

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM
THE WORKERS' COMPENSATION COMMISSION

SCWCC Case No. 0716408
Court of Appeals Case No. 2013-002482

RECEIVED
DEC 27 2013
SC Court of Appeals

Mitzi A. Watson, Appellant,

vs.

U.S. Food Service and Indemnity Ins.
Co. of N.A. Respondents.

MEMORANDUM ON APPEALABILITY

Don Kamb
Kathryn Williams, P.A.
P.O. Box 10693
Greenville, SC 29603
(864) 235-6254
Attorney for Appellant

TABLE OF AUTHORITIES

Cases

<u>Bone v. U.S. Food Serv.</u> , 404 S.C. 67, 744 S.E.2d 552 (2013)	3,4
<u>Charlotte-Mecklenburg Hosp. Auth. v. South Carolina Dep't of Health and Env. Control</u> , 387 S.C. 265, 692 S.E.2d 894 (2010)	2
<u>Long v. Sealed Air Corp.</u> , 391 S.C. 483, 706 S.E.2d 34 (Ct. App. 2011)	3
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STATEMENT OF THE CASE

This case arises from the Workers' Compensation Commission. By Order/Clincher dated March 3, 2011, the Commission approved the parties' agreement resolving all of the issues in the case, including the payment of permanent disability compensation and continuing medical care. (see attached #1, Order/Clincher) With regard to continuing medical care, the parties agreed that Watson would be entitled to continued medical treatment under the Workers' Compensation Act for her back injury. Subsequent to the Commission's approval of the Order/Clincher, respondents paid the agreed permanent disability compensation. Prior to the settlement agreement, Dr. Robert LeBlond of Upstate Medical Rehabilitation was designated as the authorized treating physician, and following the Order/Clincher, respondents continued to authorize and pay for treatment rendered by Dr. LeBlond.

In approximately June 2013, without interrupting the medical treatment being provided through Dr. LeBlond, respondents scheduled an "independent medical evaluation" (hereafter "IME") with another pain management physician, Dr. James Behr, because "[t]he [e]mployer simply wants another pain management opinion." (see attached #2, motion, p. 2) In response, the undersigned attorneys for appellant notified respondents that such an IME is not available under this Court's decision in Risinger v. Knight Textiles, 353 S.C. 69, 577 S.E.2d 222 (Ct.App. 2002).

Respondents filed a motion with the Commission seeking to compel Watson to attend the appointment with Dr. Behr. (see attached #2, motion) Appellant filed a reply to that motion, to which respondents filed a return. (see attached #3, reply to motion, and attached #4, return to

reply). Without holding a hearing, the single Commissioner summarily, and without explanation, issued a form Order granting respondent's motion. (see attached #5, order)

Appellant appealed the single Commissioner's decision to the Full Commission Panel. (see attached #6, Form 30) However, again without holding a hearing or obtaining any further information from the parties, the Full Commission Panel dismissed the appeal as interlocutory. (see attached #7, Order)

Appellant now appeals to this Court contending, in part, that her appeal to the Full Commission was not interlocutory and should have been heard, as there is no further issue or action pending before the Commission, and that the single Commissioner erred as a matter of fact and law in granting respondent's initial motion, as an IME is not available under this Court's decision in Risinger v. Knight Textiles, 353 S.C. 69, 577 S.E.2d 222 (Ct.App. 2002).

This Court has asked for a memorandum on appealability of the Full Commission's Order.

I. **The Full Commission's Order dismissing the appeal before that body is not interlocutory, is immediately appealable, and is properly before this Court on appeal.**

A review of the circumstances surrounding this case shows neither appellants' Form 30 appeal to the Full Commission nor her appeal to this Court are interlocutory, as there is no other issue pending before the Commission and this case has already reached a final judgement.

In Charlotte-Mecklenburg Hosp. Auth. v. South Carolina Dep't of Health and Env. Control, the Supreme Court looked to the Administrative Procedures Act and held that "judicial review may only be sought from a **final** decision" of an administrative agency. Charlotte-Mecklenburg Hosp. Auth. v. South Carolina Dep't of Health and Env. Control, 387 S.C. 265, 692 S.E.2d 894 (2010)(emphasis in original). In so holding, the Court stated that "[i]f there is some further act

which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory” and that “[a] final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.” Id. See also Long v. Sealed Air Corp., 391 S.C. 483, 706 S.E.2d 34 (Ct.App. 2011).

The Supreme Court addressed appealability further in Bone v. U.S. Food Serv., 404 S.C. 67, 744 S.E.2d 552 (2013). The Court looked to § 1–23–380(A) of the Administrative Procedures Act and noted that

On its face, the statute refers to a “final judgment,” which is a well-established term of art in the law to which great significance is attached. See Good v. Hartford Accident & Indem. Co., 201 S.C. 32, 21 S.E.2d 209 (1942) (holding if a judgment determines the applicable law while leaving open questions of fact, it is not a final judgment); see also Charlotte–Mecklenburg Hosp. Auth. v. S.C. Dep’t of Health & Env’tl Control, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010)(“A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.” (citing Good)).

Bone, 744 S.E.2d at 557. Concerning the definition of “final judgment,” the Court later also noted that

This Court’s jurisprudence is in accord with the definition of a final judgment found in Black’s Law Dictionary. It defines a final judgment as “[a] court’s last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs ... and enforcement of the judgment.” Black’s Law Dictionary 919 (9th ed.2009).

Bone, 744 S.E.2d at 558-559. The Court observed that no award had been made in the case and that the Commission's order did not address the severity of the injury, whether Bone had reached maximum medical improvement, or if she was entitled to medical treatment; therefore, the Court held that the order then before the Court was not final and interlocutory.

