

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Op. No. 5185 (S.C.Ct.App. filed November 27, 2013)

Hector G. Fragosa, Employee/Claimant, Petitioner,

v.

Kade Construction, LLC, Employer, and Key Risk Management Services, Inc., Carrier,
..... Respondents.

PETITION FOR A WRIT OF CERTIORARI

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SC Court of Appeals

INDEX

Certificate of Counsel 3

Questions Presented 3

Statement of the Case 3

Statement of the Facts 5

Arguments 10

 1. The Petition should be granted because the inconsistency in the Commission's findings is an error of law requiring reversal rather than remand.. 10

 2. The Decision of the Court of Appeals is immediately appealable because it is controlled by an error of law. 14

 3. The Commission erred to the extent it relied on the statement in Dr. Wagner's report that "Follow-up structural and functional studies (i.e. EEG, CT and MRI) have been read as unremarkable demonstrating structural resolution of the work-related injury." 15

Conclusion 17

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on March 31, 2014.

QUESTIONS PRESENTED

1. Whether the Commission's factual findings that Petitioner suffered a "46% permanent impairment to the whole person for a traumatic brain injury" and "is permanently and totally disabled" meet the statutory requirements for lifetime compensation for physical brain damage under Section 42-9-10 (C).
2. Whether a decision of the Court of Appeals remanding a case back to the Commission is immediately appealable when the decision is based on an error of law.
- 3.. Whether the Court of Appeals erred in holding that the Workers' Compensation Commission "did not err in relying on the opinion of [a neuropsychologist] when a neuropsychologist's expertise does not extend to reading and interpreting EEGs, CTs and MRIs.

STATEMENT OF THE CASE

This workers' compensation appeal arises out of an accident suffered by the Appellant, Hector Fragosa, on November 1, 2007. Fragosa's Employer, Kade Construction, LLC, and its Carrier, Key Risk Management Services, Inc., accepted liability and began providing benefits. Employer and Carrier are the Respondents in this appeal.

On March 25, 2011, Respondents filed a Form 21 (Employer's Request for Hearing) seeking to terminate temporary compensation.

Appellant filed a Form 50 (Request for Hearing) on April 8, 2011, alleging he was entitled to lifetime compensation and medical treatment due to permanent and total disability accompanied by physical brain damage. [R. p. 27]. Respondents timely filed a Form 51 (Employer's Answer to

Request for Hearing) on April 19, 2011. Respondents admitted the work injury, but denied Fragosa sustained injuries to the extent alleged in the Form 50. [R. p. 29].

The Workers' Compensation set the hearing on the Forms 21, 50 and 51.

The hearing was held on June 28, 2011, before Commissioner Avery B. Wilkerson. The primary issue in dispute was whether Hector Fragosa was permanently and totally disabled with physical brain damage.

Commissioner Wilkerson issued an Order on November 21, 2011, Fragosa: "has not suffered a physical brain injury and is not entitled to lifetime compensation benefits under the South Carolina Workers' Compensation Act." [R. p. 13-14, Conclusion of Law 3] He found as a fact that "based on the greater weight of the evidence, I find there has not been a physical brain injury as it does not meet the criteria established under the South Carolina Workers' Compensation Act. This award is made under 42-9-30 and 42-9-10 and physical brain damage does not apply." [R. p. 13, Finding of Fact 18]. He further found "Under 42-9-30 and Reg. 67-1101, the Claimant's multiple impairment ratings to his right lower extremity, left upper extremity, head and inner ear render the Claimant permanently and totally disabled." [R. p. 13, Conclusion of Law 2]

Fragosa timely appealed to the Appellate Panel of the Full Commission on December 5, 2011. [R. p. 25-26]. Oral argument was held before the Appellate Panel on March 19, 2012. The Appellate Panel affirmed the Single Commissioner's Order on May 23, 2012. [R. p. 16-24].

