

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner

W.C.C. FILE NO. 0904601

CASE NO. 2013-0001675

Thomas Bradley Davis, Employee Claimant/Appellant,

v.

Robert Bosch Corporation, LLC, Employer
And The Phoenix Insurance Company, Carrier Defendants/Respondents.

**RESPONSE TO APPELLANT'S MOTION TO SUSPEND
THE BRIEFING SCHEDULE FOR NINETY DAYS**

On or about December 9, 2013, Appellant filed with this court a Motion to Suspend the Briefing Schedule for Ninety Days, and the same was served on Respondents via United States Mail on that date. For reasons unknown to the parties, Respondents did not receive a copy of Appellant's Motion, until the same was forwarded to Respondents on January 15, 2014, via email. (Exhibit 1) Accordingly, Respondents have been unable to respond to Appellant's Motion until this time, and Respondents respectfully request this Response be accepted by the Court pursuant to Rule 240(e) of the South Carolina Appellate Court Rules.

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JAN 23 2014

SC Court of Appeals

CLAIM SUMMARY/BACKGROUND

Appellant sustained admitted repetitive trauma injuries to his bilateral upper extremities on April 15, 2009. Respondents admitted that Appellant suffers from causally-related bilateral carpal tunnel syndrome and bilateral epicondylitis of the upper extremities. Appellant sustained a second admitted accident on April 19, 2010, at which time the Respondent Employer was insured with a separate insurance carrier, American Zurich Insurance Company (Zurich). Zurich admitted Appellant's deQuervain's tenosynovitis of the bilateral upper extremities.

Appellant filed separate Form 50 Hearing Requests for both dates of accident, and the claims were heard simultaneously on August 30, 2012, before Commissioner T. Scott Beck of the South Carolina Workers' Compensation Commission. Commissioner Beck issued separate Orders with regard to the 2009 and 2010 claims, South Carolina Workers' Compensation Nos. 0904601 and 1022907, respectively. Following the issuance of the Orders, Appellant filed separate Form 30 Requests for Commission Review.

The appellate hearings were heard simultaneously before the Full Commission Appellate Panel on April 16, 2013. On July 9, 2013, the Appellate Panel issued its Decision and Order, affirming the Single Commissioner's Order in full for the 2009 claim, WCC File No. 0904601. The Appellate Panel issued a separate Decision and Order for the 2010 claim, WCC File No. 1022907, remanding that claim back to the Single Commissioner. Appellant timely filed a Notice of Appeal to this Court for the present claim, WCC File No. 0904601, on August 6, 2013.

After filing his appeal, Appellant requested two separate extensions of time for the service of the Initial Brief and Designation of Matter. On October 16, 2013, Appellant requested a thirty day extension of time to file and serve the Initial Brief and Designation of Matter, and his request

was graciously granted by the Court. On November 18, 2013, Appellant again requested a thirty day extension of time to file and serve the Initial Brief and Designation. By Order dated November 25, 2013, this Court again extended Appellant's time for filing the Initial Brief and Designation of Matter, allowing Appellant a final extension until December 23, 2013. Appellant now requests a "suspension of the briefing schedule" to allow this appeal to be heard in conjunction with a *future* appeal in WCC File No. 1022907, allegedly in the interest of judicial economy. Respondents did not object to Appellant's two requests for extensions of time. However, Respondents must object to Appellant's current request.

ARGUMENTS

I. Appellant's Motion to Suspend the Briefing Schedule is disallowed by Rule 240(b) of the South Carolina Appellate Court Rules.

Appellant's Motion requests a ninety day suspension of the time limits imposed by Rule 208(a)(1): "**Brief of Appellant.** Within thirty (30) days after receiving the transcript...appellant shall serve one copy of his brief on all parties to the appeal..." In his Motion to Suspend the Briefing Schedule, Appellant has essentially requested to stay the time limits imposed by Rule 208; a request which may not be made by use of a motion or petition: Rule 240(b): "**Stay of Time Limits.** Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition." The fact that Appellant terms his request a "suspension," rather than a "stay," is of no consequence. Appellant has requested a stay of the time limits imposed by Rule 208, and his Motion is disallowed by Rule 240(b). For this reason, Respondents respectfully request an Order denying or dismissing Appellant's Motion for Suspension of the Briefing Schedule.

II. Appellant has not presented extraordinary circumstances sufficient to grant his Motion to Suspend the Briefing Schedule.