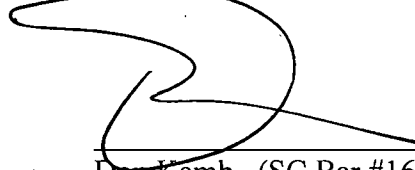
Here, the circumstances are directly opposite of the circumstances in Bone. In this matter, there has been a final judgment disposing of all the issues in the case, specifically the Order/Clincher of March 2011, which includes an award of permanent compensation and continued medical treatment. At that point, there was nothing left to be done in the case except for the enforcement of the award.

It was simply enforcement of that award that was before the single Commissioner in this current matter. Respondents were seeking to do something with regard to appellant's continued medical treatment that, according to the holding in Risinger, they no longer have the power to do, specifically to force her to attend an IME. That was the only issue before the single Commissioner, and there was and is no other proceeding or issue pending. Under the principles above, the single Commissioner's order was directly appealable to the Full Commission Panel, as it was a final decision on the only issue pending before the Commission. There is nothing more for the single Commissioner to do in this case, given her current order. The Full Commission's summary determination that the Form 30 appeal was interlocutory is contrary to fact and law.

Similarly, appellant's appeal to this court is not interlocutory. The only current issue before this Court is whether the Full Commission Panel correctly determined that appellant's Form 30 appeal to the Panel was interlocutory. There is no other issue pending or left undone at the Commission level to determine the rights of the parties on this or any other issue. As such, the current order is not interlocutory but is immediately appealable.

This case should be heard by this Court and should not be remanded to the Commission, as there is nothing more for the Commission to do in this case. The issue before this Court is ripe for determination under the facts of this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'DK', written over a horizontal line.

Don Kamb (SC Bar #16633)
Kathryn Williams, P.A.
P.O. Box 10693
Greenville, SC 29603
(864) 235-6254
Attorney for Appellant

Dated: 12/20/12

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Mitzi Watson, Employee,)
)
 Claimant,)
 -vs-)
)
 US Food Services, Inc.,)
 Employer and Indemnity Ins.)
 Co. through Gallagher Bassett)
 Services, Inc.,)
)
 Defendants.)

BEFORE THE SOUTH CAROLINA
 WORKERS' COMPENSATION COMMISSION

O R D E R/CLINCHER
 WCC FILE NO. 0716408

APPROVED

MAR 3 2011

S. C. Workers' Comp. Comm.

This matter now comes before the South Carolina Workers' Compensation Commission upon the petition of the claimant, Mitzi Watson. The claimant is represented by Kathryn Williams, Esq., of Kathryn Williams, PA, Attorneys of Greenville, South Carolina. The defendants, US Foodservices, Inc. and Indemnity Ins. Co. through Gallagher Bassett Services, Inc. are represented by Messrs. Turner Padget Graham & Laney, P. A., Attorneys of Greenville, South Carolina. The South Carolina Workers' Compensation Commission has jurisdiction.

It appears that the claimant, Mitzi Watson, suffered an injury by accident arising out of and in the course of his employment when, on April 25, 2007, she injured her back/spine when she bent over to lift a heavy box and experienced sever pain in her low back. Defendants furnished extensive medical care including treatment rendered by the Center for Health and Occupational Services, Greenville Radiology, Open MRI of Simpsonville, Southeastern Neurosurgical & Spine (Dr. Charles Kanos & Dr. Phillip Hodge), Pain Management Associates, Diagnostic Health, Upstate Medical Rehabilitation,, Smith Therapy, Greenville Hospital System, Steadman Hawkins Clinic, Piedmont Spine & Neurosurgical (Dr. Michael Bucci), and Carolinas Center for Advanced Management of Pain (Dr. John Satterthwaite & C. David Tollison, Ph.D.), among others. Defendants funded all appropriate diagnostic imaging of claimant's spine and, exhausted all means of conservative care including physical therapy and epidural steroid injections. Defendants also funded at least four (4) surgical procedures to claimant's spine. Defendants have also funded the implantation of

a spinal cord stimulator. Defendants paid temporary partial disability benefit from August 20, 2007 to November 2, 2007 and temporary total disability benefits from November 3, 2007 to February 15, 2011. On November 29, 2011, Dr. Hodge placed claimant at maximum medical improvement and assigned a twenty-five (25%) percent medical impairment to claimant's spine. On December 8, 2010, claimant's attorney had her client evaluated by Dr. George Bruce who assigned a sixty (60%) percent medical impairment to claimant's spine. On December 15, 2010, claimant's attorney also had her client evaluated by Randy L. Adams, M.Ed., CVE, who opined claimant is permanently and totally disabled as a result of the April 25, 2007 work injury.

In addition to the injuries to her back, claimant also contends she sustained injury to her right leg, left leg, left shoulder and psyche as a result of the April 25, 2007 injury. Claimant ultimately contends she is permanently and totally disabled as a result of the April 25, 2007 work injury. Defendants admit injury only to claimant's back and specifically deny claimant's claim for injury to right leg, left leg, left shoulder and psyche. Defendants also specifically deny claimant is permanently and totally disabled. Disputes have therefore arisen between the parties as to the extent of claimant's injuries, claimant's entitlement to further payments of temporary disability compensation and as to the extent of any causally related permanent disability. Further, disputes have also arisen as to whether claimant sustained any other injuries by accident, repetitive trauma injuries or occupational diseases during the period of his employment with US Foodservice, Inc.

The parties hereto now advise that in their opinion this matter is in bona fide dispute, and in view of such dispute an agreement has been reached to settle and end any and all claims of the claimant for compensation benefits (money benefits) under the South Carolina Workers' Compensation Act attributable to the work-related injury as specifically set forth in paragraph 2 hereinabove. It is also the express intent of the parties to fully and finally any and all other workers' compensation claims the claimant might have against US Foodservices, Inc. under the South Carolina Workers' Compensation Act.

