

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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OCT 10 2014

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Thomas A. Russo, Circuit Court Judge

Appellate Court Case No.: 2013-002491

Alexander Guice, Appellant,

v.

US Food Service, Inc., and Ace American Insurance Company
c/o Gallagher Bassett Service, Inc., Respondents.

REPLY TO RETURN TO MOTION FOR COSTS

Appellant was duly served with a copy of “Respondents’ Return In Opposition to Appellant’s Motion for Costs” (“Return”) dated October 2, 2014 via regular mail, with service of the same upon Appellant on October 7, 2014. Pursuant to South Carolina Appellate Court Rule (SCACR) 240(f), Appellant presents this Reply to Return to Motion for Costs, and would further state as follows;

I.

Appellant agrees in part with Respondents, as stated in the Return, in so far that SCACR Rule 222(a) states that costs “...shall be taxed against the appellant when the appeal is dismissed...”; however, the Court has discretionary authority to grant costs in an appeal that has been dismissed, in favor of the appellant, as also stated in Rule 222(a) SCACR “... When an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court”. As stated in the Motion for Costs (“Motion”), “Appellant asserts although

appellant's appeal was dismissed by the Court, the April 24, 2014 Appellate Court Order remanded Case No.: 2013-CP-32-01272 back to the Circuit Court, and ordered the same to be considered on the merits in conjunction with the related matter of Case No.: 2014-CP-32-00399, which had the effect of vacating the challenged June 10, 2013 Circuit Court Order from the Honorable Thomas A. Russo" (See Motion for Cost, pg. 2, previously submitted). Based on the fact the appeal was dismissed and remanded, Appellant should be entitled to recover actual cost incurred. Finally, if the Court would have dismissed the appeal and affirmed the lower court's June 10th, 2013 opinion, Appellant would not have filed the motion to begin with.

II.

As it relates to Respondents argument, in particular, "Regardless of what the circuit court may or may not have done on remand, Appellant was not the prevailing, or even substantially prevailing party on appeal..." (See Respondent's Return, p. 2, previously submitted), Appellant disagrees. In particular, on September 25, 2014 (with electronic service to the Appellant from the Lexington County Clerk's Office on October 7, 2014) the circuit court issued an "Order Granting Appellant/Claimant's Motion for New Trial and Order for Recusal" (enclosed and incorporated herein as Attachment "A") wherein the Court opined, "The Appellant/Claimant's motion for new trial or hearing is GRANTED as to all particulars set forth in his motion..." (See Attachment "A", p. 4).

For the Court to be fully informed and aware of all the "particulars" as contained in Appellant's "Motion for New Trial", Appellant has enclosed true copies of the "Motion for New Trial" (enclosed and incorporated herein as Attachment "B") and the "Answer to Reply to Motion for New Trial" (enclosed and incorporated herein as Attachment "C"). As accepted by the lower court, and contained on page "29" of the Motion for New Trial, Appellant sought the

“GRANTED” relief/remedy from the lower court to “...immediately issuing on appropriate order setting aside all decisions in the instant case, to include ordering the Respondents to comply with R. 67-506(D) and reinstate Appellant’s employment and release the unlawfully withheld temporary total compensation payments, as well as 25% interest penalty accessed...” (emphasis added) (See Attachment “B”, p. 29).

As such, it is the Appellant’s position that the Court’s dismissal and remand of the appeal served to preempt the timely and costly requirement of the parties to proceed through the entire appellate process, in terms of filing the volumes of copies of final briefs and record on appeal, based on the fact that the lower court has set aside all previous decisions and orders rendered in the instant appeal. The actual cost incurred by Appellant on appeal should be reimbursed by the Respondents.

III.

As it relates to Respondents argument that Appellant should not be entitled to the reimbursement of printing the motions and responses, postage, and interest on the grounds that “Appellant has not and cannot present any extraordinary circumstances that would entitled him to the cost of filing lengthy motions, postage and/or interests” (See Respondents Return, p. 2), Appellant disagrees. In particular, Appellant would remind the Court that the same; (1) is self-represented, after making several unsuccessful attempts to retain counsel; (2) has been unemployed and unable to obtain gainful employment, for nearly 9 years, pursuant to Appellant’s GRANTED argument that the same was unlawfully discharged by the employer on or around November 2, 2005; (3) has been unlawfully deprived of entitled temporary total compensation payments from the employer’s representative, for nearly 9 years, pursuant to Appellant’s GRANTED argument that the parties entered into an unlawful Settlement

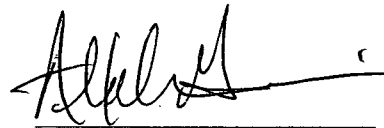
Agreement and Final Release (clincher agreement), which was procured by fraud, and erroneously approved by the Workers' Compensation Commission; and (4) asserts every penny spent in cost incurred by the Appellant to file motions and responses regarding the instant appeal, to include postage costs, have been spent through no fault of the Appellant, and has served to further burden the Appellant with "harsh and incongruous" results.

As such, Appellant asserts that the criteria required to meet the "extraordinary circumstances" benchmark, in terms of the cost for Appellant's filed motions and responses, to include postage costs, have been met, and the Court, in the interest of justice, should consider granting the sum total submitted unto for cost incurred on appeal, to include an award of interest on the cost incurred.

CONCLUSION

For all the reasons stated herein, this Court should grant Appellant's Motion for Cost.

Respectfully submitted,



Alexander Guice
Post Office Box 13281
Tampa, Florida 33681
Phone: (813) 562-0547
Appellant *pro se*

October 8, 2014

ATTACHMENT “A”

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)
 Alexander Guice,)
 Employee, Claimant,)
 Appellant,)
 vs.)
 US Foodservice, Inc., and Ace)
 American Insurance Company, c/o)
 Gallagher Bassett Services, Inc.,)
 Employer and Carrier,)
 Respondents.)

IN THE CIRCUIT COURT FOR
 THE ELEVENTH JUDICIAL CIRCUIT

C.A. #: 2014-CP-32-399
 2013-CP-32-1272

ORIGINAL

**ORDER GRANTING APPELLANT/
 CLAIMANT'S MOTION FOR
 NEW TRIAL AND ORDER
 FOR RECUSAL**

FILED
 2014 SEP 29 11:50
 BETH A. CARRIGER
 CLERK OF COURT
 LEXINGTON, SC

This matter has a convoluted and detailed procedural history. It originates from a Workers Compensation action that was purportedly resolved in 2005. Mr. Guice, hereinafter "Appellant/Claimant", seeks to overturn the decision of the Workers Compensation Commission which among other things upheld the validity of a settlement, clincher agreement, and release he signed back in 2005. This matter has been in litigation for quite some time and the Court heard this matter back on June 16, 2014 in Lexington County.

Prior to the hearing, Appellant/Claimant had emailed the Court several times providing the Court with various briefs and memoranda in support of his position. Appellant/Claimant resides in Florida and has participated in this litigation via email and mail without making an actual appearance in Court during hearings. Appellant/Claimant was not present in Court at the hearing on June 16, 2014. Respondent/Carrier appeared though its counsel who made an oral

argument to the Court in support of its position to dismiss this matter. The Court took the matter under advisement.

