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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**S.C. Supreme Court**

APPEAL FROM THE SOUTH CAROLINA COURT OF APPEALS  
AND S.C. WORKERS' COMPENSATION COMMISSION

Gene McCaskill, S.C. Workers' Compensation Commissioner

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W.C.C. File No.: 0800660

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Cindy Ella Dozier, Employee

Petitioner,

v.

American Red Cross, Employer  
and Sedgwick CMS, Carrier,

Respondents.

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**RETURN TO PETITION FOR  
WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

1. Did substantial evidence exist in the record to support the Commission's finding that Petitioner did not meet her burden of proving compensable RSD/CRPS?
2. Did substantial evidence exist in the record to support the Commission's finding that Petitioner was entitled to a permanent partial disability award to each arm but was not permanently and totally disabled?
3. Were Respondents estopped from denying that Petitioner sustained related RSD/CRPS?
4. Did Respondents waive their right to deny that Petitioner sustained related RSD/CRPS?

## **STATEMENT OF THE CASE**

Cindy Dozier ("Petitioner"), sustained an admitted injury by accident on January 17, 2008. The parties entered into a Consent Order whereby they agreed that Petitioner sustained a compensable injury to her left wrist. (R. pp. 1-2)

Petitioner filed an August 6, 2009, Form 50 alleging injury to, "arms, back/neck," and "psychological overlay." Petitioner sought further medical treatment for the "neck, back, arms, psyche." (R. pp. 91-93) On August 14, 2009, Respondents filed a Form 51 admitting an injury to the "left wrist only." (R. p. 94)

A hearing was held before a Single Commissioner on November 3, 2009. At this hearing, it was stated onto the record that Petitioner sought treatment for her alleged RSD/CRPS, as well as psychological overlay, neck and back, and also sought control over the medical treatment for same. It was also read onto the record that Respondents admitted only an injury to her left arm, a finding of MMI, and to direct future medical treatment. (R. p. 144, lines 23-25; R. p. 145, lines 1-14)

After the hearing, the Single Commissioner emailed counsel for the parties requesting that Claimant's counsel draft a proposed Order finding, "Claimant suffered injuries to both arms,

including RSD, and her neck. Defense to pay all causally-related medical bills to date and additional treatment to be directed by Dr. Moore.” (R. p. 572).

Ultimately, the Single Commissioner issued a December 17, 2009, Decision & Order. This Decision & Order found as fact that, “The Claimant suffered injuries to both arms by accident arising out of and in the course of her employment.” The Commissioner specifically ordered, “The defense shall provide the Claimant with medical treatment for both of her arms through a physician of their choosing.” (R. pp. 5-6)

On December 30, 2009, Petitioner filed a Form 30 Notice of Appeal with the following exceptions:

1. Whether the Single Commissioner erred as a matter of fact and law in failing to order past causally related medical treatment to be paid by the Carrier pursuant to § 42-15-60?
2. Whether the Single Commissioner erred as a matter of fact and law in allowing Defendants to designate a treating physician when good cause existed to designate Dr. Moore or one of the other treating physicians, such good cause being shown by Defendant’s willful failure to provide treatment through the agreed upon authorized treating physician and the fact Defendants obtained *five* IMEs?
3. Whether the Single Commissioner erred as a matter of law in failing to assess the mandatory 25% penalty for improper termination of temporary compensation?

R. p. 105; R. pp. 600-601.

On January 4, 2010, Petitioner filed an Amended Form 30 adding the following exceptions:

4. Whether the Single Commissioner erred as a matter of fact and law in failing to find Petitioner injured her neck/back when such finding was supported by the opinions of the treating physicians?
5. Whether the Single Commissioner erred as a matter of fact and law in failing to exclude the report of Dr. Bethea?

R. pp. 114-115.

Oral arguments were heard before the Appellate Panel of the Full Commission. Petitioner chose not to argue the issues of medical provider, compensability of her alleged neck, back, and psychological injuries, or the 25% penalty. The South Carolina Workers' Compensation issued an Order affirming the Single Commissioner and stating:

Claimant contends she has been diagnosed with carpal tunnel syndrome and Complex Regional Pain Syndrome (CRPS/RSD), both conditions being work-related. She seeks treatment as directed by Dr. Blake Moore, contending that although the parties agreed to Dr. McIntosh as the authorized treating physician, she was sent to Dr. McIntosh for a defense medical evaluation rather than for treatment.

