 2d 732 (Ct. App. 2001)	10
<u>Busby v. State Farm Mutual Automobile Insurance Company</u> , 280 S.C. 330, 312 S.E. 2d 716 (Ct. App. 1984)	12
<u>Bush v. Gingrey Brothers</u> , 232 S.C. 20, 100 S.E. 2d 821 (1957)	18
<u>Byars v. Cherokee County</u> , 237 S.C. 548, 118 S.E. 2d 324 (1961)	22
<u>Byrd v. King</u> , 245 S.C. 247, 140 S.E. 2d 158 (1965)	23
<u>Canal Insurance Company v. Caldwell</u> , 338 S.C. 1, 524 S.E. 2d 416 (Ct. App. 1999)	22
<u>Clade v. Champion Laboratories</u> , 330 S.C. 8, 496 S.E. 2d 856 (1998)	20
<u>Cokeley v. Robert Lee, Inc.</u> , 197 S.C. 157, 14 S.E. 2d 889 (1941)	21
<u>Denene, Inc. v. City of Charleston</u> , 352 S.C. 208, 574 S.E. 2d 196 (2002)	14
<u>Ellison v. Frigidaire Home Products</u> , 371 S.C. 159, 638 S.E. 2d 664 (2006)	14
<u>First Carolinas Joint Stock Land Bank of Columbia v. Knotts</u> , 191 S.C. 384, 1 S.E. 2d 797 (1939)	13
<u>Fredrick v. Wellman, Inc.</u> , 385 S.C. 8, 682 S.E. 2d 516 (Ct. App. 2009)	3, 15, 18, 19

<u>Greer v. Greenville County</u> , 245 S.C. 442, 141 S.E. 2d 91 (1965).....	17, 21
<u>Grinnell Corp. v. Wood</u> , 378 S.C. 458, 663 S.E. 2d 61 (Ct. App. 2008).....	14
<u>Hallums v. Hallums</u> , 296 S.C. 195, 371 S.E. 2d 525 (1988)	22
<u>Harbin v. Owens-Corning Fiberglas</u> , 316 S.C. 423, 450 S.E. 2d 112 (Ct. App. 1994)	19
<u>Hatcher v. Harleysville Mutual Insurance Company</u> , 266 S.C. 548, 225 S.E. 2d 181 (1976)	23
<u>Hernandez-Zuniga v. Tickle</u> , 374 S.C. 235, 647 S.E. 2d 691 (Ct. App. 2007)	14
<u>Hicks v. Piedmont Cold Storage, Inc.</u> , 335 S.C. 46, 515 S.E. 2d 532 (1999).....	21
<u>Hodges v. Rainey</u> , 341 S.C. 79, 533 S.E. 2d 578 (2000).....	11
<u>Houston v. Deloach & Deloach</u> , 378 S.C. 543, 663 S.E. 2d 85 (Ct. App. 2008)	20
<u>Janasik v. Fairway Oaks Villas Horizontal Property Regime</u> , 307 S.C. 339, 415 S.E. 2d 384 (1994)	22
<u>Johnson v. Life & Casualty Insurance Company of Tennessee</u> , 191 S.C. 96, 3 S.E. 2d 805 (1939)	22
<u>Jolly v. Atlantic Greyhound Corporation</u> , 207 S.C. 1, 35 S.E. 2d 42 (1945)	14
<u>King v. Wesner</u> , 198 S.C. 49, 16 S.E. 2d 289 (1941)	19
<u>Kiriakides v. United Artists Communications, Inc.</u> , 312 S.C. 271, 440 S.E. 2d 364 (1994)	14
<u>Lark v. Bi-Lo, Inc.</u> , 276 S.C. 136, 276 S.E. 2d 304 (1981)	20
<u>L.B. Price Mercantile Company v. Redd</u> , 231 S.C. 446, 99 S.E. 2d 57 (1957).....	15
<u>Lyles v. BMI, Inc.</u> , 292 S.C. 153, 355 S.E. 2d 282 (Ct. App. 1987)	22
<u>Mailsources, LLC v. M.A. Bailey & Associates, Inc.</u> , 356 S.C. 370, 588 S.E. 2d 639 (Ct. App. 2003)	21
<u>McCoy v. Easley Cotton Mills</u> , 218 S.C. 350, 62 S.E. 2d 772 (1950)	17
<u>McCreery v. Covenant Presbyterian Church</u> , 303 S.C. 271, 400 S.E. 2d 130 (1990)	16

<u>McDonald v. Palmetto Theaters</u> , 196 S.C. 460, 13 S.E. 2d 602 (1941)	19
<u>Muir v. C.R. Bard, Inc.</u> , 336 S.C. 266, 519 S.E. 2d 583 (Ct. App. 1999)	23
<u>Mullinax v. Winn-Dixie Stores, Inc.</u> , 318 S.C. 431, 458 S.E. 2d 76 (Ct. App. 1995)	21
<u>New York Times Co. v. Spartanburg County School District No. 7</u> , 374 S.C. 307, 649 S.E. 2d 28 (2007)	14
<u>Parker v. Parker</u> , 313 S.C. 482, 443 S.E. 2d 388 (1994)	21, 22, 23
<u>Pee v. AVM, Inc.</u> , 344 S.C. 162, 543 S.E. 2d 232 (Ct. App. 2001)	11
<u>Peoples v. Henry Company</u> , 364 S.C. 123, 611 S.E. 2d 527 (Ct. App. 2005).....	17
<u>Powers v. Fidelity & Deposit Co. of Maryland</u> , 180 S.C. 501, 186 S.E. 2d 523 (1936)	12
<u>Pratt v. Morris Roofing, Inc.</u> , 353 S.C. 339, 57 S.E. 2d 475 (Ct. App. 2003)	17
<u>Provident Life & Accident Insurance Company v. Driver</u> , 317 S.C. 471, 451 S.E. 2d 924 (Ct. App. 1994)	21
<u>Pruitt v. South Carolina Medical Malpractice Liability Joint Underwriting Association</u> , 343 S.C. 335, 540 S.E. 2d 843 (2001)	21
<u>Ramsey v. County of McCormick</u> , 306 S.C. 393, 412 S.E. 2d 408 (1991)	14
<u>Robbins v. Walgreen's and Broadspire Services, Inc.</u> , 375 S.C. 259, 652 S.E. 2d 90 (Ct. App. 2007)	17, 21
<u>Rodney v. Michelin Tire Corp.</u> , 320 S.C. 515, 466 S.E. 2d 357 (1996).....	10
<u>Rorrer v. P.J. Club, Inc.</u> , 347 S.C. 560, 556 S.E. 2d 726 (Ct. App. 2001).....	12
<u>Russo v. Nationwide Insurance Company</u> , 334 S.C. 455, 513 S.E. 2d 127 (Ct. App. 1999)	12
<u>RWE NUKEM v. ENSR Corporation</u> , 373 S.C. 190, 644 S.E. 2d 730 (2007)	23
<u>Singleton v. Mullins Lumbar Company</u> , 234 S.C. 330, 108 S.E. 2d 414 (1959)	13
<u>Singleton v. Young Lumbar Company</u> , 236 S.C. 454, 114 S.E. 2d 837 (1960).....	13, 15

