

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

71594

Appeal from the Appellate Panel of the
South Carolina Workers'
Compensation Commission

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MAR 17 2014

Unpublished Opinion No. 2014-UP-095
Filed March 5, 2014

SC Court of Appeals

Patricia Johnson, Employee, Appellant,

-vs-

Staffmark, Employer, and New Hampshire Insurance
Company, Carrier, Respondents.

APPELLANT'S PETITION FOR REHEARING EN BANC

The Appellant, Patricia Johnson, respectfully petitions the South Carolina Court of Appeals for a rehearing *en banc* pursuant to SCACR Rules 219(b) and 221(a). It is respectfully submitted this case involves a question of exceptional importance because the Court's decision will be misinterpreted to impose an impossibly high burden on injured workers to establish a causal connection between an injury and the workplace in which the injury occurred. It is further respectfully submitted the Court overlooked or misapprehended existing law which provides for an accident to "arise out of" the employment only requires that there be apparent to a rational mind, considering all the circumstances, a causal connection between the conditions under

which the work is performed and the resulting injury.

The Court's focus on whether there was substantial evidence that the floor was wet fails to address the actual cause of the Appellant's injury. The Appellant never stated the floor was wet. There was furthermore no evidence of an idiopathic failure of the ankle. It is uncontested the Appellant was entering the building from the outside parking lot, where it had been raining, and stepped over a raised threshold. Moreover, the nature of the injury – which included a spiral fracture – meant her leg bone was broken pursuant to violent torsion or twisting. Finally, there was evidence of remedial measures from which one can only conclude the company where the Appellant was working through a staffing company considered there to be a causal connection between the workplace and the injury. The evidence, including the nature of the injury itself, points not to an idiopathic fall but rather to a fall caused when the Appellant's foot slipped as she stepped over a raised threshold after walking on wet ground, resulting in a twisting motion, which led to her fractures.

A reading of the Court's opinion would seem to almost impose on the Appellant a standard of proof required in a premises liability setting. The Appellant in this case sustained an accidental injury at work. This injury arose out of her employment in that it occurred because of the conditions existing at the workplace. An accident arises out of the employment when there is apparent to a rational mind, considering all the circumstances, a causal connection between the conditions under which the work is performed and the resulting injury. *Douglas v. Spartan Mills*, 245 S.C. 265, 140 SE2nd 173, 174 (S.C. 1965); *Carter v. Penney Tire & Recapping Co.*, 261 S.C. 341,

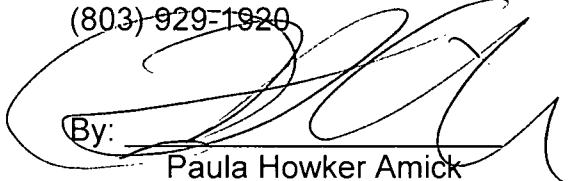
200 S.E.2d 64, 65 (1972); *Crosby v. Wal-Mart, Inc.*, 330 S.C. 489, 499 S.E.2d 253, 256 (S.C. App. 1998). It is important to distinguish a causal connection to employment from the concept of causation as developed and applied in premises liability cases or other tort law cases. The concept of "arising out of the employment" is not the same as the concept of "legally caused by the employment." An accident arises out of employment when the employment is a contributing proximate cause of the accident. *Simmons v. City of Charleston*, 349 S.C. 64, 72-73, 562 S.E.2d 476, 480 (Ct. App. 2002) citing *Lee v. Wentworth Mfg. Co.*, 240 S.C. 165, 168, 125 S.E.2d 7, 9 (1962). "To be entitled to compensation, an employee need not necessarily be engaged at the time of injury in the actual performance of his work; it is sufficient if he is upon the employer's premises, 'occupying himself consistently with his contract of hire in some manner pertaining to or incidental to his employment.'" *Id. quoting McCoy v. Easley Cotton Mills*, 218 S.C. 350, 356, 62 S.E.2d 772, 774 (1950).

It was not incumbent upon the Appellant to prove there was something hazardous about the premises of her employer, i.e., that the floor was wet. She simply had to establish that her injury by accident arose out of her employment. The Appellant established her injury arose out of her employment through the uncontested facts of this case. The Appellate Panel's decision and the decision from which the Appellant seeks a rehearing *en banc* failed to consider the obvious causal connection between a fall which unquestionably resulted from a violent twisting motion when her foot came in contact with the floor as she stepped down over a raised threshold as she entered the building after her shoes had been in contact with the wet ground

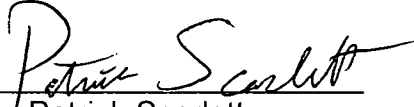
outside. There was no evidence to support an "idiopathic failure" of the ankle. Accordingly, the Court should grant the Appellant a rehearing *en banc* and reverse the Decision and Order of the Appellate Panel.

Respectfully submitted,

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and

By: 
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March 17, 2014
Columbia, South Carolina

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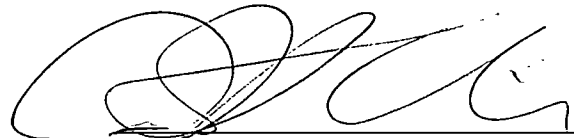
-vs-

Staffmark, Employer, and New Hampshire Insurance
Company, Carrier, Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she has on this day served a copy of the Appellant's Petition for Rehearing En Banc as filed with the Court of Appeals, by having same hand-delivered to Respondents' attorney, Grady L. Beard, Esq., Sowell Gray Stepp & Laffitte, L.L.C., 1310 Gadsden Street, P. O. Box 11449, Columbia, SC 29211.

Dated this 17th day of March, 2014.



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March 17, 2014

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
P. O. Box 11629
Columbia SC 29211

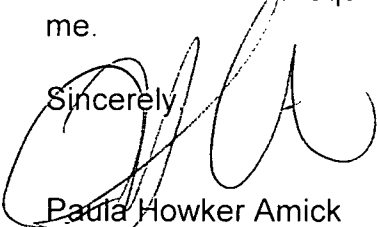
Re: Patricia Johnson, Claimant/Appellant vs. Staffmark / New Hampshire Insurance Company, Defendants/Respondents
Unpublished Opinion No.: 2014-UP-095
Appellate Case No.: 2012-213494
WCC File No.: 1118193
Our File No.: 229043.20

Dear Ms. Kitchings:

Pursuant to Rules 219(b) and 221(a), SCACR, I am filing the enclosed Appellant's Petition for Rehearing En Banc, along with a certificate of service reflecting the date of service upon all parties, and the requisite filing fee.

Should the Court require anything further at this point, please do not hesitate to contact me.

Sincerely,


Paula Howker Amick
Attorney at Law

PHA/mw
Encls.

cc: Grady Beard, Esq. (via hand delivery)
cc: Ms. Patricia Johnson

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