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Soon after the Court took the matter under advisement, Appellant/Claimant commenced with more numerous email submissions with voluminous attachments to the Court regarding any proposed Order that the Court may issue. The Court reviewed these submissions but ultimately decided against Appellant/Claimant's position and ruled in favor of Respondent/Carrier. This Order was signed on July 21, 2014 and entered on July 30, 2014. The Order was prepared by counsel for Respondent/Carrier at the direction of the Court.

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ETHA A. GARRIG
CLERK OF COURT
WASHINGTON, DC

Appellant/Claimant timely filed a motion for new trial pursuant to Rule 59 of the SCRCP along with an incorporated motion for recusal due to numerous matters where he felt the Court had either not ruled on, or where he disagreed with the Court. Appellant/Claimant has also "served" the Court with an inappropriate pleading entitled "Verified Notice to Court" which seems to insert the Court into the litigation process as a party. In addition, Appellant/Claimant in more disparaging filings has falsely suggested that the Court was unethical, fraudulent, partial, and dishonest in reaching its decision. Respondent/Carrier timely filed a return requesting the Court to uphold its decision in the July 30th Order and deny the motion for new trial and incorporated motion for recusal.

Among other arguments which need not be addressed, Appellant/Claimant contends that the Court ignored the remand decision of the SC Court of Appeals which in its remand order instructed the Circuit Court to "consider the merits of this appeal in conjunction with Appellant's appeal from

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the commission's final order." (emphasis added). It appears that the intent of the remand order was for the Circuit Court to meticulously consider each and every argument Appellant/Claimant has presented both in front of the Workers Compensation Commission and Circuit Court to preserve the record on Appeal for the Appellate Court to reconsider in the future, if necessary, for either party.

The Court does not recall all of these arguments and matters coming up at the June 16, 2014 hearing, specifically the allegations contained in Case No. 13-CP-32-1272. The Court does not recall reviewing the file in Case No. 13-CP-32-1272 when presiding in Lexington County. Both parties have substantially briefed this issue, and each was afforded an additional opportunity to brief it as well. Based upon the Court's review of the record, to comply with the remand instructions for the Court of Appeals, and in the interest of justice, the Court must grant Appellant/Claimant's motion for new trial to allow everything to be developed, on the record, for the Court of Appeals to consider if these matters continue to move on through that appellate process.

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CLERK OF COURT
LEXINGTON, SC

Since my written Order of July 30, 2014 does not appear to set forth the Court's decision in detail and since it does not specifically address matters contained in 2013-CP-32-1272 as instructed by the SC Court of Appeals, the Court agrees with Appellant /Claimant that he should be granted a new trial or hearing in Circuit Court. This Court of course could have reopened this matter for further consideration, but declines to do as explained more fully below.

The remaining grounds for a new trial argued by the Appellant/Claimant do not need to be addressed, since Appellant/Claimant prevailed on his motion for new trial.

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Further, for this Court to continue to be the presiding judge, after receiving numerous pages of meritless and spurious allegations of unethical, incompetent, and impartial behavior from the Appellant/Claimant would put the Court in a precarious ethical posture. This Court, while categorically denying any unethical behavior in how this matter was heard and decided, simply cannot, in the future avoid an appearance of impropriety to this litigant on any rehearing in this matter. While the Court is mindful of the disdain of allowing disgruntled litigants to seek recusal for adverse rulings, the integrity of the Court simply must be upheld in this instance. The Court is also mindful of the additional cost and delay this decision means for both parties, however, the Court sees no other way to resolve this matter on this level to allow for a complete record for further appellate review if either party desires. As such, in the interest of justice, and to avoid a future appearance of impropriety, this Court must recuse itself on its own motion from anything further in this matter, and hereby does so.

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 OFFICE OF THE CLERK
 JUDICIAL CIRCUIT
 WASHINGTON DC

THEREFORE, IT IS ORDERED:

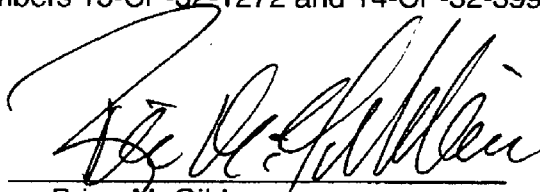
1. The Appellant/Claimant's motion for new trial or hearing is GRANTED as to all particulars set forth in his motion and that my Order of July 30, 2014 be and hereby is VACATED;
2. That Appellant/Claimant's motion for recusal is DENIED as it is baseless and meritless;
3. That the Court sua sponte RECUSES itself from any further action in this matter for the reasons above stated; and
4. That this matter be reassigned in the discretion of the Chief Administrative Judge of the Eleventh Judicial Circuit for a de novo

hearing on all matters instructed by the SC Court of Appeals in
both pending Case Numbers 13-CP-32-1272 and 14-CP-32-399.

AND IT IS SO ORDERED.

Chester, SC

September 25, 2014



Brian M. Gibbons
Circuit Court Judge

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2014 SEP 29 A 11:50
BETH A. CARRIOTT
CLERK OF COURT
DIXINGTON, SC

ATTACHMENT “B”

Alexander Guice

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2014 AUG -6 P 1:50

P.O. Box 13281
Tampa, FL 33681
Phone: (813) 562-0547
Email: alaguice@hotmail.com

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

August 4, 2014

The Honorable Beth A. Carrigg
Clerk of Court
11th Judicial Circuit
205 East Main Street
Lexington, South Carolina 29072

Re: Alexander Guice v. U.S. Food Service, Inc. and ACE American Insurance
Company c/o Gallagher Bassett Services, Inc.
Appellate Case No.: 2014-CP-32-00399

Dear Ms. Carrigg:

Enclosed please find a \$25.00 Money Order; an original and copy of a Motion and Order Information Form and Coversheet; a Motion for New Trial with supporting documents; and a certificate of service in regard to the above referenced matter. Please forward to the appropriate individual for filing and return the date-stamped copies to the undersigned in the prepaid enclosed self-addressed envelope.

By copy of this letter, I have provided Erin L. Hantske, Esq., the attorney of record for the Respondents', a copy of the same, via certified mail with enclosures. By copy of this letter and pursuant to Rule 59(g) SCRCP, I have provided The Honorable Brian M. Gibbons, a copy of the same via certified mail with enclosures.

For case study purposes only, I have provided the Injured Workers' Advocates a copy of the same, via regular mail with enclosures.

Should you have any questions or concerns, please do not hesitate to contact me. Thank you for your assistance in this matter.

Very truly yours,



Alexander Guice
Appellant, Pro Se

Enclosures: As stated

cc: Erin L. Hantske, Esq. (via cert. mail w/encl.)
The Honorable Brian M. Gibbons (via cert. mail w/encl.)
Clara Thomas Smith (via reg. mail w/encl.)

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
5th JUDICIAL CIRCUIT

COUNTY OF LEXINGTON

FILED

Alexander Guice

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET


vs.

2014 AUG - 0 P 1:00

US Foodservice, Inc., and Ace American Insurance Company, c/o Gallagher Bassett Services, Inc.