Under the proposed settlement, the defendants have agreed to pay and the claimant has agreed to accept, the sum of One Hundred Fifty Three Thousand and 00/100 Dollars (\$153,000.00) in full and final settlement and satisfaction of every liability for payment of compensation benefits (temporary total, temporary partial, permanent partial, permanent total, death benefits - i.e. money benefits) under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid injury by accident occurring on or about April 25, 2007 as described in paragraph 2 hereinabove. As an integral part of this settlement agreement, it is expressly understood and agreed that the defendants shall be responsible for all medical expenses authorized by them and incurred by the claimant for treatment of her back/spine sustained in the accident of April 25, 2007 for a period of time necessary to lessen claimant's period of disability (see Section 42-15-60 of the 1976 Code of Laws of South Carolina). It is further expressly understood and agreed that, subsequent to the date of this Order, defendants shall only be responsible for medical treatment to claimant's back causally related to the accident of April 25, 2007, and in no way obligates the defendants to make any further payments of temporary and permanent disability compensation benefits. The claimant agrees that in consideration of the payment of One Hundred Fifty Three Thousand and 00/100 Dollars (\$153,000.00) in lump sum, any and all rights to payment of additional money benefits (i.e. temporary total disability compensation benefits, temporary partial disability compensation benefits, permanent partial disability compensation benefits, permanent total disability compensation benefits, or death benefits (money benefits)), are ended and that the only obligation for future payment by the defendants is for medical expenses to claimant's back causally related to the work injury of April 25, 2007. As part of this settlement agreement, the parties acknowledge that defendants shall not be in any way responsible for any medical treatment related to claimant's claimed injury to her right leg, left leg, left shoulder and psyche, past, present or future.

The claimant hereby asserts that she has been fully advised by her attorney of record of all of her rights under the South Carolina Workers'

Compensation Act, that claimant is of the opinion that the proposed settlement is reasonable and fair and in this opinion the claimant's attorney concurs and asserts that she has fully advised claimant of all of her rights under the South Carolina Workers' Compensation Act and she respectfully requests that this Commission do hereby approve the settlement as set forth above.

The claimant hereby asserts that she recognizes that her consent to, and the approval of, this Order is a final determination and adjudication of all money benefits under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid injury by accident occurring on or about April 25, 2007 as specifically described in paragraph 2 hereinabove and that this claim is no longer subject to additional money benefits including any claim for change of condition for the worse under S.C. Code Ann. § 42-17-90.

Without in any way affecting the overall terms of this settlement insofar as the defendants are concerned, and with the claimant and the claimant's attorney acknowledging that defendants make no representations as to the effect such allocation may have on the claimant's receipt of other benefits, the claimant and her attorney hereby request this Commission to approve the allocation of the proposed settlement sum of One Hundred Fifty Three Thousand and 00/100 (\$153,000.00) Dollars as follows:

The claimant, Mitzi A. Watson, who was born on 8/24/1966, and is presently 44 years of age and who, as provided in the mortality tables set forth in S.C. Code Ann. Section 19-1-150, has a life expectancy of 38.23 years which is 458.76 months, hereby requests this Commission to approve the allocation of the aforementioned proposed settlement sum which is compensation for permanent impairment that will affect the claimant for life, as follows: \$54,000.00 as attorney's fees and costs in prosecuting this action, and \$99,000.00 in compromise settlement of disputed future disability benefits at the rate of \$215.80 per month for a period of 458.76 months, pursuant to S.C. Code Ann. Section 42-9-10, as interpreted by the South Carolina Supreme Court decision of Utica-Mohawk Mills v. Orr, 277 S.C. 226, 87 S.E. 2d 589 (1955). See also Sciarotta v. Bowen, 837 F.2d 135 (3rd Cir. 1988); S.C. Code Ann.

Section 19-1-150. (\$99,000.00 divided by 458.76 months equals \$215.80 per month).

It is expressly understood that the defendants take no position and make no representation as to the requested allocation of the proposed settlement sum as set forth hereinabove and that the proposed allocation in no way affects the absolute release of the defendants.

This Commission is of the opinion that the allocation of the proposed settlement sum as set forth hereinabove is reasonable and proper and should be approved.

It is not the intention of the employer/insurer or claimant in this case to shift the responsibility for paying future medical expenses related to the claimant's injuries to the Federal government. This settlement contemplates a final resolution of the indemnity portion (money benefits) of the claim only. Defendants have agreed to continue funding claimant's causally-related medical treatment for claimant's back. As such, the parties are not closing the future medical treatment for claimant's back and do not believe CMS has an interest in this claim. Thus, the parties do not believe a Medicare set-aside is needed.

NOW, THEREFORE, IT IS ORDERED that upon the payment of the sum of One Hundred Fifty Three Thousand and 00/100 Dollars (\$153,000.00) by the defendants, and the acceptance of said sum by the claimant, the defendants, US Foodservices, Inc. and Indemnity Ins. Co. through Gallagher Bassett Services, Inc., be, and they hereby are, fully and forever discharged of all liability of whatsoever nature and kind, under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid injury by accident of April 25, 2007, as specifically described in paragraph 2 hereinabove, to pay further compensation benefits (temporary total, temporary partial, permanent partial, permanent total, or death benefits - i.e. any and all money benefits). Defendants shall, however, continue to be responsible to pay only for the medical expenses to claimant's back causally-related to the April 25, 2007 work accident. The parties acknowledge that defendants shall not be in any way responsible for treatment and expenses related to claimant's claimed injuries to her right leg, left leg, left shoulder and psyche, past present or future.

DATED: 3/1/00

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WE CONSENT TO THE FOREGOING ORDER:

David L. ...

By: _____
Commissioner

Mitzi A. Watson

Mitzi A. Watson, Claimant

I certify this to be a true and correct copy.
Gregory ...