Fragosa timely appealed to the South Carolina Court of Appeals on June 18, 2012. Oral arguments were heard by the court on October 10, 2013. On November 27, 2013, the court of appeals issued a published opinion which affirmed in part and remanded. The court remanded the case back to the Commission for further findings because "it is unclear whether the Appellate Panel

found these injuries included an injury to the brain.” Fragosa v. Kade Construction, LLC, Op. No. 5185 (S.C.Ct.App. filed November 27, 2013)(Shearouse Adv.Sh. No. 50 at 82).

Fragosa timely filed a Petition for Rehearing and Rehearing en Banc on December 12, 2013. The Court of Appeals denied the Petition on March 31, 2014. [Appendix p. 26].

This Petition for Writ of Certiorari followed.

STATEMENT OF THE FACTS

Hector Fragosa is 32 years old and originally from Mexico where he obtained the equivalent of a middle school education. He does not speak English and testified through a Spanish interpreter.

On November 1, 2007, Fragosa was working on a construction project for the Employer in Marion, South Carolina. Fragosa was on the roof of a parking garage. He was hit in the head with part of a construction crane which fell onto him knocking him off the roof and onto the ground.

He was transported to MUSC by helicopter. Fragosa was hospitalized for one month following his accident – the first two weeks of which he was in a coma. He has no memory of the accident.

Fragosa suffered numerous injuries, to wit (drawn from the discharge summary at MUSC):

1. Subdural and epidural hematomas.
2. Bilateral frontal contusions.
3. Respiratory failure.
4. Hypotension that was treated with intravenous fluid.
5. Scalp laceration with large complex, status post repair.
6. CT and T1 spinous process fractures.
7. Right rib fractures which include 7, 8, 9, 10.
8. Bilateral transverse process fractures of L1 and L2, right L3.
9. Right big toe fracture.
10. Right fifth toe fracture.
11. Fracture of skull, midline to sagittal through frontal and parietal.
12. Placement of percutaneous endoscopic gastrostomy.
13. Tracheostomy.

14. Status post amputation of 2nd through 5th toes. [R. p. 418].

The specific diagnoses related to physical brain damage are (1) skull fracture; (2) open complex scalp wound with epidural and subdural hematoma; and (3) bilateral frontal contusions. [R. p. 418]. The attending physician at MUSC documented dramatic evidence of physical brain damage, reporting: “This patient incurred a large fracture through the skull, apparently it is open, with subdural and epidural fluid collections.” [Claimant’s APA, page 1].

While in the hospital, Fragosa required a “percutaneous endoscopic gastrostomy tube for continued enteral feeds and nutritional support.” [R. p. 172]. The surgeon who implanted the tube, Dr. Stuart Leon, noted: “The patient sustained several injuries, the most significant of which was a closed-head injury with an epidural hematoma. **This injury has left Mr. Gomez neurologically devastated.**” [R. p. 172].

The Employer accepted Fragosa’s claim and began providing benefits, including treatment from a neurologist, Dr. George Sandoz. Dr. Sandoz made numerous statements throughout his medical records confirming the physical brain injury – ultimately confirming that Fragosa had suffered physical brain damage.

On October 10, 2008 – nearly a year after the accident – Fragosa presented to Dr. Sandoz “with the complaint of dizziness [and] spells that suggest that the patient is having seizures . . . From the evidence of the brain, this was reviewed by me and it suggest that there is a **right temporal lobe injury.** [R. p. 222 (emphasis added)].

Several weeks later on October 24, 2008, Dr. Sandoz reported, “This has been worked up and has shown no evidence of any seizure and nor any evidence of any damage of the brain. **Despite that review of the MRI shows some mild abnormality in the temporal lobe.**” [R. p. 224(emphasis

added)].

On November 25, 2008, Dr. Sandoz noted, "The patient is a very complex white male who appears to have **traumatic brain injury**." [R. p. 227 (emphasis added)].

On January 6, 2009, Dr. Sandoz recorded, "The patient presented here status **post work-related injury where he had a traumatic brain injury** with the description that the patient suffer. At this moment, the **headaches appear to be chronic, posttraumatic in nature**." [R. p. 229 (emphasis added)].