<u>Smith v. NCCI, Inc.</u> , 369 S.C. 236, 631 S.E. 2d 268 (Ct. App. 2006)	21
<u>Solomon v. W.B. Easton, Inc.</u> , 307 S.C. 518, 415 S.E. 2d 841 (Ct. App. 1992).....	10
<u>South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control</u> , 280 S.C. 349, 669 S.E. 2d 899 (Ct. App. 2008)	14, 17
<u>State v. Ramsey</u> , 311 S.C. 555, 430 S.E. 2d 511 (1993)	13
<u>Strickland v. Strickland</u> , 375 S.C. 76, 650 S.E. 2d 465 (2007)	22
<u>Thompson ex rel. Harvey v. Cisson Construction Co.</u> , 377 S.C. 137, 659 S.E. 2d 171 (Ct. App. 2008)	21
<u>Wall v. C.Y. Thomason Company</u> , 232 S.C. 153, 101 S.E. 2d 286 (1957).....	10
<u>Whitner v. State</u> , 328 S.C. 1, 492 S.E. 2d 777, 779 (1997)	12

STATUTES

S.C. Code Ann. Section 1-23-380 (A) (1976, as amended).....	8, 20
S.C. Code Ann. Section 42-9-260 (1976, as amended)	3, 7, 8, 9, 10, 11, 13, 15, 24
S.C. Code Ann. Section 42-9-260 (A) (1976, as amended).....	1, 2, 3, 8, 12, 20
S.C. Code Ann. Section 42-9-260 (B)	11
S.C. Code Ann. Section 42-9-260 (F) (1976, as amended)	1, 8, 10, 11
S.C. Code Ann. Section 42-17-10 (1976, as amended)	13
S.C. Code Ann. Section 42-17-60 (1976, as amended)	10
S.C. Code ann. Section 72-177 of 1962 Code	13

REGULATIONS

Commission Regulation 67-610	18, 19

STATEMENT OF ISSUES ON APPEAL

- 1) Did the Circuit Court err in concluding S.C. Code Ann. Section 42-9-260 (A) (1976, as amended): (a) establishes a 150 day grace period for the purpose of allowing an Employer/Carrier to conduct “a good faith investigation”; (b) invoked a waiver of these grounds in the event payments are continued beyond expiration of this grace period; and (c) prohibited Appellants from contesting liability for Mr. William T. Jervy, Jr.’s entitlement to disability compensation/medical benefits per the South Carolina Workers’ Compensation Act, in the absence of fraud or jurisdictional defect, at this stage of the proceedings?
- 2) Did the Circuit Court err in determining: (a) Appellants’ June 9, 2008 Petition for Judicial Review did not raise the issue relative to the implications of S.C. Code Ann. Section 42-9-260 (F) (1976, as amended) in the current context; and (b) this issue had not been preserved for appellate review?
- 3) Did the Circuit Court err in concluding that, assuming *arguendo* the issue as to the implications of S.C. Code Ann. Section 42-9-260 (F) (1976, as amended) had been adequately preserved, this subsection: (a) necessarily governs claims for which basic liability has been admitted/acknowledged; (b) did not create an unqualified/unlimited opportunity for an Employer/Carrier to disclaim basic liability in contravention of S.C. Code Ann. Section 42-9-260 (A) (1976, as amended); and (c) could not be construed to authorize relitigation of the basic liability issue in this instance?
- 4) Did the Circuit Court err in determining: (a) Appellants did not contest (through objection before the single commissioner or exception to the Full Commission) Mr. Jervy’s assertion of the doctrines of waiver and laches; (b) their alleged lack of notice/denial of due process was consequently not preserved for appellate review; and (c)

notwithstanding their abandonment of this issue, Appellants were adequately notified of and afforded reasonable opportunity to be heard as to each of Mr. Jervey's legal contentions?

5) Did the Circuit Court err in ruling the substantial evidence of record amply supported the South Carolina Workers' Compensation Commission's determinations: (a) Appellants were immediately aware of the facts upon which they currently base their allegation Mr. Jervey's injuries occurred outside the course/scope of his employment; (b) their conduct, both before and after the expiration of the 150 day grace period afforded by S.C. Code Ann. Section 42-9-260 (A) (1976, as amended), was "reflective of the knowing/informed/voluntary acceptance of liability for Mr. Jervey's" claim; (c) Appellants failed to raise this known defense until approximately one year after the expiration of the 150 day grace period; and (d) this course of conduct was reflective of both waiver and laches?

STATEMENT OF THE CASE

This is an appeal from the March 24, 2009 Order of the Honorable R. Knox McMahon, which: (a) determined Appellants', Martint Environmental Inc.'s and General Casualty Insurance Company's, primary assertions of error had not been properly preserved for appellate review; (b) concluded the South Carolina Workers' Compensation Commission's (Commission's) factual findings relative to Appellants' course of conduct in the aftermath of Respondent's, William T. Jervy, Jr.'s, January 23, 2006 compensable accident were supported by the substantial evidence of record; (c) alternatively held the Commission correctly applied the doctrines of waiver and laches in ruling Appellants were prohibited from contesting the compensability of Mr. Jervy's claim at this stage of the proceedings; and (d) reversed the Commission's application of S.C. Code Ann. Section 42-9-260 (1976, as amended), construing this statute to preclude retrial of the basic issue of liability under the present circumstances.

Essentially, Appellants contend Judge McMahon erred in failing to ignore: (a) the import of S.C. Code Ann. Section 42-9-260 (A) where, as here, neither fraud nor jurisdictional defect have been alleged; (b) undisputed evidence verifying they were intimately aware of the allegations which provide the basis for their current attempt to disclaim liability by no later than January 24, 2006; (c) uncontroverted factual findings which certainly validate the Commission's determination "the doctrines of waiver and laches apply"; and (d) their attempt to pursue issues which were not timely/adequately preserved during the course of this litigation.

However, despite these assertions, which conveniently overlook conduct wholly inconsistent with a denial of liability, governing rules of statutory construction and material distinctions with the scenario analyzed by this Court in Fredrick v. Wellman,

Inc., 385 S.C. 8, 682 S.E. 2d 516 (Ct. App. 2009), Mr. Jervey respectfully submits: (a) Judge McMahon's rulings comport with not only the substantial evidence of record, but also relevant legal authorities; and (b) his March 24, 2009 Order should be affirmed.

FACTS/PROCEDURAL HISTORY

On January 23, 2006, Mr. Jervey sustained multiple compensable injuries while throwing a segment of hose into a dumpster at a jobsite on the Camp LeJeune Marine Corps base in Onslow County, North Carolina. Specifically, this injury occurred when: (a) he (with the assistance of a co-worker) was lifting/throwing this hose; and (b) sulfuric acid spilled from the hose onto various parts of his body. (See, Record on Appeal, pp. 11 – 12, 28 and 37).

Shortly after sustaining these injuries, Mr. Jervey was transported, via ambulance, to the University of North Carolina Hospitals/North Carolina Jaycee Burn Center, where he: (a) was admitted for acute care of his acid burn wounds; and (b) subsequently received treatment for various injuries stemming from this accident. (See, Record on Appeal, pp. 12, 28 and 37).

Per Form 12-A completed on January 24, 2006, Martint: (a) provided all requested information relative to the nature and consequences of Mr. Jervey's accident; while (b) **specifically alleging he had been "asked not" to engage in the activity he was performing at the time the accident occurred ("victim was dismantling pump & hose containing residual sulfuric acid . . . Employee was asked not to touch or dismantle the sulfuric acid system")**. (See, Record on Appeal, pp. 12, 28, 37, 142, 213 - 217) (Emphasis added).

This document was, in turn, delivered (via facsimile) to General Casualty Insurance Company, which: (a) received it on January 25, 2006; and (b) electronically filed the Form 12-A with the Commission on January 26, 2006. (Id.).

