

# Jeffrey T. Eddy, Attorney at Law, LLC

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February 26, 2014

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29201

RE: Michael W. Dority, Claimant, Appellant, v. CTR of the Carolinas, Inc., et al.,  
Employer, and Twin City Fire Insurance Company, Carrier, Respondents.  
Appellate Case No. 2014-000225 (WCC File No. 1023410)

Dear Ms. Kitchings:

Enclosed for filing is an Amended Notice of Appeal in the above case. Also enclosed you will please find a proof of service on the respondents and the South Carolina Workers' Compensation Commission.

Sincerely,



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Jeffrey T. Eddy  
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(843) 795-5666  
Attorney for Appellant

cc: Jason A. Griggs, Esquire  
872 S. Pleasantburg Drive  
Greenville, South Carolina 29607  
(864) 527-3277  
Attorney for Respondent

The South Carolina Workers' Compensation Commission  
1333 Main Street  
P.O. Box 1715  
Columbia, SC 29202-1715

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MAR 03 2014

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION  
COMMISSION

Susan S. Barden, Aisha Taylor and T. Scott Beck, Commissioners

Appellate Case No. 2014-000225 (WCC File No. 1023410)

Michael W. Dority, Claimant, Appellant,

v.

CTR of the Carolinas, Inc., et al., Employer, and Twin City Fire Insurance  
Company, Carrier, Respondents.

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AMENDED NOTICE OF APPEAL

Michael W. Dority appeals the undated decision of the Appellate Panel of the South Carolina Workers' Compensation Commission. Appellant received a copy of this decision via e-mail on January 30, 2014.

Appellant specifies the following grounds in support of this appeal:

1. Is finding of fact number 35 (treating pulmonologist's medical opinion is not sufficient to support causation) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: (a) the hearing commissioner excluded Dr. Doty's opinion supporting the claim (APA No. 9, p. 67.1) and (b) Dr. Doty testified claimant's lung disease was caused by his occupational exposures including those at CTR (dep. Dr. John Doty dated 10/03/12, pp. 9-10, 18-19, 21-32, 45, 50, 55-56, 60-61, 79, 81-82 & 88)?

2. Is finding of fact number 38 (regarding Dr. Jerrold L. Abraham) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of

discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: it completely ignores the fact that Dr. Abraham (APA No. 1, pp. 1-2) analyzed claimant's actual lung tissue using electron microscopy (SEM) and x-ray spectroscopy (EDS) and found particulate matter comprised of metals to which claimant was exposed at CTR and Springs?

3. Are findings of fact numbers 39 & 40 (regarding the opinions of Dr. Gregory J. Feldman) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: they completely omit Dr. Feldman's opinion that many metals cause lung disease and a pathological finding of particulate matter in the tissue would definitively prove claimant's lung disease was due to his occupational inhalation of dust and fumes (Dr. Feldman dep. dated 10/04/12, pp. 6, 17-18, 20-21, 27-28, 38-39 & 61-62)?

4. Is finding of fact number 34 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: claimant also relies on the opinions of the defendants' retained expert, Dr. Gregory Feldman.

5. Are finding of facts numbers 41 & 42 (regarding Dr. Victor L. Roggli) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: (a) Dr. Roggli did not "analyze" tissue samples from claimant's lung biopsy but merely reviewed existing slides under a light microscope; (b) Dr. Roggli first opined claimant does not have asbestosis when he thought this was an asbestos case; (APA No. 37, pp. 459-464) and (c) Dr. Roggli has authored medical articles stating SEM and EDS are important tools in detecting the types of disease-producing metals found in claimant's lung tissue, and he cites Dr. Jerrold Abraham in support of these statements (APA Nos. 29, 30 & 31, pp. 324-348)?

6. Is finding of fact number 37 (regarding the opinion of Dr. Richard Kradin) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: Dr. Kradin's opinion (APA No. 4, pp. 26-28) is based on his review of the pathology materials (lung tissue biopsy) and any confusion regarding the respective exposures at Springs or CTR does not detract from his opinion that claimant's lung disease was due to his occupational exposures generally?

7. Is finding of fact number 6 (regarding smoking) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: the medical evidence (dep. Dr. John Doty dated 10/03/12 at pp. 32-34, 50, 75, 77 & 83) established claimant's occupationally-related pulmonary fibrosis, not smoking, is the cause of his disability?

8. Is finding of fact number 2 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: claimant alleged an accidental injury and/or occupational lung disease as a result of over 30 years exposure/employment and not just exposure “while working for CTR.” (See Forms 50, 58, Claimant’s Pre-Hearing Brief and transcript of hearing dated 03/26/13, p. 14)?

9. Is finding of fact number 46 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: the question is not whether claimant’s lung disease was caused by his employment with CTR but whether it was caused by claimant’s occupational inhalations over 30 plus years and, if so, whether CTR is liable for the payments of benefits. (See Forms 50, 58, Claimant’s Pre-Hearing Brief and transcript of hearing dated 03/26/13, p. 14)?

10. Is finding of fact number 43 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: the question is not whether claimant’s lung disease was caused by the work environment at CTR but whether it was caused by claimant’s occupational inhalations over 30 plus years and, if so, whether CTR is liable for the payments of benefits. (See Forms 50, 58, Claimant’s Pre-Hearing Brief and transcript of hearing dated 03/26/13, p. 14)?

11. Is finding of fact number 18 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

12. Is finding of fact number 19 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

13. Is finding of fact number 20 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

14. Is finding of fact number 21 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

15. Is finding of fact number 44 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

16. Is finding of fact number 45 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

17. Is finding of fact number 47 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

18. Is conclusion of law number 2 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

19. Is conclusion of law number 3 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?



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Other Counsel of Record:  
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Attorney for Respondent

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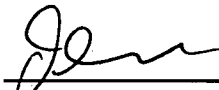
PROOF OF SERVICE

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In accordance with SCRAP 203 (d) (2) (B) (i), I certify that I have served the Amended Notice of Appeal on CTR of the Carolinas, Inc. and Twin City Fire Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on February 26, 2014 addressed to their attorney of record, Jason A. Griggs, at his office at 872 S. Pleasantburg Drive, Greenville, South Carolina 29607.

I further certify that I have also served the Notice of Appeal on the South Carolina Workers' Compensation Commission by depositing a copy of it in the United States Mail, postage prepaid, on February 26, 2014 addressed to 1333 Main Street, P.O. Box 1715 Columbia, SC 29202-1715.

February 26, 2014

  
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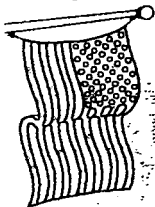
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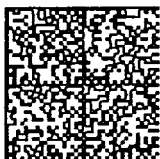
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