Six months later on June 2, 2009, Doctor Sandoz continued with the diagnosis of: "**Intracranial injury** of other and unspecified nature." [R. p. 236]. The next day he wrote a letter confirming the brain injury and assigning a 20% impairment rating per the 6th Edition of the AMA Guide: "seen by MUSC Orthopaedics for cervical and lumbar injury as well for a **traumatic brain injury**. . . . From the traumatic brain injury, the patient's impairment rating is of 20% as noted on the table 13-8." [R. p. 237].

On a followup visit on July 7, 2009, Dr. Sandoz noted the specific problems resulting from the brain injury: "The patient is a 28-year old male with traumatic brain injury, headache, dizziness, difficulty with complex tasks." [R. p. 239].

On August 20, 2009, Dr. Sandoz wrote a detailed explanation of Fragosa's impairment and total disability as it relates specifically to the brain injury:

Mr. Fragosa is a patient of mine who I have seen since 09/16/2008 secondary to a **traumatic brain injury** on 11/01/2007. He ____ for a **traumatic brain injury**. **At this moment from the injury that the patient has suffered, he is totally and permanently disabled**. After the evaluation of the AMA Guidelines, Guides to Evaluation of the Permanent Impairment Rating, fifth edition as in table 13-5, the patient has a 29% of whole person. Superimposed to this is associated with the headaches that the patient has presented and this correlates to 2% impairment of the

whole body. From the standpoint of the dizziness, the patient has 10% impairment of the whole person. Utilizing a combined value chart, this is a 46% impairment of the whole body. This does not attend to the damage that the patient has suffered from his neck and back as well for his foot. [R. p. 242 (emphasis added)]

Table 13-5 is the chart for “Clinical Dementia Rating.” [AMA Guides to Permanent Impairment (5th Edition), page 320]. The 29% whole person rating for the brain injury reflects an “impairment [which] requires direction of some activities of daily living.” Id.

Dr. Sandoz was deposed on August 6, 2010. He confirmed, “This is not a concussion, this is an injury suffered to the brain. . . . That’s why traumatic brain injury is the preferred term. . . . [The difference is the] concussion should resolve.” [R. p. 320, lines 12-19]. He further testified that it is called a traumatic brain injury “Because there’s been some damage and injury to the function of the brain.” [R. p. 320, lines 20-24].

On March 10, 2011, Dr. Sandoz removed all doubt regarding his opinions by answering “YES” to the question “to a reasonable degree of medical certainty whether Mr. Fragosa has suffered physical brain damage that has rendered him totally and permanently disabled.” [R. p. 286].

Defense counsel arranged an evaluation with Dr. Mark Wagner, a neuropsychologist. The evaluation took place on October 30, 2008. Dr. Wagner’s report is replete with observations of physical brain injury – both the fact of the physical brain injury and the cognitive deficits resulting from that injury. He notes:

[Mr. Fragosa] had a very serious work-related injury resulting in trauma to his body and skull. He had a skull fracture with acute underlying minor structural change to the brain. . . . He has persisting cognitive complaints. While he has had excellent neurologic recovery, it is probably that he is exhibiting symptoms of postconcussive syndrome.¹ The cognitive findings while mostly normal, do contain abnormal

¹Post-concussion syndrome is a set of symptoms that a person may experience for weeks, months, or occasionally up to a year or more after a concussion—a mild form of traumatic brain

findings largely in the domain of complex attention and concentration. In addition, he may have some element of decreased intellectual efficiency, although this was not measured. [R. p. 299].

Included in the above description was the incidental statement that: "Follow-up structural and functional studies (i.e. EEG, CT and MRI) have been read as unremarkable demonstrating structural resolution of the work-related injury." [R. p. 299].

Fragosa was also evaluated by Dr. Robert Brabham, a psychologist and certified brain injury specialist, on October 27, 2010. [R. p. 272-285]. Dr. Brabham concluded:

*With the passage of time, now more than 2.5 years after his injuries, behavioral and cognitive changes have persisted, as will be noted, sufficient to conclude that the brain injuries he sustained, described as post-concussion injuries in multiple records, has resulted in continuing and severe symptoms clearly associated with a **physical traumatic brain injury**, the result of his on-the-job injuries.* [R. p. 272 (Italics in original; bold added)].