Approximately one week later, General Casualty generated a Form 15(I), which: (a) confirmed temporary total disability compensation had commenced effective January 24, 2006; and (b) was received/processed by the Commission on February 9, 2006. (See, Record on Appeal, pp. 13, 28 – 29, 37 – 38 and 143). In this regard, a review of the “W/C Disability Benefit Payment Log” generated by General Casualty establishes these compensation payments have continued, without interruption, since the January 24, 2006 initiation date. (See, Record on Appeal, pp. 144 and 230 - 232).

During the ensuing months, General Casualty engaged in various activities which the Commission specifically found:

... reflected an informed and voluntary acknowledgement of liability for Mr. Jervy's claim, including: (a) instructing its nurse case manager to “remind . . . [him] that if he does not comply with medical treatment . . . [,] his benefits could be stopped” (See, April 7, 2006 fax communication from “Kathy Crews (GBO claims)”); (b) instructing this agent to attend a medical appointment and “have . . . [the] Dr. note how his treatment is related to WC of 1/23/06” (See, April 12, 2006 e-mail transmission of Kathy Crews); (c) authorizing treatment (See, June 19, 2006 and July 21, 2006 e-mail transmissions of Kathy Crews); (d) advising that at least one course of treatment was authorized to prevent Mr. Jervy from “sitting doing nothing while . . . [it was] paying him” (See, June 19, 2006 e-mail transmission of Kathy Crews); (e) repeatedly seeking medical opinions relative to Mr. Jervy's capacity to return to work, as well as the anticipated date of maximum medical improvement (See, April 25, 2006, June 16, 2006 and October 4, 2006 e-mail transmissions of Kathy Crews); and (f) admonishing Mr. Jervy's counsel, through the nurse case manager, that it “ha[d] . . . control of the medical & who . . . [he] should treat . . . with” - - a **communication which was generated approximately one year post-accident.** . . . (See, Record on Appeal, pp. 13 – 14, 29, 38, 219 and 221 - 228).

The Commission further found:

Martint Environmental, Inc. similarly verified an obvious understanding: (a) Mr. Jervej was “being treated by a psychologist for problems claimed to be related to the accident”; (b) he “remain[ed] . . . out of work” due to injury components attributed to his January 23, 2006 accident; and (c) his resulting receipt of compensation and medical benefits was “adding to the volume of the claim.” (See, Record on Appeal, pp. 14, 29 – 30, 38 and 220).

By Form 50 dated June 29, 2007, Mr. Jervej: (a) sought further medical benefits for various symptoms stemming from a cervical disc herniation, which had been attributed to the consequences of his accident; while (b) maintaining he remained temporarily totally disabled. (See, Record on Appeal, pp. 54 - 55). Subsequently, pursuant to a Form 51 dated July 27, 2007, Martint/General Casualty: (a) generally denied Mr. Jervej had sustained a compensable accident “[p]ending investigation”; and (b) asserted a number of “special and affirmative defenses. . . .” (See, Record on Appeal, pp. 56).

After completion of discovery, Mr. Jervej timely served Martint’s/General Casualty’s counsel with a W.C.C. Form 58 (Pre-Hearing Brief), alleging:

...Additionally, we submit Defendants’ belated/untimely attempt to deny this claim: (a) has no credible factual basis; (b) **is barred by several legal doctrines, including waiver, estoppel and laches**; and (c) appears to be a punitive response to Mr. Jervej’s efforts to seek treatment for his cervical injury component, particularly in view of the circumstances surrounding assertion of their current position. (See, Record on Appeal, pp. 148 - 151) (Emphasis added).

This document similarly indicated: (a) Martint/General Casualty had paid temporary total disability compensation for approximately 15 months; and (b) these payments occurred with “full knowledge of all relevant facts.” (Id.).

A hearing relative to this matter was held on October 15, 2007. Significantly, review of the resulting transcript establishes Martint/General Casualty made **no objection** as to the contents of Mr. Jervej’s Pre-Hearing Brief, **particularly the assertion of the**

doctrines of waiver and laches. The single commissioner's November 26, 2007 Order likewise contains **no mention** of either an **objection** to the positions outlined in Mr. Jervey's Pre-Hearing Brief or Martint's/General Casualty's **perfection of a due process argument.**

After reviewing the evidence, the single commissioner specifically found:

(a) Martint Environmental, Inc. was notified of Mr. Jervey's compensable injuries on January 23, 2006; (b) on January 24, 2006, this Employer generated a Form 12-A, which alleged this injury occurred while Mr. Jervey was performing an activity he "was asked not" to do; (c) General Casualty Insurance Company was formally notified of not only the circumstances surrounding Mr. Jervey's injury, but also this allegation, by no later than January 25, 2006; (d) on February 2, 2006, this Carrier commenced the payment of temporary total disability compensation (effective January 24, 2006), while filing a Form 15 (I) with this Commission; (e) during the 150 day period commencing on January 23, 2006, both Employer and Carrier engaged in activities which were reflective of the knowing/informed/voluntary acceptance of liability for Mr. Jervey's injuries per the Act; (f) their course of conduct after the expiration of this 150 day period (i.e., payment of disability compensation, authorization of medical care and declaration that "we have control of the medical & who. . . [Mr. Jervey] treats with") is likewise wholly consistent with their continued acceptance of liability for his claim; (g) Defendants did not attempt to disclaim this liability until April 17, 2007, approximately 450 days after they were notified of Mr. Jervey's injury; and (h) their attempted denial stems from the same allegation ("Employee was asked not . . . [to] touch or dismantle the sulfuric acid system") contained on the face of the January 24, 2006 Form 12-A. (See, Record on Appeal, pp. 16, 30 – 31 and 39 - 40).

In this regard, he concluded: (a) Section 42-9-260 "afforded a 150 day grace period, during which . . . [the Employer/Carrier was allowed to] conduct 'a good faith investigation' to determine whether any 'grounds for denial of the claim' exist[ed]"; (b) this statute "invokes a 'waiver of any grounds for good faith denial' in the event payments are continued beyond expiration of this grace period"; (c) as Martint/General

Casualty had not raised a known defense during the 150 day period, they were “legally barred from contesting their basic/underlying liability for Mr. Jervey’s claim”; and (d) allowing Martint/General Casualty to disclaim liability at this stage of the proceedings was “particularly inappropriate where, as here, [they]. . . have engaged in a course of conduct which unquestionably satisfies the criteria for both waiver and laches. . . .” (See, Record on Appeal, pp. 20 – 21 and 40).

Pursuant to a Form 30 (“Request for Commission Review”) dated December 5, 2007, Martint/General Casualty appealed the single commissioner’s rulings to an Appellate Panel of the Full Commission. Inspection of this document reveals: (a) 34 contentions of error; (b) an exception to the single commissioner’s determination their conduct “unquestionably satisfies the criteria for both waiver and laches” (which generally alleged error in terms of the language of S.C. Code Ann. Section 1-23-380 (A) (1976, as amended)); and (c) several assignments of error addressing the single commissioner’s construction of S.C. Code Ann. Section 42-9-260 (F)(1976, as amended). **However, these contentions/exceptions neither challenged the timeliness of Mr. Jervey’s assertions of waiver and laches nor allege a denial of due process.**

While the Appellate Panel agreed Mr. Jervey remained entitled to temporary total disability compensation and causally related medical benefits, it: (a) vacated the single commissioner’s rulings relative to the impact of the rule of repose/statute of limitation contained in Section 42-9-260; and (b) premised the rejection of Martint’s/General Casualty’s attempt to disclaim basic liability in this instance on the doctrines of waiver and laches. (See, Record on Appeal, pp. 33 - 34).

