

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Charles B. Simmons, Jr., Special Circuit Court Judge

Case No. 2013-000575

**RECEIVED**

AUG 22 2014

**SC Court of Appeals**

Artemio Alvarez v. Quality HR Services, et.al.  
W.C.C. File No.: X030301  
William Brockman v. Quality HR Services, et.al.  
W.C.C. File No.: X030600  
Martha Burke v. Quality HR Services, et.al.  
W.C.C. File No.: X030681  
Lucille Dwight v. Quality HR Services, et.al.  
W.C.C. File No.: 0326238  
Robert Hunter v. Quality HR Services, et.al.  
W.C.C. File No.: X040142  
Tammy Miller v. Quality HR Services, et.al.  
W.C.C. File No.: X040301  
Patricia Wade-Portee v. Quality HR Services, et.al.  
W.C.C. File No.: 0907616  
Jessie Pringle v. Quality HR Services, et.al.  
W.C.C. File No.: 0327062  
Steven Cameron v. Quality HR Services, et.al.  
W.C.C. File No.: 0316901  
Ruth Harmon v. Spectrum HR, et.al  
W.C.C. File No: 040613..... Respondents,

v.

South Carolina Property and Casualty  
Insurance Guaranty Association..... Appellant.

APPELLANT'S MEMORANDUM IN SUPPORT OF  
SUBJECT MATTER JURISDICTION AND IMMEDIATE APPEALABILITY

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Kathryn F. Walton/Bar No. 75639  
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## **BACKGROUND**

Prior to commencement of the proceedings/action before the Workers' Compensation Commission which led to the current appeal, issues related to workers' compensation insurance coverage for two professional employer organizations (PEOs) known as Quality HR Services (hereinafter "Quality HR") and Spectrum HR were being determined in conjunction with proceedings/actions initiated by individual claimants asserting entitlement to workers' compensation benefits for which Quality HR or Spectrum HR had potential liability during the period(s) these PEOs purport to have maintained workers' compensation insurance coverage with Realm National Insurance Company (hereinafter "Realm"). As the Court may acknowledge in light of the extensive record on appeal, litigating these insurance coverage issues in conjunction with an individual claim for benefits was highly cumbersome and time consuming for the Workers' Compensation Commission (hereinafter "Commission") and the respective parties. Such also created the potential for varying determinations and lengthy appeals. As a result, the Commission, *sua sponte*, identified the remaining pending workers' compensation claims involving these coverage issues and consolidated the same into one proceeding to determine only insurance coverage/liability issues for Quality HR and Spectrum HR so that once a final determination was made; the remaining claims could proceed unencumbered by the coverage dispute. In light of the liquidation of Realm, the insurance coverage/liability issues included whether the remaining claims constituted "covered claims" under the South Carolina Property and Casualty Insurance Guaranty Association Act, §38-31-10 et.seq. of the South Carolina Code (1976, as amended). This process is/was analogous to the proceedings provided for in Commission Regulations 67-

1402 and 1404 when there is an issue involving an employer's compliance with the insurance requirements under Title 42 of the South Carolina Code (1976, as amended) (commonly known as the Workers' Compensation Act). Such proceedings are separate and distinct from proceedings associated with an individual claimant's substantive claim for benefits. It is important to underscore the fact that the proceedings/action before the Commission which led to this appeal did not emanate from any particular claim that was pending before the Commission. Rather, the Commission was attempting to streamline processing of the remaining pending claims which involved these insurance coverage issues.<sup>1</sup>

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<sup>1</sup> The remaining claims that are subject to this appeal were pending in various stages before the Commission. In its correspondence to counsel dated August 5, 2014, the Court asserts "[t]he record in this case indicates the Claimants are currently receiving payment of benefits ordered by the Workers' Compensation Commission. (R. 155 – 64)." The only claim subject to this appeal in connection with which the Claimant was/is receiving compensation payments is the matter of Steven Cameron v. Quality HR Services, et al (W.C.C. File No. 0316901). In the Cameron matter, a course of litigation occurring prior to the liquidation of Realm and in connection with which neither Realm or Appellant South Carolina Property and Casualty Insurance Guaranty Association (SCPCIGA) were parties, resulted in Keith's Welding (a client company of Quality HR) and its workers' compensation Carrier, Capital City Insurance Company, being ordered to pay compensation and provide medical benefits until such time as the Commission, in its discretion, holds a hearing on the merits of Cameron's claim. To date, no hearing has been held by the Commission on the merits of Cameron's claim. Otherwise, no medical or compensation benefits were/are being provided in connection with any of the remaining claims subject to this appeal. Therefore, all of the claims subject to this appeal remain pending before the Commission. "Pending" is defined in Black's Law Dictionary, Sixth Edition as "begun, but not yet completed; during; before the conclusion of; prior to the completion of; unsettled; underdetermined; in process of settlement or adjuster. Awaiting an occurrence or conclusion of action, a period of continuance or indeterminacy . . ." For clarification purposes, the matters of Joseph Coonce v. Spectrum HR Services, et al (W.C.C. File No. 0408190) and Arthur Mobley v. Quality HR Services, et al (W.C.C. File No. 0406356) were also originally included in the consolidated coverage proceedings/action instituted by the Commission. However, subsequent to the consolidated coverage hearing before the Single Commissioner but prior to issuance of a Decision and Order by the Single Commissioner, the Commission approved an Agreement and Final Release (i.e. Clincher) in the Mobley matter thereby leaving the Commission without subject matter jurisdiction to determine the coverage issues in that claim. See Laboureur v. Harleysville Mutual Insurance Company, 302 S.C. 540, 397 S.E.2d 526 (1990). Concerning the Coonce matter, there was no appeal by any party to that case from the Single Commissioner's holding that neither Spectrum HR or its client company Fleet Source were insured at the time in question and a subsequent Order of Commissioner Andrea C. Roche in connection with the substantive Forms 50 and 51 issues confirmed dismissal of Appellant South Carolina Property and Casualty Insurance Guaranty Association as a party to that claim.