BETH A. CARRIGE
CLERK OF COURT
LEXINGTON, SC

Defendant.) Docket No. 2014-CP-32-00399

Plaintiff: XXXXXXXXXX Alexander Guice, Bar No. Pro Se Address: Post Office Box 13281 Tampa, Florida 33681 Phone: (813) 562-0547 Fax _____ E-mail: alguice@hotmail.com Other: _____	Defendant's Attorney: Erin L. Hantske, Bar No. 76313 Address: Post Office Box 650007 Mt. Pleasant, South Carolina 29465 Phone: (843) 576-2946 Fax (843) 534-0605 E-mail: erin.hantske@mgclaw.com Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order: <div style="text-align: center;">  Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant </div> <div style="text-align: right;"> Date submitted: 08/4/2014 </div>	
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ <u>25 -</u> <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status: <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court, or reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE: _____ Date: _____ Judge Signature: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA) **FILED** IN THE COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT
 COUNTY OF LEXINGTON 2014 AUG -6 P 1:00
) Civil CASE NO: 2014-CP-32-00399

BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

Alexander Guice,)
 Employee, Claimant,)
 Appellant,)

Versus)

US Foodservice, Inc., and Ace American)
 Insurance Company, c/o)
 Gallagher Bassett Services, Inc.,)
 Employer AND Carrier,)
 Respondents?)

MOTION FOR NEW TRIAL
 (No Oral Arguments Requested)

COPY

YOU WILL PLEASE TAKE NOTICE that ALEXANDER GUICE (Hereafter "Claimant" or "Employee" or "Injured Worker" or "Appellant"), the Appellant in the above styled caption PROCLAIMS that the pleadings in this matter are being filed by Appellant in *propia persona*, wherein pleadings are to be considered without regard to technicalities. In *propria*, pleadings are not held to the same high standards of perfection and expertise as practicing lawyers. See Haines v. Kerner, 92 Sct 594, also See Power 914 F2d 1459 (11th Cir 1990), also See Hulsey v. Ownes, 63 F3d 354 (5th Cir 1995). Pursuant to Rule 59(a) of the South Carolina Rules of Civil Procedure (SCRCP), Appellant presents this "MOTION FOR NEW TRIAL" seeking the Court to amend the findings of fact and conclusions of law and enter a new judgment with respect to the Order issued in this matter on July 21st, 2014, filed with the Clerk on July 30th, 2014 with receipt of the written entry of judgment by Appellant on August 4th, 2014. In support of this motion, Appellant

would further state as follows;

BRIEF FACTUAL STATEMENT OF THE CASE

This case is an appeal from the Appellate Panel of the Workers' Compensation Commission (hereafter "Commission") with respect to the "Decision and Order" issued by the Commission on July 17th, 2013 in the matter of Alexander Guice v. US Foodservice, et al, Workers' Compensation Case Number 0506205 which constitutes a final order (Rule 201 South Carolina Appellate Court Rules (SCACR)). Appellant timely appealed the Commission's Order to the Court of Appeals; however, Erin L. Hantske, Esq. and McAngus Godelock & Courie, LLC (hereafter "Attorney Hantske") the counsel of record to US Foodservice, Inc. (hereafter "Employer" or "Respondent") and Ace American Insurance Company, c/o Gallagher Bassett Services, Inc. (hereafter "Carrier" or "Respondent") argued to the Court of Appeals that this case should be appealed before the Court of Common Pleas, which the Court of Appeals accepted.

Pursuant to the remitter, Appellant timely appealed the Commission's aforementioned Order before this Court, which is not contested. As such, this Court serves in official appellate capacity to review the aforementioned Order dated July 17th, 2013 from the Commission. The timely appeal of the final Order of the Commission by Appellant is not contested.

Appellant argued seven (7) specific issues on appeal. First, Appellant challenged the "Findings of Fact" of the commission, arguing that the Commission erred by omitting relevant facts and factors contained in the record, as the findings of fact section of the Commission's Order began with the

Commission's approval of the "Settlement Agreement and Release" (hereafter "clincher") on January 5th, 2006. In particular, the Commission failed to include relevant and mandatory facts contained in the record, to include, but not limited to, the following; (a) the date Appellant was hired by employer; (b) the date Appellant was injured regarding the accepted compensable injury; (c) whether or not the parties are bound by the South Carolina Workers' Compensation Act (hereafter "Act"); (d) the former representation afforded to Appellant from on or around May 2005 to on or around December 2012 by Robert Glenn Bacon, Esquire and Harry Pavilack & Associates, P.A. and later The Bacon Law Firm, LLC (hereafter "Attorney Bacon"); (e) the amount of the mutually agreed average weekly wage; (f) the date Appellant reached Maximum Medical Improvement (MMI); (g) the discharge of Appellant's employment by employer on or around November 2nd, 2005; (h) the amount of consecutive days Appellant received temporary compensation payments; and (i) the manner in which the employer's representative terminated temporary total compensation payments (See Appellant's "Appeal Brief", p. 15-17).

Second, Appellant argued that the Commission's Order failed to address or rationalize any of the Appellant's arguments on appeal before the commission, to include the argument that Commissioner Susan S. Barden lacked jurisdictional authority when she issued the February 22nd, 2013 Order cancelling Appellant's hearing before the commission and dismissing any and all motions filed in the matter of W.C.C. # 0506205 (Appellant's Brief, p. 17-19).

Third, Appellant argued the same was afforded “negligent misrepresentation by Attorney Bacon, to include but not limited to the fact(s) that; (a) Attorney Bacon took no legal action on behalf of Appellant when the employer unlawfully discharged Appellant on or around November 2nd, 2005 on the grounds of “permanent lifting restrictions” and “no position available”; (b) Attorney Bacon took no legal action on behalf of Appellant when the employer’s representative unlawfully reduced Appellant’s temporary total compensation weekly payments on or around November 6th, 2005 from \$1,161.00 to \$592.56 per week subsequent the unlawful discharge of Appellant by employer; (c) Attorney Bacon took no legal action on behalf of Appellant when the employer’s representative unlawfully withheld temporary total compensation payments from Appellant on or around November 2nd, 2005 to on or around December 22nd, 2005 subsequent Appellant entering into the clincher agreement with Respondents; and (d) Attorney Bacon continues to be in willful noncompliance with a duly served Subpoena commanding the same provide Appellant with the client copy of the workers’ compensation commission case file (Appellant’s Brief, p. 26-27).

Fourth, Appellant argued the Commission failed to correct the error(s) of law contained in the record with respect to the Respondents’ unlawful discharge of Appellant’s employment on November 2nd, 2005 and unlawful termination of Appellant’s entitled temporary total compensation payments on or around December 4th, 2005, both actions in willful violation of S.C. Code Ann. § 42-1-610 & 620; S.C. Code Ann. § 42-9-260(F); and S.C. Code Reg. § 67-506(D) of the Act (Appellant’s Brief, p. 23-25).

Finally, Appellant argued that the Commission misconstrued and misapplied a statute, in particular, S.C. Code Reg. § 67-801 and S.C. Code Reg. § 67-801(E) with respect to a clincher legally serving as a means for Respondents to terminate protected employment afforded to Appellant and also serve as a means for the employer's representative to terminate entitled temporary total compensation payments to Appellant, particularly after Appellant received compensation payments after and including the first 150 days.

TABLE OF AUTHORITIES

APPELLANT'S STATUTORY RIGHT TO APPEAL

Rule 201 SCACR states in relevant part, "(a) Judgments, Orders and Decisions Subject to Appeal. Appeal may be taken, as provided by law, from any final judgment, appealable order or decision... (b) Who May Appeal. Only a party aggrieved by an order, judgment, sentence or decision may appeal."). As previously stated, this action is an appeal from the Appellate Panel of the Commission, which constitutes a final judgment, appealable by law.