Kathryn Williams

Kathryn Williams, Esq. PA
Attorney for claimant

Brad B. Easterling

BY: Brad B. Easterling Esq.
Attorney for Defendants

FEE SUBJECT TO FORM 601

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

WC # 0716408
 Carrier File # 004063-030880-WC-01
 Carrier Code # 461
 Employer FEIN 36-3642294

Mitzi Watson 247-35-6908
 Claimant's Name SSN
 14 Two Creeks Ct Simpsonville SC 29680
 Address City State Zip
 Home Phone # Work Phone #

US Foodservice
 Employer's Name
 2818 White Horse Rd Greenville SC 29611
 Address City State Zip
 Indemnity Ins Co / Gallagher Bassett
 Insurance Carrier

Tameka Graves 866-246-0259
 Preparer's Name Phone #

Compensation Paid:	Number of Weeks	From	To	Amount
1. Number of weeks T.T.	171 wks/4 days	11/03/07	2/15/11	\$ 93,691.73
2. Number of weeks T.P.	11	8/20/07	11/02/07	\$ 770.67
3. Number of weeks P.P.				\$
4. Disfigurement				\$
5. Agreement and Final Release				\$ 153,000.00
Total Compensation Paid				\$ 247,462.40
6. Total Medical Benefits* Paid				\$ 233,936.59
7. Funeral Benefits				\$ 0

Case Denied Date of Injury: 4/25/07
 month day year

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: [Signature]
 Claimant

By: [Signature]
 Employer's Representative

Date: 2/25/11
~~02/08/11~~

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: _____

Report of additional Fees and Recoupment

- A. Carrier Reimbursement by Third Party
- B. Attorney's Fee Paid by Employer
- C. Attorney's Fee Paid by Claimant

RECEIVED
 MAR 07 2011
 Division of Claims
 Claims Administrator
 Workers' Comp. Comm.

File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. *Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within sixteen days of final payment of compensation. Form 19 must be filed when a claim is denied.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0716408

MITZI WATSON,

Employee,

Claimant,

vs.

US FOODSERVICE, INC.,

Employer,

AND

GAB ROBINS NORTH AMERICA, INC.,

Carrier,

Defendants.

MOTION TO COMPEL

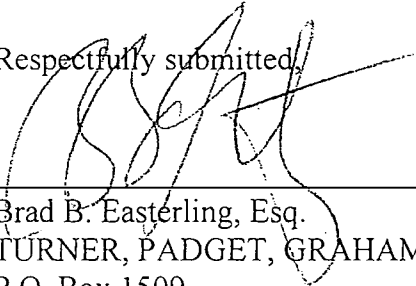
Pursuant to the previous Settlement Agreement, the Employer/Carrier is currently providing causally-related medical treatment in the form of pain management.

Without halting that treatment, the Employer/Carrier also scheduled the Claimant for an independent medical evaluation with Dr. James Behr, another pain management physician, for June 14, 2013, at 1:00 p.m. Subsequent to the scheduling of that appointment, Claimant's counsel notified the Employer/Carrier that she opposed the appointment scheduled with Dr. Behr and instructed her client not to attend the appointment. In doing so, Claimant's counsel cited the South Carolina Court of Appeals case Risinger v. Knight Textiles, 353 S.C. 69, 577 S.E.2d 222 (Ct. App. 2002). Because the factual scenario in Risinger is completely inapposite, Defendants seek an Order to Compel requiring Claimant to attend the IME with Dr. James Behr.

In Risinger, prior to the ruling by the single commissioner, the employer chose a neurosurgeon to provide a second opinion. That neurosurgeon recommended certain treatment and the employer provided such. Subsequent to the single commissioner's order, the employer then refused to provide the treatment recommended by the same physician. The employer then sought a second opinion while not continuing to provide the ordered treatment. In the case at hand, the Employer has not refused to continue providing the Claimant's pain management treatment currently being received. The indemnity portion of this case has already been settled via clincher agreement with the Employer agreeing to provide ongoing causally-related medical. At no time has the Employer ever refused to continue providing that causally-related ongoing treatment. The Employer now simply wants another pain management opinion. The Employer/Carrier will continue to provide the treatment with the current pain management physician pending the second opinion from Dr. Behr.

For these reasons, the facts of the case had hand are completely distinguishable from the facts in Risinger. The Employer/Carrier, therefore, seeks an Order from the Commission compelling the Claimant to attend the independent medical evaluation to be scheduled with Dr. James Behr.

Respectfully submitted,



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Attorneys for the Employer/Carrier

Greenville, SC

July 1, 2013.

order has been issued and the carrier is paying benefits pursuant to a final order.” Risinger v. Knight Textiles, 353 S.C. 69, 577 S.E.2d 222 (Ct. App. 2002). In that case, the Commission had determined in a final Order that the injured worker was permanently and totally disabled and designated a physician to provide related lifetime medical treatment; however, the defendant carrier thereafter refused to authorize medical treatment recommended by the designated physician and sought an independent medical examination with another physician under sections 42-15-60 and 42-15-80. However, the Court of Appeals affirmed the Commission’s determination that defendant carrier could not force the claimant to attend such an independent medical examination following a final Order providing permanent total disability benefits. The Court further found that defendant carrier’s attempts to direct medical care were improper, stating as follows:

the language of S.C. Code Ann. §§ 42-15-60 does not allow an employer to dictate the medical treatment of injured employees. Our reading of the statute reveals that it requires only that the employer/carrier pay for treatment during the life of the injured employee.

Id., at 224-225.

7 The Risinger case is on point here. Under the Workers' Compensation Act, as interpreted by our Courts, defendants cannot force claimant to attend an independent medical examination with another physician in an attempt to change or direct claimant's medical treatment **but must simply provide medical treatment as recommended by the treating physician.**

8. Defendants’ attempts to differentiate Risinger from the present case by arguing that they have not refused to provide continuing treatment with Dr. LeBlond, but this attempt fails because it is clear that the import of the Risinger decision is not that the defendants were in that case refusing to provide treatment but that the defendants were attempting to control medical treatment rather than simply paying for medical treatment recommended by the authorized treating physician as set out in the Commission-approved Order.