## ARGUMENT

I. THE WORKERS' COMPENSATION COMMISSION HAD SUBJECT MATTER JURISDICTION TO INSTITUTE THE CONSOLIDATED COVERAGE PROCEEDINGS/ACTION AND TO DETERMINE THE INSURANCE COVERAGE ISSUES INVOLVED IN THE CLAIMS SUBJECT TO THIS APPEAL.

As set forth hereinabove, the remaining claims subject to this appeal were all pending before the Commission at the time the consolidated coverage proceedings/action were instituted and remain pending at present. When there is a pending employee claim for compensation, the exclusive jurisdiction for the determination of questions concerning cancellation, **coverage**, construction of insurance contracts and the like, is in the Workers' Compensation Commission. Laboureur v. Harleystown Mutual Insurance Company, 302 S.C. 540, 543, 397 SE2d 526, 528 (1990) (*emphasis added*). Accordingly, the Commission had subject matter jurisdiction to determine the insurance coverage/liability issues associated with the remaining claims subject to this appeal. Such is an entirely different circumstance than was present in Price v. Peachtree Electrical Services, Inc., 396 S.C. 403; 721 SE2d 461 (Ct.App. 2011) where this Court determined that the Commission lacked subject matter jurisdiction to determine what was essentially a contribution claim by one workers' compensation defendant against another occurring **after** the underlying workers' compensation claim for benefits by the employee was finally settled (*emphasis added*).

## II. THE CIRCUIT COURT'S AMENDED ORDER IS IMMEDIATELY APPEALABLE.

The Administrative Procedures Act (APA) governs appeals from the Workers' Compensation Commission and provides uniform procedures for judicial review after the exhaustion of administrative remedies. *See* Bone v. U.S. Food Service, 404 S.C. 67; 744 S.E.2d 552 (2013) and Lark v. Bi-Lo, Inc., 276 S.C. 130, 132, 276 S.E.2d 304, 305 (1981). Under §1-23-380(A) of the APA, “[a] party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review . . .” Bone 404 S.C. at 73 and 744 S.E.2d at 556.<sup>2</sup> Section 1-23-390 of the APA governing further appellate review provides: “An aggrieved party may obtain a review of a *final judgment* of the Circuit Court or the Court of Appeals pursuant to this article by taking an appeal in the manner provided by the South Carolina Appellate Court Rules as in other civil cases.” Bone 404 S.C. at 74 and 744 S.E.2d at 556 (*emphasis added*). In Bone, the South Carolina Supreme Court held that a “final judgment” within the meaning of §1-23-390 means “something that finally disposes of the whole subject matter of the action or terminates the action leaving nothing to be done but to execute the judgment . . .” Id. at 83, 744 S.E.2d at 561 (*see also* Charlotte-Mecklenburg Hospital Authority v. The South Carolina Department of Health and Environmental Control, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010) and Black’s Law Dictionary (Ninth Edition 2009) *cited in* Bone at 74, 78, and 83-84, 744 S.E.2d at

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<sup>2</sup> §1-23-380 originally provided for review by the Circuit Court but was amended in 2006 to direct appeals to the Court of Appeals. The workers’ compensation statutory amendment making this change (§42-17-60) was not enacted until 2007 and applies to injuries on or after July 1, 2007. *See* Bone Fn. No. 2. All of the remaining claims subject to this appeal involve accident dates prior to July 1, 2007; therefore, the initial request for judicial review was made to the Circuit Court. *See also* Pee Dee Regional Transp. v. South Carolina Second Injury Fund, 377 S.C. 60, 650 S.E.2d 464 (2007).

557-559 and 561-562, *accord Price v. Peachtree Electrical Services, Inc.*, 405 S.C. 455, 748 S.E.2d 229 (2013) (*emphasis added*).