APPELLANT'S STATUTORY RIGHT TO REQUEST A NEW TRIAL

Rule 59(a) SCRCP states in relevant part, "(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been

entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

In the instant case, the hearing was convened on June 16th, 2014; the Order of the Court was issued on July 21st, 2014, filed with the Clerk on July 30th, 2014; and received via regular mail by Appellant on August 4th, 2014, a copy of which is incorporated and enclosed herein as Exhibit "A". This motion has been duly submitted to the Court and the presiding judicial officer in question, within the required ten (10) days from receipt of service via regular by Appellant, and should be duly considered as a matter of law.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the workers' compensation commission. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Bass v. Isochem, 365 S.C. 454, 617 S.E.2d 369 (Ct. App. 2005); Hargrove v. Titan Textile Co., 360 S.C. 276, 599 S.E.2d 604 (Ct. App. 2004). A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions, or decisions of that agency are "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." Burse v. South Carolina Dep't of Health & Env'tl. Control, 360 S.C. 135, 141, 600 S.E.2d 80, 84 (Ct. App. 2004); S.C. Code Ann. § 1-23-380(5)(e) (2005). Under the scope of review established in the APA, this Court may not substitute its judgment for that of the appellate panel as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Liberty Mut. Ins. Co. v. South Carolina

Second Injury Fund, 363 S.C. 612, 611 S.E.2d 297 (Ct. App. 2005); Frame v. Resort Servs., Inc., 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004); Stephen v. Avins Constr. Co., 324 S.C. 334, 478 S.E.2d 74 (Ct. App. 1996); S.C. Code Ann. § 1-23-380(5)(d) (2005). Workers Compensation Commission's legal conclusions are reviewed *de novo*. Grant v. Grant Textiles, 372 S.C. 196, 200-201, 641 S.E.2d 869, 871 (2007). The Commission's factual findings are reviewed for "substantial evidence." Review is limited to whether reasonable minds could reach the conclusion that the agency reached: "Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached." Holmes v. Nat'l Serv. Ind., Inc., 395 S.C. 305, 308-309, 717 S.E.2d 751, 752 (2011). In the instant appeal, Appellant is arguing both questions of law and issues of fact with respect to the aforementioned Final Order of the Commission.

ABUSE OF DISCRETION STANDARD

"An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.", citing State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011). Appellant asserts the abuse of discretion standard must be adopted and applied with respect to conclusions of the Court serving in the appellate review capacity. In the instant appeal, Appellant shall establish that the Court "abused its discretion" based on the fact the conclusions of the Court; (1) lacked evidentiary support; and (2) were controlled by an error of law.

FRAUD UPON THE COURT STANDARD

Fraud upon the Court is defined as either a fraud perpetrated by an officer of the court or "that species of fraud which does, or attempts to, subvert the integrity of the court itself." See Chewning v. Ford Motor Company, 354 S.C. 72, 579 S.E.2d 605 (2003). In the instant appeal, Appellant was, and continues to be subjected to "fraud upon the court" by Attorney Bacon, Attorney Hantske, and the Commission.

EXTRINSIC FRAUD STANDARD

Extrinsic Fraud is defined by the Court as "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." See 358 S.C. at 19, 594 S.E.2d at 483 (citing Chewning, 354 S.C. at 81, 579 S.E.2d 610). In the instant appeal, Appellant previously established the same was and continues to be subjected to "extrinsic fraud" by Attorney Bacon. Additionally, Appellant will further establish the same has been subjected to "extrinsic fraud" by the Court, with respect to the intentional failure of the Court to provide a rationale in support of; (1) overruling the arguments submitted by Appellant on appeal; (2) sustaining the Respondents motion to dismiss; (3) overruling Appellant's arguments in opposition to Respondents motion to dismiss; and (4) failing to comply with the Order of the Court of Appeals dated April 24th, 2014.

CODES OF LAW

S.C. Constitution, Article 1, Section 22- No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

S.C. Code Ann. § 1-23-380(5) - Judicial review upon exhaustion of administrative remedies.- 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 pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy...(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 42-1-610 - Agreement or regulation shall not limit liability of employer.- No contract or agreement, written or implied, and no rule, regulation or other device shall in any manner operate to relieve any employer, in whole or in part, of any obligation created by this Title except as otherwise expressly provided in this Title.

S.C. Code Ann. § 42-1-620 - Agreements of employee to waive rights shall be invalid. - No agreement by an employee to waive his rights to compensation under this Title shall be valid.

S.C. Code Ann. § 42-9-260(F)&(G)- Notice to Commission when payments have begun; suspension or termination of payments. - (F) After the one-hundred-fifty-day period has expired, the commission shall provide by regulation the method and procedure by which benefits may be suspended or terminated for any cause, but the regulation must provide for an evidentiary hearing and commission approval prior to termination or suspension unless such prior hearing is expressly waived in writing by the recipient or the circumstances identified in Section 42-9-260(B)(1) or (B)(2) are present. Further, the commission may not entertain any application to terminate or suspend benefits unless and until the employer or carrier is current with all payments due.

(G) Failure to comply with this section shall result in a twenty-five percent penalty imposed upon the carrier or employer computed on the amount of benefits withheld in violation of this section, and the amount of the penalty must be paid to the employee in addition to the amount of benefits withheld. However, the penalty does not apply if the employer or carrier has terminated or suspended benefits when the employee has returned to any employment at the same or similar wage.

S.C. Code Ann. § 42-9-440- Suspected false statements or misrepresentations to be reported to Insurance Fraud Division of Office of Attorney General. - The commission shall report all cases of suspected false statement or misrepresentation, as defined in Section 38-55-530(D), to the Insurance Fraud Division of the Office of the Attorney General for investigation and prosecution, if warranted, pursuant to the Omnibus Insurance Fraud and Reporting Immunity Act.

S.C. Code Ann. § 38-55-530 – Definitions - As used in this article: (A) "Authorized agency" means any duly constituted criminal investigative department or agency of the United States or of this State; the Department of Insurance; the Department of Revenue; the Department of Public Safety; the Department of Motor Vehicles; the Workers' Compensation Commission; the State Accident Fund; the Second Injury Fund; the Department of Employment and Workforce; the Department of Consumer Affairs; the Human Affairs Commission; the Department of Health and Environmental Control; the Department of Social Services; the Department of Health and Human Services; the Department of Labor, Licensing and Regulation; all other state boards, commissions, and agencies; the Office of the Attorney General of South Carolina; or the prosecuting attorney of any judicial circuit, county, municipality, or political subdivision of this State or of the United States, and their respective employees or personnel acting in their official capacity.

(B) "Insurer" shall have the meaning set forth in Section 38-1-20(25) and includes any authorized insurer, self-insurer, reinsurer, broker, producer, or any agent thereof.

(C) "Person" means any natural person, company, corporation, unincorporated association, partnership, professional corporation, or other legal entity and includes any applicant, policyholder, claimant, medical providers, vocational rehabilitation provider, attorney, agent, insurer, fund, or advisory organization.

(D) "False statement or misrepresentation" means a statement or representation made by a person that is false, material, made with the person's knowledge of the

falsity of the statement and made with the intent of obtaining or causing another to obtain or attempting to obtain or causing another to obtain an undeserved economic advantage or benefit or made with the intent to deny or cause another to deny any benefit or payment in connection with an insurance transaction, and such shall constitute fraud. "False statement or misrepresentation" specifically includes, but is not limited to, an intentional:

- (1) false report of business activities;
- (2) miscount or misclassification by an employer of its employees;
- (3) failure to timely reduce reserves;
- (4) failure to account for Second Injury Fund reimbursements or subrogation reimbursements; or
- (5) failure to provide verifiable information to public or private rating bureaus and the Department of Insurance.