By Petition for Review filed June 5, 2008, Mr. Jervey challenged the Appellate Panel’s construction of Section 42-9-260 (A). Shortly thereafter, per Petition filed June 9,

2008, Appellants raised 23 exceptions to the Panel's Order. Significantly, these exceptions: (a) did not address the issue relative to the impact of Section 42-9-260 (F) in this context; and (b) sought to advance several arguments which had not been raised to either the single commissioner or the Appellate Panel.

After considering extensive argument, Judge McMahon: (a) concluded Appellants had not properly/adequately preserved several issues for appellate review; (b) affirmed the Appellate Panel's findings as to waiver and laches; and (c) reversed the Panel's construction of Section 42-9-260. This appeal followed.

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY CONCLUDED APPELLANTS DID NOT PROPERLY PRESERVE THE ISSUE RELATIVE TO THE IMPACT OF S.C. CODE ANN. SECTION 42-9-260 (F) (1976, AS AMENDED) AND ARE CONSEQUENTLY PROHIBITED FROM ADVANCING ANY ARGUMENTS ON THIS POINT. HOWEVER, ASSUMING ARGUENDO THIS ISSUE HAD BEEN ADEQUATELY RAISED, THE CIRCUIT COURT NONETHELESS CORRECTLY CONSTRUED SECTION 42-9-260 TO PROHIBIT RELITIGATION OF THE BASIC ISSUE OF LIABILITY, ESPECIALLY IN VIEW OF THE FACTS: (A) APPELLANTS DID NOT ATTEMPT TO RAISE ANY DEFENSE UNTIL APPROXIMATELY 300 DAYS AFTER EXPIRATION OF THE STATUTORY “GRACE PERIOD”; AND (B) NEITHER FRAUD NOR LACK OF JURISDICTION HAVE BEEN ALLEGED.

It is axiomatic that this Court “can consider only matters that were before the Commission. . . and to which error has been specifically assigned” at the appropriate stages of the appellate process. Wall v. C.Y. Thomason Company, 232 S.C. 153, 101 S.E. 2d 286, 288 (1957). In this regard, an “argument is not preserved for. . . review [where the Appellant does]. . . not raise [the]. . . issue to the circuit court.” Brunson v. Wal-Mart Stores, Inc., 344 S.C. 107, 542 S.E. 2d 732, 735 (Ct. App. 2001); (See also, Rodney v. Michelin Tire Corp., 320 S.C. 515, 466 S.E. 2d 357 (1996).

Although Appellants sought a ruling from the Commission as to the impact of Section 42-9-260 (F), this issue: (a) “was not raised in. . . [their] exceptions to the circuit court”; and (b) “[i]s. . . [consequently] not preserved for review.” Solomon v. W.B. Easton, Inc., 307 S.C. 518, 415 S.E. 2d 841, 844 (Ct. App. 1992); See also, S.C. Code Ann. Section 42-17-60 (1976, as amended). (“Notice of appeal must state the grounds of the appeal or the alleged errors of law.”).

However, assuming *arguendo*, this issue has been properly preserved for consideration by the Court, a review of Section 42-9-260, in light of governing rules of construction, validates Judge McMahon’s ruling.

Section 42-9-260 provides in pertinent part:

(A) When an employee has been out of work due to a reported work-related injury or occupational disease for eight days, an employer may start temporary disability payments immediately and **may continue these payments for up to one hundred fifty days from the date the injury or disease is reported without waiver of any grounds for good faith denial.** Upon making the first payment, the employer immediately shall notify the commission, in accordance with a form prescribed by the commission, that payment of compensation has begun. (Emphasis added).

This statute further prescribes:

(B) Once temporary disability payments are commenced, the payments may be terminated or suspended immediately at any time within the **one hundred fifty days if:**

...

(3) a good faith investigation by the employer reveals grounds for denial of the claim;

...

(F) after the one-hundred-fifty-day period has expired, the commission shall provide by regulation the method and procedure by which benefits may be suspended or terminated for any cause, but the regulation must provide for an evidentiary hearing and commission approval prior to termination or suspension unless such prior hearing is expressly waived in writing by the recipient or the circumstances identified in Section 42-9-260 (B) (1) or (B) (2) are present. (Emphasis added).

“Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Hodges v. Rainey, 341 S.C. 79, 533 S.E. 2d 578, 581 (2000); Pee v. AVM, Inc., 344 S.C. 162, 543 S.E. 2d 232, 235 (Ct. App. 2001). In this connection, the “[L]egislature is presumed to have fully understood the meaning of the words used in a statute and, unless the meaning is vague or indefinite, intended to use them in their ordinary and common meaning or in their well-defined legal sense.”

Powers v. Fidelity & Deposit Co. of Maryland, 180 S.C. 501, 186 S.E. 2d 523, 527 (1936); Rorrer v. P.J. Club, Inc., 347 S.C. 560, 556 S.E. 2d 726, 731 (Ct. App. 2001).

A review of the rather explicit language of Section 42-9-260 (A) clearly establishes that an Employer/Carrier: (a) “may start temporary disability payments . . . [once] an employee has been out of work due to a work-related injury . . . for eight days”; (b) is afforded a 150 day grace period, during which it may conduct “a good faith investigation” to determine whether any “grounds for denial of the claim” exist; and (c) does not “waive . . . any grounds for good faith denial”, provided the defense is raised within the prescribed period. This language likewise: (a) limits the grace period to “one hundred fifty days from the date the injury . . . is reported”; and (b) invokes a “waiver of any grounds for good faith denial” in the event payments are continued beyond expiration of the grace period.

Although Appellants maintain the language of Subsection (F) effectively overrides the waiver provision of Subsection (A), this argument conveniently/impermissible ignores the impact of several fundamental rules of statutory construction. Specifically, “there is a basic presumption that the . . . [L]egislature has knowledge of previous legislation as well as judicial decisions construing that legislation when later statutes are enacted concerning related subjects.” Whitner v. State, 328 S.C. 1, 492 S.E. 2d 777, 779 (1997); Russo v. Nationwide Insurance Company, 334 S.C. 455, 513 S.E. 2d 127, 129 (Ct. App. 1999). A similar presumption exists that the General Assembly “enact[s]. . . legislation with reference to existing law. . . [and the intention] to achieve a consistent body of law.” See, Abba Equipment, Inc. v. Thomason, 335 S.C. 477, 517 S.E. 2d 235, 238 (Ct. App. 1999); Busby v. State Farm Mutual Automobile

Insurance Company, 280 S.C. 330, 312 S.E. 2d 716, 719 (Ct. App. 1984); State v. Ramsey, 311 S.C. 555, 430 S.E. 2d 511, 516 (1993).

Section 42-9-260 (including prior codifications) has consistently: (a) related solely to the payment (commencement, suspension and termination) of compensation; and (b) recognized this activity was regulated by “form[s]. . . prescribed by the commission. . . .” While previous codifications of S.C. Code Ann. Section 42-17-10 (1976, as amended) outlined the mechanism (filing/approval of “agreement as to compensation”) through which the payment of compensation was voluntarily commenced, no statutory mandate for the establishment of a “method and procedure” for suspension/termination existed until 1974, at which time Section 72-177 of the 1962 Code was amended to include the language currently embodied in Subsection F.

