THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SCWCC No. 1023410

Michael W. Dority, Claimant, Appellant,

v.

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

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

I. DID THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION CORRECTLY FIND THAT APPELLANT DID NOT SUSTAIN A COMPENSABLE OCCUPATIONAL DISEASE TO HIS LUNGS UNDER THE ACT, BASED ON THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE IN THE RECORD?

II. DID THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION CORRECTLY FIND THAT APPELLANT'S LUNG DISEASE IS NOT A COMPENSABLE ACCIDENTAL INJURY UNDER THE ACT?

STATEMENT OF THE CASE

Appellant Michael W. Dority ("Dority") filed a Form 50, Notice of Claim, on May 10, 2012 alleging that he sustained both an accidental injury and illness to his lungs due to the "inhalation of silver solder fumes/dust and other airborne contaminants" during the course of his employment with CTR of the Carolinas, Inc. (Form 50, dated May 10, 2012.) Dority subsequently filed a Form 50, Request for Hearing, on August 1, 2012, alleging the same injury and illness. (Form 50, dated August 1, 2012.) Respondents CTR of the Carolinas, Inc. and its workers' compensation carrier, Twin City Fire Insurance Company (collectively "CTR"), timely filed a Form 51 on August 29, 2012, denying that Dority sustained a compensable injury by accident or occupational disease arising out of and in the course of his employment. (Form 51, dated August 29, 2012.)

The claim was initially scheduled for hearing on October 19, 2012, but prior to the case being called, the parties entered into a Consent Order removing the hearing from the docket to allow for additional discovery. (Consent Order, dated October 19, 2012.) The claim was later reset for a hearing on February 5, 2013. (*See* Consent Order, dated January 29, 2013.) However, prior to the scheduled hearing, the parties again agreed that additional discovery was needed before the claim could be adjudicated, and the hearing was removed from the docket pursuant to the parties' Consent Order, dated January 29, 2013.[1] (Id.) On February 1, 2013, Claimant's attorney sent a letter to the Commission requesting that the case be reset for hearing.. (Letter to SCWCC, dated February 1, 2013.)

[1] Dority inaccurately portrays this sequence of events in footnote number 11 of his Brief. Prior to CTR seeking to postpone the hearing in order to allow an expert to formulate a report, Dority requested a postponement in order to take a deposition. CTR freely agreed to a postponement, and a Consent Order postponing the hearing for the first time was approved on October 19, 2012.

A hearing on the parties' Forms 50 and 51 was ultimately held on March 26, 2013 and April 23, 2013 in Rock Hill, South Carolina.

At the hearing, Dority contended that he had contracted a compensable occupational disease to his lungs as a result of exposure to inorganic particles during his employment. (Tr. One, p. 14, lines 2-9.) In addition to a finding of compensability, Dority sought a finding that he was permanently and totally disabled as a result of his lung disease. (Id. at 5:19-21.) He also sought payment for all causally related medical treatment. (Id.) In support of his position, Dority relied on the opinions of his two retained experts, Dr. Richard Kradin and Dr. Jerrold Abraham. (Id. at 5:23 – 6:24.) He also argued that the opinion of the treating physician, Dr. John Doty, supported his claim. (Id.)

CTR continued to deny that Dority sustained a compensable accidental injury or occupational disease arising out of and in the course of his employment with CTR. (Id. at 4:20-21.) In support of its contention, CTR relied on the opinions of its retained experts, Dr. Victor Roggli and Dr. Gregory Feldman. (Id. at 32:9 – 34:2.) CTR also contended that Dr. Doty's opinion did not support Dority's position. (Id. at 25:22 – 25:20.) Additionally, CTR took the position that Claimant's allegations regarding the conditions of the work environment at CTR were not accurate. (Id. at 21:9-14.) Therefore, CTR contended that the opinions of Dority's experts were not reliable because they were based on his inaccurate facts. (Id. at 36:19-24.)

On August 19, 2013, the Single Commissioner issued his Decision and Order finding that Dority did not sustain a compensable occupational disease under S.C. Code Ann. § 42-11-10. (Order, dated August 19, 2013, p. 45.) The Single Commissioner

found that Dority failed to prove that his alleged lung disease was directly caused by, aggravated by, or arose out of his employment with CTR. (Id.) As part of his findings, the Single Commissioner specifically found that Dority's testimony and that of his lay witness, Eddie Glenn, were not credible. (Id. at 39-40.) Additionally, the Single Commissioner determined that greater weight should be given to the causation opinions of CTR's experts because Dority's experts' opinions were based on inaccurate information. (Id. at 43-46.) Accordingly, the Single Commissioner denied Dority's claim for benefits under the Act. (Id. at 47.)

Dority subsequently filed a Form 30, Request for Commission Review, on August 23, 2013. (Form 30, dated August 13, 2013.) Oral arguments were held in front of the Appellate Panel of the Workers' Compensation Commission on December 16, 2013. (*See* Order, dated January 30, 2014.) On January 30, 2014, the Appellate Panel issued a Decision and Order affirming the Order of the Single Commissioner in its entirety. (Id.) Thereafter, Dority filed a Notice of Appeal with this Court. (*See* Notice of Appeal, dated February 3, 2014.)

STATEMENT OF THE FACTS

Dority contends that he has suffered a compensable occupational lung disease, arising out of and in the course of his employment. The Single Commissioner and the Appellate Panel determined that Dority did not carry his burden of proving a compensable occupational disease. This appeal follows from the Order of the Appellate Panel, affirming the findings of the Single Commissioner. The issue for determination is a factual one, i.e. whether Dority has carried his burden of proving the facts necessary to bring his lung disease into the scope of the Workers' Compensation Act.

Prior to working for CTR, Dority worked for Springs Industries at the Grace Bleachery in Lancaster, South Carolina from 1975 to 1996 and again from 2000 to 2007. (Tr. One, p. 56, lines 18-23.) The Grace Bleachery was a plant that finished raw cotton materials. (Id. at 58:2-6.) When he was hired by Springs Industries, he worked as an operator for a short period of time before moving into the Industrial Maintenance and Instrumentation Department, where his job duties required him to maintain and repair machinery throughout the plant. (Id. at 57:16-23.) Dority testified that while working at the Grace Bleachery, he was exposed to "a little bit of dust," but not a whole lot of fumes. (Id. at 58:13-19.) From 1996 to 1999 he worked at the Georgia Pacific plant in Catawba, South Carolina, where they manufactured hardboard siding and plasterboard. (Tr. One, p. 56, line 1-p.57, line 2.) According to Dority, his only exposure at Georgia Pacific was to the resin that was used in the plasterboard. (Id. at 59:15-22.)

Dority began working for CTR at its Rock Hill plant on July 9, 2007. (Id. at 57: 7-9.) CTR manufactured and restored tanks and equipment that were used to hold oxygen and other types of gases. (Id. at 60:15-25.) CTR's facility had several

departments, but all of the departments were contained under one roof. (Id. at 63:2-5.) The departments inside the plant included Bulk Tank, Tanker Restoration, Final Line, the O2 cleaning room, the electrical shop, the paint booth, and the sandblasting area. (Tr. One, p. 64, line 2-p.66, line 9.) Dority testified that he did not know the exact square footage of the CTR facility but it was a "pretty good size." (Id. at 103:13-15.) He believed the ceiling inside the plant was approximately twenty to twenty-five feet tall at his highest point. (Id. at 103:16-19.)

When asked about the ventilation inside the plant, Dority testified that the plant had five to six large, garage type roll-up doors that were wide and tall enough to drive a tractor-trailer through. (Id. at 105:11-20.) He testified that these doors were open throughout the spring, summer, and fall months when it was not raining or extremely cold. (Id. at 105:3-10.) When these doors were open, there were some cross-breezes throughout the plant, and the air in the facility was clear. (Id. at 107:16-18; 139:18-21.) Dority testified that during the winter months, the doors remained shut the majority of the time, but they were opened and closed throughout the day to bring material in and out of the facility. (Id. at 107:19-24.)

Dority specifically testified that there was a large roll-up door next to Final Line, and that he could feel a breeze when that door was open. (Id. at 108:21-109:3.) He also testified that on the roof of the plant, there were ceiling and suction fans that ventilated the air and particles outside of the plant. (Id. at 110:23-111:5.) Dority further testified that there was a fan on the wall of Final Line that was also used for ventilation. (Id. at 112:17-21.) Dority alleged that the atmosphere in Final Line was "horrible" during the

winter months because CTR kept the plant doors closed and because there were no fans to ventilate the smoke and dust out of the plant. (Id. at 77:4-10.)

Michael Hornback, one of Dority's supervisors at CTR testified that the plant was approximately 50,000 square feet and that the ceilings were approximately forty feet high at the highest point and twenty-five feet tall at the lowest point. (Tr. Two, p. 18, lines 13-19.) He also testified that there were approximately 20-30 fans in the facility that are used for ventilation. (Id. at 23:8-11.) This includes an exhaust fan inside the wall of the facility in the Final Line area. (Id. at 24:15-17.) Additionally, Mr. Hornback and Jason Threatt, a CTR employee, testified that there were 14 large garage roll-up doors in the facility and that these doors were left open during the warm months. (Id. at 20:12-13; 84: 15-19; 32:8-16; 85:4-9.) Mr. Hornback testified that during the winter months, the doors are opened and closed constantly to bring material into the plant. (Id. at 29:15-22.) Mr. Threatt estimated that the doors are only closed for two hours at most during the winter months. (Id. at 85:21-25.)