An undeserved economic benefit or advantage includes, but is not limited to, a favorable insurance premium, payment schedule, insurance award, or insurance settlement.

(E) "Immune" means that neither a civil action nor a criminal prosecution may arise from any action taken pursuant to this article unless actual malice on the part of the reporting person or gross negligence or reckless disregard for the rights of the reported person is present.

S.C. Code Reg. § 67-202A(5)&(10) - Words and Phrases, Defined - (5) Compliance Division : A division of the Commission responsible for investigation and, if necessary, requests prosecution of an employer who refuses or neglects to comply with the insurance provisions of this Chapter and the Act. The division is authorized to request and, if necessary, assess a fine for failure to file reports required under this Chapter and the Act.

(10) **Judicial Department**: A department of the Commission which assigns the informal conference, contested case, and Commission review docket and issues the hearing notice. The department reviews the Commission's files and assures compliance with the provisions of this Chapter and the Act by requesting and, if necessary, assessing a fine for failure to file reports required by this Chapter and the Act.

S.C. Code Reg. § 67-506D&E- Terminating Temporary Compensation after the First One Hundred Fifty Days after the Employer's Notice of the Injury. - D. After

the one hundred fifty day period, when the claimant is receiving temporary compensation and the authorized health care provider assigns an impairment rating and reports the claimant is unable to return to work at the same or other suitable job, the employer's representative must continue payment of temporary compensation until the Commission finds the employer's representative may terminate temporary compensation.

E. To request a hearing for permission to terminate temporary compensation, the employer's representative shall file a Form 21 with the Judicial Department.

(1) The employer's representative shall serve a copy of the Form 21 on the claimant according to R.67-211.

(2) The employer's representative shall certify temporary compensation is current or no hearing will be set.

S.C. Code Reg. § 67-801E- Settlement of the Claim, General - E. An Agreement and Final Release (clincher) relieves the employer and its representative from any further responsibility for payment of compensation or medical expenses, unless the Agreement and Final Release specifically provides otherwise. When the claimant signs the Agreement and Final Release and it is approved, the claimant does not have the right to ask for additional payments in the future even if the claimant's medical condition worsens, unless otherwise specifically provided in the document.

S.C. Code Reg. § 67-803C - Settlement by Agreement and Final Release - C. The Commission shall not approve an Agreement and Final Release that is not fairly made and in accordance with the Act. An approved Agreement and Final Release is binding. The employer's representative shall pay compensation according to its terms.

RULES OF LAW

Rule 501, Code of Judicial Conduct (CJC), Rule 501, SCACR - APPLICATION OF THE CODE OF JUDICIAL CONDUCT - A. Anyone, whether or not a lawyer, who is an officer of the unified judicial system and who performs judicial functions, including an officer such as a magistrate, master-in-equity or special referee, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

Rule 1A, CJC, Rule 501, SCACR - A Judge Shall Uphold the Integrity and Independence of the Judiciary - A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally

observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Rule 2A, CJC, Rule 501, SCACR - A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES - A. A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Rule 3B(2), CJC, Rule 501, SCACR - A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY - Adjudicative Responsibilities. - (2) A judge shall be faithful to the law* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

Rule 3D(2), CJC, Rule 501, SCACR - A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY – Disciplinary Duties - (2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct contained in Rule 407, SCACR, should take appropriate action. A judge having knowledge* that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.*

Rule 1.1, Rules of Professional Conduct (RPC), Rule 407, SCACR – COMPETENCE A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.2(d), RPC, Rule 407, SCACR - SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER- (d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Rule 1.3, RPC, Rule 407, SCACR – DILIGENCE - A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4(a)&(b), RPC, Rule 407, SCACR – COMMUNICATION – (a) A lawyer shall (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(g), is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about

the status of the matter;(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law. (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 3.4(a)&(c), RPC, Rule 407, SCACR - FAIRNESS TO OPPOSING PARTY AND COUNSEL- A lawyer shall not: (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act; (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

Rule 4.1(a)&(b), RPC, Rule 407, SCACR - TRUTHFULNESS IN STATEMENTS TO OTHERS- In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Rule 8.4(a)-(e), RPC, Rule 407, SCACR – MISCONDUCT- It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (c) commit a criminal act involving moral turpitude; (d) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (e) engage in conduct that is prejudicial to the administration of justice;

Rule 12(b)(1)&(6), SCRCF - DEFENSES AND OBJECTIONS - WHEN AND HOW PRESENTED - BY PLEADING OR MOTION - MOTION FOR JUDGMENT ON PLEADINGS - How Presented - Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (6) failure to state facts sufficient to constitute a cause of action.

ARGUMENT

I

**The Court Order Violated the Order of the Court of Appeals
Dated April 24th, 2014**

On April 24th, 2014 the Court of Appeals issued an Order in the matter of **Alexander Guice v. US Foodservice, Inc.**, Appellate Case No.: 2014-002491 (hereafter “related matter”), a copy of which is incorporated and enclosed herein as Exhibit “B”. In particular, the aforementioned Appellate Court Order states, (“This case is remanded to the circuit court which shall consider the merits of this appeal in conjunction with Appellant’s appeal from the commission’s final order.”) (Exhibit “B”). The June 16th, 2014 hearing was convened without the Court considering the related matter. Furthermore, Appellant duly informed the Court of the Order of the Court of Appeals on June 27th, 2014, more than 21 days prior to the Court ratifying the Order in question. In fact, in correspondence received by the parties from the Honorable Brian M. Gibbons (“Judge Gibbons”) on Saturday, June 28th, 2014, Judge Gibbons stated, (“Apparently everyone has seen the proposed order except for me. All I received was Mr. Guice’s stuff. please send it again to me Ms. Hantske. Thank you”) (Exhibit “C”).

However, for reasons unknown, the Court ratified the proposed order prepared by Attorney Hantske on July 21st, 2014 in willful and deliberate violation of the Order of the Court of Appeals. Judge Gibbons did not submit and correspondence or instructions to the parties with respect to the Appellate Court Order prior to ratifying the Order in question. Appellant asserts the failure of Judge Gibbons to immediately set aside the June 16th, 2014 hearing and reschedule a hearing in the instant appeal to comply with the Order of the Court

of Appeals dated April 14th, 2014, with respect to considering the related matter “in conjunction” with the appeal of the commission’s final order; (1) prejudiced the substantial rights afforded to the Appellant, in violation of *Rule 2A, CJC, Rule 501, SCACR*; (2) constituted “fraud upon the court”; and (3) reflects a lack of integrity and the ability to adjudicate the instant case fairly and impartially.

Based on the failure of the Court to comply with the Order of the Court of Appeals dated April 24th, 2014, Appellant moves the Court to issue an Order setting aside the July 30th, 2014 Order in this matter and grant a rehearing to correct a miscarriage of justice.

