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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Maité Murphy

Civil Case No. 2013-CP-18-1299

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JAN 29 2015

SC Court of Appeals

Frank Wilson, Claimant,.....Appellant,

v.

American LaFrance, Employer, and,
AIG c/o Gallagher Bassett Services, Inc., Carrier, Respondents.

**MOTION TO STRIKE AND/OR FOR CORRECTION OF
DESIGNATION OF MATTER AND
SUPPLEMENTAL DESIGNATION OF MATTER**

Pursuant to Rule 209, SCACR, Respondents move this Court to order that a number of items included in Appellant Frank Wilson’s Designation of Matter to be Included in the Record on Appeal (“Designation”), dated January 20, 2015, be stricken because they are not part of the record that was before the Commission. In particular, a number of Appellant’s designations do not comply with Rules 209(b) and 210(c) SCACR because they refer to material that post-date the April 18, 2012 hearing before the Single Commissioner (*see* Att. A, Decision and Order of Single Commissioner), and Appellant failed to move the Commission to enter these materials into the record pursuant to S.C. Code Reg. § 67-707, Additional and Newly Discovered Evidence. Rule 209(b) SCACR provides that “[t]he Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly

included in the Record on Appeal [See Rule 210(c)].” Rule 210(c) SCACR, in turn, provides that “[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal.”

The following materials were not presented to the Single Commissioner and were never part of the record on which the Commission based its Decision:

#21. TriCounty Radiology Associates – Appellant’s Thoracic Spine MRI report dated May 21, 2012;

#22. The Appellant’s Southeastern Spine Institute Pain Management patient medical report dated June 4, 2012 – PAGES: 1 thru 2; and,

#25. The Appellants’ Southeastern Spine Institute Pain Management patient medical report dated January 11, 2013 – PAGES: 1 thru 2.

These items should be stricken from Appellant’s Designation because they were not included in the record before the Commission.

In addition, Appellant has filed what appears to be a Supplemental Designation of Matter to be included in the Record on Appeal (“Supplemental Designation”), also dated January 20, 2015. First, it is unclear why Appellant has filed a Supplemental Designation at the same time he filed his Designation. Appellant should be ordered to file a single, proper Designation. Second, the Supplemental Designation includes designations of non-record material, including:

Supp. #4. The Appellant’s Southeastern Spine Institute Physician’s Statement (Donald R. Johnson, II, MD) dated June 18, 2011;

Supp. #5. The Appellant’s Southeastern Spine Institute patient medical report dated November 22, 2011 – PAGES: 1 thru 2;

Supp. #6. The Appellant’s Southeastern Spine Institute patient medical report dated December 29, 2011 – PAGES: 1 thru 2;

Supp. #7. The Appellant’s Southeastern Spine Institute patient medical report dated February 24, 2012 – PAGES: 1 thru 2; and

Supp. #8 The Appellant's Southeastern Spine Institute Pain Management Physician's Statement (William Blane Richardson, MD) dated February 24, 2012 – PAGES: 1 thru 2.

These items should be stricken from Appellant's Supplemental Designation because they were not included in the record before the Commission.

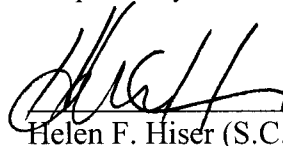
Finally, Appellant has attached a large amount of material to his Initial Brief. To the extent Appellant intends this to serve as the Record on Appeal, he is premature. *See* Rules 208-211, SCACR. Although Respondents have not performed an exhaustive review of these materials, they may well include non-record material, such as the items listed above. In any event, the materials are not numbered and, therefore, could not be referenced by page number in any final briefs. Respondents request that this Court strike the materials included with Appellant's Initial Brief and instruct Appellant to include in the Record on Appeal only those items made part of the record below and properly designated by the parties to this appeal.

CONCLUSION

For the reasons stated herein, Respondents request that this Court order that non-record items be stricken from Appellant's Designation and Supplemental Designation as outlined above, and the materials attached to Appellant's initial Brief be stricken. In addition, Respondents request that this Court suspend the time for Respondents to file their Initial Brief until this Motion is decided.

Respectfully submitted,

January 27, 2015


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*Attorneys for Respondents American LaFrance and
AIG c/o Gallagher Bassett Services, Inc.*

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PROOF OF SERVICE

I certify that I have served the Respondents' **Motion to Strike and/or Correct Designation of Matter and Supplemental Designation of Matter** to be included in the Record on Appeal on Frank Wilson by depositing a copy of it in the United States Mail, postage prepaid, on January 27, 2015, addressed as follows:

Mr. Frank Wilson, *pro se*
8755 Jessica Court
North Charleston, South Carolina 29406



Jami Richards
Legal Assistant to Helen F. Hiser
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SC Court of Appeals



Reply To

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Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

January 27, 2015

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Frank Wilson v. American LaFrance and AIG c/o Gallagher Bassett
Services, Inc.
Date of Accident: May 16, 2005
WCC File No.: 0506037
Our File No.: 2098.05297
Claim No.: 001961-031227-WC-02
Appellate Case No.: 2014-001996

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Motion to Strike and/or Correct Appellant's Designation of Matter and Supplemental Designation of Matter, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the self-addressed, stamped envelope. Also enclosed is our firm's check in the amount of \$25 for filing the motion.

If you have any questions, please do not hesitate to contact me.

Yours truly,
McAngus Goudelock & Courie, LLC



Helen F. Hiser

Enclosures

cc: Frank Wilson, *pro se*

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