When he was hired by CTR, Dority initially worked in Final Line for approximately one year and three months before being transferred to the electrical department in October of 2008. (Tr. One, p. 112, line 22-p. 113, line 6.) According to Dority, a normal workday at CTR was eight hours and included three breaks during the day: two fifteen minute breaks and a thirty minute unpaid lunch break. (Id. at 128:5-8.)

When asked about his daily job duties in Final Line, Dority testified that he cut and soldered pipes together using silver solder. (Id. at 70:9-13.) He testified that the pipes he worked with in Final Line were made of a variety of different metals, including copper, stainless steel, and brass. (Id. at 70:23-25.) According to Dority, the soldering

process required him to put flux on the pipes, heat the pipes with a rosebud torch, and feed the silver solder wire around the pipe. (Id. at 71:17-20; 73:3-6.) Dority alleged that heating the silver solder created smoke that he could see rise up to the ceiling, and that smoke was created from each of the six work stations in Final Line whenever silver soldering was being performed. (Id. at 75:4-5; 76:4-16.)

Dority testified that he soldered everyday, but that he did not do it all day because he spent part of the day cutting tubing and other materials that he needed to build the parts for the tanks. (Id. at 115:19-21.) Dority estimated that he spent an average of four hours per day soldering. (Id. at 116:1-8.) When he referred to soldering, he meant the time he actually spent with the torch lit. (Id. at 115:22-25.) Despite this testimony, Dority further testified that one of his expert's reports which stated "he soldered 8 hours a day, 5 days a week," was correct. (Id. at 116:11-22.)

Dority also performed a number of other job duties and activities during a normal work day in Final Line. (Id. at 129:18-24.) He would occasionally have to go to different areas of the plant to get parts that he needed. (Id. at 122:4-12.) When he finished soldering a certain part, he would have to turn off the torch, blow off the part, and place the part in a bucket of water to cool. (Id. at 124:5-11.) Dority would also have to put labels and stickers on certain components he manufactured. (Id. at 128:12-17.) Additionally, when he finished manufacturing a component, he secured the final component to a unistrut on the tanks. (Id. at 129:2-4.) After securing the final components to the unistrut, a Quality Control employee would come to his station and perform a pressure test on the components. (Id. at 129:7-17.) Dority would stand with

the Quality Control employee while the testing was being performed. (Id.) Dority was not engaged in any actual soldering during these activities. (Id. at 129:18-24.)

Dority would also have to take pipes to an employee in the sandblasting department after he finished soldering them together. (Id. at 78:8-20.) Dority further testified that he performed the sandblasting a couple of times per week. (Id. at 78:23-24.) When asked about this, Dority testified that he would put the parts into a cabinet, which was completely closed while the sandblasting was being performed, and that he used rubber gloves that were attached to the cabinet to manipulate the part while sandblasting. (Id. at 79:4-12.) The door to the sandblasting cabinet was on the side of the cabinet and was approximately two feet tall by two and a half feet wide. (Id. at 125:7-20.) Even though the actual sandblasting was performed in an enclosed cabinet, Dority alleged that a lot of dust would come out of the cabinet when he opened the side door. (Id. at 126:19-21.) Once the pipes had been sandblasted, Dority performed an inspection and then delivered the pipes to an employee in the O2 room, where the pipes were cleaned. (Id. at 66:3-6.) After the pipes were cleaned, the O2 room would return them to Dority in a bag, and he would then assemble the final product on the tanks' aluminum frame racks. (Id. at 78:15-20.)

Dority testified that there were two work stations in Final Line directly across, approximately eight to ten feet away, from his work station that used tubing called Monel to build high pressure gas panels. (Id. at 82:11-20.) He testified that those employees cut the Monel with band saws, which created dust, and that they used an air hose to blow dust off of the tubing after it had been cut. (Id. at 82:23-83:7.) While Dority admitted that the Monel was not a product that was used every day, he alleged that he inhaled the

Monel dust whenever it was being used. (Id. at 83:8-84:3.) Dority testified that he never wore any respiratory protection while working in Final Line and that he never complained about any air quality issues to his supervisor. (Id. at 77:21-23; 136:4-6.) He also admitted that he did not have any respiratory issues while working in Final Line. (Id. at 92:10-15.)

After working in Final Line for approximately fifteen months, Dority started working in the Electrical Department. (Id. at 113:3-9.) The Electrical Department had its own door, walls, and ceiling and was closed off from other areas of the plant. (Id. at 137:1-5.) However, he alleged that he was exposed to the conditions in the main part of the plant when he delivered the panels to Final Line. (Id. at 91:19-25.) He did not perform any work in the Electrical Department that produced fumes, dust, or particles. (Id. at 137:6-13.) Dority testified that the only time any smoke was produced in the Electrical Department was when he had to drill holes in panels and brackets, which he testified "produced a little bit of smoke." (Id.) However, when shown his deposition testimony where he testified that there was no work in the Electrical Department that produced smoke, he claimed that his deposition testimony was incorrect. (Id. at 137:19-23.)

While working in the Electrical Department, the only time he was exposed to the general plant conditions was when he went into the plant to install panels in Final Line. (Id. at 138:14-139:3.) He alleged that on average, he spent approximately three hours per day installing panels, but he also testified that there were some days where he did not install any panels. (Id. at 139:7-10.) Dority worked in the Electrical Department until the last day of his employment on September 19, 2010. (Id. at 96:17-19.)

With regard to Dority's medical treatment, on June 29, 2010, Dr. Frank Sharp, referred him to Lancaster Imaging Center for a CT scan of his abdomen due to complaints of abdominal pain. (Claimant's APA #6, p.44.) The CT of his abdomen showed "extensive bibasilar interstitial thickening or infiltrates, minimal bilateral posterior lateral pleural thickening, and tiny right pleural effusion" and a chest CT was recommended for further evaluation. (Id.) A CT scan of his chest, dated July 6, 2010, revealed "pathologic intrathoracic lymphadenopathy and bilateral subcentimeter noncalcified pulmonary nodules," as well as "extensive coronary artery calcifications." (Claimant's APA #7, p. 45.)

Due to the abnormal findings in Dority's chest CT, Dr. Sharp referred Dority to Dr. John D. Doty, of Charlotte Medical Clinic for a pulmonary consultation. (*See* Claimant's APA #8, p. 46.) While Dority's recent CT scan of the chest was abnormal, Dr. Doty noted that he was essentially asymptomatic from a pulmonary standpoint. (Id.) Dority did not complain of any pulmonary symptoms at his initial visit, and Dr. Doty noted that Dority had a 60-pack-year smoking history. (Id.) Dr. Doty performed pulmonary function tests, which showed mild airflow obstruction with a significant reduction in defusing capacity. (Id. at 47.) Dr. Doty diagnosed Dority with evidence of COPD based on his spirometric findings and an abnormal CT scan of the chest. (Id.) Dr. Doty noted that the differential diagnosis could include idiopathic pulmonary fibrosis ("IPF"), asbestosis, or a hypersensitivity reaction to an occupational or environmental exposure. (Id.)

On September 14, 2010, Dr. Mark K. Reames of Sanger Heart & Vascular Institute noted that Dority had findings of interstitial lung disease of unknown etiology on

his CT scan. (Claimant's APA #11, p.70.) Dr. Reames also noted a 60-pack-year history of tobacco abuse, as well as known diagnoses of dyslipidemia, questionable obstructive sleep apnea, obesity, and COPD. (Id. at 71.) Following his examination, Dr. Reames recommended a thoracoscopic lung biopsy in an attempt to determine a definitive diagnosis. (Id.)

On September 23, 2010, Dority he underwent a right-sided video-assisted thoracoscopic surgery with wedge biopsies of the upper, middle, and lower lobes. (Claimant's APA #12, pp. 73-75.) On October 4, 2010, Dr. Kiran Adlakha of Carolinas Laboratory Network issued a surgical pathology report from the lung biopsy and noted that it revealed emphysema with diffuse septal thickening, patchy aggregates of pigmented anthracotic macrophages with rare silicate particles, bronchiolar mediplasia with some honeycomb features, patchy chronic inflammation with lymphoid aggregate, and pulmonary hypertension. (Claimant's APA #13, pp. 76-78.) Dr. Adlaka opined that "[o]verall features are those of chronic fibrosing interstitial pneumonia in the back ground of emphysema and is likely going to behave as UIP (usual interstitial pneumonia)." (Id.) The discharge diagnoses included interstitial lung disease of unknown etiology, dyslipidemia, questionable obstructive sleep apnea, obesity, COPD, and diverticular disease. (Claimant's APA #14, pp. 79-81.)

Following his open lung biopsy, Dority returned to Dr. Doty on November 2, 2010. Dr. Doty noted that the pathology results from Dority's lung biopsy were most likely consistent with Usual Interstitial Pneumonitis ("UIP"). (Claimant's APA #8, pp. 51-53). Dr. Doty diagnosed Dority with interstitial lung disease, chronic hypoxemia, and evidence of obstructive lung disease. (Id. at 52.)

