

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE GREENVILLE COUNTY
COURT OF COMMON PLEAS

71273

Civil Action No.: 2011-CP-23-7975
W.C.C. File No.: 0622179

Jacqueline Carter, Respondent,

v.

Verizon Wireless Southeast and
American Home Assurance Company, Appellants.

APPELLANTS' PETITION FOR REHEARING

Grady L. Beard
Nicolas L. Haigler
Sowell Gray Stepp & Laffitte, LLC
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Attorneys for Appellants

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FEB 18 2014

SC Court of Appeals

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Verizon Wireless Southeast and American Home Assurance Company ("Appellants" or "Defendants") hereby petition for a rehearing of Published Opinion No. 5191 wherein this Honorable Court affirmed in part and reversed in part the Order of D. Garrison Hill, Circuit Court Judge, filed on July 16, 2012, to determine whether the unaddressed issues on appeal are moot.

This Court reversed the Order of the Circuit Court that substantial evidence in the record does not support the Appellate Panel's finding that the Claimant suffered no change of condition. Moreover, this Court affirmed the Order of the Circuit Court reversing the Appellate Panel's modification of the Single Commissioner's decision regarding the Claimant's future medical treatment. Finally, this Court rendered the remaining issues on appeal, specifically whether the Circuit Court erred in reversing the Appellate Panel's finding of an intervening accident(s), moot.

Defendants now request this Court to reconsider the issue on appeal of whether the Circuit Court erred in reversing the Appellate Panel's decision regarding an intervening accident(s), as this issue is not moot. In support of this Petition, the Defendants state as follows:

1. In finding the issue of an intervening accident moot, the Court overlooked well-established precedent that an intervening accident or cause is sufficient to break the chain of causation between the Claimant's need for additional medical treatment and the original compensable accident. *Sanders v. Wal-Mart Stores, Inc.*, 379 S.C 554, 666 S.E. 2d 297 (Ct. App. 2008). In the case at bar, substantial evidence supports the finding of the Appellate Panel that Claimant's causal need for *Dodge* medical treatment after January 2008 was broken

by an intervening superseding cause in 2010, specifically the exacerbation of her left knee during unauthorized and voluntary water aerobics classes.

2. In finding the issue of an intervening accident moot, this Court overlooked substantial evidence which supports the finding of the Appellate Panel that an intervening accident or cause occurred sufficient to break the causal connection between the Claimant's current condition and her compensable accident. It is undisputed that the Claimant reached MMI on March 3, 2008. (R. p. 142). It is also undisputed that the Claimant did not return to Dr. Grady for medical treatment until November 4, 2010, almost thirty-two months after the date of MMI. (R. pp. 152-156). In July of 2010, just four months prior to returning to Dr. Grady, the Claimant voluntarily began attending water aerobics classes at her local gym, and attended fifty-five classes between July and November of 2010, or an average of five per week. (R. pp. 143-151). Importantly, the Claimant was not concurrently treating with Dr. Grady and, in fact, had not seen him for treatment since March 2008. After the Claimant's left knee pain increased during the course of her exercise regimen, the Claimant returned to Dr. Grady in November 2010. (R. pp. 132-133).

Defendants acknowledge Dr. Grady's testimony, as cited by this Court, that while her exercise regimen may have accelerated her condition, "we are going to arrive at the same end result (total knee replacement) whether it would have been six months later, eight months later, or [twelve] months later, as we did when I saw her on November 4." (R. p. 121, ll. 18-24). However, Defendants submit that the proper analysis is not whether the treatment was inevitable, but whether the inevitable treatment was required sooner due to some intervening cause. Defendants assert there is an unmistakable connection between the Claimant's

voluntarily and causally unrelated exercise during the summer of 2010 and her accelerated need for additional medical treatment in November 2010. Dr. Grady's testimony supports this assertion by the Defendants. (R. pp. 120, 122).

Accordingly, the Claimant's exercise during the summer of 2010 constitutes substantial evidence of an intervening superseding cause sufficient to break the causal connection between her original work accident and her present need for medical treatment. Defendants submit the Claimant is no longer entitled to continued medical treatment under *Dodge*.

For the reasons set forth above, Defendants respectfully requests that this Court grant the petition for rehearing only as it pertains to the above-referenced issue and reverse the finding of the Circuit Court that the Appellate Panel's finding of an intervening accident or cause is not supported by substantial evidence.

Respectfully submitted,



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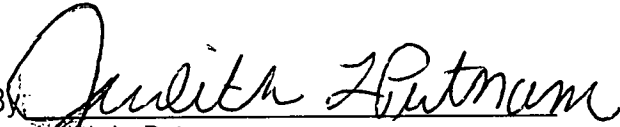
v.

Verizon Wireless Southeast and
American Home Assurance Company, Appellants.

PROOF OF SERVICE

I certify that I have served a copy of the Petition for Rehearing on Jacqueline Carter, by depositing a copy of same in the United States Mail, postage prepaid, on February 18, 2014, addressed to her attorney of record, Jeremy A. Dantin, Esquire, Harrison, White, Smith & Coggins, P.A., 178 West Main Street, Post Office Box 3547, Spartanburg SC 29304.

SOWELL GRAY STEPP AND LAFFITTE, L.L.C.

By: 

Judith L. Putnam
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Attorneys for Appellants

February 18, 2014

February 18, 2014

VIA HAND DELIVERY

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

RE: Jacqueline Y. Carter v. Verizon Wireless Southeast
SC Court of Appeals Appellate Case No.: 2012-212924
Civil Action No.: 2011-CP-23-7975
WCC File No.: 0622179
Date of Accident: 12/27/06
Claim No.: 200612457380001
Our File No.: 5332/8041

Dear Ms. Kitchings:

We represent the Appellants Verizon Wireless and American Home Assurance Company in the above-referenced matter.

Please find enclosed for filing an original and seven (7) copies of a Petition for Rehearing on behalf of the Appellants, as well as the Proof of Service serving same. Please return a clocked-in copy to us via our courier. Finally, we are enclosing our Firm's check in the amount of \$25.00 for the filing fee of this document.

By copy of this letter and aforementioned document to Jeremy A. Dantin, Esquire, we are serving him with a copy of the above-referenced document via regular U.S. Mail.

Should you have any questions or need anything further, please do not hesitate to contact me.

Very truly yours,


Nicolas L. Haigler

NLH:jjp

cc: Jeremy A. Dantin, Esquire (w/enclosure)
Mr. Brandon Parreno (w/enclosure)
Ms. Pamela Shannon (w/enclosure)
Ms. Sheila Wyles (w/enclosure)

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