THE STATE OF SOUTH CAROLINA
In the Court of Appeals



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APPEAL FROM THE
COURT OF COMMON PLEAS
The Honorable R. Knox McMahon

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**Appellate Case No. 2014-001258**

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Ricky Kneece, Respondent,

v.

Kneece Farms and Legion in Liquidation
And the South Carolina Property and Casualty
Insurance Guaranty Association, Appellants.

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# INITIAL REPLY BRIEF OF APPELLANTS

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### I. THE CIRCUIT COURT IGNORED SUBSTANTIAL EVIDENCE IN THE RECORD IN REVERSING THE FULL COMMISSION'S ORDER

The Order of the Circuit Court overturned the findings of the Appellate Panel which had ruled, under the facts of this case, the Claimant was not permanently totally disabled. In Workers' Compensation cases, the Full Commission is the ultimate arbiter of factual issues related to a claim. Their findings will not be disturbed where there is substantial evidence to support their findings and may only be reversed if the findings are based on surmise, speculation, or conjecture. *Sharpe v. Case Produce Company*, 329 S.C. 534, 495 S.E.2d 790 (Ct. App. 1998). The Circuit Court made its decision to reverse despite the existence of reasonable and reliable evidence that Claimant was not permanently and totally disabled from work. It is well settled that findings of fact by the Industrial Commission are conclusive and binding upon both the Court of Common Pleas and the Supreme Court, if there is any competent evidence reasonably tending to support them, even though there is evidence that would have supported a finding to the contrary. *Willard v. Commissioners of Public Works of City of Spartanburg*, 219 S.C. 477, 65 S.E.2d 874 (1951).

"The statute empowers the full Commission to make its own findings of fact and to reach its own conclusions of law consistent with or inconsistent with those of the hearing commissioner. *Green v. Raybestos-Manhattan, Inc.*, 250 S.C. 58, 156 S.E.2d 318 (1967). The statute does not allow the Circuit Court or other appellate bodies to do the same. The standard shifts from "greater weight of the evidence" to whether any substantial evidence exists to support the findings of the Full Commission. If evidence is susceptible to more than one reasonable inference, the full Commission's finding must be sustained. *Wilson v. City of Darlington*, 229 S.C. 62, 91 S.E.2d 714 (1956). The courts may not weigh the evidence in their review of a

factual finding by the Commission. *Walker v. City of Columbia*, 247 S.C. 241, 146 S.E.2d 856 (1966).

The Circuit Court, in its appellate capacity, is not permitted to substitute its own judgment for that of the Appellate Panel of the Workers' Compensation Commission with regards to the weight of the evidence. It is not the court's duty, when sitting in an appellate capacity, to weigh the testimony but only to determine whether the record contain[ed] competent evidence to support the findings of the Workers' Compensation Commission. *Kay v. South Carolina Public Service Authority,* 246 S.C. 168, 143 S.E.2d 130 (1965),

## II. SUBSTANTIAL EVIDENCE SHOWS THE CLAIMANT/RESPONDENT DID NOT SUSTAIN A "PERMANENT AND SEVERE" BRAIN INJURY SUFFICIENT TO QUALIFY FOR PERMANENT AND TOTAL OR LIFETIME COMPENSATION

A finding of permanent and total disability is not a finding that can be made as a matter of law. The ultimate determination of disability in such circumstances *must* be determined by the Workers' Compensation Commission as the trier of fact. The Supreme Court recently clarified in two opinions, *Sparks v. Palmetto Hardwood, Inc.*, 406 S.C. 124, 750 S.E.2d 61 (2013) and *Crisp v. SouthCo., Inc.*, 401 S.C. 627, 738 S.E.2d 835 (2013) that a physical brain injury in and of itself was not enough to make a finding that a Claimant was therefore permanently totally disabled under S.C. Code Ann. §42-9-10(C).

In the Respondent's Brief, the Respondent repeatedly uses the terms "permanent and severe" to describe Claimant's injury. This appears to be repeatedly used as it is part of the standard handed down by the Court in *Sparks*; however, it mischaracterizes even Claimant's own evidence of the case and the reliable evidence that Claimant is capable of continued gainful employment (which he returned to just months after the injury and has worked full time since 2005).