Between December of 2010 and March of 2012, Dority's condition remained fairly stable. (Id. at 55-64.) Following an examination on March 1, 2012, Dr. Doty diagnosed Dority with interstitial lung disease. (Id. at 63-64.) Dr. Doty opined that Dority's pathology was consistent with UIP, but he noted that his clinical course seemed to be a bit more benign than would be expected with UIP secondary to IPF, and that it raised the question as to whether his lung disease may have been secondary to some sort of occupational exposure. (Id.)

In a letter to Dority's attorney, dated July 27, 2012, Dr. Richard L. Kradin of Harvard Medical School issued an opinion regarding causation of Dority's lung disease. (Claimant's APA #4.) Dr. Kradin performed a records review and noted Dority's occupational history. (Id.) Dr. Kradin noted that from 1978 to 1996, Dority worked as a Maintenance Mechanic for Springs Industries. (Id.) Dr. Kradin noted that Dority's job duties at Springs Industries included "extensive welding with rods containing nickel, stainless, steel, aluminum, galvanized steel, lead, and cadmium" and "firefighting at the plant which occurred on a regular basis releasing fumes from the burning chemicals." (Id.) Dority later testified that this information was not accurate. (Id.) With regards to his employment at CTR, Dr. Kradin noted that Dority spent 18 months "soldering copper, brass, and stainless steel pipe and tubing," and he specifically noted that "he soldered 8 hours a day, 5 days a week." (Id.) Additionally, Dr. Kradin noted that "there was minimal venting" in CTR's plant and that "fumes and dust were moved around the plant by fans." (Id.) Again, Dority later testified that this information was not accurate, but stood by the veracity of the report. (Id.) After reviewing the medical records, the MSDS Sheet for Wolverine Silvaloy, and the stained slides from Claimant's lung biopsy, Dr.

Kradin opined that "Mr. Dority's occupational exposures to heavy metals, including the components of silver brazing alloy, must be considered to a reasonable degree of medical probability causes of his chronic lung disease." (Id.)

On August 1, 2012, Dr. Doty noted that although he continued to complain of shortness of breath with exertion, Dority was doing reasonably well from a pulmonary standpoint. (Claimant's APA #8 pp. 65-66.) Dr. Doty also noted that Dority was losing his health insurance in October and that he was not eligible for any additional coverage at the present time. (Id.) Again, Dr. Doty diagnosed Dority with interstitial lung disease and instructed him to continue using his previously prescribed medications and oxygen. (Id.) Dr. Doty still noted that Dority's pathology was most consistent with UIP. (Id.)

On September 14, 2012, Joel D. Leonard of Leonard & Associates Vocational and Rehabilitation Consultants, performed a vocational evaluation on Dority at the request of his attorney. In his report, dated September 19, 2012, Mr. Leonard noted that "[d]uring the interview, [Dority] demonstrated difficulty recalling details and events. He experienced difficulty responding to the specific intent of questions and was prone to providing stories and extraneous information not relevant to my inquiry." (Id. at 154.) Mr. Leonard also noted that Dority used a portable oxygen unit throughout the interview and that he "was observed to become emotional and irritable at different times during the interview." (Id.)

In a letter to Dority's attorney, dated January 15, 2013, Dr. Jerrold L. Abraham of Upstate Medical University in Syracuse, New York issued an opinion regarding causation of Dority's lung disease. (Claimant's APA #1, pp. 1-2.) Dr. Abraham performed a records review and noted that Dority's occupational exposure at CTR included soldering copper, stainless steel, and brass tubing with silver solder. (Id.) He further noted that

Dority's job duties at CTR required him to grind completed welds, sandblast parts on a regular basis, and drill holes in and sand sheets of aluminum. (Id.) Dr. Abraham also analyzed tissue samples from the September 23, 2010 lung biopsy. (Id.) He noted that he found particulates from various metals in Claimant's tissue samples. (Id.) Dr. Abraham opined that based on the particulates he found and based on Dority's exposure history, "his exposures to a multitude of different toxic dust particulates over his working career and including his exposures at CTR contributed to the development of his lung disease (pulmonary fibrosis)." (Id.)

On September 20, 2012, Dority was examined by Dr. Gregory J. Feldman of Upstate Lung & Critical Care Specialists. (Defendants APA #39, pp. 489-492.) In his report, dated September 21, 2012, Dr. Feldman noted that Dority complained of significant breathlessness, that he reported his shortness of breath had dramatically worsened since his lung biopsy in 2010 and that during the past several months he had required supplemental oxygen. (Id. at 490.) After examining Dority and reviewing his prior medical records, Dr. Feldman diagnosed him with IPF and COPD. (Id. at 491.) He opined to a reasonable degree of medical certainty that "Mr. Dority's clinical course is consistent with IPF and is, in fact, classic for IPF with pathological findings of UIP confirming diagnosis." (Id.) Dr. Feldman specifically noted that Dority "exhibits all of the cardinal features of IPF," including "progressive dyspnea, bilateral interstitial fibrosis, with honeycombing on CT scan of the chest, and UIP pattern on histology." (Id.) He also noted that the findings of mediastinal and hilar adenopathy on Dority's CT scan of the chest were commonly associated with advanced IPF. (Id.) Dr. Feldman further noted that IPF is much more common in current or former smokers and that Dority was a very heavy smoker with a

documented history of sixty pack/year cigarette smoking. (Id.) Finally, Dr. Feldman stated that "[i]t is impossible to opine whether any of the numerous environmental exposures that Mr. Dority experienced over more than 30 years played a role, if any, in addition to smoking cigarettes in a genetic predisposition." (Id. at 452.)

In a letter to CTR's attorney, dated February 1, 2013, Dr. Victor L. Roggli of Duke University Medical Center's Department of Pathology indicated that he performed studies on the slides and paraffin blocks from Dority's lung biopsy. (Defendants APA #37, p. 459.) Dr. Roggli noted that the slides and paraffin blocks "show diffuse pulmonary fibrosis with spatial and temporal heterogeneity, fibroblast foci, and vascular remodeling," that there were "areas of chronic inflammation," and that "some areas have a 'chicken wire' pattern of fibrosis reminiscent of non-specific interstitial pneumonia." (Id.) He further noted that other findings included "centrilobular emphysema and small airways disease with mucous plugging." (Id.) Dr. Roggli specifically opined that the findings did not satisfy the histological criteria for asbestosis and did not demonstrate features of any recognized pneumoconiosis. (Id.) Dr. Roggli opined that "the most appropriate diagnosis is usual interstitial pneumonia (idiopathic pulmonary fibrosis) with some discordant features." (Id.) Dr. Roggli noted that the there were some findings of aluminum silica particles but that this was a well recognized occurrence in cigarette smokers and that silica particles may be found in the lungs of most individuals from the general population. (Id.)

On February 27, 2013, Dr. Roggli issued a second letter to CTR's attorney and indicated that he reviewed Dr. Jerrold L. Abraham's report, dated January 15, 2013. (Id. at 463.) With regard to the findings of aluminum silicates in Dr. Abraham's laboratory, Dr. Roggli again opined that aluminum silicates are found in smokers, that silica is also

commonly found in lung samples in the general population, and that it also occurs in cigarette smoke. (Id.) While he noted that Dr. Abraham's laboratory identified a variety of metal particles, Dr. Roggli opined that this case does not meet the criteria for any of the metal induced lung diseases that have been described and that "there is no convincing evidence that any of the metal particles described by Dr. Abraham cause a usual interstitial pneumonia pattern." (Id.) For these reasons, Dr. Roggli opined that Dr. Abraham's opinion that Dority's lung disease was due to "exposure of a multitude of different toxic dust particulates over his working career and including his exposures at CTR" was sheer speculation and not supported by scientific evidence. (Id.) In conclusion, Dr. Roggli opined to a reasonable degree of medical certainty that Dority's case does not fit the pattern of any recognized pneumoconiosis and that "it is unlikely that exposure to the types of particulates Dr. Abraham found, including any that may have derived from his time at CTR, would have caused or contributed to the observed pattern of interstitial lung disease." (Id.)

STANDARD OF REVIEW

The Administrative Procedures Act establishes the rule for judicial review of awards of the Workers' Compensation Commission. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). In workers' compensation cases, the South Carolina Workers' Compensation Commission is the trier of fact. Hunter v. Patrick Construction Co., 289 S.C. 46, 344 S.E.2d 613 (1986). The appellate court's review of these findings of fact is limited to determining whether the findings are clearly unsupported by substantial evidence in the record. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E.2d 384 (1987). The appellate court is not permitted to re-weigh the evidence and to substitute its own findings of fact for those of the Commission. Brown v. Jordan Oil Co., 291 S.C. 272, 353 S.E.2d 280 (1987). An appellate court can reverse or modify the Commission's decision if it is affected by an error of law or clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record. Fishburne v. ATI Systems Intern., 384 S.C. 76, 681 S.E.2d 595 (Ct. App. 2009) (citing S.C. Code Ann. §1-23-380).

"Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached." Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010). Substantial evidence "is something less than the weight of the evidence"; it is "evidence which...would allow reasonable minds to reach the conclusion...the administrative agency reached." De Groot v. Employment Security Commission, 285 S.C. 209, 328 S.E.2d 668 (Ct. App. 1985) (citing Ellis v. Spartan Mills, 276 S.C. 216, 277 S.E.2d 590 (1981)). "Indeed, the possibility of drawing two inconsistent conclusions from the evidence does

not prevent an administrative agency's findings from being supported by substantial evidence." Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 593 (Ct. App. 1999).

ARGUMENTS

I.

THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION CORRECTLY FOUND THAT DORITY DID NOT SUSTAIN A COMPENSABLE OCCUPATIONAL DISEASE TO HIS LUNGS UNDER THE ACT.

A claimant has the burden on proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture, or speculation. Jennings v. Chambers Development Co., 335 S.C. 249, 516 S.E.2d 453 (Ct. App. 1999). In order to prove a compensable occupational disease, a claimant must prove six elements: 1) a disease; 2) the disease must arise out of and in the course of the claimant's employment; 3) the disease must be due to hazards in excess of those hazards that are ordinarily incident to employment; 4) the disease must be peculiar to the occupation in which the claimant was engaged; 5) the hazard causing the disease must be one recognized as peculiar to a particular trade, process, occupation, or employment; **and** 6) the disease must directly result from the claimant's continuous exposure to the normal working conditions of the particular trade, process, occupation, or employment. *See* Brunson v. Am. Koyo Bearings, 395 S.C. 450, 718 S.E.2d 755 (Ct. App. 2011) (emphasis added).

Dority contends the Commission erred in finding that he did not sustain a compensable occupational disease because the Commission required Dority to prove that his lung disease resulted solely from the employment with CTR. However, this is a misstatement of the issue. The Commission simply found that Dority pursuant to S.C. Code Ann. § 42-11-10 failed to carry his burden of proving the facts necessary to prove a compensable occupational disease. (Order, dated January 30, 2014, p. 46.) Simply put,

this is a factual issue, and there is substantial evidence in the record to support the Commission's finding that Dority failed to carry his burden of proof.

The requirement of showing that the disease arise out of and in the course of employment requires a causal connection between the alleged occupational disease and the conditions of employment. Mohasco Corp., Dixiana Mill Div. v. Rising, 289 S.C. 130, 345 S.E.2d 249 (Ct. App. 1986) *rev'd on other grounds*, 292 S.C. 489, 357 S.E.2d 456 (1987). Dority is correct in his assertion that there is no requirement that the causative element be with a singular employer. However, "[a]s in all workers' compensation cases, the burden is upon the claimant in an occupational disease case to prove such facts as will entitle the claimant to compensation." Id. (citing Alatex, Inc. v. Couch, 449 So.2d 1254 (Ala.Civ.App.1984); *see* Kennedy v. Williamsburg County, 242 S.C. 477, 131 S.E.2d 512 (1963). Among other things, a claimant still must prove that his occupational disease arose out of and took place in the course of employment. *See* Brunson, 395 S.C. at 456, 718 S.E.2d at 759.

In the present case, as discussed below, Dority failed to satisfy his burden of proving a compensable occupational disease. While Dority had to prove each of the six elements listed above for a compensable occupational disease, the Commission correctly determined that Dority failed to prove that his disease arose out of his employment with CTR or that there was any causal connection between his disease and his employment. (Order, dated January 30, 2014, p. 29.) Accordingly, the Commission correctly found that Dority failed to carry his burden of proving a compensable occupational disease. (Id.)

A. **The testimony of Dority and his witness, Eddie Glenn, was *not* credible.**

First, Dority has abandoned the portion of his appeal regarding the credibility of the "fact" witnesses. An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by legal authority. Bryson v. Bryson, 378 S.C. 502, 662 S.E.2d 611 (Ct. App. 2008). South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review. Glasscock, Inc. v. U.S. Fidelity & Guaranty Co., 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001) (citing Fields v. Melrose Ltd. P'ship., 312 S.C. 102, 439 S.E.2d 283 (1993); Brown v. Theos, 338 S.C. 305, 526 S.E.2d 232 (Ct. App. 1999))

In the present case, the Single Commissioner received testimony from four "fact" witnesses. Dority testified at the hearing, and he also submitted the deposition testimony of Eddie Glenn in support of his claim. Defendants called two witnesses to testify at the hearing, Michael Hornback and Jason Threatt. In his Order, dated August 9, 2013, the Single Commissioner found that the testimony of Dority and his witness, Mr. Glenn, was exaggerated and inconsistent, and thus, neither probative nor reliable. (*See* Order, dated August 9, 2013, pp. 39-40.) Additionally, the Hearing Commissioner specifically found "[t]hat Defendants' witnesses, Mr. Hornback and Mr. Threatt, were credible." (Id. at 38-39.)

In his Form 30, Request for Commission Review, Dority asserted that the Single Commissioner's Findings of Fact #18-21 [the findings regarding the credibility of the witnesses] are "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)." (Form 30, dated August 23, 2013.) However, in his brief to the Appellate Panel, Dority failed to make any argument, much less offer any legal authority, to support his contention that the Single Commissioner's findings regarding the witnesses' credibility are erroneous. (*See* Brief of Appellant, dated November 22, 2013.) Thus, pursuant to Bryson, *supra*, and Glasscock, *supra*, Dority previously abandoned his argument that the Single Commissioner's findings of fact regarding the witnesses' credibility are erroneous. As such, the Single Commissioner's findings regarding the witnesses' credibility are the law of the case and not subject to review.

Furthermore, the Appellate Panel also found that CTR's witnesses, Mr. Hornbeck and Mr. Threatt, were credible and that the testimony of Dority and his witness, Mr. Glenn, was neither probative nor reliable because it was exaggerated and inconsistent. (*See* Order, dated January 30, 2014, pp. 21-22.) Since the Appellate Panel did not have the opportunity to observe the witnesses, it apparently gave great weight to the Single Commissioner's observations of the witnesses' demeanor and delivery of their testimonies. *See* Brunson v. American Koyo Bearings, 395 S.C. 450, 718 S.E.2d 755 (Ct. App. 2011) (quoting Fishburne v. ATI Systems, Int'l, 384 S.C. 76, 681 S.E.2d 595 (Ct. App. 2009) ("it is logical for the Appellate Panel, which did not have the benefit of observing the witnesses, to give weight to the Hearing Commissioner's opinion")).

Assuming *arguendo* that Dority has not abandoned this portion of his appeal, the substantial evidence clearly supports the Appellate Panel's findings regarding the credibility of the witnesses' testimony. In workers' compensation cases, the Commission

is the trier of fact. Hunter v. Patrick Construction Co., 289 S.C. 46, 344 S.E.2d 613 (1986). When the evidence is conflicting over a factual issue, the findings of the Appellate Panel are conclusive. Brunson, 395 S.C. at 455, 718 S.E.2d at 758. The final determination of witness credibility and the weight to be accorded statements is reserved to the Appellate Panel. Id.

The credibility of the witnesses was a crucial factor in this case, and in that regard, the Appellate Panel made specific findings of fact regarding their credibility. First, as noted above, the Appellate Panel specifically found that "Defendants' witnesses, Michael Hornback and Jason Threatt, were credible." (Order, dated January 30, 2014, p. 21.) The Appellate Panel further found that "Dority's testimony regarding the atmosphere inside CTR's Rock Hill plant, his job duties, the plant's ventilation, and his alleged 'exposure' was exaggerated and inconsistent, and therefore, was neither probative nor reliable." (Id.) Finally, the Appellate Panel found that the testimony of Eddie Glenn, Dority's witness, was "exaggerated" and "inconsistent with the credible testimony of Mr. Hornback and Mr. Threatt." (Id. at 22.) These findings are clearly supported by substantial evidence.

First, Dority's testimony regarding his job duties in CTR's Final Line was not credible. CTR manufactures and restores tanks and equipment that are used by hospitals and other companies to hold oxygen and other types of gases. (Tr. One, p. 60, lines 15-25.) CTR's Rock Hill plant is a large, single building facility that is approximately 50,000 square feet in size, and the plant's ceiling is about forty feet high at the apex in the center of the plant and about twenty-five feet high on the sides of the plant, which is the lowest point. (Tr. Two, p. 18, lines 13-19.) There are a number of departments inside CTR's

Rock Hill plant, including Bulk Tank, Tanker Restoration, Final Line, the Electrical Department, the O2 cleaning room, the paint booth, the welding area, and the sandblasting area. (Tr. One, p.64, line 2-p. 66, line 9.) Bulk Tank, Tanker Restoration, Final Line, the welding area, and the sandblasting area were divided by floor-to-ceiling walls in some places and large partial walls in other places. (Id. at 63:22-64:24.) The Electrical Department, the O2 cleaning room, and the paint booth were completely sealed off from the other areas of the plant. (Id. at 65:8-17.)

Dority started working for CTR at its plant in Rock Hill, South Carolina on July 9, 2007. (Id. at 57:7-9.) During the first fifteen to eighteen months of his employment with CTR, Dority worked in Final Line, where he manufactured parts and components that were used to reduce gas pressure and to deliver gas from the tanks. (Id. at 112:22-113:6.) In late 2008, Dority was transferred to the Electrical Department, where he manufactured electrical components for tanks. (Id.) Dority worked in the Electrical Department until his employment with CTR ended on September 19, 2010. (Id. at 96:17-19.)