Significantly, at the time of this amendment, our Supreme Court had conclusively held: (a) once an agreement as to compensation was approved by the Commission, it became “as binding on the parties as an order, decision or award of the Commission affirmed upon appeal.” Singleton v. Young Lumber Company, 236 S.C. 454, 114 S.E. 2d 837, 841 (1960); (b) “the basic issue of liability could not be . . . retr[ie]d” subsequent to the Commission’s approval of this form. Allen v. Benson Outdoor Advertising Company, 236 S.C. 22, 112 S.E. 2d 722, 723 (1960); and (c) judicial decrees of this nature were not subject to collateral attack, “except upon proof of fraud or want of jurisdiction.” First Carolinas Joint Stock Land Bank of Columbia v. Knotts, 191 S.C. 384, 1 S.E. 2d 797, 805 (1939); Singleton v. Mullins Lumber Company, 234 S.C. 330, 108 S.E. 2d 414, 420 (1959).

While Appellants seek a construction of Section 42-9-260 which effectively nullifies the import of Subsection (A), both this Court and the Supreme Court have

repeatedly recognized that “[h]owever plain the ordinary meaning of the words used in a statute may be, the courts will reject that the meaning when to accept it would lead to a result so plainly absurd that it could not possibly be intended by the Legislature or would defeat the plain legislative intention.” Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 440 S.E. 2d 364, 366 (1994); New York Times Co. v. Spartanburg County School District No. 7, 374 S.C. 307, 649 S.E. 2d 28, 30 (2007); South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control, 280 S.C. 349, 669 S.E. 2d 899, 909 (Ct. App. 2008).

Similarly, “a particular clause in a statute. . . [should not be] construed in isolation, but should. . . [be read] in conjunction with the purpose of the whole statute and the policy of the law.” Branch v. City of Myrtle Beach, 340 S.C. 405, 532 S.E. 2d 289, 292 (2000); Hernandez-Zuniga v. Tickle, 374 S.C. 235, 647 S.E. 2d 691, 697 (Ct. App. 2007); Grinnell Corp. v. Wood, 378 S.C. 458, 663 S.E. 2d 61, 67 (Ct. App. 2008). Further, this “court must presume the [L]egislature. . . did not intend a futile act, but rather intended its statutes to accomplish something.” Denene, Inc. v. City of Charleston, 352 S.C. 208, 574 S.E. 2d 196, 198 (2002); Ellison v. Frigidaire Home Products, 371 S.C. 159, 638 S.E. 2d 664, 666 (2006). Finally, should a true “repugnancy between the two statutory provisions. . . [exist] the subsequent provision of the statute should prevail over a prior one, the later being the last in point of time or order of arrangement.” Jolly v. Atlantic Greyhound Corporation, 207 S.C. 1, 35 S.E. 2d 42, 44 (1945); Ramsey v. County of McCormick, 306 S.C. 393, 412 S.E. 2d 408, 410 (1991).

Although Subsection (A) affords the Employer/Carrier an opportunity to pay compensation, without prejudice, while conducting a good faith investigation, the Legislature: (a) has specifically limited this investigatory period; and (b) maintained the

longstanding element of finality by stating that payments could be made “without waiver of any grounds for good faith denial . . . for [only] . . . one hundred fifty days from the date the injury . . . [was] reported. . . .” The legislative intent to preserve this “rule of repose”, which “promotes finality of the commission’s decisions”, is further evidenced by the facts Subsection (F): (a) references universally recognized grounds for termination of compensation in circumstances where liability for a claim **has been accepted by the Employer/Carrier**; (b) essentially mirrors the pre-1996 codification relative to the termination of compensation, which was presumptively adopted with “knowledge” of the Supreme Court’s rulings in Allen and Singleton; and (c) contains no language which would even remotely suggest a departure from this process.

In view of the Legislature’s actions, it is clear: (a) subsection (F) relates solely to claims for which liability is admitted/acknowledge; (b) the Commission’s regulations adequately outline “the method and procedure for which benefits may be suspended or terminated” in the context of an admitted liability claim; and (c) this construction is wholly consistent with the Legislature’s continued recognition of the binding impact/effect of the payment of compensation.

Additionally, despite Appellants’ claim to the contrary, this Court’s ruling in Frederick is clearly distinguishable from the current circumstances, as: (a) Wellman Inc., alleged not only a “fraud defense”, but also “that Frederick’s concealment of her prior back problems [v]itiated the. . . employment relationship. . . [, creating] a jurisdictional issue.” Frederick, 682 S.E. 2d at 519 – 520; (b) even the otherwise binding compensation agreement envisioned by Section 42-9-260 (W.C.C. Form 15) is “not immune from collateral attack” on the basis of either fraud or want of jurisdiction. L.B. Price Mercantile Company v. Redd, 231 S.C. 446, 99 S.E. 2d 57, 60 (1957); (c) neither lack of

jurisdiction nor “[f]raud is. . . an issue here.” McCreery v. Covenant Presbyterian Church, 303 S.C. 271, 400 S.E. 2d 130, 131 (1990); and (d) the record is devoid of any evidence which would warrant circumvention of the limitation/rule of repose perpetuated by Subsection (A).

Given the Legislature’s actions, as analyzed by application of the above-outlined rules of construction, it is clear: (a) subsection (F) relates solely to claims for which liability is admitted/acknowledged; (b) the Commission’s regulations adequately outline “the method and procedure for which benefits may be suspended or terminated” in the context of an admitted liability claim; (c) the binding/conclusive impact of the payment of compensation has been preserved; and (d) this element of finality is triggered by expiration of the 150 day grace period.

As Appellants unquestionably continued to pay compensation long after the expiration of this grace period and have not asserted grounds sufficient to allow collateral attack, they “cannot now retry the basic issue of liability.” Allen, 112 S.E. 2d at 723. To hold otherwise will necessarily: (a) thwart the clear legislative intent to provide a **limited** investigation period prior to **binding the Employer/Carrier to a claim** through payment of compensation; (b) impermissibly negate the Legislature’s effort to maintain the inherent finality of voluntary payment through a Form 15 after expiration of the grace period (whether characterized as a statute of limitation or rule of repose) by creating an unqualified/unlimited opportunity to reject liability; and (c) not only render the 1996 amendment “a futile act”, but also produce a patently inconsistent body of law.

II. THE CIRCUIT COURT PROPERLY CONCLUDED APPELLANTS DID NOT ADEQUATELY PRESERVE AND WERE CONSEQUENTLY PRECLUDED FROM FURTHER LITIGATING THE ISSUES RELATIVE TO: (A) THE COMMISSION'S AUTHORITY TO APPLY THE DOCTRINES OF WAIVER AND LACHES; AND (B) A PURPORTED DENIAL OF DUE PROCESS.

"It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the. . . [Commission] to be preserved for appellate review." Pratt v. Morris Roofing, Inc., 353 S.C. 339, 57 S.E. 2d 475, 481 (Ct. App. 2003); Peoples v. Henry Company, 364 S.C. 123, 611 S.E. 2d 527, 530 (Ct. App. 2005); South Carolina Coastal Conservation League, 669 S.E. 2d at 914 – 915. In this regard, an issue is waived if it is not raised/argued to the Commission. McCoy v. Easley Cotton Mills, 218 S.C. 350, 62 S.E. 2d 772, 774 – 775 (1950) ("The question was first raised on appeal to the Circuit Court. The objection came too late. It should have been made at the hearing before the full Commission and by failing to do so, appellant waived the right now asserted."); Robbins v. Walgreen's and Broadspire Services, Inc., 375 S.C. 259, 652 S.E. 2d 90, 94 (Ct. App. 2007) ("Because the matter was not argued before the single commissioner or the Appellate Panel, Robbins waived the matter.").