II

Fraud upon the Court committed by Judge Gibbons In the Instant Appeal

A. Failure of Judge Gibbons to adjudicate the unlawful discharge

Notwithstanding the deliberate failure of Judge Gibbons to comply with the aforementioned Order of the Court of Appeals, a review of the Order in question, and in particular, the *defacto* “Statement of the Case” proposed by Attorney Hantske and accepted by Judge Gibbons, His Honor continues to intentionally further perpetrate the unlawful discharge by the employer which occurred on November 2nd, 2005 – more than two (2) months prior to the commission approving the clincher – by intentionally disregarding Appellant’s argument (Appeal Brief, p. 26), to include disregarding the submission of a true copy of the discharge notice, which is uncontested by the Respondents, and failing to perform the required “fair” and “impartial” *de novo* review of the record.

Instead, Judge Gibbons concealed the unlawful discharge by the Respondents by accepting the fraudulent statement of the case as presented by Attorney Hantske, which intentionally omits all actions which occurred in the case between October 27th, 2005, when the treating physician opined MMI, to January 5th, 2006, when the commission approved the clincher.

B. Failure of Judge Gibbons to adjudicate the unlawful termination of temporary total compensation payments

In the Appeal Brief, Appellant duly asserted that; (1) Appellant received temporary total compensation payments for approximately 213 days, including the first 150 days – without objection from Attorney Hantske; (2) Respondents unlawfully reduced compensation payments from \$1,161.00 to \$592.00 (Appeal Brief, p. 23); (3) Respondents terminated entitled compensation payments in violation of S.C. Code Ann. § 42-9-260 (F) and S.C. Code Reg. § 67-506(D); and (4) provided irrefutable evidence, namely, the Form 18 filed with the Commission – by the Respondents – in support of Appellant’s argument that entitled compensation payments had been unlawfully terminated.

However, Judge Gibbons made no reference to Appellant’s argument, instead stating that His Honor reviewed all submissions of the parties, and again concealing the unlawful termination of temporary total compensation payments by failing to state how many days Appellant received compensation payments and omitting all relevant factors related to temporary total compensation in the same manner Judge Gibbons concealed the unlawful discharge.

C. Failure of Judge Gibbons to Perform his Disciplinary Responsibilities

As contained in the Appeal Brief, Appellant alleged and provided evidence

to adequately prove negligent misrepresentation afforded to Appellant by Attorney Bacon (Appeal Brief, p.); however, a review of the Court Order in questions confirms Judge Gibbons made no reference to the extrinsic fraud Appellant continues to be subjected to by Attorney Bacon. The actions of Attorney Bacon with respect to: (1) concealing from the Appellant that the employer unlawfully terminated the same; (2) concealing from the Appellant that the employer's representative unlawfully reduced, suspended and terminated entitled temporary total compensation payments; (3) taking no action to protect Appellant's entitled and legal rights to both employment and compensation payments; and (4) continuing to willfully violated a duly served subpoena constitutes willful violations of (a) *Rule 1.1, RPC, Rule 407, SCACR* ; (b) *Rule 1.2(d), RPC, Rule 407, SCACR*; (c) *Rule 1.3, RPC, Rule 407, SCACR*; (d) *Rule 4.1(a)&(b), RPC, Rule 407, SCACR*; (e) *Rule 8.4(a)-(e), RPC, Rule 407, SCACR*; S.C. Code Ann. § 38-55-530; (f) Extrinsic Fraud; and (g) Fraud upon the Court.

Furthermore, Attorney Hantske continues to willfully submit false statements on behalf of Respondents with respect to using the clearly erroneous argument that Respondents lawfully terminated entitled temporary total compensation payments by of the clincher, when Attorney Hantske is both informed and aware that pursuant to the first 213 days Appellant received compensation payments that permission to suspend or terminate compensation required the filing of the required Form 21, certification that payments were current with the commission, the scheduling and convening of a hearing, and an Order from the commission granting permission to terminate compensation.

Appellant asserts Attorney Hantske's conduct in the instant case as counsel for the Respondents constitutes; (1) a violation of *Rule 1.2(d), RPC, Rule 407, SCACR*; (2) a violation of *Rule 3.4(a)&(c), RPC, Rule 407, SCACR*; (3) a violation of *Rule 4.1(a)&(b), RPC, Rule 407, SCACR*; (4) *Rule 8.4(a)-(e), RPC, Rule 407, SCACR*; (5) a violation of S.C. Code Ann. § 42-9-260(F); (6) a violation of S.C. Code Reg. § 67-506(D); Insurance Fraud; (7) Extrinsic Fraud; and (8) Fraud upon the Court.

However, Judge Gibbons has failed to report any of the egregious conduct of either Attorney Hantske or Attorney Bacon to the appropriate authority and instead issued a clearly erroneous and fraudulent Order with intent to conceal, shield, and protect the unlawful and criminal acts of the same. The failure of Judge Gibbons to perform his required disciplinary duties not only stands to further prejudice Appellant, but constitutes a violation of *Rule 3D(2), CJC, Rule 501, SCACR*.

The above referenced allegations with respect to the performance, or gross lack thereof, by Judge Gibbons, constitutes fraud upon the court, and as such, Appellant moves the Court for an Order granting this motion for rehearing.

III

Unlawful Granting of Respondents Motion to Dismiss By Judge Gibbons

Respondents filed a motion to dismiss seeking to dismiss Appellant's appeal pursuant to Rule 12(b)(1) (lack of jurisdiction over the subject matter and Rule 12(b)(6) (failure to state facts sufficient to constitute a cause of action). As Appellant duly asserted in Appellant's "Answer to Motion to Dismiss", it was

Attorney Hantske, on behalf of Respondents, who argued to the Court of Appeals that this appeal should be filed with the Court of Common Pleas (See Answer to Motion to Dismiss, p. 4-6). Additionally, this action is an appeal from a final order from the Commission, which certainly is appealable per Rule 201 SCACR. The assertion by Attorney Hantske that the Court lacked jurisdiction was legally insufficient.

Additionally, a review of the Appeal Brief confirms Appellant certainly submitted arguments and facts sufficient to constitute a cause of action. However, Judge Gibbons granted the motion to dismiss. A review of the Order confirms that in granting the motion to dismiss, Judge Gibbons provides no rationale or commentary in support granting the motion to dismiss. Judge Gibbons also failed to provide a rationale in support of overruling the arguments submitted by Appellant.

Per the scope of review standard as it directly relates to what actions a reviewing authority can take with respect to an appeal from the workers compensation commission, a reviewing court may affirm, reverse or modify a decision. Dismissal of the appeal is not an option. Bursey v. South Carolina Dep't of Health & Env'tl. Control, 360 S.C. 135, 141, 600 S.E.2d 80, 84 (Ct. App. 2004). The dismissal of the appeal by Judge Gibbons constitutes "abuse of discretion" based on the fact the act of Judge Gibbons dismissing the instant appeal is controlled by an error of law. The act of erroneously dismissing the appeal prejudiced the substantial rights afforded to Appellant, and also constitutes "fraud upon the court"; and violation of *Rule 3B(2), CJC, Rule 501*,

SCACR by Judge Gibbons. Based on the clear arbitrary and capricious conduct by Judge Gibbons, the Order dated July 30th, 2014 in the instant appeal must be set aside and a new hearing granted.

IV

Violation of Appellant's Constitutional Right To be heard

As contained in the Order in question, Judge Gibbons alleges to have reviewed and considered the submissions of all parties; however, Judge Gibbons granted the Respondents motion to dismiss and fully affirmed final order of the commission without stating or providing a rationale in support overruling Appellants arguments on appeal clearly contained in the complaint or stating and providing a rationale in support of overruling the arguments contained in Appellant's Answer to Motion to Dismiss (See Appeal Brief and Answer to Motion to Dismiss, previously submitted).