Dority alleged that he performed soldering for four hours a day on average while working in Final Line. (Id. at 116:1-8.) The soldering process required Dority to clean the two metals he wanted to solder together, apply flux, heat the metals with a torch, and then fill in the joint with solder wire. (Id. at 71-73.) Dority testified that when he referred to soldering, he was referring to actually having the torch lit and using the silver solder wire. (Id. at 115:22-25.) However, Mr. Hornback, Dority's supervisor in Final Line, testified that Dority would only spend approximately thirty minutes per day on average with the torch lit and actually soldering metals. (Tr. Two, p. 14, lines 12-15.) Additionally, Mr. Threatt testified that his position in Final Line was similar to Dority's

and that on average, he would spend approximately one hour per day actually soldering parts. (Id. at 82:8-11.) Dority also testified that he never went an entire day without soldering during his time in Final Line. (Tr. One, p. 130, lines 16-20.) Yet, Mr. Threatt testified that there were times when Dority would go a day or more without performing any soldering. (Tr. Two, p. 83, lines 1-11.) Notably, even though Dority testified that he soldered an average of four hours per day and that he performed a variety of other tasks during the day, Dority maintained that Dr. Kradin's report, which stated "he soldered 8 hours a day, 5 days a week," was accurate and correct. (Tr. One, p. 116, line 11-p. 117, line 13; Dority's APA #4, p. 27.)

Further, Dority's testimony, as well as the testimony of his witness Eddie Glenn,[2] regarding the ventilation in CTR's plant and regarding Dority's alleged "exposure" was not credible. Dority alleged that when he heated the solder wire, it created smoke that he could see rise up to the top of the ceiling. (Tr. One, p. 75, lines 4-10.) Mr. Glenn testified that when soldering was performed in Final Line, there was "a visible smoke cloud" that would rise up to the top of the ceiling and hover in the air. (Glenn Depo. p. 26, lines 8-11.) However, Mr. Hornback testified that when an employee is engaged in the soldering of metals, there is only a "little puff of smoke" that dissipated quickly. (Tr. Two, p. 12, line 24-p. 13, line 2.) Mr. Hornback specifically testified that the smoke does not hang in the air and that there is not a visible cloud of smoke in the plant. (Id. at 13:3-6.) Additionally, during direct examination by Dority's attorney, Mr. Glenn testified that the "visible smoke cloud" was in the plant on a "daily basis;" however, during cross-

[2] Dority's attorney deposed Eddie Glenn on October 29, 2012. Mr. Glenn was hired by CTR in February of 2007, and he worked for CTR until he was laid off in November of 2011. (Glenn Depo. at 6). Of note, Mr. Glenn admitted that he spoke with Dority's attorney on four separate occasions and that he talked to Dority "a couple times" prior to his deposition. Id. at 105 & 112.

examination, Mr. Glenn testified that the air quality was "pretty clear" from March through October when the large doors in the plant were open. (Glenn Depo. p. 26, lines 8-19; p. 93, line 18-p.94.)

Further, during direct examination, Dority initially testified that while working in Final Line, he would get "choked up" and lose his breath once or twice per week as a result of inhaling the smoke from the solder; however, he later testified that he did not notice any respiratory problems while working in Final Line. (Tr. One, p. 88, lines 16-19; p. 92, lines 10-15.) Notably, Mr. Threatt, who worked next to Dority in Final Line, never saw Dority experience a coughing fit or spitting up things. (Tr. Two, p. 83, lines 12-20.) Dority also alleged that when he performed sandblasting, which was done in an enclosed cabinet that had a vacuum system, he would be exposed to a lot of dust because it would just come out of the cabinet when he opened the door to remove the part. (Tr. One, p. 79, lines 10-17.) However, Mr. Hornback testified that he has performed the same type of sandblasting in the past and that there is no exposure to dust or particles. (Tr. Two, p. 28, lines 22-25.)

In addition, while Dority and Mr. Glenn alleged that there were only five to six large roll-up doors in the plant, both Mr. Hornback and Mr. Threatt testified that there were actually fourteen large roll-up doors in the plant. (Tr. One, p. 105, lines 11-20; Glenn Depo., p. 36, lines 16-22; Tr. Two, p. 20, lines 12-13; p. 84, lines 15-19.) Dority admitted that the doors were opened throughout the spring, summer, and fall months and that the air in the facility was clear when the doors were open and the wind was blowing. (Tr. One, p. 110, lines 3-10; p. 139, lines 18-21.) Furthermore, during direct examination, Dority alleged that the atmosphere in Final Line during the winter months

was "horrible" and that there was no ventilation in the plant during the winter months because CTR kept the plant doors closed and because there were no fans to ventilate the smoke and dust out of the plant. (Id. at 77:4-10.) However, on cross-examination, Dority admitted that even during the winter months, the large roll-up doors in the plant were opened and closed throughout the day. (Id. at 107:19-24.) Notably, both Mr. Hornback and Mr. Threatt testified that during the winter months the large roll-up doors are constantly opened and closed in order to bring materials in and take materials out of the plant. (Tr. Two, p. 29, lines 15-22; p. 85, lines 10-11.) Finally, Dority testified that CTR did not have any fans to ventilate the air out of the plant during the winter months. (Tr. One, p. 77, lines 4-5.) However, the testimony of Mr. Hornback and Mr. Threatt clearly establishes that the wall fan in the Final Line area ran constantly throughout the year and was operable when Dority was working there. (Tr. Two, pp. 24-25; p. 86, line 11-p. 88, line 4.)

Despite Dority's self-serving testimony to the contrary, CTR's plant had more than adequate ventilation consisting of fourteen large, garage type roll-up doors that were wide and tall enough to drive a tractor-trailer through, four wall fans, two ceiling suction fans, and several industrial sized floor fans. Specifically, with regards to the Final Line area of the plant where Dority worked, there was at least one large roll-up door, one wall fan that ventilated the air out of the plant, and multiple large industrial floor fans.

Accordingly, based on the foregoing, substantial evidence supports the Appellate Panel's findings of fact regarding the witnesses' credibility.

B. Dority failed to prove that his lung disease arose out of or was causally related to his employment.

As stated above, a claimant must show that his disease arose out of and in the course of his employment. This requires the claimant to show a causal connection between the alleged occupational disease and the employment. In the instant case, Dority failed to carry this burden. The Commission placed greater weight on the evidence submitted by CTR showing that IPF cannot be ruled out as Dority's diagnosis. (Finding of Fact #35, Appellate Panel Order p. 29.) "When the evidence is conflicting over a factual issue, the findings of the Appellate Panel are conclusive." Brunson v. American Koyo Bearings, 395 S.C. 450, 718 S.E.2d 755 (Ct. App. 2011) (citing Hargrove v. Titan Textile Co., 360 S.C. 276, 599 S.E.2d 604 (Ct. App. 2004)). Additionally, the Commission found that the testimony of Dority's treating physician, Dr. John Doty, was not sufficient to support causation. (Order, dated January 30, 2014, p. 26.) "When conflicting medical evidence is presented, this court must not substitute its judgment for that of the fact finder, which in this case is the Appellate Panel." Brunson v. American Koyo Bearings, 395 S.C. 450, 718 S.E.2d 755 (Ct. App. 2011) (citing Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995)). In Brunson, this Court also cited Lockridge v. Santens of Am., Inc., 344 S.C. 511, 544 S.E.2d 842 (Ct. App. 2001), for the proposition that "when one doctor attributed employment to injury and another doctor could not testify unequivocally about the source of employee's injury, the Appellate Panel had the discretion to weigh the testimony and deny the employee's claim."

Dr. Doty testified that to a reasonable degree of medical certainty he could not rule out IPF as Dority's diagnosis and could only say that Dority's employment with CTR could have contributed to his lung disease:

> Q: [Mr. Griggs] To a reasonable degree of medical certainty, we cannot rule out IPF, Idiopathic Pulmonary Fibrosis, correct?
>
> A: It's still on the list, yes.
>
> ...
>
> Q: [Mr. Eddy] I just need to make sure that I understand what you mean by that. Would you agree that the work at CTR contributed to his lung disease?
>
> A: [Dr. Doty] Could have contributed, yes.
>
> Q: Assuming that he worked with the silver sauder and was exposed to the dust and fumes for a year and a half directly using the silver sauder, and then for a year and a half just coming into that site, would you, to a reasonable degree of medical certainty, believe that that would have contributed to his lung disease?
>
> A: Yes.
>
> Q: Okay. Thank you.
>
> D. [Mr. Griggs] Could have contributed or did?
>
> [Mr. Eddy] Object to form.
>
> [Mr. Griggs] Answer the question.
>
> A. [Dr. Doty] I'll go with could have contributed.

(Doty Depo. at 87:10-13 & 87:21 – 88:16.)