The Claimant was evaluated by Dr. Green on March 20, 2006. During this evaluation, the Claimant informed Dr. Green that he drove his tractor for long periods of time for his employer (Kneece & Son). The Claimant's physical examination at this appointment was normal except for a "little bit of discomfort." Dr. Green opined at that time that the claimant was able to *work full duty* as of March 20, 2006. (See reports of Dr. Michael Green – Midlands Orthopaedic). Shortly thereafter, on June 16, 2006, Claimant signed a Form 17 agreeing that he had returned to full duty work and was capable of continued full duty work as of October 4, 2005. Ricky Kneece's income tax filings reflect that as of 2009, his annual salary was over $77,000 per year, more than double his salary in 1998, the year prior to this injury.

The Claimant received a neuropsychological evaluation by Dr. Randy Waid for his closed head injury. In his report of February 8, 2007, Dr. Waid indicated that the Claimant continued to "demonstrate **mild** executive dysfunction both with regard to cognitive and emotional/psychological functioning." Dr. Waid also noted that Ricky Kneece continued to be employed on his family farm. On February 8, 2007, Dr. Waid released the Claimant at MMI with a 22% impairment rating to the whole person for this injury. (See records of Dr. L. Randolph Waid).

On May 14, 2008, the Claimant underwent a neurological examination with Dr. Julian Adams of the South Carolina Neurological Clinic. Dr. Adams diagnosed Claimant with previously having had a "mild to moderate head injury with a contusion to his right frontal lobe," and he found the Claimant's examination to be "absolutely normal." (See report of Dr. Julian Adams – SC Neurological Clinic). Dr. Adams subsequently ordered an electroencephalogram (EEG) test to measure brain electrical activity which was also normal. (at *Id*). Consequently, no further treatment was recommended by Dr. Adams. These items alone would constitute

substantial evidence upon which the Commission could have relied to make their prior finding that Claimant Kneece is not permanently totally disabled.

Appellants obtained their own neuropsychological evaluation with Dr. Tora Brawley on January 29, 2011. In her report, Dr. Brawley was essentially in agreement with Dr. Waid that the Claimant had experienced a "**mild** residual brain dysfunction as a result of his accident." (See report of Dr. Tora Brawley, dated February 11, 2011).

Contrary to Respondent's repeated assertion of severe brain damage, the evidence supports only a mild residual dysfunction as a result of the accident. Likewise, the Appellate Panel of the Commission found that Claimant Kneece was not permanently totally disabled, which is further supported by the Claimant's own admission of full duty employment on his signed Form 17, Claimant's continued work of greater than 50 hours per week, to include operation of heavy equipment, and Claimant's ongoing and current wages with a third-party employer which are over twice his income at the time of his accident.

The South Carolina Supreme Court clarified, "we view the inclusion of 'physical brain damage,' along with quadriplegia and paraplegia, in § 42-9-10(C) as indicative of the General Assembly's intent to compensate an employee-claimant for life *only in the most serious cases of injury to the brain*, separate and apart from other scheduled injuries, resulting in permanent brain damage." *Sparks v. Palmetto Hardwood, Inc.*, 406 S.C. 124, 750 S.E.2d 61 (2013) (emphasis added). Furthermore, "[t]hus, we conclude that 'physical brain damage' as used in § 42-9-10(C) is physical brain damage that is both permanent and severe." *Id.*

The Court in *Crisp*, relied on the *Sparks* decision in noting that, "permanency and physicality are requirements. However, the severity of the injury is the lynchpin of the analysis. *Cf. James v. Anne's Inc.*, 390 S.C. 188, 199, 701 S.E.2d 730, 736 (2010) ("The 500 weeks

limitation, however, represents the limit of the monetary amount of compensation that may be recovered. It has no relation to the duration or the extent of the injury. A permanent impairment, by definition, lasts for a lifetime. (emphasis in original))." Furthermore, "[i]nherent in the requirement that the injury to the brain be severe is the requirement that the worker is unable to return to suitable gainful employment. *See Floyd v. C.B. Askins & Co.*, 382 S.C. 84, 90, 675 S.E.2d 450, 453 (Ct. App. 2009)"