In the November 25, 2013 Order from this Court, Respondent was specifically notified that “[n]o further extensions will be granted absent extraordinary circumstances.” Appellant was granted two separate thirty day extensions of time for the filing of his Initial Brief and Designation of Matter, and he now seeks an additional ninety day “suspension of the briefing period.” Respondent has termed his request a Motion to Suspend the Briefing Schedule, but the Motion is merely a veiled request for an additional extension of time; an extension which this Court has already ruled will not be granted absent extraordinary circumstances. Respondents maintain that the combination of this appeal with the future appeal of WCC File No. 1022907 does not represent extraordinary circumstances so as to warrant an additional ninety day extension of time for Appellant to file his Initial Brief.

The injuries in Appellant’s 2009 claim are separate and independent from those in the 2010 claim, and the legal and factual issues to be argued are wholly independent of one another. The mere fact that both claims involve the same injured worker and the same Employer does not warrant the unnecessary delay of the pending appeal in this claim; an appeal which was initially filed on August 6, 2013, more than five months ago. Appellant’s sole arguments in support of his Motion are that the two claims “...would certainly be more reasonable if heard together,” and that a combination of the claims “...would promote the interests of judicial economy.” (Appellant’s Motion, p. 2) Respondents maintain that these are not extraordinary circumstances and respectfully request an Order denying or dismissing Appellant’s Motion for Suspension of the Briefing Schedule.

III. Respondents will be prejudiced if Appellant’s Motion is granted.

The claims were heard together at the Commission level because they were filed

simultaneously and because a combined hearing would not cause prejudice to any of the parties. A postponement at this point, however, would unduly prejudice Respondents. Pursuant to S.C. Code Ann. Section 42-17-90, Appellant is entitled to file a claim for a change of condition for the worse within one year after the last payment of compensation has been made. With each day that passes, and until an award is issued to Appellant, Appellant's time frame for filing a change of condition claim expands, and Respondents' exposure increases. Any alleged economy or benefit which may come from a combination of this appeal with the future appeal of WCC File No. 1022907 is outweighed by the prejudice to Respondents while this appeal is delayed, and Respondents respectfully request an Order denying or dismissing Appellant's Motion for Suspension of the Briefing Schedule.

CONCLUSION

For the reasons stated above, Respondents respectfully request an Order denying or dismissing Appellant's Motion for Suspension of the Briefing Schedule.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.



Franklin D. Guerrero
Willson Jones Carter & Baxley, P.A.
872 South Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3282
(864) 235-6015 facsimile

Attorneys for Respondents

January 21, 2014

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 0904601

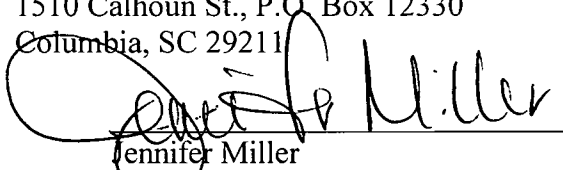
Thomas Bradley Davis,)
Employee,)
Claimant,)
vs.)
Robert Bosch Corporation, LLC,)
Employer,)
and)
Travelers Insurance Company,)
Carrier,)
Defendants.)

CERTIFICATE OF SERVICE

I, Jennifer Miller, do hereby certify that I am the Secretary for Franklin D. Guerrero, Esquire, attorney for the defendants with **WILLSON JONES CARTER & BAXLEY, P.A.** in Greenville, South Carolina, and that on the 21st day of January, 2014, I mailed the foregoing Response to Appellant's Motion to Suspend the Briefing Scheduled for Ninety Days to the following by placing a copy thereof in the United States mail, first class, proper postage affixed thereto:

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

William L. Smith, II, Esquire
Chappell, Smith & Arden, P.A.
1510 Calhoun St., P.O. Box 12330
Columbia, SC 29211



Jennifer Miller
Secretary to Franklin D. Guerrero, Esquire
WILLSON JONES CARTER & BAXLEY, P.A.
872 S. Pleasantburg Drive
Greenville, SC 296070

EXHIBIT 1

Franklin C. Gohean

From: Bill Smith [bsmith@csa-law.com]
Sent: Wednesday, January 15, 2014 2:19 PM
To: Franklin D. Guerrero
Subject: RE: Thomas Bradley Davis v. Robert Bosch LLC 026-CB-A5A8482-K:
Attachments: doc05885520140115141211.pdf

Franklin,

Sorry for the delay. I was out a couple of days. Attached is the motion. You didn't get it?