It is true that portions of Dr. Doty's deposition can be read as supporting both sides. However, when read in its entirety, Dr. Doty's deposition testimony is not sufficient to help Dority carry his burden. Additionally, as is often cited, substantial evidence is "evidence which...would allow reasonable minds to reach the conclusion...the administrative agency reached." De Groot v. Employment Security Commission, 285 S.C. 209, 328 S.E.2d 668 (Ct. App. 1985) (citing Ellis v. Spartan Mills,

276 S.C. 216, 277 S.E.2d 590 (1981)). "Indeed, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 593 (Ct. App. 1999).

Dr. Gregory Feldman affirmatively diagnosed Dority with IPF. On September 20, 2012, Dr. Feldman, of Upstate Lung & Critical Care Specialists, examined Dority. Dr. Feldman's report indicates that Dority reported significant breathlessness that had worsened since his lung biopsy in 2010. (Defendants' APA #39, p. 489.) It also notes that Dority was a heavy smoker, with a "documented 60 pack/year cigarette smoking." (Id.) After reviewing the medical records and examining Dority, Dr. Feldman diagnosed him with IPF and chronic obstructive pulmonary disease ("COPD"). (Id. at 491.)

Dr. Feldman stated that Dority "exhibits all cardinal features of IPF, progressive dyspnea, bilateral interstitial fibrosis, with honeycombing on the CT scan of the chest, and UIP pattern on histology." (Id.) He also noted that the findings of mediastinal and hilar adenopathy on Dority's CT scan of the chest are commonly associated with advanced IPF. (Id.) His report states that Dority's "clinical course is consistent with IPF and is, indeed, classic for IPF with pathological findings of UIP confirming diagnosis with reasonable degree of medical certainty." (Id.) According to Dr. Feldman, UIP is not a disease, but rather what pathologists see in studies, and UIP is a "cardinal feature of IPF." (Feldman depo., p. 29, lines 7-25.) He went on to testify, "[h]e has a clinical course, classic for IPF. He has exposure, not over [sic] past five, six years, but he's a heavy smoker. He's been exposed to an ungodly amount of fume and dust over 30 years. He's a classic patient with IPF." (Id. at 44:25-45:4.) According to Dr. Feldman, IPF is

much more common in current or former smokers, and thus is an important factor." (Defendants' APA #39, p. 491.) Dr. Feldman concludes his report by saying, "[i]t is impossible to opine whether any of the numerous environmental exposures that Mr. Dority experienced over more than 30 years played a role, if any, in addition to smoking cigarettes and a genetic predisposition. We will never know." (Id. at 492.)

Dr. Victor Roggli, of Duke University Medical Center's Department of Pathology also provided an opinion regarding Dority's lung disease. He performed a microscopic examination on the slides and paraffin blocks from Dority's lung biopsy. (Defendants' APA #37, p. 459.) Dr. Roggli noted that the slides and paraffin blocks "show diffuse pulmonary fibrosis with spatial and temporal heterogeneity, fibroblast foci, and vascular remodeling," that there were "areas of chronic inflammation," and that "some areas have a 'chicken wire' pattern of fibrosis reminiscent of non-specific interstitial pneumonia." (Id.) He noted that other findings included "centrilobular emphysema and small airways disease with mucous plugging. (Id.) Dr. Roggli specifically noted that Dority's case did not satisfy the histological criteria for asbestosis or demonstrate features of any recognized pneumoconiosis. (Id.) He opined that the "most appropriate diagnosis is usual insterstitial pneumonia (idiopathic pulmonary fibrosis) with some discordant features." (Id.) There were some aluminum silicate particles found within the alveolar macrophages, but Dr. Roggli stated that this is a well recognized occurrence in cigarette smokers, and that silica particles may be found in the lungs of most individuals in the general population. (Id.)

Additionally, Dr. Roggli reviewed the report of Dority's expert, Dr. Jerrold Abraham, and issued a second letter addressing Dority's condition. (Id. at 463.) Dr.

Roggli noted that Dr. Abraham's laboratory identified a variety of metal particles, but opined that this case does not meet the criteria for any of the metal induced lung diseases that have been described and that "there is no convincing evidence that any of the metal particles described by Dr. Abraham cause a usual interstitial pneumonia pattern." (Id.) Because of this, Dr. Roggli opined that Dr. Abraham's opinion that Claimant's lung disease was due to "exposure of a multitude of different toxic dust particulates over his working career and including his exposures at CTR" was sheer speculation and not supported by scientific evidence. (Id.) He concluded his second letter by stating it "is unlikely that exposure to the types of particulates Dr. Abraham found, including any that may have derived from his time at CTR, would have caused or contributed to the observed pattern of interstitial lung disease." (Id.) All of Dr. Roggli's opinions were stated to a reasonable degree of medical certainty. (Id.)

In his brief, Dority attempts to undercut Dr. Roggli's opinion. Dority seems to argue that Dr. Roggli's opinion is flawed because he has agreed with and cited their expert, Dr. Jerrold Abraham, prior to his involvement in this case. The fact that Dr. Roggli has agreed with Dr. Abraham's methods and scholarly opinions, does not lead to the conclusion that he must agree with all of Dr. Abraham's clinical opinions. Dority also contends that Dr. Roggli's opinion is not credible because his report contained a conclusion that Dority does not have asbestosis. (*See* Defendants' APA #37, p. 459.) However, the very next sentence states that "this case does not demonstrate features of any recognized pneumoconiosis." (Id.) The fact that Dr. Roggli rules out several diseases certainly does not render his opinion unreliable. Finally, Dority argues that Dr. Roggli's opinion is not reliable because CTR moved for a postponement of the hearing in

order to get an opinion from Dr. Roggli. In a footnote, he states the implication is that CTR knew Dr. Roggli would support their position, but this is simply inaccurate.[3]

Dority contends that the evidence does not support a finding of IPF, and that his expert opinions finding an occupational cause should rule the day. First, he contends that Dr. Doty's opinion supports a finding that Dority's lung disease is occupationally related. According to Dority, Dr. Doty first suspected occupational exposure as a cause at Dority's first appointment on July 22, 2010. However, Dr. Doty's note indicates that the CT scan shows "fibrosis and honeycombing, thus we must consider the possibility of IPF." (Claimant's APA #8, p. 47.) He goes on to state that "[g]iven his occupational history this could represent asbestosis, although there is no mention of pleural plaquing." (Id.) Thus, it is clear that Dr. Doty did not know what was causing Dority's complaints at that time.

Dority also states that Dr. Doty's deposition testimony supports a finding that his lung disease is occupationally related. As stated above, portions of Dr. Doty's deposition can be read to support both sides. However, when read in its entirety, the deposition testimony is simply not enough to support a finding of causation. The Commission specifically found that Dr. Doty's testimony was not sufficient to support a finding of causation. (*See* Order, dated January 30, 2014, p. 26.) This finding is supported by substantial evidence. First, Dr. Doty admits that he does not have expertise in occupational lung disease. (Doty depo., p. 37, lines 18-19.) He testified that UIP is a pathological description and it's often used synonymously with IPF, and "we don't know

[3]Technically, there is no evidence in the record evidencing the fact that both parties sought postponements to allow for further discovery. However, both parties would readily admit that each side sought a postponement to allow for additional discovery. It is simply inaccurate to suggest that only CTR sought a postponement to gather additional information. Dority's statement that CTR knew Dr. Roggli would support their position is inaccurate at best.

what's causing his UIP...." (Id. at 44:7-8.) He went on to testify that he would code him as having interstitial lung disease. (Id. at 44:11-12.) at However, there are different kinds of interstitial lung disease, including IPF. (Id. at 44:15-21.) He also testified that pneumoconiosis is not an interstitial lung disease. (Id. at 45:6-8.). As mentioned above, Dr. Doty testified at the end of his extensive deposition that he could not rule out IPF to reasonable degree of medical certainty and that he could not testify that Dority's lung disease was caused by work at CTR to a reasonable degree of medical certainty. (Id. at 87:10-19.)

Dority also points to Dr. Doty's testimony regarding the progression of IPF and Dority's clinical course as evidence of pneumoconiosis as opposed to IPF. Dority contends that removing an individual with pneumoconiosis from the offending environment often results in stabilization and that since leaving CTR, he has stabilized. Additionally, Dority points to portions of Dr. Doty's deposition to state that IPF is usually seen in older patients and is almost always rapidly progressive. However, Dr. Feldman testified that people with IPF can "fall off of a cliff" and never recover, but they can stabilize until they have another falling off of a cliff. (Feldman depo., p. 25, line 16-p.26, line 4.) There is substantial evidence in the record to support the Commission's finding that Dr. Doty's testimony is not sufficient to help Dority carry his burden of proof in this case.

Dority obtained a causation opinion from Dr. Richard Kradin. After reviewing the medical records, the MSDS Sheet for Wolverine Silvaloy, and the stained slides from Dority's lung biopsy, Dr. Kradin opined that "[Dority's] occupational exposures to heavy metals, including the components of silver brazing allow [sic], must be considered to a

reasonable degree of medical probability causes of his chronic lung disease." (Claimant's APA #4, p. 28.) Dr. Kradin's report also states that while working at Springs Industries Dority performed "extensive welding with rods containing nickel, stainless, steel, aluminum, galvanized steel, lead, and cadmium. He also participated in firefighting at the plant which occurred on a regular basis releasing fumes from the burning chemicals." (Id. at 27.) However, Dority testified at the hearing that he did not perform any welding while working at Springs Industries. (Tr. One, p. 114, lines 10-13.) He also testified that he participated in firefighting at Springs Industries, but that he would not call it "a regular basis." (Id. at p. 115, lines 5-8.) Dr. Kradin's report also includes a statement that Dority soldered 8 hours per day, 5 days per week while working at CTR. (Claimant's APA #4, p. 27.) However, Dority's own testimony refutes this statement. During cross-examination at the hearing, Dority alleged that he soldered for four hours each day on average. (Tr. One, p. 114, lines 1-8.)

