

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Ricky D. Kneece,

Plaintiff(s)

CIVIL ACTION COVERSHEET

-CP -

vs.

Kneece Farms,

Defendant(s)

Submitted By: Mark D. Cauthen, Esquire

SC Bar #: 64309

Telephone #: 256-4645

Fax #: 765-1839

Address: PO Drawer 7217
Columbia, SC 29202

Other:

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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case #, Notice/ File MedMal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature: [Signature] Date: May 21, 2012.

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS
)
) WCC FILE NO.: 9920867

C/A NO.: _____

Ricky Kneece,)
)
) Claimant / Respondent,)
)
) vs.)
)
) Kneece Farms,)
)
) Employer,)
)
) and)
)
) Legion Insurance Company in Liquidation)
) through The South Carolina Property &)
) Casualty Insurance Guaranty Association,)
)
) Carrier,)
)
) Defendants / Appellants.)

PETITION FOR JUDICIAL REVIEW

Pursuant to S.C. Code Ann. § 1-23-380 and § 42-17-60, Defendants Kneece Farms and Legion Insurance Company in Liquidation through The South Carolina Property & Casualty Insurance Guaranty Association (hereinafter "Defendants"), hereby appeal the Decision and Order of the Appellate Panel of the South Carolina Workers' Compensation Commission (hereinafter "Appellate Panel") filed on April 19, 2012, a copy of which is attached. The grounds for this appeal are as follows:

1. The Appellate Panel of the Workers' Compensation Commission erred in affirming the Hearing Commissioner's award of lifetime medical benefits under S.C. Code Ann. § 42-9-10 (c), the error being that the Appellate Panel specifically reversed the findings and conclusions of the Hearing Commissioner that Claimant was totally disabled

accompanied by a physical brain injury pursuant to S.C. Code Ann. § 42-9-10 (c) and, therefore, the Claimant is not entitled to lifetime medical benefits under the Act.

2. The Appellate Panel of the Workers' Compensation Commission erred in affirming a Finding that Claimant is entitled to lifetime compensation benefits pursuant to S.C. Code Ann. § 42-9-10(C), the error being that the Appellate Panel specifically reversed the Finding that the Claimant was totally disabled accompanied by a physical brain injury and Claimant is, therefore, not entitled to benefits under S.C. Code Ann. § 42-9-10(C).

3. The Appellate Panel erred in affirming the Finding of the Hearing Commissioner that Claimant is entitled to continuing and future treatment with Dr. Charles Shissias, Dr. Christopher Wicker, Dr. Michael Ugino, Dr. Lawrence Bergmann and Dr. Roger Deal pursuant to S.C. Code Ann. § 42-9-10(C), the error being that the Appellate Panel reversed the award of total disability and Claimant is, therefore, not entitled to medical care pursuant to S.C. Code Ann. § 42-9-10(C).

4. The Appellate Panel erred in affirming the Finding of the Hearing Commissioner that Defendants are responsible for reimbursing Claimant for medical treatment provided by Dr. Ugino, Dr. Shissias, Dr. Wicker, and Dr. White pursuant to S.C. Code Ann. § 42-9-10 (C), the error being that the Appellate Panel determined the Claimant was not totally and permanently disabled under S.C. Code Ann. § 42-9-10(C) and, therefore, Claimant is not entitled to benefits under this section.

5. The Appellate Panel erred in affirming the Finding of the Hearing Commissioner that Defendants are responsible for past or future medical care with Dr. Shissias, Dr. Wicker, Dr. Ugino and Dr. White, the error being that treatment obtained by the Claimant with these providers was unauthorized and obtained without notice to Defendants and, further, that such Finding is not supported by substantial evidence.
6. The Appellate Panel erred in affirming the Hearing Commissioner's Finding that Defendants are responsible for reimbursement of all prescription medications associated with Claimant's treatment to date and, specifically, for such prescriptive drugs found in Claimant's Exhibit 2, the error being that such reimbursement includes (a) medication for unauthorized and unrequested medical treatment, (b) medication for treatment not causally related to Claimant's compensable injuries, (c) is effected by Claimant's own latches in failing to timely request authorization for such prescriptions, and (d) such Finding is not supported by medical evidence in the record.
7. The Appellate Panel erred in affirming a Finding that Defendants are responsible for all prescription medications associated with Claimant's injuries to date, the error being that Claimant failed to raise this issue at a prior hearing before the Commission in January 2005 and, therefore reimbursement for all prescriptions not requested prior to that date are barred by the doctrines of res judicata, collateral estoppel and/or law of the case.
8. The Appellate Panel erred in affirming a Finding that Defendants are responsible for reimbursing Claimant for all mileage incurred to date and, specifically, as set forth in Claimant's Exhibit 1, the error being such Finding is (a) unsupported by substantial