9. Here, while defendants state that they are not refusing to provide causally-related medical treatment, by their statement that they “will continue to provide the treatment with the current pain management physician *pending the second opinion from Dr. Behr*,” it is apparent that they are attempting to control or dictate claimant’s medical treatment rather than simply pay for recommended medical treatment as Risinger requires.

10. Since Risinger, the Commission has consistently denied motions to compel IMEs in situations such as is presented in this case. (see e.g. attached Order from Commissioner McCaskill dated 1/18/13)

11. Claimant urges the Commission to deny defendants' motion.

Respectfully submitted,



Don Kamb
Kathryn Williams, P.A.
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P.O. Box 10693
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(864) 235-6254

Attorney for Claimant

Dated: 7/11/12
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Mitzi Watson, Employee,)
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 Claimant,)
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 US Food Services, Inc.,)
 Employer and Indemnity Ins.)
 Co. through Gallagher Bassett)
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a spinal cord stimulator. Defendants paid temporary partial disability benefit from August 20, 2007 to November 2, 2007 and temporary total disability benefits from November 3, 2007 to February 15, 2011. On November 29, 2011, Dr. Hodge placed claimant at maximum medical improvement and assigned a twenty-five (25%) percent medical impairment to claimant's spine. On December 8, 2010, claimant's attorney had her client evaluated by Dr. George Bruce who assigned a sixty (60%) percent medical impairment to claimant's spine. On December 15, 2010, claimant's attorney also had her client evaluated by Randy L. Adams, M.Ed., CVE, who opined claimant is permanently and totally disabled as a result of the April 25, 2007 work injury.

In addition to the injuries to her back, claimant also contends she sustained injury to her right leg, left leg, left shoulder and psyche as a result of the April 25, 2007 injury. Claimant ultimately contends she is permanently and totally disabled as a result of the April 25, 2007 work injury. Defendants admit injury only to claimant's back and specifically deny claimant's claim for injury to right leg, left leg, left shoulder and psyche. Defendants also specifically deny claimant is permanently and totally disabled. Disputes have therefore arisen between the parties as to the extent of claimant's injuries, claimant's entitlement to further payments of temporary disability compensation and as to the extent of any causally related permanent disability. Further, disputes have also arisen as to whether claimant sustained any other injuries by accident, repetitive trauma injuries or occupational diseases during the period of his employment with US Foodservice, Inc.

The parties hereto now advise that in their opinion this matter is in bona fide dispute, and in view of such dispute an agreement has been reached to settle and end any and all claims of the claimant for compensation benefits (money benefits) under the South Carolina Workers' Compensation Act attributable to the work-related injury as specifically set forth in paragraph 2 hereinabove. It is also the express intent of the parties to fully and finally any and all other workers' compensation claims the claimant might have against US Foodservices, Inc. under the South Carolina Workers' Compensation Act.

Under the proposed settlement, the defendants have agreed to pay and the claimant has agreed to accept, the sum of One Hundred Fifty Three Thousand and 00/100 Dollars (\$153,000.00) in full and final settlement and satisfaction of every liability for payment of compensation benefits (temporary total, temporary partial, permanent partial, permanent total, death benefits - i.e. money benefits) under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid injury by accident occurring on or about April 25, 2007 as described in paragraph 2 hereinabove. As an integral part of this settlement agreement, it is expressly understood and agreed that the defendants shall be responsible for all medical expenses authorized by them and incurred by the claimant for treatment of her back/spine sustained in the accident of April 25, 2007 for a period of time necessary to lessen claimant's period of disability (see Section 42-15-60 of the 1976 Code of Laws of South Carolina). It is further expressly understood and agreed that, subsequent to the date of this Order, defendants shall only be responsible for medical treatment to claimant's back causally related to the accident of April 25, 2007, and in no way obligates the defendants to make any further payments of temporary and permanent disability compensation benefits. The claimant agrees that in consideration of the payment of One Hundred Fifty Three Thousand and 00/100 Dollars (\$153,000.00) in lump sum, any and all rights to payment of additional money benefits (i.e. temporary total disability compensation benefits, temporary partial disability compensation benefits, permanent partial disability compensation benefits, permanent total disability compensation benefits, or death benefits (money benefits)), are ended and that the only obligation for future payment by the defendants is for medical expenses to claimant's back causally related to the work injury of April 25, 2007. As part of this settlement agreement, the parties acknowledge that defendants shall not be in any way responsible for any medical treatment related to claimant's claimed injury to her right leg, left leg, left shoulder and psyche, past, present or future.

The claimant hereby asserts that she has been fully advised by her attorney of record of all of her rights under the South Carolina Workers'

Compensation Act, that claimant is of the opinion that the proposed settlement is reasonable and fair and in this opinion the claimant's attorney concurs and asserts that she has fully advised claimant of all of her rights under the South Carolina Workers' Compensation Act and she respectfully requests that this Commission do hereby approve the settlement as set forth above.

The claimant hereby asserts that she recognizes that her consent to, and the approval of, this Order is a final determination and adjudication of all money benefits under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid injury by accident occurring on or about April 25, 2007 as specifically described in paragraph 2 hereinabove and that this claim is no longer subject to additional money benefits including any claim for change of condition for the worse under S.C. Code Ann. § 42-17-90.