The record clearly establishes that the proceedings/action instituted *sua sponte* by the Commission were limited to deciding insurance coverage/liability issues in connection with the consolidated claims and did not pertain to any individual claimant's entitlement to benefits. (R. 22-23). The Commission's decision on the insurance coverage/liability issues on the consolidated claims was made final by way of the Full Commission Appellate Panel Decision and Order filed January 5, 2010 in conjunction with the Full Commission Appellate Panel's Supplemental Order dated August 30, 2012 which was issued in accordance with the remand instructions of the Circuit Court in its Order dated September 9, 2010 and filed September 10, 2010. Therefore, the Commission's final decision was properly appealable to the Circuit Court pursuant to §42-17-60 of the South Carolina Code (1976, as amended) and §1-23-380(A) of the South Carolina Code (1976, as amended).

Similarly, the Circuit Court's Amended Order dated March 8, 2013 and filed March 11, 2013 constitutes a final judgment within the meaning of §1-23-390. It does not contain any remand component. It finally disposed of the whole subject matter of the action by determining the insurance coverage/liability issues and absent this appeal, effectively terminates the action leaving nothing further to be done. Accordingly, the Circuit Court's Amended Order is immediately appealable to this Court pursuant to §1-23-390 and the South Carolina Supreme Court's holdings in Bone and Price.

**III. TO THE EXTENT THE COURT DISMISSES THE APPEAL, IT SHOULD VACATE THE ORDERS OF THE COMMISSION AND/OR CIRCUIT COURT.**

In the event this Court determines the Commission did not have subject matter jurisdiction to determine the insurance coverage issues involved in this matter, the Appellant would respectfully request that the Court vacate all orders heretofore issued by the Commission and the Circuit Court on the grounds that such constitute a nullity for lack of subject matter jurisdiction. To the extent this Court determines that the Circuit Court's Amended Order is not immediately appealable, the Appellant would respectfully request that the Circuit Court's orders be vacated on the same grounds and by way of the same reasoning set forth in paragraph two of this Court's August 5, 2014 correspondence to counsel (i.e. if the Circuit Court's Amended Order is not immediately appealable to this Court, then the appeals from the Commission's Decision and Order were also interlocutory in nature and not immediately appealable to the Circuit Court pursuant to §1-23-380(A) thus leaving the Circuit Court without subject matter jurisdiction in the matter). *See* Levi v. N. Anderson County EMS, 2014 S.C. App. LEXIS 161; 2014 WL292972 (Ct.App. 2014, Petition for Re-hearing pending) (vacating Full Commission Appellate Panel's order where appeal from Single Commissioner's order held to be interlocutory).

**CONCLUSION**

For the reasons set forth in Sections I and II above, Appellant South Carolina Property and Casualty Insurance Guaranty Association asserts that the Workers' Compensation Commission had subject matter jurisdiction to determine the insurance

coverage/liability issues that are the subject of this appeal; that the Circuit Court's Amended Order is immediately appealable and that this Court should dispose of the appeal on the merits. Alternatively, in the event this Court dismisses the appeal on the grounds that the Commission lacked subject matter jurisdiction and/or that the Circuit Court's Amended Order is not immediately appealable; Appellant respectfully requests that the Court vacate the orders of the Commission and/or Circuit Court for the reasons set forth in Section III above.

RESPECTFULLY SUBMITTED,

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By: 

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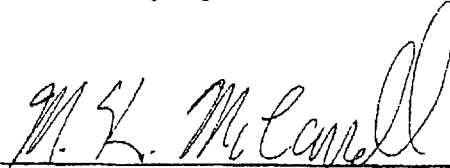
August 20, 2014

Charleston, South Carolina

The undersigned counsel of record for South Carolina Uninsured Employers' Fund and Quality HR Services join in the Appellant's foregoing Memorandum:



David H. Keller/Bar No. 3345  
Attorney for South Carolina Uninsured  
Employers' Fund



for Duke K. McCall, Jr./Bar No. 3720  
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v.

South Carolina Property and Casualty  
Insurance Guaranty Association.....Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Memorandum on all interested parties and the South Carolina Workers' Compensation Commission by depositing a copy of it in the United States mail, postage prepaid, on August 20, 2014 addressed as follows:

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August 20, 2014

REPLY TO  
P.O. Box 20550  
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The Honorable Jenny Abbott Kitchings  
Clerk of the South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

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WCC File No.: 0406103

v.

South Carolina Property and Casualty Insurance Guaranty Association,  
Appellant.


Appellate Case No.: 2013-000575

Dear Ms. Kitchings:

As requested, please find enclosed the original Appellant Memorandum addressing the subject matter jurisdiction and the immediate appealability of the above named matter in connection with which Respondents South Carolina Uninsured Employers' Fund and Quality HR Services have joined. By copy of this letter and Proof

The Honorable Jenny Abbott Kitchings  
Re: Appellate Case No.: 2013-000575  
August 20, 2014  
Page 2

of Service, I am providing a copy of the Appellant Memorandum to all interested parties.  
Thank you for your time and attention to this matter.

Very truly yours,  
  
J. Hubert Wood, III

JHWIII/kfw  
Enclosures

cc: Mr. Randy Mason (w/enc.)  
Ms. Amy Bracy, SCWCC Judicial Director (w/enc.)  
Latonya D. Edwards, Esquire (w/enc.)  
Mr. William Brockman (w/enc.)  
J-R Construction Company, Inc. (w/enc.)  
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