Appellant asserts Judge Gibbons has intentionally violated the Appellant's protected constitutional right to be heard, a violation of S.C. Const. art. I, 22. Based on the deliberate and abuse of discretion by Judge Gibbons, with respect to failing to clearly state and provide rationales in support of overruling Appellant's arguments as contained in the Appeal Brief (Complaint) and the Answer to Motion to Dismiss, the Order dated July 30th, 2014 must be set aside and a new hearing granted.

V

Interpretation of S.C. Code Ann. § 42-1-610 & 620; S.C. Code Ann. § 42-9-260(F) and S.C. Code Reg. § 67- 506(D) in Contrast to

S.C. Code Reg. § 67-801

The cardinal rule of statutory interpretation is to determine the intent of the legislature. Miller v. Aiken, 364 S.C. 303, 307, 613 S.E.2d. 364, 366 (2005). The intent of the legislature should be ascertained primarily from the plain language of the statute. State v. Landis, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004). “The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose.” Mun. Ass’n of South Carolina v. AT&T Communications of S. States, Inc., 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004). A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. Liberty Mut. Ins. Co. v. South Carolina Second Injury Fund, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005). The court will reject a statutory interpretation that would “lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention.” Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000).

A *de novo* review of the record with respect to the instant appeal confirms that on October 27th, 2005 the treating physician, Dr. Alan Tamadon, opined MMI; assigned a 5% impairment rating to the whole person of the Appellant; assigned “permanent lifting restrictions”; and reported to the Respondents that Appellant could no longer perform the duties of a delivery driver (Exhibit “D” resubmitted). On October 27th, 2005 when Dr. Tamadon opined MMI and the like, Appellant had received temporary compensation payments for approximately 175 days,

including the first 150 days (Exhibit "E" resubmitted). The Respondents did not challenge the medical findings of the treating physician.

On November 2nd, 2005, without offering or affording suitable employment to accommodate Appellant's incapacity, the employer terminated Appellant on the grounds of "permanent lifting restrictions" and "no position available". Additionally, in section 2 of the discharge notice, the employer states "Termination of Employment – Released from Doctor with permanent lifting restrictions not comparable with job duties" (Exhibit "F" resubmitted). S.C. Code 42-9-260(F) and S.C. Code Reg. § 67-506(D) as stated above provides clear and expressed statutory procedural requirements, which must be complied with, as it relates to the duties of the employer's representative paying temporary total compensation payments, and the requirements which must be met to suspend or terminate compensation payments to an injured worker after the injured worker has received compensation payments for more than 150 days.

Appellant asserts the intent of the lawmakers in establishing 42-9-260(F) and 67-506(D) was to protect the injured worker's right to continued compensation payments and benefits and to ensure a fair and impartial hearing be convened by the commission, and only after a review of the record, and permission by the commission, by order (not agreement), would the employer's representative be permitted to suspend or terminate entitled compensation.

Additionally, a review of S.C. Code Ann. § 42-1-610 & 620 must be interpreted based on its clear language, which would certainly lead a reasonable mind to conclude that the intent of the lawmakers was to protect an injured

worker from being forced into entering into an unfair and illegal agreement to waive, resolve, or settle the injured workers' entitled right to continued employment and entitled compensation benefits by way of clincher. Furthermore, 42-1-610 and 620 have been in place since 1962 – more than FIFTY YEARS, unchanged, to again protect the rights of the injured worker.

The Respondents would have the Court believe, in the instant case, asserting S.C. Reg. § 67-801, that the sum of \$20,000.00, of which Appellant received approximately \$13,333.33, as 33% was paid to Attorney Bacon in attorney fees, by way of the clincher, would LEGALLY serve the TRILATTERAL purposes as; (1) Final Severance Pay for Appellant's entitled employment with the employer, when in 2004 Appellant earned an annual salary of around \$60,372.00 (based on mutually agreed average weekly wage of \$1,161.00 times 52 weeks in a year); (2) Final payment of entitled temporary total compensation payments (which as stated, is \$1,161.00 per week); and (3) serve as a schedule award for the 5% impairment rating to the whole person of the Appellant. Appellant asserts the Court must reject the Respondents rationale and application with respect to the statutory interpretation of R. 67-801 by the Commission in the instant appeal as the interpretation "lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention." Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000).

Finally, the court must consider the intentional "checks and balances" mechanism placed within Act, by lawmakers, with respect to S.C. Code Reg. § 67-

202(5)&(10). In particular, the Claims and Judicial Departments of the Commission, respectively, has a regulatory function to inspect the commission's files and ensure compliance with the Act, to include the issuance of notices, fines, and if necessary, reporting unlawful actions by the employer, carrier, employer's representative, or claimant, to the Insurance Fraud Division of the Office of the Attorney General for prosecution.

Whether or not Attorney Bacon duly apprised the Appellant of the Appellant's legal right to continued employment and entitled temporary total compensation payments, the Commission, through both the Claims and Judicial Departments, had a regulatory duty and responsibility, upon reviewing the Form 18 filed by the RESPONDENTS, which confirmed the Appellant had received temporary compensation payments AFTER and INCLUDING the first 150 days, to issue the appropriate notices and fines, to the Respondents, and in particular, the employer's representative, with respect to enforcing compliance with 42-9-260(F)&(G) and R. 67-506(D)&(E) of the Act, but failed to do so. The breakdown of control within the Commission lies at the heart of the instant appeal.

It would be 'absurd' to assume that the Full Commission would act in a fair and impartial manner with respect to the instant appeal, given the Commission's own lack of control and egregious conduct in *de novo* review of the record. Appellant reminds the court that no hearing, conference, or informal conference was ever convened by the commission prior to approving the clincher on January 5th, 2006. The parties acknowledged that the commission relied upon the "representation of counsel for the Claimant", not the Claimant himself, to ensure

the Claimant was fully apprised of his rights under the Act (See Exhibit "G", p. 4 resubmitted).

It is more likely that the Commission would attempt to further perpetrate the fraud committed in the instant case, by attempting to conceal the breakdown of control within the Commission with respect to ensuring that the Respondents were in compliance with the law, by intentionally misapplying a regulation and fraudulently ignoring relevant facts and evidence, so the Respondents can prevail, and the commission and its former and current officers can be shielded from exposure to potential liability and/or prosecution.

As such, Appellant would move the Court to immediately set aside the July 30th, 2014 Order and Order the immediate setting aside of all decisions rendered in the instant case, and immediately enforcing compliance of S.C. Code 42-9-260(F)&(G) and S.C. Code Reg. § 67-506(D) by ordering Respondents to reinstate entitled employment and release illegally withheld temporary total compensation payments, to include the release of the twenty five percent penalty as a matter of law.

VI

DEMAND FOR INVESTIGATION

As of August 4th, 2014, the Appellant has been unlawfully deprived of entitled employment and entitled temporary total compensation payments for approximately 450.7 weeks, from December 4th, 2005 to August 4th, 2014. To date, Appellant has been unlawfully deprived of approximately \$523,262.70 (450.7 weeks x \$1,161.00 average weekly wage) in entitled worker's compensation

insurance benefits, which includes the 33.3% required payment of Appellant's average weekly wage by the employer. Further, the assessed penalty of twenty five percent (25%), per S.C. Code 42-9-260(G), which amounts to \$130,815.68, brings the total amount owed to Appellant, to date, to approximately \$654,078.38.