Without in any way affecting the overall terms of this settlement insofar as the defendants are concerned, and with the claimant and the claimant's attorney acknowledging that defendants make no representations as to the effect such allocation may have on the claimant's receipt of other benefits, the claimant and her attorney hereby request this Commission to approve the allocation of the proposed settlement sum of One Hundred Fifty Three Thousand and 00/100 (\$153,000.00) Dollars as follows:

The claimant, Mitzi A. Watson, who was born on 8/24/1966, and is presently 44 years of age and who, as provided in the mortality tables set forth in S.C. Code Ann. Section 19-1-150, has a life expectancy of 38.23 years which is 458.76 months, hereby requests this Commission to approve the allocation of the aforementioned proposed settlement sum which is compensation for permanent impairment that will affect the claimant for life, as follows: \$54,000.00 as attorney's fees and costs in prosecuting this action, and \$99,000.00 in compromise settlement of disputed future disability benefits at the rate of \$215.80 per month for a period of 458.76 months, pursuant to S.C. Code Ann. Section 42-9-10, as interpreted by the South Carolina Supreme Court decision of Utica-Mohawk Mills v. Orr, 277 S.C. 226, 87 S.E. 2d 589 (1955). See also Sciarotta v. Bowen, 837 F.2d 135 (3rd Cir. 1988); S.C. Code Ann.

Section 19-1-150. (\$99,000.00 divided by 458.76 months equals \$215.80 per month).

It is expressly understood that the defendants take no position and make no representation as to the requested allocation of the proposed settlement sum as set forth hereinabove and that the proposed allocation in no way affects the absolute release of the defendants.

This Commission is of the opinion that the allocation of the proposed settlement sum as set forth hereinabove is reasonable and proper and should be approved.

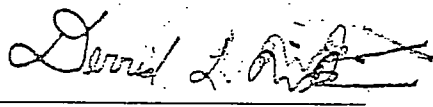
It is not the intention of the employer/insurer or claimant in this case to shift the responsibility for paying future medical expenses related to the claimant's injuries to the Federal government. This settlement contemplates a final resolution of the indemnity portion (money benefits) of the claim only. Defendants have agreed to continue funding claimant's causally-related medical treatment for claimant's back. As such, the parties are not closing the future medical treatment for claimant's back and do not believe CMS has an interest in this claim. Thus, the parties do not believe a Medicare set-aside is needed.

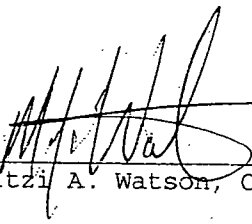
NOW, THEREFORE, IT IS ORDERED that upon the payment of the sum of One Hundred Fifty Three Thousand and 00/100 Dollars (\$153,000.00) by the defendants, and the acceptance of said sum by the claimant, the defendants, US Foodservices, Inc. and Indemnity Ins. Co. through Gallagher Bassett Services, Inc., be, and they hereby are, fully and forever discharged of all liability of whatsoever nature and kind, under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid injury by accident of April 25, 2007, as specifically described in paragraph 2 hereinabove, to pay further compensation benefits (temporary total, temporary partial, permanent partial, permanent total, or death benefits - i.e. any and all money benefits). Defendants shall, however, continue to be responsible to pay only for the medical expenses to claimant's back causally-related to the April 25, 2007 work accident. The parties acknowledge that defendants shall not be in any way responsible for treatment and expenses related to claimant's claimed injuries to her right leg, left leg, left shoulder and psyche, past present or future.

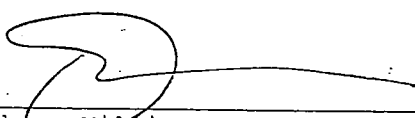
DATED: 3/14/11

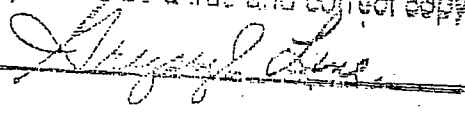
WE CONSENT TO THE
FOREGOING ORDER:

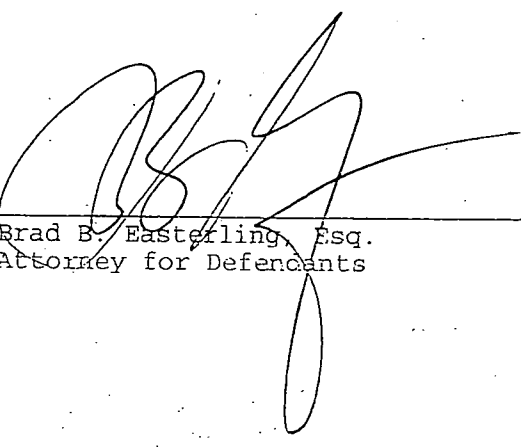
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

By: 
Commissioner


Mitzi A. Watson, Claimant


Kathryn Williams, Esq. PA
Attorney for claimant

I certify this to be a true and correct copy.


BY: 
Brad B. Easterling, Esq.
Attorney for Defendants

FEE SUBJECT TO FORM 611

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Adgwina Jones, Employee,)	WCC File No.: 0708383
)	
Claimant,)	
)	
vs.)	
)	
BMW Manufacturing Corp., Employer,)	ORDER
and Zurich American Ins. Co., Carrier,)	
)	
Defendants.)	

This claim came before the undersigned Commissioner in Columbia, South Carolina on December 19, 2012 concerning claimant's Motion to Compel defendants to authorize and provide a spinal cord stimulator trial with Dr. L. Ashley Mullinax, as recommended by the authorized, treating physician Dr. Robert LeBlond. A hearing on the record was held, during which both parties were given opportunity to present their arguments.

By previous Order of the Workers' Compensation Commission, claimant was awarded permanent total disability, including lifetime medical treatment, for compensable injuries to her right shoulder, neck, thoracic spine, and lumbar spine. Thereafter, defendants authorized Dr. Robert LeBlond to provide continuing pain management treatment and have paid for all the treatment that he has recommended prior to the recommendation for the spinal cord stimulator trial. On or about June 27, 2012, Dr. LeBlond referred claimant to Dr. Mullinax, another physician in his practice, for consideration of a spinal cord stimulator for her back pain. After examination, Dr.

Mullinax indicated that claimant was a candidate for the trial and requested authorization for the procedure.

Defendants responded by denying the request for authorization, referring claimant to neurosurgeon Dr. Michael Bucci for consultation concerning the stimulator trial, by conducting a peer review, and scheduling claimant for an independent medical examination with another pain management physician, Dr. James Behr.


