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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Letitia H. Verdin, Circuit Court Judge

RECEIVED

APR 25 2014

SC Court of Appeals

Appellate Case No.: 2013-001892

Trial Court Case No.: 2013-CP-2305822

South Carolina Second Injury Fund.....Appellant,

v.

Specialty Risk Services.....Respondent.

**NOTICE OF MOTION AND MOTION OF RESPONDENT, SPECIALTY RISK SERVICES, REQUESTING APPELLANT SUPPLEMENT RECORD BY ADDING MATTERS IMPROPERLY EXCLUDED FROM THE RECORD ON APPEAL**

TO: JENNY ABBOTT KITCHINGS, CLERK OF COURT OF THE SOUTH CAROLINA COURT OF APPEALS; AND LATONYA DILLIGARD EDWARDS, ESQUIRE, ATTORNEY FOR SOUTH CAROLINA SECOND INJURY FUND, APPELLANT.

Pursuant to Rule 240, Specialty Risk Services [hereinafter "Respondent"] hereby files a Motion respectfully requesting that Appellant supplement the Record on Appeal to include the following documents which had been previously identified and designated in Respondent's matters to be included in the Record on Appeal:

1. Decision and Order of Commissioner Avery Wilkerson dated February 18, 2011; and

2. South Carolina Workers' Compensation Commission's hearing transcript dated January 14, 2011 with regard to Commissioner Wilkerson's hearing as referenced above.

The South Carolina Second Injury Fund [hereinafter "Appellant"] filed the Record on Appeal on April 11, 2014. After filing of the Record on Appeal, the undersigned received Appellant's Initial Brief and Record on Appeal on April 16, 2014. After reviewing the Record on Appeal, the undersigned confirmed that the Decision and Order of the South Carolina Workers' Compensation Commissioner, Avery Wilkerson, and the Transcript of Record from that hearing were not a part of the record. Respondent argues that the exclusion or omission of the Decision and Order and Hearing Transcript is improper.

First, in Respondent's pleading seeking Second Injury Fund reimbursement, a Form 54 was completed providing Appellant with Notice that the underlying disability claim had been concluded by an award of the Commission dated March 10, 2011 (R. p. 102). The award of Commissioner Wilkerson ordering that Tunde Quarles, Employee/Claimant, be paid permanent and total disability compensation benefits is a matter of public record. In fact, the Decision and Order had been provided to The Fund prior to or at the time of filing of the Form 54.

Second, the Findings and Conclusions of Commissioner Wilkerson's Order from which reimbursement is sought was argued at the hearing before Commissioner Barden on August 24, 2011. Specifically, Commissioner Barden was apprised in arguments made by the undersigned that Commissioner Wilkerson had promulgated an Order on

March 10, 2011, adjudicating Tunde Quarles permanently and totally disabled (R. p. 45, lines 17-25; p. 26, lines 1-3; and pp. 49-50, lines 1-2). Reimbursement sought stems from Commissioner Wilkerson's award of permanent and total disability benefits and lifetime medical treatment.

Third, the Order and the Transcript of Record with regard to the underlying hearing held by Commissioner Wilkerson was made a part of this record involving the Second Injury Fund (R. p. 17, Stipulation No. 4; and R. p. 43, lines 15-22). Because the request for Second Injury Fund reimbursement is predicated upon benefits paid in the underlying claim, it is logical to include Commissioner Wilkerson's Decision and Order, along with the Hearing Transcript in the Record on Appeal, is a part of the Record on Appeal. This fact is further corroborated by the Commission's use of the same WCC File No. 0408336 in both the underlying merits hearing and in the claim for Second Injury Fund reimbursement.

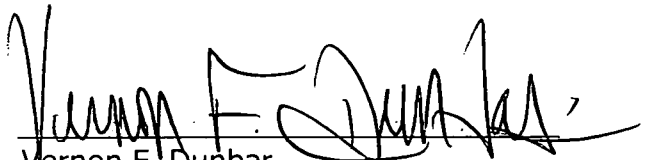
Fourth, Commissioner Wilkerson's Order was referenced by the Appellate Panel's Decision and Order dated June 5, 2012 (R. pp. 3-14). The Order of the Appellate Panel reversed Commissioner Barden's Order denying reimbursement from the South Carolina Second Injury Fund (R. pp. 5 and 9).

Last, Commissioner Wilkerson's Decision and Order was referenced in Respondent's Brief and Memorandum of Law to the Circuit Court by specific reference on Page 2 as set forth below:

**By order dated March 10, 2011, Commissioner Avery B. Wilkerson, Jr., adjudicated [Ms. Szabo] permanently and totally disabled. (Decision & Order, p. 12, March 10, 2011). Commissioner Wilkerson found that the combination of [Ms. Szabo's] non work-related injuries, i.e., depression, as well as her hypothyroidism and Raynaud's disease combined with the cervical spine and upper extremity injuries to render her permanently and totally disabled. (Decision & Order, p. 12, March 10, 2011).**

WHEREFORE, despite the Decision and Order and transcript of record being made a part of the Commission's Record throughout the Appellate process, Appellant has elected to exclude or omit these documents from the Record on Appeal. Thus, it is respectfully submitted that this Court promulgate an Order directing Appellant to include the aforesaid records in the Record on Appeal in accordance with Appellate Court Rule 212.

Respectfully submitted,

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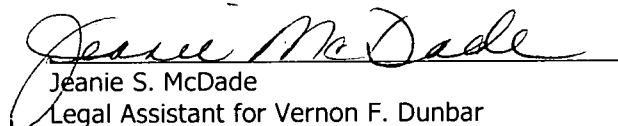
**PROOF OF SERVICE**

I certify that I have served the Notice of Motion and Motion of Respondent, Specialty Risk Services, Requesting Appellant Supplement Record by Adding Matters Improperly Excluded from the Record on Appeal on the attorney of record for Latonya Dilligard Edwards, by depositing a copy of it in the United States Mail, postage prepaid, on the 23rd day of April, 2014 addressed to her attorney of record,

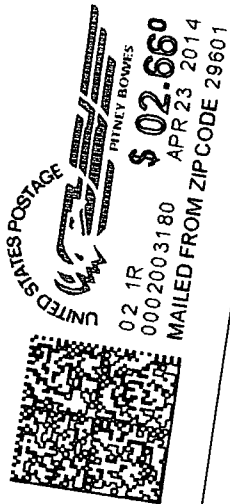
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April 23, 2014

  
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