Dr. Brabham further opined: "to a high degree of professional certainty . . . he has experienced a (Physical) Traumatic Brain Injury and must be expected to permanently remain, unable to engage in full-time gainful, competitive employment as a result of his medical conditions resulting from his on-the-job injuries in November 2007. [R. p. 283-284].

As of the June 28, 2011 trial, Fragosa still suffered from daily headaches, dizziness, short and long term memory deficits, cognitive deficits, and buzzing in both ears – all of which resulted from the physical brain injury. [R. p. 79, line 5-page 83, line 16]. He remains physically and mentally incapable of returning to any kind of work that he has ever done. [R. p. 90, lines 12-15].

ARGUMENT

injury. The condition can cause a variety of symptoms: physical, such as headache; cognitive, such as difficulty concentrating; and emotional and behavioral, such as irritability. Continuing symptoms confirm the presence of physical brain damage.

1. The Petition should be granted because the inconsistency in the Commission's findings is an error of law requiring reversal rather than remand.

In 2013, the South Carolina Supreme Court issued two landmark opinions addressing “physical brain damage” in workers’ compensation cases. In Sparks, the Court held “we conclude that ‘physical brain damage’ as used in § 42-9-10(C) is physical brain damage that is both permanent and severe.” Sparks v. Palmetto Hardwood, Op. No. 27229 (S.C. Sup. Ct. filed May 22, 2013) (Shearouse Ad. Sh. No. 23 at 40). In Crisp, the Court further explained that entitlement to lifetime compensation was predicated on “brain damage so severe that the person could not subsequently return to suitable gainful employment.” Crisp v. SouthCo Inc., 738 S.E.2d 835, 401 S.C. 627 (2013).

Even though the Court has now defined “physical brain damage,” the Court has not yet reached a case applying the “permanent and severe” standard. In Crisp, the issue was not ripe because “the Commission’s order manifests a clear intention to delay a permanency finding with respect to Petitioner’s brain injury because Petitioner had not yet reached MMI . . .” Crisp. And in Sparks, although Sparks had reached maximum medical improvement (MMI), the Court affirmed the Commission’s finding that “Claimant has failed to carry his burden of proof to establish physical brain damage as contemplated by S.C.Code Ann. § 42-9-10.” Sparks.

This case squarely presents the issues left unanswered by Sparks and Crisp. As such, it is ripe for analyzing how the test for physical brain damage is applied in real life.

Fragosa has reached MMI. He suffered severe permanent physical brain damage – sufficiently severe for the Commission to find “That the Claimant sustained a 46% permanent impairment to the whole person for a traumatic brain injury as stated by Dr. George M. Sandoz in his August 20, 2009 letter.” [R. page 22, Finding of Fact 8]. The Commission further found “that

the Claimant is permanently and totally disabled and is unable to return to any type of work that he has performed in the past.” [R. page 22, Finding of Fact 9]. These twin findings plainly meet the permanent and severe standard.

Despite these findings – and the evidence supporting them – the Commission inexplicably concluded “there has not been a physical brain injury *as it does not meet the criteria* established under the South Carolina Workers’ Compensation Act.” [R. page 23, Finding of Fact 18 (emphasis added)]. Unlike the other two findings, this is not a finding of fact – it is a conclusion of law. More specifically, it is the application of Finding of Facts 8 and 9 to the law – as the law was understood prior to Crisp and Sparks.

The criteria relied on by the Commission was the supposed, albeit erroneous, requirement that *physical brain damage* must be visible on MRI or CT scans – as had been argued below by Respondents. The Commissioners plainly believed this was the dispositive criterion.² At the time, their belief was not wholly unreasonable as the Supreme Court had not yet addressed the issue. Now that Crisp and Sparks have rejected “use of a specific diagnostic tool in proving these medically-technical brain injury cases,” the Commission’s conclusion is affected by an error of law and must be reversed. Cf. Burnette v. City of Greenville, 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012)(“the medical opinion of the single commissioner, adopted by the Commission,” is not evidence and cannot form the basis of a finding).