On October 25, 2012, claimant filed the underlying Motion seeking an Order from the Commission compelling defendants to comply with the Commission's earlier Order and to authorize and provide the spinal cord stimulator trial as recommended by the authorized, treating physician. Claimant based her motion on Risinger v. Knight Textiles, 353 S.C. 69, 577 S.E.2d 222 (Ct. App. 2002) and argued that the Court of Appeals' holding in that case states that the independent medical examination statute, S.C. Code Ann. § 42-15-80, is no longer applicable when a final award of permanent total disability has been made, that at that point defendants are no longer able to direct medical treatment, and that defendants must now simply pay for medical treatment recommended by the chosen medical provider. Claimant also pointed out that it is simply unreasonable to send her to Spartanburg concerning the spinal cord stimulator when there is a doctor in Dr. LeBlond's office in Greenville whom both claimant and Dr. LeBlond trust to provide the requested treatment.

Defendants argued that Risinger does not apply here since they are not seeking a third opinion on the issue, as was the case in Risinger, and that it is defendants' right to choose the medical provider under § 42-15-60 and S.C. Code Reg. 67-509.

In response, claimant pointed out that defendants have in fact chosen the treating physician, Dr. LeBlond, in keeping with the Commission's prior Order, § 42-15-60, and 67-509 and that under Risinger, their only remaining role is to now provide the medical treatment that Dr. LeBlond recommends.

After hearing the parties' arguments and reviewing the motion, defendants' response, and all related documents, the undersigned finds that Risinger is on point here. Given the Commission's prior Order finding claimant is permanently and totally disabled and awarding her lifetime medical treatment under § 42-15-60(C), the independent medical examination statute, § 42-15-80, is no longer available to defendants. Defendants chose Dr. Robert LeBlond as the authorized, treating physician and must now provide the medical treatment and care that he recommends and directs. Accordingly, claimant's motion is granted, and defendants are hereby ordered to authorize and provide the medical treatment recommended by Dr. LeBlond, as he directs, including but not limited to the spinal cord stimulator trial with Dr. L. Ashley Mullinax.

IT IS SO ORDERED.



Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
January 18, 2013

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0716408

MITZI WATSON,

Employee,

Claimant,

vs.

US FOODSERVICE, INC.,

Employer,

AND

GAB ROBINS NORTH AMERICA, INC.,

Carrier,

Defendants.

**DEFENDANTS RETURN TO
CLAIMANT'S REPLY TO DEFENDANTS
MOTION TO COMPEL**

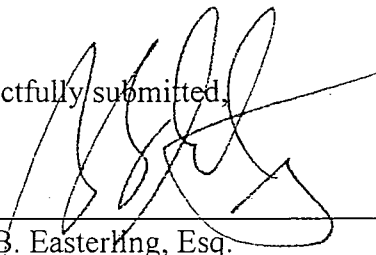
On July 11, 2013, Claimant filed a reply to Defendants Motion to Compel. Defendants now respond in kind to Claimant's Reply as follows:

1. Again, the facts in Risinger are completely distinguishable from the current claim. In Risinger, the Employer/Carrier refused to authorize the treatment recommended by the previously designated authorized treating physician. At that point, the Claimant's treatment was at a standstill. While at a standstill, Defendants attempted to schedule a second opinion, which the Claimant ultimately objected to. Here, the Employer/Carrier continues and will continue to provide and pay for the treatment being provided by Dr. Robert LeBlond. For this reason, the current claim is factually distinguishable from Risinger and the Employer/Carrier should be allowed to have Claimant evaluated by Dr. James Behr.

2. To hold that an Employer/Carrier cannot seek other opinions while continuing to provide the ordered medical treatment would result in an unreasonable outcome for the Employer/Carrier. In situations such as this, where indemnity was settled via clincher agreement with the stipulation that causally related future medical would be provided, Defendants would be stuck with the treatment recommended by the authorized treating physician at all costs. Dr. James Behr is a board certified pain management physician and is an otherwise well respected physician.
3. Having the claimant seen for a second opinion, while continuing the care recommended by Dr. Robert LeBlond, is in no way prejudicial to the claimant. Having additional medical opinions regarding an individual's current medical situation seems only beneficial. It is certainly not out of the realm of possibility that Dr. Behr may provide additional insight which will hopefully improve the claimant's overall condition.

For these reasons, most importantly of which is the claimant's ultimate improvement, Defendants seek an Order compelling the Claimant to attend an independent medical evaluation with Dr. James Behr.

Respectfully submitted,



Brad B. Easterling, Esq.
TURNER, PADGET, GRAHAM & LANEY, P.A.
P.O. Box 1509
Greenville, SC 29602
(864) 552-4619
Attorneys for the Employer/Carrier

Greenville, SC

July 17, 2013

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 0716408

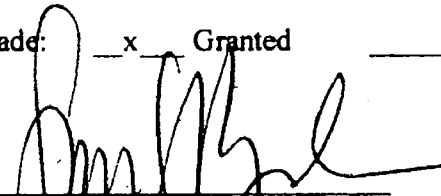
Mitzi A. Watson,)
)
 Claimant,)
 vs.)
)
 US Food Service,)
)
 Employer,)
)
 Indemnity Insurance Co. of NA,)
)
 Carrier,)
 Defendants)
)

A Motion regarding the following issue(s) has been received.

- Discovery or Subpoena
- Appointment of guardian Ad Litem
- Attorney's appearance before the Commission
- Withdrawal of Representation
- Attorney's Fee
- Claim Pending Commission Review
- Postpone
- Adjourned the Scheduled Hearing
- Self Insurance Privileges
- Penalties and Interest
- Third Party Practice
- Other: Defendants' Motion to Compel Claimant to Attend
IME with Dr. Behr.

