THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas
R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No.: 2012-207528
Circuit Court Case No.: 2007-CP-14-00150

Diane C. Dingle, (Employee/Claimant),.....Appellant,

v.

Federal Mogul Corporation (Employer) and
Travelers Property and Casualty Company of America, (Carrier),.....Respondents.

RESPONDENTS' RETURN TO APPELLANT'S PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

Respondents, by and through the undersigned attorney, hereby file this Response to Appellant's July 23, 2014 Petition for Rehearing and Rehearing en banc. The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is the purpose of a petition for rehearing to have the case tried in the appellate court a second time. Kennedy v. South Carolina Retirement System, 564 S.E.2d 322, 349 S.C. 531 (S.C. 2001). In this case, the Court did not overlook or misapprehend any evidence or arguments of the Appellant, and the Court appropriately affirmed the Workers' Compensation Commission's denial of Appellant's claim for benefits allegedly resulting from either an accidental injury and/or occupational disease.

I. The Court did not overlook or misapprehend Appellant's argument that the September 25, 2006 circuit court Order of Judge Thomas W. Cooper erred by remanding the matter to the Commission for specific findings of fact and conclusions of law.

In her Petition, Appellant first argues that the Court of Appeals overlooked, misapprehended, or failed to consider the record in finding that the September 25, 2006 circuit court Order of Judge Thomas W. Cooper remanding the matter to the Commission for specific findings of fact and conclusions of law was propoer, since the first single commissioner's order did not mention any basis for an award of benefits other than Appellant's allegation that she incurred an occupational disease. Appellant argues that she did not previously file a Rule 59, SCRCP, motion contesting the circuit court's statement because she contends there is reliable, probative, and substantial evidence in the record supporting the fact that she suffered a compensable injury as a result of either accident under S.C. Code Ann. §42-1-160 (1976) or as a result of occupational disease under §42-11-10, and she so argued.

Appellant is correct that Judge Cooper's Order pointed out the fact that the implicit findings of the Commission were insufficient to support the conclusions reached in the case at the time. Appellant filed her first Form 50 request for a hearing on December 19, 2000. This is clearly past the two year statute of limitations for an injury by accident, which would have run on June 7, 2000. Therefore, the only way the Claimant could have had a compensable claim would be for her to have proven the elements of an occupational disease, and the single commissioner's Order lacked the specific findings to support the elements required for an occupational disease.

Appellant already unsuccessfully tried to make this argument in her final brief to the Court of Appeals and has not pointed to any argument that the Court overlooked, misapprehended, or failed to consider. The Court accurately found that the first single

Commissioner's order was insufficient to support a finding of occupational disease, and a result the remand back to the Commission was proper.

II. The Court did not overlook or misapprehend Appellant's argument and correctly held that the first single commissioner's order was insufficient to support her finding of an occupational disease.

Appellant next argues that the single commissioner's Order and Award makes no finding of an occupational disease, and on the contrary found that "as a result of her injuries, the Claimant was diagnosed with medical conditions..." (R., Vol 1., p. 96). Appellant bases her agument in large part on the fact that record reveals that an oral finding of the circuit court on June 14, 2006 forced the posture of the case into being solely considered as a claim for occupational disease, since the statute of limitations would preclude the claim from being raised as an injury by accident. Although Judge Thomas W. Cooper's September 25, 2006 Order did incorrectly state that the first Form 50 was filed on February 12, 2002 instead of December 19, 2000, that error was harmless there was no actual prejudice to the Appellant. Even if Judge Cooper correctly cited the December 9, 2000 Form 50 as the first of Appellant's filings, the December 9, 2000 Form 50 still falls six months after the 2 year statute of limitations set forth by Workers Compensation Act. Therefore, Judge Cooper was correct that the only way this could have been found compensable would be to meet the elements of an occupational disease, and the single commissioner's order lacked sufficient findings to support the elements of an occupational disease as set forth in Mohasco Corp., Dixiana Div. v., Rising, 289 S.C. 130, 345 S.E.2d 249 (Ct. App. 1986).

Again, Appellant is not raising any points that were overlooked or misapprehended by the Court of Appeals, but is simply trying to argue the same points on appeal for a second time. The

Court of Appeals correctly found that first hearing commissioner's order lacked sufficient findings to support a compensable occupational disease, and the remand to the Circuit Court at that time was proper. Appellant's argument that Judge Cooper's error in using the wrong date for determining that Claimant failed to meet the statue of limitations for an injury by accident is without merit, since the corrected date of Appellant's first filing still fails to meet the two year statute of limitations set for in the Workers Compensation Act.