The issues were confounded further when the Court of Appeals declined to reverse, instead

²At oral argument before the Appellate Panel, Commissioner McCaskill asked Respondents’ counsel, “As I understand what you’re saying if it is a physical brain injury you’ve got to be able to see it.” Counsel responded affirmatively, stating “That is our position there would be some physical change that something would pick up on a Scan . . .” [R. Page 16, lines 11-17].

remanding the case back to the Commission because “it is unclear whether the Appellate Panel found these injuries included an injury to the brain.” Fragosa v. Kade Construction, LLC, Op. No. 5185 (S.C.Ct.App. filed November 27, 2013)(Shearouse Adv.Sh. No. 50 at 82). The court perceived a conflict that did not exist when it paraphrased the Commission’s order: “However, in finding of fact #18, the Appellate Panel found Fragosa did not suffer a brain injury.” Id.

The Commission found as a fact “That the Claimant sustained a 46% permanent impairment to the whole person for a traumatic brain injury as stated by Dr. George M. Sandoz in his August 20, 2009 letter.” [R. page 22, Finding of Fact 8]. This is plainly a finding that Fragosa sustained permanent damage to the brain. There is nothing at all ambiguous about it. “A permanent impairment, by definition, lasts for a lifetime.” James v. Anne’s Inc., 701 S.E.2d 730, 736, 390 S.C. 188 (2010). Impairment ratings are not made until the injured person reaches maximum medical improvement. “Maximum medical improvement is a term used to indicate that a person has reached such a plateau that in the physician’s opinion there is no further medical care or treatment which will lessen the degree of impairment.” O’Banner v. Westinghouse Elec. Corp., 319 S.C. 24, 28, 459 S.E.2d 324, 327 (Ct. App. 1995). There is also no doubt that 46% to the whole person is a significant permanent impairment.³ This finding satisfies the requirement that the brain damage be permanent and severe.

The Commission went on to find “That, after considering the Claimant’s multiple impairment

³The finding itself is amply supported by substantial evidence. Much of the impairment is based on a “Clinical Dementia Rating” correlating to an “impairment [which] requires direction of some activities of daily living.” [AMA Guides to Permanent Impairment (5th Edition), page 320]. In the description of the rating, Dr. Sandoz specified it was “for a traumatic brain injury. At this moment from the injury that the patient has suffered, he is totally and permanently disabled.” [R. Page 242].

ratings, we find that the Claimant is permanently and totally disabled and is unable to return to any type of work that he has performed in the past.” [R. page 22, Finding of Fact 9]. This finding meets the second part of the test – “brain damage so severe that the person could not subsequently return to suitable gainful employment.” *Id.* at 843. There is nothing ambiguous in this finding either. Indeed, Respondents concede Fragosa is permanently and totally disabled. The reference to “multiple impairment ratings” – of which the 46% for traumatic brain injury is by far the most significant – confirm that the brain damage rendered Fragosa unemployable. See Pearson v. JPS Converter & Indus. Corp., 489 S.E.2d 219, 327 S.C. 393 (Ct. App. 1997), *cert. denied*, (February 5, 1998)(“the statute only requires that a claimant be totally and permanent disabled and suffer physical brain damage as a result of the injury.”).

Once the Commission made findings meeting the physical brain damage definition set out in Crisp and Sparks, it was an error of law to conclude Fragosa did not meet the criteria for lifetime compensation. The Court of Appeals erred in remanding the case. A remand was unneeded. The proper ruling was to hold that under the established facts, Fragosa had proven physical brain damage as a matter of law. “[T]he guiding principle undergirding our workers’ compensation system [is] that the Act is to be liberally construed in favor of the claimant. The second is the equally compelling evidentiary principle that an award may not rest upon surmise, conjecture, or speculation.” Hutson v. S.C. State Ports Authority, 399 S.C. 381, 732 S.E.2d 500 (2012).

The issues presented in this case are sufficiently novel and important to our State’s public policy that they warrant a full analysis by our highest court. As such, Petitioner respectfully requests that this Court grant his Petition for Writ of Certiorari and reverse the decisions below.