Given the large amount of benefit payments owed to Appellant in insurance compensation benefits and interests, by the Respondents, Appellant asserts the Court must consider the possibility that Judge Gibbon's intentional acts of abuse of discretionary authority, fraud upon the court, and failure to perform his required disciplinary duties, may be the result of subornation. Additionally, the Court must also consider that the extrinsic fraud, fraud upon the court, and intentional misrepresentation afforded to Appellant by Attorney Bacon may also be the result of subornation. Further, the Court must consider the failure of the Commission to perform the required regulatory functions as well as the clearly erroneous final order issued by the commission to be possibly due to subornation.

The Appellant is not an attorney; however, a reasonable person would certainly agree to pay small payments, for example, of \$25,000.00, \$10,000.00, \$50,000.00, or provide special favors to individuals in positions of authority, in exchange for the issuance of decisions which would serve to "legally" prevent the payment of hundreds of thousands of dollars in withheld and entitled benefits to a litigant. Appellant respectfully demands that the Court refer this matter to the Insurance Fraud Division of the Office of the Attorney General, pursuant to S.C. Code Ann. § 42-9-440 so that a proper review and investigation into the

finances of; (1) Judge Gibbons; (2) Attorney Bacon; and (3) previous and current officers within the Commission can be investigated, to ensure the clear abusive conduct in the instant appeal was not effectuated by way of subornation, as well as taking the potential prosecutorial actions against the named individuals regarding the instant appeal, and Attorney Hantske, and the clear insurance fraud, which continues to be committed in this matter.

CONCLUSION

Based on the clear abuse of discretion, fraud upon the court, and the clear departure from the essential requirements of law by Judge Gibbons, in the interest of justice, Judge Gibbons should immediately recuse himself. If the termination of the Appellant's employment and entitled temporary total compensation payments were legally effectuated by way of the clincher and R. 67-801, the Court would not have intentionally omitted the factual events which occurred in instant case between October 27th, 2005 and January 5th, 2006 in the July 30th, 2014 Order, with respect to the discharge of Appellant's employment on November 2nd, 2005 and the unlawful termination of entitled temporary total compensation payments by the employer's representative on December 4th, 2005.

It is "absurd" for the Court to accept the Commission and Respondents application of R. 67-801 and the \$20,000.00 clincher to serve as final payment of Appellant's entitled right to employment, a schedule award payment for the 5% impairment rating, and final payment for entitled temporary total compensation payments. The July 30th, 2014 Order is in direct violation of the April 24th, 2014 Order from the Court of Appeals. Attorney Hantske and the Respondents

continue to commit Insurance Fraud.

Based on the foregoing, Appellant moves the Court to grant this motion by immediately setting aside the July 30th, 2014 Order and granting a new hearing in the instant case, or in the alternative, immediately issuing on appropriate order setting aside all decisions in the instant case, to include ordering the Respondents to comply with R. 67-506(D) and reinstate Appellant's employment and release the unlawfully withheld temporary total compensation payments, as well as 25% interest penalty assessed, and referring this matter to the Insurance Fraud Division of the Office of the Attorney General for investigation.

I, Alexander Guice, do swear, under penalty of perjury, that the information contained herein is true and correct to the best of my knowledge and ability.

Respectfully submitted,



Alexander Guice
Post Office Box 13281
Tampa, FL 33681
(813) 562-0547
alguice@hotmail.com
Appellant, Pro Se



MIGUEL VELASQUEZ
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE141636
Expires 10/26/2015

August 4, 2014

Sworn to and Subscribed before me

This 4th Day of August, 2014


Notary Public

My commission expires 10/26/2015

Comm# EE141636

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
2014 AUG -6)
FILED IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
Civil Action No.: 2014-CP-32-00399
P 90

Alexander Guice,
Employee, Claimant,
Appellant,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Versus

Certificate of Service

US Foodservice, Inc., and Ace American
Insurance Company, c/o Gallagher Bassett
Services, Inc.,
Employer AND Carrier,
Respondents.

COPY

I HEREBY CERTIFY that I provided a true copy of a Civil Form Coversheet, a Motion for New Trial and supporting documents, by depositing a copy of the same in US Postal Service, via certified mail on August 4th, 2014 with sufficient first class and certified postage affixed on the party(s) listed below.



Alexander Guice
Post Office Box 13281
Tampa, Florida 33681
Phone: (813) 562-0547
Appellant, Pro Se

Signed this 4th Day of August, 2014

COPIES SENT TO:

Erin L. Hantske, Esquire
Post Office Box 650007
Mt. Pleasant, SC 29465
Certified Receipt No.: 70100290000018085249

Clerk of Court
205 East Main Street
Lexington, SC 29072

The Honorable Brian M. Gibbons
140 Main Street
Post Office Drawer 580
Chester, South Carolina 29706
Certified No.: 70100290000018085236

ATTACHMENT “C”

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Thomas A. Russo, Circuit Court Judge

Case No.: 2013-002491

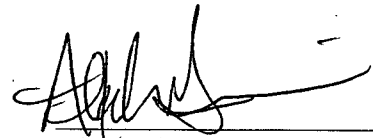
Alexander Guice,Appellant,

V.

US Foodservice, Inc., and Ace American Insurance Co.
c/o Gallagher Bassett Service, Inc.,Respondents'.

PROOF OF SERVICE

I HEREBY CERTIFY that a copy of a 'Reply to Return to Motion for Costs' with attachments and a proof of service was provided to the Respondents by depositing the same in the US Postal Service on October 8, 2014 with sufficient postage to the Respondents' counsel of record, Erin L. Hantske and addressed to: Erin L. Hantske, Esq., McAngus Goudelock & Courie, LLC P.O. Box 650007 Mt. Pleasant, SC 29465 on this 8th day of October 2014.



Alexander Guice
Post Office Box 13281
Tampa, Florida 33681
(813) 562-0547
Appellant, *pro se*

October 8, 2014

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OCT 10 2014

SC Court of Appeals

Alexander Guice

P.O. Box 13281
Tampa, FL 33681
Phone: (813) 562-0547
Email: alguice@hotmail.com

October 8, 2014

VIA PRIORITY MAIL

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

Re: Alexander Guice v. U.S. Food Service, Inc. and ACE American Insurance Company c/o
Gallagher Bassett Services, Inc.
Appellate Case No.: 2013-002941

Dear Ms. Kitchings:

Please find enclosed an original and a copy of a 'Reply to Return to Motion for Costs' with attachments, and a proof of service. Please forward to the appropriate individual for filing and please return a date stamped copy of the same to the Appellant in the prepaid self-addressed envelope enclosed for your convenience.

By copy of this letter the Respondents, by and through the Respondents' counsel of record, has been served a copy of the same via priority mail with enclosures.

Should you have any questions or concerns, please do not hesitate to contact me. Thank you for your assistance in this matter.

Very truly yours,



Alexander Guice
Appellant, *pro se*

/AG

Enclosures: As stated

cc: Erin L. Hantske, Esq. (via Priority mail w/encl.)

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OCT 10 2014

SC Court of Appeals

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SO Court of Appeals

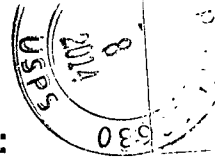
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