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Proudly representing injured workers
for over 25 years.

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February 7, 2014

VIA EMAIL - klove@wcc.sc.gov
AND US MAIL
Commissioner Susan S. Barden
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

VIA EMAIL - jkitchings@sccourts.org
AND US MAIL
Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED

FEB 10 2014

SC Court of Appeals

RE: Antonio Lazaro v. Burriss Electrical, Inc.
WCC File No: 0710622
Appellate Case No. 2011-192272

Dear Commissioner Barden and Ms. Kitchings:

I am addressing this to both of you first to Commissioner Barden as being the Commissioner that was just, and I want to reiterate just (January 27th), assigned to this case to move it forward at the Commission. I am addressing it to Ms. Kitchings because I believe this particular issue may affect my clients' rights and the delay in obtaining benefits for my clients.

First, prior to me going into that, let me say Commissioner Barden that I want to let the Court and everybody know that since this case was, "recently" assigned to you on January 27th, that you have done everything humanly possible once it was assigned and you reviewed the file that day and realized the situation to move this case forward for a resolution on this issue of Remand as fast as possible. Within days of you being assigned the file, you reviewed it and got with the parties to try to get it moving as fast as possible so you could address the remand from the Court including us waiving notice so it could be heard faster. There is no way anything could have been done any faster than you were trying to do it, again once it was assigned to you.

With that said, the issue that I have that I want and need

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to address, which quite honestly just hit me like a ton of bricks when trying to decide what we were going to do on behalf of our clients, and which I need to bring to the Court's and to the Commission's attention is that we received the email below from Rocky Hughey who is representing the Defendants before the Workers' Compensation Commission. In that email, Mr. Hughey states in pertinent part,

"I have learned that my client, CAGC, is now in liquidation as of January 17, 2014. This file has been transferred to the Guaranty Fund. It is my understanding that there is a 90 day stay of all legal proceeding in matters pertaining to CAGC before the Commission. As it stands, I am no longer being paid for any work on this file and it is my understanding that the Guaranty Fund will be retaining new counsel.

In light of this, it does not appear that we can have the February 28th, 2014 hearing, much less move it up. I apologize for any inconvenience, but it is of course out of my control at this point."

As we all know, in a workers' compensation case in most cases, Defense Counsel has two clients and in this case, has two clients, one being the employer and the other being the insurance carrier for the employer. SC Code §42-5-20 allows for an employer to ensure its responsibility under the Act through an insurance carrier and SC Code §42-5-210 provides that an insurance carrier is subrogated, "to all the rights and duties of the employer". The Act is very clear that the ultimate liability remains with the employer and in that regard, see for example SC Code §42-17-70 in reference to enforcement of an award affirmed on appeal by the Commission.

I bring this to the Commission's and the Court's attention because while I do not know Defense Counsel's responsibility to each of their two clients, I know my responsibility is to move forward with obtaining benefits in as fast a manner as possible and to protect my clients' interests in every way possible. Please correct me if I am wrong but until the Court, the Commission and I are notified as to whom the new counsel is for both the employer and the insurance company, we should be communicating with current counsel and current counsel remains Counsel for the Defendants. Also while I have previously requested, I am again requesting a copy of the Order staying proceedings before the Commission which in this case would include a copy being filed with the Court so everyone can determine whether proceedings are stayed.

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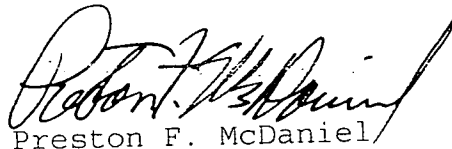
My clients in no way caused this delay and I seek only to bring this issue (i.e. McAngus, Goudelock and Courie having two clients only one of which is in liquidation) to the Court and the Commission's attention and to be advised as to how I may move forward and as fast as possible on behalf of my clients to obtain a resolution of the issues and their entitlements to benefits.

While not directly related to this issue but in part why I need a response, based on the Record you will find I have one client that is brain dead and is under 24/7 medical care at the Babcock Center and my three other clients, his wife and two dependent children, are dependent on him and his benefits.

While it is very nice to say "let's all be understanding" because the Guaranty Fund has been hit with a flood of all these claims and that one of my clients, "is in liquidation", that does nothing for my clients or the other injured workers involved.

I await the direction of the Commission and the Court and will try to decide which way I am going. I am faced with a supposedly 90 day delay in proceedings before the Commission and also I cannot move forward because the Court has directed me not to move forward until after the Remittitur to the Commission. I appreciate your understanding and as always, I appreciate all the courtesies and kindnesses shown to me by the Commission and the Court.

Sincerely yours,


Preston F. McDaniel

PFM/kth

cc: John E. Duncan, Esquire ((Via Email and US Mail - [johnduncanlaw@gmail.com](mailto: johnduncanlaw@gmail.com))
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