The following disposition has been made: Granted Denied

Columbia, SC



Susan S. Barden, Commissioner

August 29, 2013

CERTIFICATE OF SERVICE

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

By Kristi Love on August 29, 2013

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

P. O. Box 1715 - 1333 Main Street, Suite 500
Columbia, South Carolina 29202-1715

WCC File No. **0716408**
Carrier File #
Carrier Code #
Employer FEIN

Mitzi A. Watson
Claimant's Name SSN
Address City State Zip
(864) ()
Home Phone Work Phone
Kathryn Williams, P.A.
Preparer's Name

U.S. Food Service
Employer's Name
Address City State Zip
Indemnity Ins. Co. of N.A.
Insurance Carrier
(864) 235-6254
Phone #


Request for Commission Review by **CLAIMANT. ORAL ARGUMENT IS REQUESTED.**

The undersigned makes application for review of the Hearing Commissioner's findings in the above matter. 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).

- The Hearing Commissioner erred in granting defendants' motion to compel claimant to attend an IME appointment with Dr. Behr in this matter; the error being that the Commissioner's decision is directly contrary to established case law, specifically *Risinger v. Knight Textiles*, 577 S.E.2d 222 (S.C. Ct.App. 2002)
- The Hearing Commissioner erred in granting defendants' motion to compel claimant to attend an IME appointment with Dr. Behr in this matter; the error being that the IME statute, § 42-15-80, is no longer available to defendants to require claimant to submit to such an evaluation where, as here, the Commission has made a final determination of permanent total disability and an authorized treating physician has been designated to provide lifetime medical care, as defendants' role is now to simply pay for the medical treatment recommended by the designated treating physician
- The Hearing Commissioner erred in failing to find that the IME statute, § 42-15-80, is no longer available to defendants to require claimant to submit to such an evaluation; the error being that such finding is consistent with and mandated by established case law, specifically *Risinger v. Knight Textiles*, 577 S.E.2d 222 (S.C. Ct.App. 2002)
- The Hearing Commissioner erred in failing to find defendants are improperly trying to dictate medical treatment in this matter by trying to force claimant to an IME with another pain management physician rather than simply paying for the medical treatment recommended by the designated treating physician as required by established case law, specifically *Risinger v. Knight Textiles*, 577 S.E.2d 222 (S.C. Ct.App. 2002)
- The Hearing Commissioner erred in failing to make findings of fact and conclusions of law in support of her decision and in failing to specifically address the effect of *Risinger v. Knight Textiles*; the error being that the Workers' Compensation Act and the Administrative Procedures Act require such findings and conclusions so that an appellate body can determine whether the decision is supported by substantial evidence or affected by error of law

ORAL ARGUMENT IS REQUESTED.

I certify that I have served this document pursuant to R.67-212 by delivering a copy to the South Carolina Workers' Compensation Commission at P.O. Box 1715, Columbia, SC 29202 and to the attorney for defendants, Brad B. Easterling of Turner, Padgett, Graham & Laney, P.A. at P.O. Box 1509, Greenville, SC 29602, on the 5th day of Sept., 2013 by first class U.S. mail.


Preparer's Signature

Attorney for Claimant
Title

9/5/13
Date

If claimant appeals and is not represented by an attorney, the Judicial Department will prepare additional copies of this form and serve it on the opposing party. Rule 67-701(B). Otherwise, file the original and eight 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. Rule 67-205(D). Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to Rules 67-701 through 711 for additional information.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Mitzi A. Watson v U.S. Food Service
SCWCC: 0716408
Commissioner: Barden

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby:

Dismissed as Interlocutory. Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;

Granted. Denied. Dismissed Set for Hearing.

BEFORE THE;

Hearing Comm. Jurisdictional Comm. Full Commission.

IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

Remand to Panel as indicated below.

<input type="checkbox"/> Barden	<input type="checkbox"/> James	<input type="checkbox"/> Taylor
<input type="checkbox"/> Beck	<input type="checkbox"/> Roche	<input type="checkbox"/> Wilkerson
	<input type="checkbox"/> McCaskill	

Remand for Order consistent with the Order of the Court.

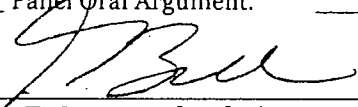
Remand to the Hearing Commissioner.

Remand to the Jurisdictional Commissioner.

Other: _____

Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.



T. Scott Beck, Chair

Columbia, South Carolina

10/14 2013

CONCURRING:

Commissioner Susan S. Barden
Commissioner Melody James
Commissioner Aisha Taylor
Commissioner Avery Wilkerson
Commissioner Andrea C. Roche
Commissioner Gene McCaskill

NOT PARTICIPATING:

DISSENTING:

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPY HEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 14 day of October, 2013.

By: Valerie Deller
SCWCC Judicial Department

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM
THE WORKERS' COMPENSATION COMMISSION

SCWCC Case No. 0716408
Court of Appeals Case No. 2013-002482

RECEIVED
DEC 27 2013
SC Court of Appeals

Mitzi A. Watson, Appellant,


vs.

U.S. Food Service and Indemnity Ins.
Co. of N.A. Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that Respondent/Appellant's MEMORANDUM ON APPEALABILITY has been served on Appellants/Respondents by depositing a copy in the U.S. Mail, postage prepaid on 12/20/12, addressed to their attorney of record:

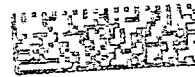
Brad B. Easterling, Esq.
Turner Padgett Graham & Laney, P.A.
P.O. Box 1509
Greenville, SC 29602



Kathryn Williams, P.A.
P.O. Box 10693
Greenville, S.C. 29603
(864) 235-6254
Attorney for Appellant

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DEC 27 2013

SC Court of Appeals

KATHRYN WILLIAMS, P.A.
ATTORNEYS AT LAW

P.O. BOX 10693
619 N. MAIN STREET
GREENVILLE, SC 29603

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211