The Court in *Crisp* interpreted "the inclusion of "physical brain damage" among the most serious injuries within the statutory exception to the 500 week cap on benefits as an indication that the legislature was contemplating a brain injury so severe that the person could not subsequently return to suitable gainful employment. *See Adams v. Texfi Indus.*, 320 S.C. 213, 217, 464 S.E.2d 109, 112 (1995) ("In construing a statute, the Court looks to its language as a whole in light of its manifest purpose." (citing *Simmons v. City of Columbia*, 280 S.C. 163, 311 S.E.2d 732 (1984))); *Cokeley v. Robert Lee, Inc.*, 197 S.C. 157, 169, 14 S.E.2d 889, 894 (1941) ("While it is an elementary rule of construction that words used in a statute should be given their plain and ordinary meaning this, as all other rules, is subject to the prime object of ascertaining and giving effect to the legislative intention. In doing this, we are not to be governed by the apparent meaning of words found in one clause, sentence, or part of the act, but by a consideration of the whole act, read in the light of the conditions and circumstances as we may judicially know they appeared to the Legislature, and the purpose sought to be accomplished." (quoting *State ex rel. Walker v. Sawyer*, 104 S.C. 342, 346, 88 S.E. 894, 895 (1916))).

This interpretation is in harmony with the entire purpose of our workers' compensation regime and recognizes the other avenues of compensation available under the scheme for brain injuries that do not render the worker unemployable (for example, compensation for non-total

disability to the brain is available under Regulation 67-1101). *See Shealy v. Algernon Blair, Inc.*, 250 S.C. 106, 112, 156 S.E.2d 646, 649 (1967) ("The object of the act is to relieve an injured workman from the loss or impairment of his Capacity to earn wages."). Thus, only in cases of physical brain damage that are both permanent and severe would an employee-claimant be entitled to benefits for life."

The Order of the Circuit Court in this claim unilaterally made a finding that that Respondent was indeed permanently totally disabled, reversing the Appellate Panel of the Commission's findings that he is not permanently totally disabled, and – under the Commission's ruling - was only entitled to benefits under S.C. Code of Regs. §67-1101 and S.C. Code Ann. §42-9-30. The finding of permanent total disability by the Circuit Court in this matter represented an improper determination of fact as to the degree and severity of the injury to the Claimant's brain, which the Circuit Court was not entitled to determine. Rather, the Circuit Court should have made a determination of the sufficiency of the evidence supporting the factual findings of the Appellate Panel of the Commission. Even assuming, *arguendo*, that the findings of the Full Commission were not supported by substantial evidence, the Circuit Court should have then remanded the claim to the Full Commission for further findings rather than unilaterally issuing its own.

Finally, on this point, the Circuit Court Order on page 11, in weighing the evidence of the record held that: "[t]he evidence of the record, when viewed as a whole, compels the finding that the Claimant suffered physical brain damage with a severe and permanent impairment of his normal brain function." However, this newly instituted finding by the Circuit Court, in contradiction to the Appellate Panels' findings on this point, is also contradictory to the 'substantial evidence rule,' and seems to indicate a weighing of the evidence anew by the Circuit

Court to find the greater weight of the evidence in favor of a finding of permanent total disability. The Appellant submits this was in error, and not the proper standard.

First, a finding of the degree of severity of an injury is a question of fact for the Commission. The Commission's failure to find a, "severe and permanent brain injury," is most certainly supported by the evidence in the record, even if the Circuit Court were to conclude it was not by the greater weight of the evidence. Nonetheless, the Appellate Panel's ruling should stand under the applicable standard of review.

Whether the Circuit Court upon its review finds that the greater weight of the evidence may have supported a finding of permanent total disability or not, such weighing of the evidence was not permitted at that point in the appellate process. The only question upon appellate review of this issue is indeed whether or not the finding of the Appellate Panel (that the Respondent's injuries had not resulted in permanent total disability) was supported by substantial evidence in the record. Appellants assert that such findings were so supported, and to find otherwise was in error. Similarly on page 12 of the Order, the Circuit Court improperly engaged in fact finding stating, "[t]here is no evidence that he can operate a complicated computer operated tractor." To the contrary, there is substantial evidence in the record, to include the Respondent's own testimony at the hearing and his sworn deposition testimony on this point. Therefore, this finding should not have been disturbed on appeal by the Circuit Court. Moreover, even if the Circuit Court review did not find that the computer devices involved in operating the tractor (that the Claimant admitted he drives in excess of 50 hours per week for his current employer) were or were not "complicated" in nature, this is not the only item of substantial evidence upon which the Appellate Panel could have considered to support its factual determination that Ricky Kneece was indeed not permanently totally disabled.

