THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

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SC Court of Appeals

Case No.: 2012-CP-10-6355

Anita Chaudhari, Deceased Employee, and
Dharmendra Chaudhari, Claimant, ... Respondents

v.

Avni Grocers, Employer/Defendant and the South Carolina Uninsured Employer's Fund
of whom the South Carolina Uninsured Employer's Fund is the . . . . . .Appellant,

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Case No.: 2012-CP-10-6357

Virendra Puniyani, Deceased Employee, and
Rajkumari Puniyani, Claimant, ...Respondents,

v.

Avni Grocers, Employer, and South Carolina
Uninsured Employers' Fund, Carrier, ...
Defendants,

of whom
South Carolina Uninsured Employer's Fund, Carrier, is the . . . . . .Appellant

The Uninsured Employer's Fund oppose the Respondents' request to consolidate and expedite these case.

Respondents imply that the Fund has been intentionally delaying a final outcome in these matters. These matters do have a long procedural history. These cases arise upon the filing of Forms 52 in 2005. The Claimants, in their Forms 52, alleged that the Employer was Avni Grocers, who was uninsured. Following the Claimants' filing of the Form 52, an investigation was conducted by the SCWCC Division of Coverage and Compliance. A Rule to Show Cause hearing to determine whether the employer was required to have an insurance and whether it was subject to jurisdiction from the Commission was scheduled, however, the Department of Coverage and Compliance stated that costs precluded it from publishing to locate the employer and, therefore, no Rule to Show Cause hearing was held. Counsel for the Claimant was advised by the Department of Coverage and Compliance that he bore the burden of proof in showing that the employer was subject to the Act, and, at a minimum, the Claimant would be required to present the Commission with evidence establishing jurisdiction over the employer.

These matters went forward to a hearing before the Single Commissioner on January 4, 2006. At the hearing, counsel for SCUEF objected to venue and jurisdiction, arguing, among others matters, that SCUEF lacked proper notice and that the Employer was not subject to the Workers' Compensation Act. Jurisdiction can be raised at any

level and *sua sponte* by the court. Jurisdiction cannot be waived by any act or admission of the parties. *State v. Dudley*, 354 S.C. 514, 581 S.E.2d 514 (Ct. App. 2003). Respondents claims that they were some how prejudiced when jurisdiction was raised at the time of the hearing is without merit. Following the hearing, Commissioner Huffstetler issued orders on February 15, 2006. In his Findings of Fact, Commissioner Huffstetler found that the Claimants failed to produce substantial evidence showing that Avni Grocers regularly employed four (4) or more employees so as to be subject to the Workers' Compensation Act. He also found that the Claimants were given an opportunity to agree to a postponement of the hearing, but did not do so. He found that there was not substantial evidence that the employer regularly employed four (4) or more employees. Therefore, the Commission did not have jurisdiction to make a determination; and that the Claimant failed to meet his burden of providing entitlement to benefits under the Act. The Commissioner ordered that the claim of the Claimant was denied.

Despite the allegations, by the Respondents that the Fund did little to no work on these cases, the Respondents had the burden of proof at the initial hearing to prove that the employer had 4 or more employees and failed to meet that burden. Respondents were well aware that this was their burden. The Single Commissioner found that the Respondent's failed to meet this burden and this was later affirmed by the Full Commission. For whatever reason, Respondents did not attempt to locate the

owner Avni Grocers until after the initial hearing.

After the ruling of the circuit court, this matter was appealed to the Court of Appeals but that appeal was dismissed as it was ruled that the circuit court's order was interlocutory. Because the initial appeal to the Court of Appeals was ruled to be interlocutory, it has taken this long for the appeal to be heard as the case had to once again go through worker's compensation appeals process.

Respondents also allege that the brief and record on appeal in Chaudhari has not been perfected. This is an incorrect statement as final briefs and the record have been filed in this case.

The reasons given by the Respondents to expedite and consolidate these cases are not factually correct and despite the allegations of the Respondents, Appellants have not been trying to delay the resolution of the case. Therefore, the Respondents' Motions should be denied.

Margaret M. Urbanic, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492
(843) 577-2026
Attorney for Appellants

Dated: ~~March~~ April 24, 2014.