A review of the Record on Appeal unquestionably confirms Appellants **did not**: (a) object to Mr. Jervey's assertion of the doctrines of waiver and laches (which were identified in his Pre-Hearing Brief as grounds for disallowing their belated attempt to deny basic liability for his claim) before the single commissioner; (b) challenge the sufficiency of either Mr. Jervey's "pleadings" or their notice (opportunity to be heard) as to these issues; and (c) raise these issues to the Appellate Panel through their Form 30 – Request for Commission Review. In view of these facts, Judge McMahon correctly concluded: (a) it was "improper" to consider these arguments at this stage of the proceedings; and (b) these issues had been waived. Greer v. Greenville County, 245 S.C.

442, 141 S.E. 2d 91, 99 (1965). (Determination that it was improper for Circuit Court to address issue where party had failed to make timely objection before Commission); Bickerstaff v. Prevost, 380 S.C. 521, 670 S.E. 2d 660, 662 (Ct. App. 2009) (“Constitutional arguments are no exception to the rule. . . [requiring timely preservation], and if not raised to the trial court are deemed waived on appeal”); See also, Bush v. Gingrey Brothers, 232 S.C. 20, 100 S.E. 2d 821, 824 (1957) (Issues raised by Petition for Judicial review, which “were not before the Full Commission upon review,. . . properly refused by the Circuit Court. . .”).

However, assuming *arguendo* these issues had been properly preserved for consideration by this Court, inspection of the applicable Commission regulations, previous appellate decisions recognizing the legislatively intended “simplicity of procedure” before the Commission and this Court’s ruling in Frederick established the propriety of Judge McMahon’s alternative ruling.

Specifically, analysis of Commission Regulation 67-610 (A) verifies an amended “Request for Hearing and Answer. . . must be filed to indicate a **change in the nature of the claim, relief requested or another defense.**” (Emphasis added). Inspection of the Forms 50 and 51 filed by the respective parties, in light of the Commission’s Order, indicates: (a) neither the nature of Mr. Jervey’s claim nor his request for relief changed during the course of this litigation; (b) the doctrines of waiver and laches were asserted, per Form 58 – Prehearing Brief, at least 15 days prior to the evidentiary hearing conducted by the single commissioner; and (c) these doctrines were raised to highlight the fact Appellants’ attempt to assert affirmative defenses was untimely, rather than to “change. . . the nature of. . . [Mr. Jervey’s] claim. . . [or the] relief requested” per his Form 50.

Additionally, our appellate courts have repeatedly held: (a) “the intention of the Compensation Acts is to provide simplicity of procedure.” McDonald v. Palmetto Theaters, 196 S.C. 460, 13 S.E. 2d 602, 604 (1941); (b) “[t]he niceties of pleadings of process in the law Courts, desirable though they may be, cannot be required of the Commission . . . without violating the spirit and philosophy of work[ers] . . . compensation.” King v. Wesner, 198 S.C. 49, 16 S.E. 2d 289, 295 (1941); and (c) an exhaustive pleading process is “not required in workers’ compensation proceedings. . . .” Harbin v. Owens-Corning Fiberglas, 316 S.C. 423, 450 S.E. 2d 112, 115 (Ct. App. 1994).

When Regulation 67-610 is considered in light of this decades old policy, it is clear Mr. Jervey: (a) was not obliged to amend his Form 50 – Request for Hearing to respond to a defense raised by Appellants; and (b) timely apprised the Commission, as well as the Appellants, of his belief the doctrines of waiver and laches precluded assertion of any defenses. See, Frederick, 682 S.E. 2d at 521 – 522 (Pre-Hearing Brief determined to have provided sufficient notice as to assertion of party’s position). Based upon these facts, Mr. Jervey respectfully submits Judge McMahon correctly held Appellants were adequately notified of his contention relative to the untimely presentation of their defenses and afforded due process.

III. THE CIRCUIT COURT CORRECTLY CONCLUDED THE SUBSTANTIAL EVIDENCE OF RECORD AMPLY SUPPORTED THE COMMISSION'S DETERMINATIONS: (A) APPELLANTS WERE IMMEDIATELY AWARE OF THE FACTS UPON WHICH THEY CURRENTLY BASE THEIR ALLEGATION MR. JERVEY'S INJURIES OCCURRED OUTSIDE THE COURSE/SCOPE OF HIS EMPLOYMENT; (B) THEIR CONDUCT BOTH BEFORE AND AFTER THE EXPIRATION OF THE 150 DAY GRACE PERIOD AFFORDED BY S.C. CODE ANN. SECTION 42-9-260 (A) (1976, AS AMENDED) WAS "REFLECTIVE OF THE KNOWING/INFORMED/VOLUNTARY ACCEPTANCE OF LIABILITY FOR MR. JERVEY'S" CLAIM; (C) THEY FAILED TO RAISE THIS KNOWN DEFENSE UNTIL APPROXIMATELY ONE YEAR AFTER THE EXPIRATION OF THE 150 DAY GRACE PERIOD; AND (D) THIS COURSE OF CONDUCT WAS REFLECTIVE OF WAIVER, AS WELL AS LACHES.

S.C. Code Ann. Section 1-23-380(A), which governs judicial review of these matters, provides in pertinent part:

(5) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(c) made upon unlawful procedure;

(d) affected by other error of law; [or]

(e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record

" 'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." Lark v. Bi-Lo, Inc., 276 S.C. 136, 276 S.E. 2d 304, 306 (1981); Houston v. Deloach & Deloach, 378 S.C. 543, 663 S.E. 2d 85, 89 (Ct. App. 2008). In this connection, "[t]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." Clade v. Champion Laboratories,

330 S.C. 8, 496 S.E. 2d 856, 857 (1998); Smith v. NCCI, Inc., 369 S.C. 236, 631 S.E. 2d 268, 273 (Ct. App. 2006). Similarly, where there is "a conflict in the evidence, either of different witnesses or of the same witness, the findings of fact of the . . . commission, as triers of fact, are conclusive." Cokeley v. Robert Lee, Inc., 197 S.C. 157, 14 S.E. 2d 889, 893 (1941); Anderson v. Baptist Medical Center, 343 S.C. 487, 541 S.E. 2d 526, 528 (2001).

Based upon these authorities, is it clear: (a) "the Commission alone is the ultimate fact finder." Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E. 2d 76, 78 (Ct. App. 1995); Robbins, 652 S.E. 2d at 93 (Commission "is the ultimate fact finder"); (b) in this context, appellate courts "are limited in their review of the facts to a determination of whether or not there is . . . [substantial] evidence to support the factual findings of the Commission." Greer, 141 S.E. 2d at 100; Baxter v. Martin Brothers, Inc., 368 S.C. 510, 630 S.E. 2d 42, 43 (2006) (Appellate Court "must determine whether the . . . [P]anel's findings of fact are supported by substantial evidence in the record"); and (c) "[a] court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Hicks v. Piedmont Cold Storage, Inc., 335 S.C. 46, 515 S.E. 2d 532, 533 (1999); Thompson ex rel. Harvey v. Cisson Construction Co., 377 S.C. 137, 659 S.E. 2d 171, 177 (Ct. App. 2008).

"Waiver is the voluntary and intentional relinquishment of a known right." Provident Life & Accident Insurance Company v. Driver, 317 S.C. 471, 451 S.E. 2d 924, 928 (Ct. App. 1994); Mailsources, LLC v. M.A. Bailey & Associates, Inc., 356 S.C. 370, 588 S.E. 2d 639, 641 (Ct. App. 2003). "It may be expressed or implied by a party's conduct" Parker v. Parker, 313 S.C. 482, 443 S.E. 2d 388, 391 (1994); Pruitt v. South Carolina Medical Malpractice Liability Joint Underwriting Association, 343 S.C.