## III. THE CIRCUIT COURT INCORRECTLY REINSTATED AND APPLIED SHELTERED EMPLOYMENT FINDINGS IN ITS ORDER

The Circuit Court improperly relies on the "sheltered employment" doctrine to find the Respondent was permanently totally disabled through a total loss of earning capacity, when such a finding by the single Commissioner had been inherently overturned by the Appellate Panel. This was done by the Appellate Panel's findings that the Respondent was in fact gainfully employed by virtue of his work driving a tractor up to 50 hours per week, and contemporaneously ruling that he was indeed not permanently totally disabled. For the Circuit Court to have found otherwise was an impermissible weighing of the evidence as to this factual determination made by the Appellate Panel on this point.

Furthermore, the "sheltered employment" doctrine has not been formally adopted in South Carolina. Nevertheless, even in states where "sheltered employment" has been adopted, the facts of this case are materially different. Sheltered employment is designed to protect employees from an employer seeking to avoid liability for permanent and total benefits by providing sham/make work employment through adjudication of a claim to try and bolster the argument that a Claimant can actually work and earn wages, when in reality they cannot – and the employment would be terminated at the end of the workers' compensation claim. (Note: Sheltered or 'benevolent' employment can also happen in other circumstances where an employer continues to gratuitously his own employer, that was severely injured, out of guilt or social obligation to him, because he will never be able to work again).

However, in the instant case, Claimant no longer works for the Employer/Appellant, he works for a third-party entity who has no motivation to avoid payment of workers' compensation benefits. Furthermore, Ricky Kneece has continually received raises over the past ten years since the accident, and he actually works, in essentially the same capacity – driving tractors for

up to three quarters of the week, for close to 50 hours or more per week, as he did prior to the date of accident and confirmed in his deposition testimony.

No authority was cited by the Circuit Court for the premise that sheltered employment may be provided by a non-party employer, as was the case here. Respondent's employment with Appellant employer ended and he has subsequently worked at a much greater salary with a non-party employer that has provided years of stable employment. Moreover, Ricky Kneece's current employer, Delano Kneece & Son Farms, has no financial interest in minimizing Mr. Kneece's own financial recovery from his prior employer. Mr. Ricky Kneece is one of the primary owners of this company, and for all intents and purposes is largely self employed.

On its most basic level, the Claimant/Respondent must show an inability to obtain wages. Here, Ricky Kneece admittedly returned to work for a non-party employer months after the injury and admitted via signing a Form 17 that he could and did return to fulltime employment as of October 4, 2005. Claimant has been in the same position since that time.

The Respondent argues that the income received from Kneece & Son was no more than a "gift" and does not constitute wages (Respondent's Brief page 35). However, Respondent then conceeds that the income was treated as wages for income tax purposes, but while still denying that he has retained any earning capacity. Respondent attempts to characterize these payments as a way to preserve his dignity (Respondent's Brief page 19); however, contrary to this assertion, Respondent's wife asserted that she writes and deposits the checks and Respondent never sees it. (Respondents' Brief page 18). Additionally, the Respondent, himself, testified that he had a substantial work life following his injury despite his limitations. (Ricky Kneece Deposition, December 17, 2004, P. 15-21).

In fact, the Respondent testified both in his deposition on September 23, 2010, and at the Hearing on November 11, 2005, that he works at Kneece & Son approximately six (6) days a week, eight (8) to twelve (12) hours per day, and spends 75% of his working time driving a tractor. If Respondent was truly severely brain damaged to the point alleged by the Respondent, these Appellants would posit that it would be unfathomable that his family would allow him to operate heavy machinery for such extended hours, day in and day out, for over a decade and taking this machinery over crops worth tens of thousands of dollars. But again, this is a question for the trier of fact, and the Appellate Panel has essentially spoken on this issue.

Similarly, if the Claimant was truly costing the family business money, it would be extremely unlikely that this non-party employer would continue to not only pay him, but also annually increase his wages year after year while having to pay others to correct his mistakes. In fact, in addition to demonstrating no loss of earning capacity, the evidence in the record further demonstrated that if the Respondent were not performing the job duties at Delano Kneece & Son that he has been performing since at least 2005; then someone else would have had to perform them in order to maintain the business, and that individual would have to be paid a wage to do those services.