Michael Hornback who was Claimant's supervisor in Final Line at CTR testified that it would be impossible to solder 8 hours per day for 5 days a week. (Tr. Two, p. 14, lines 8-11.) Mr. Hornback testified that you would spend approximately 30 minutes per day actually soldering, because of other tasks that had to be completed. (Id. at 14:12-15.) Additionally, Jason Threatt, who is currently employed at CTR in the Final Line department, testified at the hearing. Mr. Threatt did the same job Dority performed during his time in Final Line, and even worked with Dority for a period of time. (Id. at 79:8-24.) He testified that his job in Final Line requires him to solder on a regular basis, but he estimated that he only spends an average of one hour per day soldering. (Id. at 82:8-13.) He testified that it would be impossible to solder eight hours per day for five

days a week. (Id. at 82:14-19.) Finally, he testified that there were times where he would go more than one day without soldering. (Id. at 83:6-11.) The Commission found that Mr. Hornback's testimony and Mr. Threatt's testimony was more credible than Dority's. Dority has not challenged the Commission's ruling regarding credibility, and as such it is the law of the case. *See* ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 489 S.E.2d 470 (1997).

Dr. Kradin's report is based on inaccurate information. The probative value of an expert's opinion, based upon hypothetical facts, stands or falls with existence or nonexistence of facts upon which it is predicated. *See* Glenn v. Dunean Mills, 242 S.C. 535, 131 S.E.2d 696 (1963); Chapman v. Foremost Dairies, Inc., 249 S.C. 438, 154 S.E.2d 845 (1967). Dr. Kradin's report cannot be considered probative evidence because it is based on facts that are nonexistent.

Dority also obtained a causation opinion from Dr. Jerrold Abraham of SUNY Upstate Medical University in Syracuse, New York. Dr. Abraham reviewed the paraffin blocks from Dority's 2010 lung biopsy. (Claimant's APA #1, p. 1.) He noted that Dority's occupational exposure at CTR included soldering copper, stainless steel, and brass tubing with silver solder. (Id. at 2.) He also noted that Claimant's job duties at CTR required him to grind completed welds, to sandblast parts on a regular basis, and to drill holes in and sand sheets of aluminum. (Id.) Dr. Abraham opined that based on the particulates he found in Dority's lung and based on Dority's exposure history, "his exposures to a multitude of different toxic dust particulates over his working career and including his exposure at CTR contributed to the development of his lung disease (pulmonary fibrosis)." (Id.)

Dority alleges that Dr. Feldman's opinion supports a finding of causation because of Dr. Abraham's report. Dr. Feldman testified in his deposition that there are many metals that can cause pneumoconiosis, and if a pathologist's report found particulate matter in the lung it would be important. (Feldman depo., p. 17, lines 16-19.) However, the pathologist's report did not "describe any of that." (Id.) Dr. Feldman went on to testify that "you have to have a particulate matter to suggest that metal/welding plays some role." (Id. at 62:8-9.) Even then Dr. Feldman stated, "[i]t's not definitive, but it's a hell of a lot better than speculation." (Id. at 62:9-11.) He went on to say "[t]hat's a different group of patients. Then we would not be sitting here and arguing what he has." (Id. at 62:14-15.) Because of Dr. Abraham's report, Dority contends that Dr. Feldman's testimony favors his position. However, Dority never went back to Dr. Feldman to seek clarification of his opinion after a review of Dr. Abraham's report. (*See* Defendants' APA #43.) Therefore, contending that Dr. Feldman's testimony supports Dority's position is sheer speculation. This is especially clear when one considers that Dr. Roggli reviewed Dr. Abraham's report finding particulate matter in Dority's lungs and still came to the conclusion that his disease is not occupationally related.

It is true that Dority's retained experts opined that his lung disease is occupationally related. However, his experts' opinions are flawed and not based on reliable evidence. The Commission found that the testimony of Dority and his witness was not credible and exaggerated. (See Order, dated January 30, 2014, pp. 21-22.) His experts' opinions were based on this information and therefore, are not reliable. The probative value of an expert's opinion, based upon hypothetical facts, stands or falls with existence or nonexistence of facts upon which it is predicated. *See* Glenn v. Duncan

Mills, 242 S.C. 535, 131 S.E.2d 696 (1963); Chapman v. Foremost Dairies, Inc., 249 S.C. 438, 154 S.E.2d 845 (1967). As a best case scenario, Dority has two out of five expert opinions that support his case (Dr. Kradin and Dr. Abraham). However, since Dr. Kradin's opinion is based on inaccurate evidence, the reality is that Dority only has one out of five expert opinions supporting his claim. (*See* Order, dated January 30, 2014, pp. 26-27.) Therefore, the substantial evidence in the record supports a finding that Dority cannot carry his burden because a diagnosis of IPF cannot be ruled out. A claimant has the burden of proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture, or speculation. Jennings v. Chambers Development Co., 335 S.C. 249, 516 S.E.2d 453 (Ct. App. 1999); See also Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998).

As stated above, IPF stands for idiopathic pulmonary fibrosis. Dr. Feldman's report states that the "American Thoracic Society's (ATS) definition of Idiopathic Pulmonary Fibrosis (IPF) is a distinctive type of chronic fibrosing interstitial pneumonia of unknown cause, limited to the lungs and associated with a surgical lung biopsy showing a histologic pattern of UIP." (Defendants' APA #39, p. 491.) Dr. Feldman also supported this in his deposition when he testified, "[w]e don't know what cause [sic] IPF." (Feldman depo., p. 39, lines 17-18.) Inherent in the fact that the cause of an idiopathic disease is unknown, is the fact that it cannot be causally related to employment. Since the cause of IPF is unknown and since IPF cannot be eliminated as a diagnosis, Dority cannot prove that his lung disease arose out of his employment and cannot show a causal link to his employment. As Dr. Feldman stated, "[w]e will never

know," what caused Dority's IPF. (Defendants' APA #39 p. 492) Therefore, Dority cannot carry his burden of proving a compensable occupational disease.

The Commission weighed the evidence and found that Dority could not carry his burden of proving an occupational disease. (*See* Order, dated January 30, 2014, p. 29.) "[I]t is well established that the Industrial Commission is the fact-finding body and...appellate courts in workmen's compensation matters can only review the facts to determine whether or not there is any competent evidence to support the findings of the fact-finding body." Hiers v. Brunson Const. Co., 221 S.C. 212, 70 S.E.2d 211 (1952). "If there is, the Courts are without power to pass upon the force and effect of such evidence." Id. The substantial evidence in the record "would allow reasonable minds to reach the conclusion the agency reached." See Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010). "Indeed, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 593 (Ct. App. 1999.) Therefore, this Court should affirm the Commission's Order because Dority cannot carry his burden of proving a compensable occupational disease.

C. Dority failed to prove that his disease was due to any hazard in excess of those normally incident to employment.

In order to establish a compensable occupational disease, claimants must prove the facts necessary to establish six requirements. Claimants must prove: 1) a disease, 2) the disease must arise out of and in the course of the claimant's employment, 3) the disease must be **due to** hazards in excess of those hazards that are ordinarily incident to employment, 4) the disease must be peculiar to the occupation in which the claimant was engaged, 5) the hazard causing the disease must be one recognized as peculiar to a

particular trade, process, occupation, or employment, **and** 6) the disease must directly result from the claimant's continuous exposure to the normal working conditions of the particular trade, process, occupation, or employment. Mohasco Corp., Dixiana Mill Div. v. Rising, 289 S.C. 130, 345 S.E.2d 249 (Ct. App. 1986) *rev'd on other grounds*, 292 S.C. 489, 357 S.E.2d 456 (1987) (emphasis added). In addition to failing to prove that his disease arose out of and in course of his employment, Dority has failed to establish that his lung disease is due to, or caused by, hazards in excess of those that are ordinarily incident to employment.

The substantial evidence in the record supports the fact that IPF cannot be ruled out as a diagnosis. As is discussed above, the medical community does not know what causes IPF. Dr. Feldman stated in his deposition, "[w]e don't know what cause [sic] IPF." (Feldman depo., p. 39, lines 17-18.) Since the cause of IPF is unknown, Dority cannot prove that his lung disease is due to hazards in excess of those hazards that are ordinarily incident to employment. It would be sheer speculation to attribute a disease, the cause of which is unknown, to hazards in excess of those ordinarily incident to employment.

As mentioned above, Dority misstates the issue and contends that the Commission's decision is affected by an error of law because the Commission required Dority to prove that his disease was caused solely by his employment at CTR. The issue is a factual one. The Commission did not deny this claim because Dority failed to prove that his lung disease was caused solely by his employment at CTR. The Commission properly denied this claim because Dority could not prove that his lung disease is employment related. (*See* Order, dated January 30, 2014, p. 29.) Dority had to prove,

inter alia, the facts necessary to establish that his disease arose out of and in the course of his employment, and that his disease was due to hazards in excess of those ordinarily incident to employment. Dority failed to prove the facts necessary to carry his burden of proving these elements of a compensable occupational disease. The Commission as the ultimate finder of fact, weighed the evidence presented and determined that CTR's experts' opinions diagnosing Dority with IPF were more reliable than Dority's experts' opinions. (*See* Id.) Therefore, the Commission properly determined, based on the evidence in the record as a whole, that Dority's lung disease is not causally related to his employment. (Id.)