2. The Decision of the Court of Appeals is immediately appealable because

it is controlled by an error of law.

The Court of Appeals remanded “for clarification regarding the existence of a physical brain injury.” Fragosa v. Kade Construction, LLC, Op. No. 5185 (S.C.Ct.App. filed November 27, 2013)(Shearouse Adv.Sh. No. 50 at 83). As argued above, *supra* pages 10-13, the decision to remand was erroneous and unnecessary. The Commission made an error of law; our appellate courts exist to correct errors of law. Atlantic Coast Builders and Contractors, LLC v. Lewis, 722 S.E.2d 213, 396 S.C. 479 (2011)(“it is axiomatic that we sit to correct errors of law”).

A remand serves no purpose in this case. Workers’ compensation cases can be remanded for further proceedings for two possible reasons: (1) when the order is insufficiently detailed for appellate review; or (2) when the Commission must address issues not reached in the original order. See Brayboy v. Clark Heating Co., Inc., 306 S.C. 56, 409 S.E.2d 767 (1991)(impossible for court to determine basis of Commission’s conclusion where Commission failed to make specific, express findings of fact on conflicting evidence); Bone v. U.S. Food Service, 744 S.E.2d 552, 404 S.C. 67 (2013)(“An order as to compensability, without addressing the claimant's current medical status and specific benefits to be awarded, is not a final judgment disposing of the entirety of the action and leaving nothing further to be done but execution of the judgment.”).

Neither situation applies here. The key factual findings (# 8 and #9) are clear, detailed, and supported by substantial evidence. The Court need only correct the error of law in finding #14. Once that error is corrected, nothing further needs to be done by the Commission. As such, the decision below is a final judgment which is appealable to this Court. See Shatto v. McLeod Regional, Op. No. 27341 (S.C. filed December 18, 2013)(Shearouse Adv.Sh. No. 53 at 16).

3. **The Commission erred to the extent it relied on the statement in Dr. Wagner's report that "Follow-up structural and functional studies (i.e. EEG, CT and MRI) have been read as unremarkable demonstrating structural resolution of the work-related injury."**

Respectfully, Petitioner asks the Court to review the holding below with regards to Dr. Wagner's report. The specific error by the Commission was to make a finding of fact based on a mere observation by Dr. Wagner – an observation he was not qualified to make. Thus, while an expert can refer incidentally to various records in his report, he cannot base his opinion on matters outside his expertise. The Court of Appeals held:

As a neuropsychologist, Dr. Wagner is able to consider the diagnostic studies and findings of other doctors in the formation of his opinion. Thus, the Appellate Panel did not err in relying on the opinion of Dr. Wagner.

Fragosa v. Kade Construction, LLC, Op. No. 5185 (S.C.Ct.App. filed November 27, 2013)(Shearouse Adv.Sh. No. 50 at 83).

Neuropsychologists are qualified to testify as experts on physical brain damage *as shown* by neuropsychological testing. In this case, Dr. Wagner's testing confirmed the existence of cognitive deficits due to "structural change to the brain." The comment about the imaging studies "demonstrating structural resolution of the work-related injury" is not an opinion about physical brain damage, nor could it be as Dr. Wagner is not qualified to interpret or opine on imaging studies. Dr. Wagner never explicitly opined on physical brain damage one way or the other (nor did he ever state his opinions to a reasonable degree of medical or neuropsychological certainty). See Hutson v. South Carolina State Ports Authority, 732 S.E.2d 500, 399 S.C. 381 (2012)(reversing Appellate Panel's conclusion as based on "rank speculation"). The only inference which can be drawn from his report is that Fragosa suffers persistent cognitive deficits due to the brain damage, thus

supporting Fragosa's claim of physical brain damage.

This is not to suggest that the Commission cannot rely on neuropsychologists for determining the existence of physical brain damage. Most definitely it can: "there are essentially three ways to determine whether a person has sustained physical brain damage: (1) CT or MRI scanning; (2) cognitive behavioral level of functioning; and (3) neuropsychological testing." Crisp v. SouthCo Inc., 738 S.E.2d 835, 401 S.C. 627 (2013).