The Respondent also testified that after the accident, his job duties at Kneece & Son were essentially the same job duties he was performing prior to the accident. Specifically, the Respondent testified that the majority of his work day following the accident involves driving a "complicated computer operated tractor," which is the same job duties Respondent primarily performed prior to his injury. The Respondent's wife confirmed this fact as she testified that the Respondent currently drives a tractor for five to seven hours per day, six days a week, and rarely misses a day of work. (Roxanne Kneece Deposition, September 29, 2010, pp. 17, 19).

Accordingly, the fact that the Respondent has been working for many years since his work accident operating a computer operated tractor system which he admitted under oath he drives for over fifty (50) hours per week, and earning a greater income than before his injury, countermands any argument that the Respondent is permanently totally disabled under a wage loss theory. "[A]s the claimant is now earning wages in an amount equal to those received by him prior to his injury, he has failed to show any compensable injury or incapacity." See *Parrott v. Barfield Used Parts, et. al.*, 206 SC 381, 34 SE 2d 802 (1945).

The totality of the evidence displays that the Appellate Panel's finding that Claimant was not permanently this was supported by substantial evidence:

Based on the facts above, the Respondent's job duties do not fit the definition of benevolent employment where an employee continues to receive wages despite an inability to contribute to his employer. On the contrary, Respondent remained a productive and integral part of Delano Kneece & Son. In fact, if Respondent were truly unable to contribute then the Employer would have to bear the expense of paying for another employee to work the tractor up to 50 hours per week.

## IV. EVEN IF RESPONDENT WAS PROPERLY DEEMED PERMANENTLY AND TOTALLY DISABLED, THE CIRCUIT COURT ERRED IN AWARDING TEMPORARY TOTAL DISABILITY BENEFITS FOR PERIODS PRIOR TO THE DATE OF MAXIMUM MEDICAL IMPROVEMENT

The Respondent previously voluntarily terminated his right to further temporary indemnity benefits back in 2006 prefaced upon his 2005 return to full time employment at the same or greater earnings. Also, see *Curiel v. Environmental Management Services* 376 S.C. 23, 655 S.E.2d 482 (2007) which states in part:

> Essentially, workers' compensation benefits accrue along a time continuum: temporary total disability benefits are available from the date of injury through the date of maximum medical improvement; post-MMI benefits may then be awarded

> either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member. *Smith v. NCCI, Inc.*, 369 S.C. 236, 631 S.E.2d 268 (Ct.App.2006). Accordingly, the date of maximum medical improvement signals the end of entitlement to temporary total benefits.

Respondent's assertion of return to full time employment at greater wages is confirmed by the evidence contained in his tax records. Furthermore, Respondent's admission of a return to gainful employment in 2005 was undisturbed and unchallenged until following MMI. Therefore, Respondent should, after asserting to the Commission that he was receiving wages for full-time employment, be estopped from arguing in hindsight that those wages were not actually payment for services rendered working over 50 hours per week conducting farm labor.

Additionally, the Respondent's argument that Commissioner Childs' Order finding pre-2005 wages to be a "collateral source" should apply to all wages after the Order falls flat. The Order does not apply to payments made subsequent to the Order and certainly did not prohibit Claimant from later agreeing that he had returned to gainful employment and signing a Form 17. Claimant agreed that he was able to return to full time employment after the Childs Order and by signing the Form 17 voluntarily agreed that the income represented earned wages and allowed the Employer to suspend benefits.

Finally, Respondent repeatedly mischaracterizes his return to work as an "attempt" which is not supported by his deposition testimony or the fact that he unquestionably returned to work for over a decade earning more money than he did before, operating heavy machinery, and working in excess of 50 hours per week. Therefore, even if the Respondent be found entitled to lifetime benefits, Appellants should be entitled to a credit for all weeks between October 4, 2005 and the date of MMI.

## V. THE CIRCUIT COURT ERRED IN AFFIRMING THAT THE RESPONDENT IS ENTITLED TO REIMBURSEMENT OF PAST MEDICAL EXPENSES FROM UNAUTHORIZED TREATMENT PROVIDERS AS WELL AS LIFETIME MEDICAL EXPENSES

The Circuit Court erred in affirming the Full Commission and Single Commissioner's findings and conclusions that Appellants are responsible for treatment with Claimant's unauthorized physicians.