D. It is irrelevant whether the CTR employment "was of a kind contributing to the disease."

Dority argues that he has successfully carried his burden of proving a compensable occupational disease, and therefore, all he needs to show is that his employment with CTR was of a kind contributing to the disease. However, Dority has failed to carry his burden of proving a compensable occupational disease. Thus, it is not necessary to reach the question of whether CTR employment was of a kind contributing to the disease.

Assuming *arguendo* that Dority has shown that he suffered a compensable occupational disease, Dority cannot carry his burden of proving that his employment with CTR was contributing to the disease. The Commission specifically found that Dority "failed to prove by a preponderance of the credible, reliable, and probative evidence that his alleged lung disease was directly caused by, aggravated by, or arose out of his employment with CTR." (Order, dated January 30, 2014 p. 29.) This finding is supported by the substantial evidence in the record.

Dority correctly states the law related to the issue of liability between successive carriers. In Glenn v. Columbia Silica Sand, 236 S.C. 13, 112 S.E.2d 711 (1960), the Supreme Court addressed the question of liability between successive carriers. Citing to Professor Larson, the Court stated that "liability is most frequently assigned to the carrier who was on the risk when the disease resulted in disability, if the employment at the time of disability was of a kind contributing to the disease." Glenn v. Columbia Silica Sand, 236 S.C. 13, 112 S.E.2d 711 (1960). In further support of his contention, Dority cites the cases of Hanks v. Blair Mills, 286 S.C. 378, 335 S.E.2d 91 (Ct. App. 1985) and Reese v. CCI Construction Co., 334 S.C. 600, 514 S.E.2d 144 (Ct. App. 1999). In Hanks, this Court held a carrier that had been on the risk for twenty-four days was liable for payment of compensation for the claimant's occupational disease. This Court based its holding on the rule from Glenn. In Reese, this Court held a carrier that had been on the risk for three days was liable for payment of compensation for the claimant's occupational disease. Essential to the holdings in both cases was that the claimants proved an occupational disease. Since they worked for multiple companies, thereby potentially exposing more than one carrier to liability, the court had to reach the question of whether the employment at the time of disability was of a kind contributing to the disease.

The case at bar is distinguishable from Hanks and Reese. First, since Dority has not shown a compensable occupational disease, we do not need to reach the question of whether his employment with CTR was of a kind contributing to the disease. Second, Dority summarily states that CTR employment was of a kind contributing to the disease. It appears that he offers his testimony and that of his witness as evidence of this assertion. Dority asserts that the only real difference between the testimony of CTR's witnesses and

his witnesses concerns the intensity of exposure or atmospheric conditions. Dority protrays this as if it is a minor issue, which is completely inaccurate. The testimony regarding exposure and atmospheric conditions inside CTR's facility is directly relevant to the issue of whether Dority's employment with CTR was of a kind contributing to the disease. As is outlined above, the Commission specifically found that Dority's testimony, and that of his lay witness was not credible. (*See* Order, dated January 30, 2014, pp. 21-22.) This ruling has not been appealed, and is therefore the law of the case. *See* ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 489 S.E.2d 470 (1997). Because the testimony is not credible, it cannot be relied upon to make a finding that CTR employment is of a kind contributing to the disease.

As is stated above, the question of whether CTR employment is of a kind contributing to the disease is not relevant in this case. However, assuming *arguendo* that it is, Dority has failed to carry his burden in proving that CTR employment is of a kind contributing to the disease. The reliable, probative, and substantial evidence in the record supports a finding that Dority's exposure at CTR, if any, did not aggravate or cause his disease. If it did not aggravate or cause his disease, it cannot be said that it was "of a kind contributing to the disease."

II.

DORITY'S LUNG DISEASE IS NOT A COMPENSABLE "INJURY" UNDER SECTION 42-1-160 OF THE WORKERS' COMPENSATION ACT.

"Injury" and "personal injury" are defined by S.C. Code Ann. § 42-1-160. Paragraph A of that section states that injury and personal injury "mean only injury by accident arising out of and in the course of employment and shall not include a disease in

any form, except when it results naturally and unavoidably from the accident and except such disease as are compensable under the provisions of Chapter 11...." S.C. Code Ann. § 42-1-160(A)(1976). Additionally, Paragraph F of that section states that the word accident "must not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously, or at frequent intervals in the course of such employment, over extended periods of time." S.C. Code Ann. § 42-1-160(F). "Any injury or disease attributable to such causes must be compensable only if culminating in a compensable repetitive trauma injury pursuant to Section 42-1-172 or an occupational disease pursuant to the provisions of Chapter 11 of this title. Id.

Paragraph F has not always been a part of this statute, and clearly represents the idea that a disease or condition allegedly caused by exposure over an extended period of time is compensable, if at all, as an occupational disease or repetitive trauma. In fact, paragraph F was not a part of § 42-1-160 in 2002, which is the year the South Carolina Supreme Court decided Pee v. AVM, Inc., 352 S.C. 167, 573 S.E.2d 785 (2002). In Pee, the Court found that carpal tunnel syndrome was compensable as an injury by accident. The Court stated "[d]efiniteness of time, while relevant to proving causation, is not required to prove an injury qualifies as an injury by accident." Id. The Court cited Sturkie v. Ballenger Corp., 268 S.C. 536, 235 S.E.2d 120 (1977) as supporting their argument. Dority also cites Sturkie in his brief in support of the fact that he has suffered an accidental injury. In Sturkie, the Court found that the claimant suffered a compensable injury when he gradually developed emphysema due to repeated atmospheric exposure. The Court went on to cite § 42-1-160 (Supp. 2001), and stated "a disease, which typically has a gradual onset, is compensable as an injury by accident

'when it results naturally and unavoidably from the accident.'" Pee v. AVM, Inc., 352 S.C. 167, 573 S.E.2d 785 (2002). The Court interpreted this provision to indicate an intention by the legislature for "an accident to be compensable under the Act, even where the effects of the accident develop gradually." Id.

S.C. Code Ann. § 42-1-160 was amended by Act Number 111, Part I, Section 6 in 2007. This amendment included Paragraph F in § 42-1-160. This indicates intent by the legislature to change the analysis. The legislature statutorily mandated that diseases or conditions that arise over an extended period of time are compensable, if at all, not as accidental injuries but rather as repetitive trauma injuries or occupational diseases. This amendment would change the outcome of Pee and Sturkie.

Dority also cites Hiers v. Brunson Construction Co., 221 S.C. 212, 70 S.E.2d 211 (1952), in support of his argument. In Hiers, the claimant had a preexisting cold and had to work on a roof on a cold and rainy day. While working on the roof he experienced a chill and subsequently developed influenza, pleurisy, and pneumonia. The claimant later passed away and the Court affirmed an award for death benefits. The instant case is distinguishable from Hiers in two ways. First, Hiers was decided over 50 years prior to the 2007 amendment. Second, the claimant in Hiers had a preexisting cold and suffered an exacerbation from exposure to atmospheric conditions over a short period of time.

Dority does not describe a single incident or single day as causing his lung disease. He contends that the cause of his lung disease is continuous exposure to elements related to his employment. In his brief, he states on several occasions that he "regularly" had to perform tasks or inhaled dust on a "regular basis". It is worth noting that Dority's assertion that Mr. Threatt corroborated his testimony that he inhaled dust

and shavings on a regular basis is not an accurate representation of the testimony cited by Dority. (*See* Hr. Tr., Vol. 2, pp. 92-93.) In any event, Dority has not asserted that his lung disease was caused by a specific incident or short period of exposure. In fact, Dr. Feldman stated in his deposition that "fibrosis takes decades to develop." (Feldman depo. p. 6). As a result, Dority's lung disease cannot be compensable under the accidental injury provisions of the Act. Rather, his claim must be compensable, if at all, pursuant to the occupational disease provisions of the Act.

CONCLUSION

For the foregoing reasons, substantial evidence in the record supports the South Carolina Workers' Compensation Commission's decision that Dority failed to carry his burden of proving a compensable occupation disease. Accordingly, Respondents CTR of the Carolinas, Inc., and Twin City Fire Insurance Company respectfully request that this Court affirm the Commission's Decision and Order in its entirety.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.

BY: ______________________

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April 17, 2014

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SCWCC No. 1023410

Michael W. Dority, Claimant, Appellant,

v.

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

CERTIFICATE OF SERVICE

I, Cheri Evans Coon, do hereby certify that I am the Legal Assistant for Jason A. Griggs, Esquire, attorney for the defendants with **WILLSON JONES CARTER & BAXLEY, P.A.** in Greenville, South Carolina, and that on the 17th day of April, 2014, I mailed the foregoing **INITIAL BRIEF OF RESPONDENTS** to the following by placing a copy thereof in the United States mail, first class, proper postage affixed thereto:

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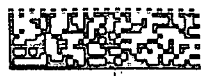

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