

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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OCT 13 2014

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SC Court of Appeals

13824

Appellate Case No.: 2014-001083

Old Republic Insurance Company, Appellant,

v.

South Carolina Second Injury Fund, Respondent.

(In Re: Carl Hutchins, Employee v. Pepsi Bottling Group and Old Republic Insurance Company,
Employer and Carrier)

MOTION TO STRIKE APPELLANT'S FINAL BRIEF

The Respondent, South Carolina Second Injury Fund by and through its undersigned counsel, hereby files this Motion To Strike Appellant's Final Brief as a violation of SCACR 211 (b). SCACR Rule 211 (b) states that final briefs shall be identical to the briefs previously served under Rule 208, with the exception of citations to the record and corrections of typographical errors or misspellings. SCACR 211(b) (1) and (2). Appellant's Final Brief is in clear violation of this rule and the undersigned offers the following evidence in support:

Appellant's Statement of Issues on Appeal in the Initial Brief, (p.1, Issue #2) is as follows:

2. Whether the Full Commission is correct in finding, as the Hearing Commissioner found, the Appellants properly provided notice to the Fund of the November 29, 2007 accident on December 31, 2007?

Appellant's Statement of Issues in the Final Brief, (p.1, Issue #2) is as follows:

2. Whether the Full Commission is correct in finding, as the Hearing Commissioner found, the Appellants properly provided notice to the Fund of the November 29, 2007, accident, within the period of seventy-eight (78) weeks of payment of compensation, on December 31, 2007, in accordance with S.C. Code Ann. S. 42-9-400(2010).

(emphasis on added portion).

Carrier's Initial Brief (p.14) indicates the following:

IT IS THEREFORE, ORDERED that the Order of the Single Commissioner filed on September 6, 2013, is hereby REVERSED by a Majority of the Appellate Panel, and this Order shall constitute the Decision of the Full Commission. (Item No. 32).

A review of Carrier's Final Brief indicates that this entire sentence has been deleted. (See p.14)

Carrier's Initial Brief (p.15) indicates the following:

"The Full Commission then prepared its own Findings of Fact and Conclusions of Law it states as follows."

A review of Carrier's Final Brief indicates that the sentence has been expanded and emphasized to read as follows:

"After two (2) proposed Decision and Orders by the Fund were rejected, the Full Commission then chose to prepare its own Findings of Facts and Conclusions of Law it states as follows."

(emphasis on added portion).

The Fund asserts that not only has Appellant emphasized the section above with bold print and underscoring, which were absent from Appellant's Initial Brief, but the added portion is also factually incorrect.

Appellant's Initial Brief (pp.27-28) Section #3, states the following:

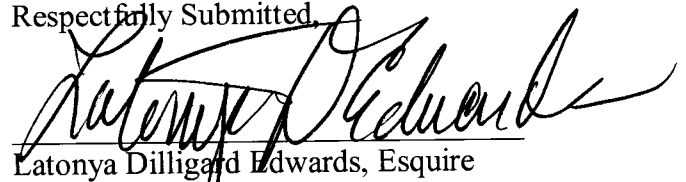
"It further held that an employer may not submit into evidence at a hearing that was not already submitted to the Fund prior to June 30, 2011, if a prima facie case was not established and provided to the Fund prior to June 30, 2011, despite the fact that the Fund clearly chose to deny the claim prior to June 30, 2011. (Item No. 34)."

A review of Appellant's Final Brief indicates that this entire sentence has been deleted. (See p.26 Argument No. 3.)

In addition to these violations, Appellant's Final Brief is peppered with bold print and underlined emphases that were clearly absent in the Initial Brief. Appellant's changes to the Final Brief are much more than the mere citations to the record or the corrections of typographical errors and misspellings permissible under SCACR 211(b). At least one of Appellant's assertions is new, factually incorrect, irrelevant, and provided in a thinly veiled attempt to malign Respondent's Counsel. Rather than correcting misspellings and typographical errors, which is permissible under SCACR 211 (b), Appellant has inserted additional content to the Final Brief, which is prohibited by SCACR 211 (b). Appellant has also added emphasis via bold print and underscoring in various other portions of the Final Brief that were not present in his Initial Brief to the Court. Appellant's Final Brief violates SCARC 211(b).

Respondent requests that this Honorable Court strike Appellant's Final Brief with instructions to file a proper brief.

Respectfully Submitted,



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3790 Fernandina Road, Suite 103
Columbia, South Carolina 29210
S.C. Bar No.: 14593

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October 9, 2014
Columbia, South Carolina

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Appellate Case No.: 2014-001083

Old Republic Insurance Company, Appellant,

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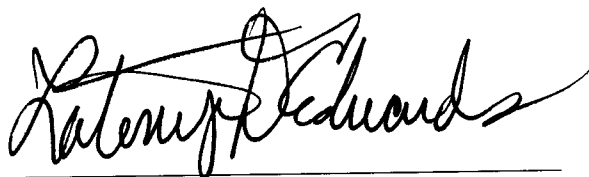
(In Re: Carl Hutchins, Employee v. Pepsi Bottling Group and Old Republic Insurance Company,
Employer and Carrier)

PROOF OF SERVICE

The undersigned employee of Dilligard Edwards, LLC, Attorney for the Respondent, does hereby certify that service of the **Motion to Strike Appellant's Final Brief** to South Carolina Court of Appeals in the above-captioned matter was made upon counsel of record for Appellants, Old Republic Insurance Company, and the South Carolina Workers' Compensation Commission, by placing same in the United States mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelope on this 9th day of October, 2014, as follows:

Andrew D. Smith, Esquire
Andrew D. Smith, LLC
Wappoo Center
147 Wappoo Creek Drive, Suite 104
Charleston, South Carolina 29412

The Honorable Amy Bracy, Judicial Director
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

A handwritten signature in black ink, appearing to read "Latonya Dilligard Edwards". The signature is fluid and cursive, with a horizontal line drawn underneath it.

Latonya Dilligard Edwards, Esquire
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*CERTIFIED CIRCUIT COURT MEDIATOR

October 9, 2014

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Old Republic Insurance Company v. South Carolina Second Injury Fund
[In Re: Carl Hutchins v. Pepsi Bottling Group]
Appellate Case No.: 2014-001083

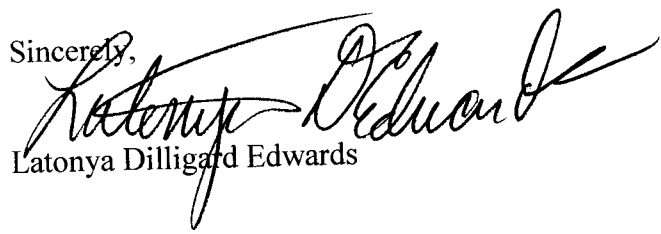
Dear Ms. Kitchings:

Enclosed herewith please find for filing the original and one (1) copy of South Carolina Second Injury Fund's Motion To Strike Appellant's Final Brief, along with Proof of Service thereof and a check in the amount of \$25.00 for the filing fee.

By copy of this letter, I am notifying Carrier's attorney and the South Carolina Workers' Compensation Commission of this communication to your office.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to give me a call.

Sincerely,


Latonya Dilligard Edwards

LDE/ems

Enclosures

cc: The Honorable Amy Bracy, Judicial Director, SCWCC (w/encls., Via U. S. Mail)
Andrew D. Smith, Esquire (w/encls., Via U. S. Mail)

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
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