335, 540 S.E. 2d 843, 846 (2001). “An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable.” Lyles v. BMI, Inc., 292 S.C. 153, 355 S.E. 2d 282, 285 (Ct. App. 1987); Canal Insurance Company v. Caldwell, 338 S.C. 1, 524 S.E. 2d 416, 419 (Ct. App. 1999).

As noted by the South Carolina Supreme Court in Johnson v. Life & Casualty Insurance Company of Tennessee, 191 S.C. 96, 3 S.E. 2d 805, 807 (1939):

Waiver implies an intention to give up a known right, and generally rests in agreement, express or implied. But there may be a waiver by estoppel, in which case the conduct of one, inconsistent with a known fact and inducing a belief that such fact would not be asserted, precludes him from asserting that he has not intentionally relinquished the right founded on such fact.

In this connection, “the distinction between waiver and estoppel is close, and sometimes the doctrines merge into each other with almost imperceptible gradations.” Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E. 2d 384, 388 (1994); Parker, 443 S.E. 2d at 391.

“Laches is the neglect for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done, or neglecting or admitting to do what in law should have been done for an unreasonable and unexplained length of time and in circumstances which afforded opportunity for diligence.” Byars v. Cherokee County, 237 S.C. 548, 118 S.E. 2d 324, 329 (1961); Hallums v. Hallums, 296 S.C. 195, 371 S.E. 2d 525 (1988). “The equitable doctrine of laches is equivalent to the legal doctrine of waiver” Strickland v. Strickland, 375 S.C. 76, 650 S.E. 2d 465, 470 (2007).

“Wavier is a question of fact for the finder of fact.” Parker, *supra*.; RWE NUKEM v. ENSR Corporation, 373 S.C. 190, 644 S.E. 2d 730, 734 (2007). “[W]hether

laches applies in a particular situation is highly fact-specific”, to the extent the factfinder’s determination will be adopted if supported by substantial evidence. Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E. 2d 583, 599 (Ct. App. 1999). See also, Byrd v. King, 245 S.C. 247, 140 S.E. 2d 158, 166 (1965).

The Commission emphatically found Appellants: (a) were fully aware of the factual allegations relative to this alleged deviation from the course/scope of employment by no later than January 25, 2006; (b) nonetheless commenced the payment of temporary total disability compensation; (c) engaged in various activities reflective of an informed/voluntary acknowledgement of liability for Mr. Jerve’s claim during the ensuing months, notwithstanding their unquestioned possession of the same information upon which the current “good faith defense” is premised; and (d) did not attempt to raise this defense until approximately 450 days after they were notified of Mr. Jerve’s injury. (See, Record on Appeal, pp. 12 – 14, 16, 28 – 32 and 51).

As the Commission’s findings are amply supported by the substantial evidence of record, Mr. Jerve respectfully submits Judge McMahon properly concluded “the Commission correctly determined the current defense ‘was clearly waived by’” Appellants. See, Hatcher v. Harleysville Mutual Insurance Company, 266 S.C. 548, 225 S.E. 2d 181, 184 (1976). The Commission’s ruling that Appellants’ conduct likewise satisfied the criteria for laches should also be affirmed, as the requisite knowledge of this defense, inexplicable delay in its assertion and prejudice (obvious loss of future compensation/medical benefits and disgorgement of substantial previously paid sums) are validated by the substantial evidence of record.

CONCLUSION

In this instance, Appellants were obviously aware of the allegation relative to Mr. Jervey's purported infraction from the outset. Despite this fact, they commenced a course of conduct which the Commission found not only acknowledged, but actually embraced, their acceptance of liability for this claim.

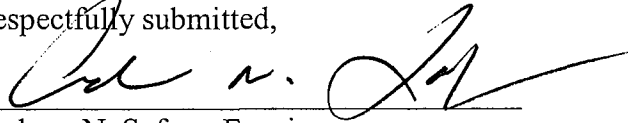
Interestingly, Appellants **do not contest the factual basis for the Commission's rejection of their belated effort to disclaim basic liability**. As this determination rests with the factfinder and is amply supported by the substantial evidence of record, the Commission's ruling is conclusive.

However, assuming *arguendo* the remaining issues were relevant to a resolution of this appeal, the Court cannot ignore Appellants' failure to properly preserve the remaining issues for review. While minor omissions are certainly excusable, the absence of essential objections and/or exceptions at virtually every stage of this litigation cannot be overlooked, as to do so would result in significant prejudice to Mr. Jervey.

Finally, the substantive legal arguments advanced by Appellants: (a) fly in the face nearly every applicable rule of statutory construction; (b) solicit an impermissible judicial nullification of a material provision of Section 42-9-260; (c) seek to extinguish the element of finality that has become a hallmark of the voluntary payment of compensation; and (d) demand a level of "pleading" far in excess of any previously recognized standard.

As the current circumstances hardly warrant these extreme and legally unsustainable remedies, Mr. Jervey respectfully prays that this Court: (a) reject these misplaced contentions; and (b) affirm Judge McMahon's Order in its entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew N. Safran", written over a horizontal line.

Andrew N. Safran, Esquire

Post Office Box 12089

Columbia, South Carolina 29211

(803) 256-6689

Attorney for Respondent

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

THE HONORABLE R. KNOX MCMAHON, CIRCUIT COURT JUDGE

CASE NUMBER: 2008-CP-32-2361

William T. Jervey, Jr., Employee Respondent,

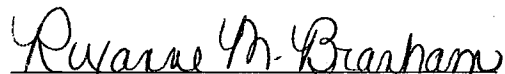
v.

Martint Environmental, Inc., Employer, and General Casualty Insurance Company,
Carrier Appellants.

CERTIFICATE OF SERVICE

I, Roxanne M. Branham, legal assistant for Andrew N. Safran, Esquire, Attorney for Respondent, do hereby certify that on the 15th day of March, 2010, I caused to be filed, via hand delivery, the original and fourteen (14) copies of the Respondent's Final Brief, with the Clerk of the South Carolina Court of Appeals. One (1) copy of the Respondent's Final Brief was furnished to counsel for Appellants via first class mail at the following address:

E. Ros Huff, Jr., Esquire
Elizabeth F. Render, Esquire
HUFF LAW FIRM, LLC
Post Office Box 1935
Irmo, South Carolina 29063
Attorneys for Appellants


Roxanne M. Branham
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689

March 15, 2010

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

THE HONORABLE R. KNOX MCMAHON, CIRCUIT COURT JUDGE

CASE NUMBER: 2008-CP-32-2361

William T. Jervy, Jr., Employee Respondent,

v.

Martint Environmental, Inc., Employer, and General Casualty Insurance Company,
Carrier Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b),

SCACR.



Andrew N. Safran, Esquire
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689
Attorney for Respondents.

March 15, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

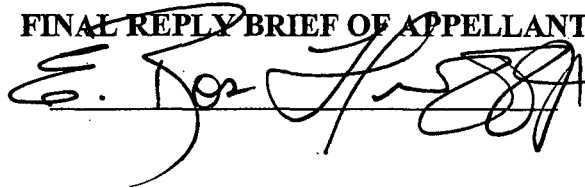
Case No. 2008-CP-32-2361

William T. Jervey, Jr., Employee Respondent,

v.