What the Commission cannot do is base a finding on a neuropsychologist's paraphrase of a radiologist's interpretation of an MRI scan. A neuropsychologist can base his opinion on cognitive behavioral level of functioning and on neuropsychological testing; not CT or MRI scanning. Id. When the Commission cherry picks isolated tidbits from incidental comments buried within a report from an expert speaking as a layman, the Commission is essentially making its own medical opinions. Such findings must be reversed as unsupported by substantial evidence. Burnette v. City of Greenville, 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012). A conclusion by the Commission "based on rank speculation . . . cannot now be used as the basis for denying [an injured worker's] claim for lost wages. Hutson v. S.C. State Ports Authority, 399 S.C. 381, 732 S.E.2d 500 (2012).

Petitioner respectfully requests that the Court include this issue in its grant of the Petition for Writ of Certiorari.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for Writ of Certiorari and permit further briefing of the issues.

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Respectfully Submitted



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April 30, 2014

VIA HAND DELIVERY

Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

Re: Hector Fragosa v. Kade Construction

Dear Mr. Shearouse:

Enclosed for filing please find the original and six (6) copies of our **Petition for a Writ of Certiorari** in the above-referenced matter along with our check in the amount of One Hundred (\$100.00) Dollars as payment of the filing fee. We have also enclosed two (2) copies of the **Appendix**, one of which is unbound per Rule 267(d).

By copy of this letter and enclosure to Michael Burkett and Gabe Coggiola, we are serving a copy of our **Petition for a Writ of Certiorari** and **Appendix** upon counsel for the Respondents as indicated by the attached Proof of Service. We are also providing a copy of our **Petition for a Writ of Certiorari** to the South Carolina Court of Appeals pursuant to Rule 242(c).

If you have any questions or concerns, please do not hesitate to contact me. Thank you for your consideration.

With kindest regards, I am

Yours very truly,

Stephen B. Samuels

SBS/aro

Enclosure(s)

cc w/encl: Michael W. Burkett, Esquire
J. Gabriel Coggiola, Esquire
Jeffrey C. Chandler, Esquire
✓ Honorable Jenny Abbott Kitchings

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SC Court of Appeals

WE WORK FOR THE PEOPLE WHO WORK.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Workers' Compensation Commission

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v.

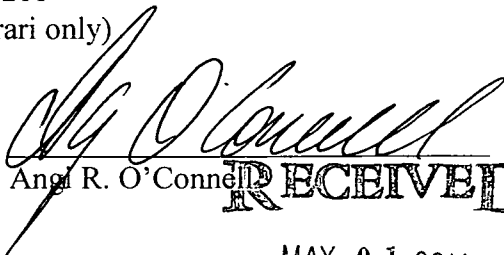
Kade Construction, LLC, Employer, and Key Risk Management Services, Inc., Carrier,
..... Respondents.

PROOF OF SERVICE

I, the undersigned, paralegal to Stephen B. Samuels of Samuels Law Firm, LLC, attorneys for the Petitioner, do hereby certify that I have served one copy of the **Petition for a Writ of Certiorari** and **Appendix**, dated April 30, 2014, first class mail addressed to the parties as indicated below:

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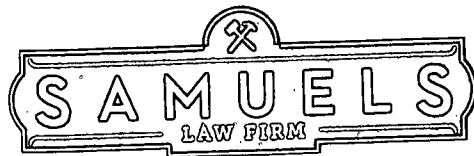
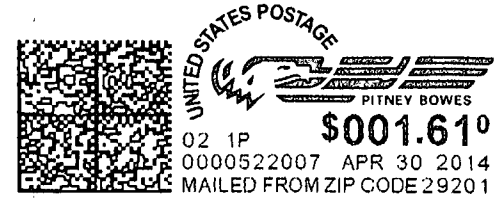
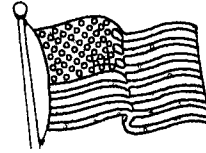
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