William L. Smith II
Chappell, Smith & Arden
Post Office Box 12330
Columbia, SC 29211
803-509-5839

This electronic message may contain confidential or privileged information and is intended for the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the contents of this information is prohibited. If you have received this electronic transmission in error, please notify the sender immediately by using the e-mail address of the sender or by telephone at 800-531-9780.

From: Franklin D. Guerrero [mailto:fdguerrero@wjlaw.net]
Sent: Friday, January 10, 2014 4:21 PM
To: Bill Smith
Subject: RE: Thomas Bradley Davis v. Robert Bosch LLC 026-CB-A5A8482-K:

Bill:

Thanks for your voicemail. I do not recall seeing a Motion. Can you send me a copy?

Franklin D. Guerrero
Willson, Jones, Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
Phone: 864-527-3282
Fax: 864-235-6015

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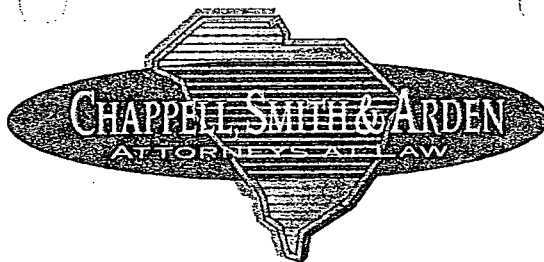
From: Franklin D. Guerrero
Sent: Wednesday, January 08, 2014 3:01 PM
To: 'Bill Smith'
Subject: RE: Thomas Bradley Davis v. Robert Bosch LLC 026-CB-A5A8482-K:

Bill:

Where do we stand with this appeal?

Mark D. Chappell*
William L. Smith, II
Mark T. Arden
W. Beau Busch
C. Daniel Vega
W. Hugh McAngus, Jr.**
Jacob D. Born***

Of Counsel:
Solomon, Budman & Stricker****



STATEWIDE PRACTICE

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*Also licensed in DC
**Also licensed in NC
***Also licensed in GA
****Also licensed in GA, TN

December 9, 2013

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

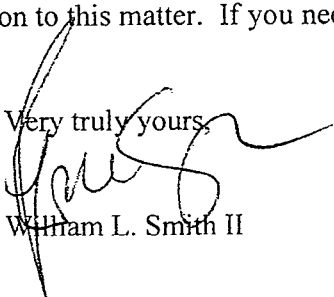
RE: Thomas Bradley Davis v. Robert Bosch Corporation LLC and The Phoenix
Insurance Company
Appellate Case No: 2013-0001675
WCC File No: 0904601

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of a Motion to Suspend the Briefing Schedule for Ninety Days in regards to this case. I have also enclosed a proof of service for this document on counsel for the respondents and a \$25 check for filing this motion. Please return the additional file copy to me via our courier. I would point out that the Appellant's brief is due on December 23 and would request an expedited decision on this notice if at all possible.

Thank you for your cooperation to this matter. If you need additional information, please do not hesitate to contact me.

Very truly yours,


William L. Smith II

WLS:ceb

cc: Franklin D. Guerrero
Willson Jones Carter & Baxley
872 South Pleasantburg Drive
Greenville, SC 29607

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SC Court of Appeals

AIKEN

322 Laurens Street, NW

CHARLESTON

One Poston Road

COLUMBIA

1510 Calhoun Street

FLORENCE

181 S. Coit Street

ROCK HILL

1770 India Hook Road

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

CASE NO: 2013-0001675

WCC FILE NO: 0904601

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DEC 09 2013

Thomas Bradley Davis

Employee/Claimant
Appellant

SC Court of Appeals

v.

Robert Bosch Corporation LLC,
and
The Phoenix Insurance Company,

Employer

Carrier,
Defendants/Respondents.

MOTION TO SUSPEND THE BRIEFING
SCHEDULE FOR NINETY DAYS

This motion is filed pursuant to Rule 240 of the South Carolina Appellate Court Rules. This is a workers' compensation appeal. Through this motion, the appellant requests that the Court suspend the briefing schedule for a period of ninety days so that a companion case that was tried with this case can be decided. This decision may obviate the need for this appeal.