Martint Environmental, Inc., Employer
and General Casualty Insurance Company, Carrier.....Appellants

FINAL REPLY BRIEF OF APPELLANT



E. Ros Huff, Jr.
Post Office Box 1935
Irmo, South Carolina 29063
(803) 252-2232
Attorney for Appellants

TABLE OF CONTENTS

Table of Authorities	ii
Arguments	
1. S.C. Code Ann. § 42-9-260 DOES NOT ACT AS A STATUTE OF LIMITATIONS FOR PURPOSES OF DENYING LIABILITY BUT STANDS FOR THE PROPOSITION THAT BENEFITS CANNOT BE UNILATERALLY STOPPED WITHOUT AN ORDER FROM THE S.C. WORKERS' COMPENSATION COMMISSION.....	4
2. APPELLANTS PROPERLY RAISED EXCEPTIONS FOR APPELLATE REVIEW	6
Conclusion	7

TABLE OF AUTHORITIES

CASES

Joann Fredrick v. Wellman, Inc., 682 S.E.2d 516 (S.C.App. 2009)	5,6

STATUTES

S.C. Code § 42-9-260	4,5,6,7

OTHER AUTHORITIES

S.C. Workers' Compensation Regulation 67-506	5

ARGUMENTS

I. S.C. Code Ann. § 42-9-260 DOES NOT ACT AS A STATUTE OF LIMITATIONS FOR PURPOSES OF DENYING LIABILITY BUT STANDS FOR THE PROPOSITION THAT BENEFITS CANNOT BE UNILATERALLY STOPPED WITHOUT AN ORDER FROM THE S.C. WORKERS' COMPENSATION COMMISSION

The Respondent has misconstrued the statute by indicating that § 42-9-260 establishes a limitation of 150 days in which an employer can pay temporary total disability without waiving grounds for a good faith denial. However, Appellants argue that in fact this 150 day period is only a time in which the employer can unilaterally stop temporary total disability benefits without the need for a hearing before the South Carolina Workers' Compensation Commission. Outside the 150 days, the employer must request a hearing.

Respondent further asserts that Appellants seek to nullify § 42-9-260 (A), when in fact this couldn't be further from the truth. Respondent has misinterpreted the language in subsection (A) to mean something it does not. Further, Respondents have cited case law which has no application to the facts of this case. This is not an accepted workers' compensation claim, however Appellants do not deny that they began payment of temporary total disability benefits. Appellants paid the temporary total disability and upon obtaining legal representation made a reasonable investigation into whether the claimant was acting in the course and scope of his employment when he was injured. As their investigation revealed, the Appellants reasonably believe that the Claimant was in fact not acting in the course and scope of his employment thus Appellants had no ability to unilaterally stop payment of benefits except to request a hearing before the South Carolina Workers' Compensation Commission. Pursuant to § 42-9-260 (F) once the 150 days period has passed, the Commission shall provide by regulation the method and

procedure by which benefits may be suspended or terminated for **any cause**, but the regulation must provide for an evidentiary hearing and commission approval...

Respondent goes on to argue that subsection (F) references grounds for termination in circumstances where liability has been accepted. Assuming, arguendo, this is the cause, then Appellants would argue that as a presumably accepted claim the employer and carrier paid out both temporary total disability benefits and paid for medical treatment without legal counsel from the date of the injury until January 16, 2007. While the carrier had knowledge that the Form 12A indicates that the Claimant was asked not to touch the pump and hose containing residual sulfuric acid, the carrier did not interpret this to mean that he was acting outside the course and scope of his employment. (R. p. 142). That is a legal conclusion that was not raised until after the employer and carrier hired legal counsel. Therefore, as this was first viewed as an admitted claim for benefits and Appellants paid both temporary total disability benefits and medical benefits, the only way for the Appellant to deny the claim and terminate benefits was through a hearing. § 42-9-260 and Regulation 67-506 are silent on this issue, thus we turn to controlling case law which has addressed a similar situation.

The Claimant in Joann Fredrick v. Wellman, Inc., 682 S.E.2d 516 (S.C.App. 2009) lied on her employment application thus Defendants raised a defense of fraud in their pre-hearing brief. Though the facts are distinguishable from this claim, the Claimant raised the same argument the Respondent has raised in the present claim: **that the Appellants are barred from raising a defense to compensability because they paid for benefits past the 150 days time period as indicated in § 42-9-260** . This very Court found that § 42-9-260 (F) specifically allows for suspension or termination of payments after the 150 days have expired for any cause. As such, Fredrick is applicable and controlling.

Given the Courts ruling in Fredrick along with the plain meaning found in § 42-9-260, Appellants had to file a request for a hearing to stop payment of temporary total disability benefits based on denial of the claim. Appellants were never afforded the right to try the basic issue of liability as the Single Commission would not allow Appellants to proffer testimony. Thus no evidentiary hearing was ever held allowing evidence to be put in regarding liability for this claim (R. p. 84).

II. APPELLANTS PROPERLY RAISED EXCEPTIONS FOR APPELLATE REVIEW

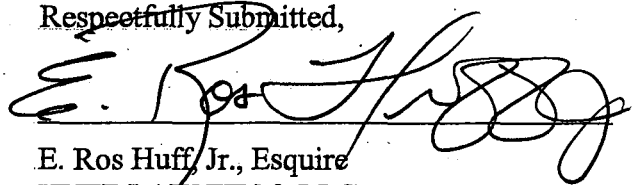
Appellants contend that a more careful review of the record clearly shows that all issues were properly preserved for Appellate review. That the Respondent's first claim indicating Appellant didn't object to the Claimant raising waiver and laches is unsupported. Appellants refer to the Form 30 Addendum and make special reference to number 13, 16, 32, and 33 in which Appellants cite errors in the Commissioner's order and preserve these issues for Appellate review. (R. p. 57).

In addition, Appellants will ask that this Court carefully review the hearing transcript from the Single Commissioner in which no arguments regarding waiver and laches are found. The first mention and alleged evidentiary basis for waiver and laches arose in the Single Commissioner's Order which was drafted by the Claimant's attorney. (R. p. 84).

CONCLUSION

Based on the above cited arguments, and as concluded in the Appellant's Initial Brief, Defendants would respectfully request that the Circuit Court Order be vacated, that this Court find that § 42-9-260 is not a statute of limitations, therefore the Defendants can deny the Claimant's claim for injuries sustained. Further, that Appellant's properly preserved their issues for appellate review.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "E. Ros Huff Jr.", is written over a horizontal line.

E. Ros Huff Jr., Esquire
HUFF LAW FIRM, LLC
Post Office Box 1935
Irmo, South Carolina 29063-1935
(803) 252-2232

Attorneys for Appellants

Irmo, South Carolina
February 22, 2010

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

THE HONORABLE R. KNOX MCMAHON, CIRCUIT COURT JUDGE

CASE NUMBER: 2008-CP-32-2361

William T. Jervey, Jr., Employee Respondent/Petitioner,

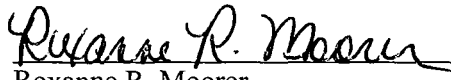
v.

Martint Environmental, Inc., Employer, and General Casualty Insurance Company, Carrier
.....Petitioners/Respondents.

CERTIFICATE OF SERVICE

I, Roxanne R. Moorner, legal assistant for Andrew N. Safran, Esquire, Attorney for Petitioner, do hereby certify that on the 30th day of April, 2012 I caused to be filed, via first class mail, the original and two (2) copies of the Petitioner's Appendix, with the Clerk of the South Carolina Supreme Court. One (1) copy of the Petitioner's Appendix was furnished to counsel for Respondents via first class mail at the following address:

E. Ros Huff, Jr., Esquire
HUFF LAW FIRM, LLC
Post Office Box 1935
Irmo, South Carolina 29063
Attorney for Appellants


Roxanne R. Moorner
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689

April 30, 2012