While this statute ultimately gives great deference to the Commission, the statute "does not give a unilateral right to claimants to seek their own treating physician, and such an unencumbered right undermines the authority of the Commission, as prescribed by the legislature." *Turner v. S.C. Dept of Health and Environmental Control*, 377 S.C. 540, 661 S.E.118 (Ct. App. 2008).

Following the 2005 Order of Commissioner Childs, the Respondent requested and the Appellants authorized a neurological examination with Dr. Julian Adams of the South Carolina Neurological Clinic. This evaluation was performed on May 14, 2008, at which time Dr. Adams found the Claimant's examination to be "absolutely normal" and he diagnosed Claimant with a "mild to moderate head injury with a contusion to his right frontal lobe." (See report of Dr. Julian Adams – SC Neurological Clinic).

Following his release by Dr. Adams, the Respondent never requested authorization from Appellants for another neurological evaluation or any other type of medical treatment (aside from ongoing psychological counseling). Instead, the Respondent sought unauthorized medical treatment with providers of his own choice. (R. p. 243, line 18 – p. 244, line 4). The Appellants were never notified of this unauthorized treatment until Respondent filed his Form 50 hearing

request in 2010. (See Form 50 dated July 9, 2010). Pursuant to S.C. Code Ann. § 42-15-60, the Respondent did not have the right to seek his own treating physicians with no notice to the Appellants as no emergency situations coincided with the need for treatment or the Respondent's decision to unilaterally seek medical providers without advice or consent of the Appellants.

The only treating physicians in this case since approximately 2005, have been Drs. Deal and Bergmann. However, the Respondent never made any request of the Appellants to authorize treatment by any other providers since 2005, with the exception Dr. Adams in 2008. Therefore, pursuant to S.C. Code Ann. § 42-15-60, Appellants would respectfully show that they have no responsibility for any past or future treatment, expense, or mileage, arising from or related to treatment provided by the unauthorized physicians; specifically, Drs. Shissias, White, Ugino, or Wicker.

## CONCLUSION

BASED ON THE FOREGOING, the Appellants respectfully request the Court of Appeals reverse the ruling of the Circuit Court as to finding that the Respondent Ricky Kneece is permanently totally disabled under S.C. Code Ann. §42-9-10(C), and that the claim should be remanded as ordered to a single Commissioner for a determination of permanency pursuant to S.C. Code Ann. §42-9-30 and Reg.§ 67-1101 for the scheduled member injuries including but not limited to the Claimant's brain, and with further modification as outlined herein above.

Respectfully Submitted,

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December 29, 2014

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS



APPEAL FROM THE
COURT OF COMMON PLEAS
THE HONORABLE R. KNOX MCMAHON

**APPELLATE CASE NO. 2014-001258**

RICKY KNEECE, RESPONDENT,

V.

KNEECE FARMS AND LEGION IN LIQUIDATION
AND THE SOUTH CAROLINA PROPERTY AND CASUALTY
INSURANCE GUARANTY ASSOCIATION, APPELLANTS.

## PROOF OF SERVICE

I certify that I have served the **Initial Reply Brief of Appellants** and Certificate of Counsel on Ricky Kneece by depositing a copy of it in the United States Mail, postage prepaid, on **December 29, 2014,** addressed to his attorney of record, Scott Elliot, Elliott & Elliott, 1508 Lady Street, Columbia, SC 29201.

December 29, 2014

Respectfully submitted,

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December 29, 2014



The Honorable Jenny Abbott Kitchings
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***Re:*** ***Ricky Kneece v. Kneece Farms***
*WCC File No: 5920867 Claim No.: L16755*
*Our File No.: 5400-0032* ***Ct. of Appeals Tracking No.:2014-001258***

Dear Ms. Kitchings:

Enclosed for filing please find the original and one (1) copy of the Initial Reply Brief of the Appellants, and Proof of Service on behalf of Kneece Farms and Legion in Liquidation and The S.C. Property & Casualty Insurance Guaranty Assoc. in the above-referenced matter. Please return a certified copy to our courier.

By copy of this letter, I am serving a copy of the Initial Reply Brief of the Appellants upon Respondent's counsel of record.

Very truly yours,

Mark D. Cauthen (PPZ)

Mark D. Cauthen

MDC/hrv
Enclosure
cc: Scott Elliot, Esquire