evidence (b) contrary to South Carolina law where such mileage includes travel to providers or pharmacies for unauthorized medical visits including treatment not causally related to Claimant's compensable injuries, or for any reason prior to August 23, 2004, to or from a pharmacy, and (c) the Claimant's failure to request such mileage benefits for a period up to approximately ten (10) years constitutes laches and is prejudicial to Defendants' ability to properly assess and evaluate these requests, and (d) Claimant failed to provide properly itemized reimbursement requests to Defendants.

9. The Appellate Panel erred in affirming a Finding of the Hearing Commissioner that Claimant is entitled to payment of weekly compensation from the date of his November 22, 1999 accident as well as future weekly compensation for Claimant's lifetime pursuant to S.C. Code Ann. § 42-9-10(C) the error being that the Appellate Panel specifically reversed the Findings and Conclusions of the Hearing Commissioner that Claimant was totally disabled with a physical brain injury pursuant S.C. Code Ann. § 42-9-10(C), the Claimant returned to work with earnings equivalent to or greater than at the time of the compensable injury, the Claimant executed a Form 17 in 2005, and such Finding is inconsistent with the Commission's prior Order issued in 2005.
10. The Appellate Panel erred in affirming an award for weekly compensation benefits to the Claimant while failing to address credit for wages/earnings of the Claimant from his date of return to work to the present, the error being that such issue was raised by Defendants in their appeal but not ruled upon by the Appellate Panel.

11. The Appellate Panel erred in affirming a Finding of compensable injuries to Claimant's zygomatic arch, thyroid, scarring and finger, the error being that Claimant failed to allege these injuries in his 2005 hearing before the Commission, failed to notify Defendants of such injuries, and these injuries were not included in the prior Order, therefore, Claimant is barred from asserting said injuries by principles of res judicata, collateral estoppel and/or law of the case, and, further, that evidence in the record does not support this Finding.

12. The Appellate Panel erred in affirming a Finding that Claimant's weight gain and hypothyroidism are causally related to his 1999 head injury, the error being that Claimant failed to notify Defendants of such conditions and sought unauthorized treatment for these conditions without notice to Defendants and such finding is unsupported by substantial evidence in the record.

13. The Appellate Panel erred in affirming a Finding that Claimant's fall and fractured left metacarpal and resulting treatment was causally related to his 1999 accident and claim for benefits, the error being that Claimant failed to notify or request treatment from Defendants for such injury and sought unauthorized treatment on his own and such Finding is unsupported by substantial evidence in the record.

14. The Appellate Panel erred in affirming in part Findings of the Hearing Commissioner relating to Claimant's alleged inability to perform gainful work, inability to maintain employment in a competitive job market and alleged dependence upon benevolent/gratuitous employment offered by Claimant's family, the error being such

Findings are inconsistent with the Appellate Panel's determination that Claimant can operate a "complicated computer operated tractor for 50 hours per week" and is, therefore, not totally disabled accompanied by a physical brain injury, and, further, that such Findings are irrelevant, ambiguous, based upon speculation, and not supported by substantial evidence.