BACKGROUND

Thomas Bradley Davis suffered injuries to his bilateral arms and hands as a result of repetitive trauma while working for Robert Bosch Corporation. His claim was admitted with regard to bilateral carpal tunnel syndrome and bilateral epicondylitis (WCC File No. 0904601). Davis continued to work following his injury and surgeries and also developed bilateral

DeQuervains syndrome and had additional surgeries. Claimant alleged this was the result of the original repetitive trauma claim and/or had sustained a new injury.

Bosch eventually admitted a new repetitive trauma claim (WCC File No. 1022907). Bosch's workers' compensation insurance carrier/administrator had changed in the interim. The cases were tried together on August 30, 2012. Separate decisions were issued by Commissioner T. Scott Beck (Exhibit A & B). Those decisions were appealed by appellant and the appeal was heard in one oral argument.

The Appellate Panel affirmed WCC File No 0904601 but affirmed in part, reversed in part, and remanded WCC File No 102290 (Exhibit C & D). This appeal followed on WCC File No. 0904601 but WCC File No. 1022907 was not immediately appealable because it was remanded and was not a final judgment. The remand of WCC File No. 1022907 was heard before Commissioner Beck on December 4, 2013.

ARGUMENT

Appellant experienced repetitive trauma that resulted in two dates of injury. The cases were tried together both at the trial level and at the appellate level. One case became an immediately appealable final judgment while the other case was remanded and not immediately appealable. The remand has now been heard and a decision is pending.

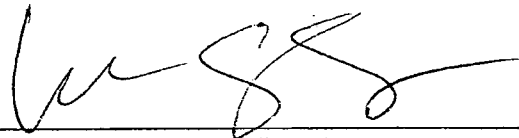
The decision on remand may end the need for this appeal. However, if it does not, there is overlap between the cases and they would certainly be more understandable if heard together. Further, it would promote the interests of judicial economy.

Appellant's counsel is aware and appreciative of the fact that prior extensions have been allowed in this case. However, this request is not being made for the purpose of delay.

CONCLUSION

Appellant requests the briefing schedule be suspended to allow the companion case to “catch up” with this case. This would help clarify overlapping issues and would promote judicial economy.

Respectfully submitted,



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Attorney for Appellant

Dated: December 9, 2013

CHAPPELL, SMITH & ARDEN, P.A.
OPERATING ACCOUNT
(803) 929-3600
P.O. BOX 12330
COLUMBIA, SC 29211



Flex Citizens

67-604/539

104139

12/8/13

PAY TO THE ORDER OF

S.C. Court of Appeals

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AUTHORIZED SIGNATURE

MEMO Thomas Bradley Davis

TRUE WATERMARK PAPER - HOLD TO LIGHT TO VIEW HEAT SENSITIVE RED IMAGE DISAPPEARS WITH HEAT

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

CASE NO: 2013-00001675
WCC FILE NO: 0904601

Thomas Bradley Davis

Employee/Claimant,
Appellant

v.

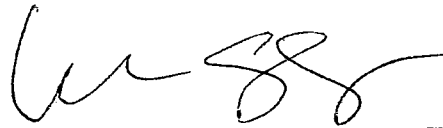
Robert Bosch Corporation LLC,
And
The Phoenix Insurance Company,

Employer

Carrier,
Defendants/Respondents.

PROOF OF SERVICE

I certify that I have served the Motion to Suspend the Briefing Schedule for Ninety Days on Respondents Robert Bosch Corporation LLC and The Phoenix Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on December 9, 2013, addressed to their attorney of record Franklin D. Guerrero, Willson, Jones, Carter & Baxley, 872 South Pleasantburg Drive, Greenville, SC 29607. I have also served the South Carolina Workers' Compensation Commission by depositing a copy of it in the United States Mail to the Honorable Virginia Crocker, Judicial Director, South Carolina Workers' Compensation Commission, Post Office Box 1715, Columbia, SC 29202-1715.



William L. Smith II
Post Office Box 12330
Columbia, South Carolina 29211
(803) 929-3600
Attorney for Appellant

Dated: December 9, 2013

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JAN 23 2014

SC Court of Appeals

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SC Court of Appeals

John
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ATTORNEYS AT LAW
872 S. PLEASANTBURG DRIVE
GREENVILLE, SC 29607

JENNY ABBOTT KITCHINGS, CLERK
THE SOUTH CAROLINA COURT OF APPEALS
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