III. The Court did not overlook or misapprehend any of Appellant's arguments in holding that the all remaining issues were affirmed pursuant to Rule 220(b) SCACR, and S.C. Code Ann. §1-23-380(5).

Finally, Appellant argues that the Court of Appeals should, en banc, have a "fresh look" at the case in light of the error that she finds "permeated the consideration of the claim as to render the final outcome contrary to the intent and purpose of the Workers Compensation Law." Again, Respondents argue that the error referenced by Appellant is a harmless error, since the correct date of Appellant's first filing with the Workers Compensation Commission still fails the two year statue of limitations. Further, Appellant stipulated to an entire new hearing *de novo* on July 15, 2008. At that time, Appellant had every opportunity to take a second chance and argue against any errors she felt were previously made and provide any evidence, including new evidence, necessary to establish a compensable claim as either an injury by accident or an occupational disease, and Appellant simply failed to meet that burden.

Conclusion

For the reasons set forth above, Respondents respectfully request the Court deny Appellant's Petition for Rehearing. Appellant has failed to demonstrate any points that were overlooked or misapprehended by the Court, and instead simply restates the previous arguments made before the Court. Further, Respondents respectfully request the Court deny the petition for

rehearing *en banc*. A hearing or rehearing *en banc* is not favored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Neither of these exceptions applies to the immediate case, and Appellant's petition for rehearing *en banc* should be denied.

Respectfully Submitted,

J. Gabriel Coggiola, Esquire
Candace G. Hindersman, Esquire
Willson, Jones, Carter & Baxley
4500 Fort Jackson Blvd.
Columbia, SC 29209
(803) 782-2520
Attorneys for the Respondents

RECEIVED

AUG 0 4 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas
R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No.: 2012-207528
Circuit Court Case No.: 2007-CP-14-00150

Diane C. Dingle, (Employee/Claimant),.....Appellant,

v.

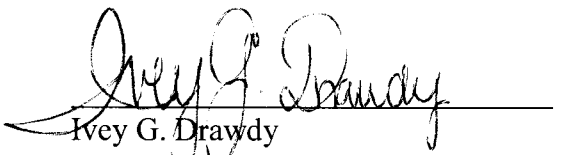
Federal Mogul Corporation, Employer, and
Travelers Property Casualty Company of America, Carrier ..... Respondents.

PROOF OF SERVICE

The undersigned certifies that on August 4, 2014, she served counsel for the Appellant with a copy of **Respondents Return to Petition for Rehearing** by depositing a copy in the United State Mail, postage prepaid, to the following address:

Dwight C. Moore, Esquire,
Moore Law Firm, L.L.C.,
26 North Main Street,
Post Office Box 1229
Sumter, South Carolina 29151-1229.

WILLSON JONES CARTER & BAXLEY, P.A.



Ivey G. Drawdy
Legal Assistant to J. Gabriel Coggiola, Esquire
Attorney for Respondents
4500 Fort Jackson Boulevard
Columbia, SC 29209

August 4, 2014

WILLSON JONES CARTER & BAXLEY, P.A.

ATTORNEYS AT LAW

GREENVILLE CHARLESTON COLUMBIA CHARLOTTE RALEIGH ATLANTA

John Gabriel Coggiola
Direct (803) 227-2889
Fax (803) 782-2527
jgcoggiola@wjlaw.net

4500 Fort Jackson Boulevard
Columbia, SC 29209
www.wjcblaw.net

August 4, 2014

(Hand Delivery)
The Honorable Jenny Abbott Kittchings
South Carolina Court of Appeals
1015 Sumter Street
P.O. Box 11629
Columbia, SC 29211

Re: Diane Dingle vs Federal Mogul Corporation
Appellate Case No.: 2012-207528
WCC File No.: 9831715 DOI: 6/7/1998
Carrier: Travelers Property Casualty Company of America
WJC&B File No.: 0020.04596

Dear Ms. Kitchings:

Pursuant to Rule 240, enclosed for filing please find one original and six (6) copies of the Respondents Return to Petition for Rehearing in the above-referenced matter. I have also enclosed the Proof of Service for the same.

By copy of this correspondence and enclosure, a copy of the Return to Petition for Rehearing is being provided directly to Dwight C. Moore, Appellant's counsel. Thank you for your attention to this matter, and please do not hesitate to contact me if you have any questions or concerns.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.

John Gabriel Coggiola

JGC/jgc
Enclosure
cc: Dwight C. Moore, Esquire