15. The Appellate Panel erred in making the following Statement in the body of the Order:
"After careful review in the instant case, the Commission, by unanimous vote, has determined to affirm in part and reverse in part;" said error being that the Appellate Panel ordered that the decision and Order of the Hearing Commissioner was Reversed and Remanded to the Jurisdictional Commissioner for a decision regarding any permanency to Claimant's brain only pursuant to Regulation 67-1101.
16. The Appellate Panel erred in Finding that "all other Findings of Fact and Conclusion of Law" of the Hearing Commissioner are affirmed; said error being that the appellate Panel ordered that the Findings of Fact and Conclusions of Law made by the Hearing Commissioner were Reversed and the Panel Remanded the claim to the Jurisdictional Commissioner for a decision regarding any permanency to Claimant's brain only pursuant to Regulation 67-1101.
17. The Appellate Panel erred in issuing an Order Finding and Concluding that the Claimant sustained permanent physical brain damage pursuant to the reports of Dr. Waid, Dr. Shissias, Dr. White, and Dr. Smith; said error being that the Appellate Panel's Order clearly states that the Claimant did not sustain a permanent physical brain injury and that he only sustained an injury to the brain pursuant to Regulation 67-1101; moreover, the Appellate Panel ordered that the Decision and Order of the Hearing Commissioner was

Reversed and Remanded the claim to the Jurisdictional Commissioner for a decision regarding any permanency to Claimant's brain only pursuant to Regulation 67-1101.

18. The Appellate Panel erred in Finding and Concluding that there is "essentially no evidence contradicting several doctors finding a physical brain injury"; said error being that the Appellate Panel's Order clearly states that the Claimant did not sustain a permanent physical brain injury and that Claimant only sustained an injury to the brain pursuant to Regulation 67-1101; moreover that the Appellate Panel ordered that all Findings of Fact and Conclusions of Law made by the Hearing Commissioner were Reversed and the Panel Remanded the claim to the Jurisdictional commissioner for a decisions regarding any permanency to Claimant's brain only pursuant to Regulation 67-1101.



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Attorneys for Defendants

Columbia, South Carolina
May 21, 2012.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)
Ricky D. Kneece,)
)
Respondent,)
)
v.)
)
Kneece Farms,)
)
Employer,)
)
and)
)
Legion Insurance Co. in Liquidation)
and The South Carolina Property and)
Casualty Insurance Guaranty)
Association,)
)
Carrier,)
)
Appellants.)

IN THE COURT OF COMMON PLEAS

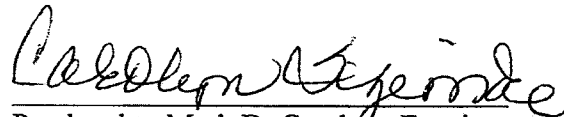
CIVIL ACTION NO.: _____

CERTIFICATE OF SERVICE

I certify that on this date, I served a copy of the Petition for Judicial Review in this action, dated May 21, 2012, on Scott A. Elliott, Esquire, and the South Carolina Workers' Compensation Commission, by placing a true and exact copy of the clocked Petition in properly addressed stamped envelopes, postage prepaid, to the following at the addresses listed below:

Scott Elliott, Esquire
Elliott & Elliott, P.A.
1508 Lady Street
Columbia, SC 29201

South Carolina Workers' Compensation Commission
1333 Main Street, Suite #500
Columbia, SC 29201



Paralegal to Mark D. Cauthen, Esquire
McKay, Cauthen, Settana & Stublely, P.A.
Post Office Drawer 7217
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May 21, 2012

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May 21, 2012

Via Hand Delivery

Ms. Beth Carrigg
Clerk of Court for Lexington County
205 East Main Street
Lexington, SC 29072

RECEIVED
MAY 21 2012
SC Court of Appeals

RE: *Ricky Kneece v. Kneece Farms*
WCC File No: 9920867
Claim No.: L16755

DOI: 11/22/99
Our File No.: 5400-0032

Dear Ms. Carrigg:

Enclosed for filing, please find the original and one copy of a Petition for Judicial Review in the above-referenced matter, along with proof of service, civil cover sheet and the filing fee of \$150.00. Please return a clocked copy of the Petition to our courier.

The appeal is addressed to an Order of the Appellate Panel of the SC Workers' Compensation Commission dated April 19, 2012, a copy of which is also enclosed. Please place this matter on the non-jury roster.

By copy of this letter, we are serving the Petition for Judicial Review on counsel for the Claimant and the Workers' Compensation Commission.

Very truly yours,



Mark D. Cauthen

Cc: Scott A. Elliott, Esquire
S.C. Workers' Compensation Commission
Randy Mason