

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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

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Case No. 2014-000225 (WCC FILE NO. 1023410)

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Michael W. Dority, Claimant, Appellant,

v.

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

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REPLY BRIEF OF APPELLANT

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**SC Court of Appeals**

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TABLE OF AUTHORITIES

**Cases**

*Bryson v. Bryson*,  
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*Glasscock, Inc. v. U.S. Fidelity & Guaranty Co.*,  
348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001).....4

*Brown v. Theos*,  
338 S.C. 305, 526 S.E.2d 232 (Ct. App. 1999).....4

## I. STATEMENT OF ISSUES ON REPLY

- A. Appellant Did Not Abandon the Issue of the Credibility of the Witnesses.
- B. Respondents' Argument Regarding Dr. Doty's Testimony Shows the Commission's Order is Based on an Error of Law

## II. ARGUMENT

- A. Appellant Did Not Abandon the Issue of the Credibility of the Witnesses.

Appellant included the Commission's factual findings (numbers 18 through 21, Order dated August 9, 2013, pp. 38-40) regarding the credibility of the lay witnesses (Dority, Glenn, Hornback and Threatt) as grounds in both his appeal to the Appellate Panel and this Court. (Form 30 dated August 23, 2013 and Amended Notice of Appeal dated February 26, 2014).

Appellant cited extensively the testimony of Michael Dority and Charlie Glenn in his brief to the Appellate Panel and in his initial brief to this Court. (Brief of Appellant, dated November 22, 2013, pp. 4-5 and Appellant's Initial Brief dated, March 29, 2014, pp. 20-23)

The cases (*Bryson*, *Glasscock* and *Brown*) cited by respondents all involve specific legal issues which were abandoned on appeal from a circuit court to the South Carolina Court of Appeals. In *Bryson*, the issue involved whether a special referee can order the repayment of monies from the sale of property when the referee did not set aside the sale of the property. *Bryson v. Bryson*, 378 S.C. 502, 662 S.E.2d 611 (Ct. App. 2008). In *Glasscock*, the issue was whether contract reformation must be plead as a specific cause of action. *Glasscock, Inc. v. U.S. Fidelity & Guaranty Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001). In *Brown*, the issue was whether plaintiff properly plead the elements of a cause of action for intentional infliction of emotional distress. *Brown v. Theos*, 338 S.C. 305, 526 S.E.2d 232 (Ct. App. 1999).

Respondents' contention is an attempt to distract the Court from the fact that the appellant's lung tissue contains an unusual number and type of particulates from metals to which he was exposed at CTR.

B. Respondents' Argument Regarding the Treating Pulmonologist's Deposition Testimony Shows the Commission's Order is Based on an Error of Law.

Appellant's treating pulmonologist, Dr. Doty, testified extensively in his deposition that, in his opinion, appellant's lung disease was caused by his employment and that most likely the CTR employment contributed. However, on page 88 of his deposition, Dr. Doty, on cross-examination, testified the CTR employment "could have contributed." Respondents cite this one line answer in support of its contention that Dr. Doty's testimony does not support causation generally.

However, the issue is not whether the CTR employment, alone, caused appellant's lung disease. The issue is whether appellant's lung disease was caused by his employment generally, and if so, whether the CTR employment is of a kind contributing to the disease.

This argument is what caused the Commission's Order to be affected by an error of law in requiring the appellant to prove the disease resulted solely from the employment with CTR.

III. CONCLUSION

All of the competent, probative, reliable and substantial evidence establishes that appellant has sustained an accidental injury and occupational disease and that the respondents are liable for the payment of workers' compensation benefits under the Act.

The Order of the South Carolina Workers' Compensation Commission should be reversed and the case remanded to the Commission for a determination of applicable benefits.

Respectfully submitted,



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April 23, 2014

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COMMISSION

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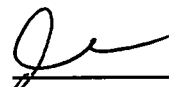
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PROOF OF SERVICE

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In accordance with SCRAP 203 (d) (2) (B) (i), I certify that I have served the Appellant's Reply Brief on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, on April 23, 2014 addressed to their attorney of record, Jason A. Griggs, at his office at 872 S. Pleasantburg Drive, Greenville, South Carolina 29607.

April 23, 2014



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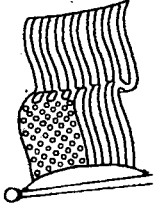
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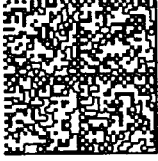
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**SC Court of Appeals**

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