R. p. 8.

This November 23, 2010, Order was drafted by Petitioner's counsel and included all five original issues for appeal, including the issue of whether or not the Single Commissioner erred by failing to find that Petitioner injured her neck/back and the issue of whether or not the Single Commissioner erred by failing to authorize Dr. Moore as the authorized treating physician (at that point in time, Dr. Moore was the only physician to diagnose possible RSD/CRPS and had referred her to Dr. Mancuso and Dr. Bitting for a determination of this).

Petitioner filed a subsequent Form 50 on October 17, 2011. Petitioner alleged an additional injured body part, making her allegations, "both arms, central nervous system." At this hearing, Petitioner requested a lump sum award for permanent total disability benefits. Respondents filed a November 15, 2011, Form 51 which admitted "only injury to the bilateral wrists. All other alleged injuries are denied." (R. p. 123)

A hearing was held before the Single Commissioner on February 6, 2012. Petitioner argued that she was entitled to a finding of permanent and total disability under S.C. Code Ann. § 42-9-10 (2007) based on the medical restrictions placed on her by her authorized treating physicians. Specifically, she contended that the 5-pound lifting restriction placed on her by Dr. Shealy and Dr.

Zgleszewski left her unable to return to the workforce. In addition, Petitioner argued that she was unable to return to work due to Dr. Zgleszewski's assertion that she would not be able to use either upper extremity on a repetitive basis "secondary to her CRPS and chronic pain from her failed CTS surgery." (R. p. 423-424)

Respondents argued that Petitioner was entitled to a permanent partial disability award to each wrist only but that Petitioner had not met her burden of proving permanent and totally disability and that her argument for such award was based upon her alleged and denied RSD/CRPS.

Respondents further argued that Petitioner previously sought a finding of compensable RSD/CRPS with treatment for same with a provider of her choosing at the prior November 3, 2009 hearing, but that the resulting December 17, 2009, Decision & Order did not make any findings to this effect or order treatment for RSD/CRPS. Rather, the December 17, 2009, Decision & Order gave Respondents the right to choose Petitioner's treating physician. (R. pp. 5-6). In addition, Respondents argued that, rather than appealing the issue of RSD/CRPS, Petitioner chose to appeal other issues which were argued and ruled upon by the Full Commission in the November 23, 2010, Order that was drafted by Petitioner's attorney. Respondents further contended that the overwhelming preponderance of the credible evidence did not support a medical diagnosis of RSD/CRPS.

The Single Commissioner issued a Decision & Order finding, inter alia: (1) Petitioner did not suffer from RSD/CRPS related to her January 17, 2008, wrists injuries (Finding of Fact #33); (2) Petitioner reached MMI on August 9, 2011 (Finding of Fact #4); and (3) Petitioner sustained 20% permanent partial disability to each arm (Finding of Fact # 36). (R. pp. 55, 62, 63) This Order also found that Respondents were not estopped from denying Petitioner's alleged RSD/CRPS and

also were not estopped from denying same. The Full Commission fully affirmed the Single Commissioner's Decision & Order. (R. pp. 67-87)

Petitioner filed her Notice of Appeal with the South Carolina Court of Appeals on December 14, 2012. The Court of Appeals issued an opinion on May 6, 2014, affirming the Commission with respect to the issues of Petitioner's RSD/CRPS, permanent disability, and waiver/Estoppel.

Respondents submit to this Court that the Petition for Writ of Certiorari should be denied because the Court of Appeals correctly upheld the Commission with respect the factual issues of the extent of Petitioner's injury from her work accident (RSD/CRPS) and permanent disability. With respect to Estoppel and waiver, the Court of Appeals should be affirmed because Petitioner failed to show that Respondent made a false representation or concealed material facts with the intent to induce Petition into a detrimental act.

## **ARGUMENT**

### **I. SUBSTANTIAL EVIDENCE EXISTS TO SUPPORT THE COMMISSION'S FINDING THAT PETITIONER DID NOT SUSTAIN COMPENSABLE RSD/CRPS.**

The central issue in this case is whether there is substantial evidence to support the Commission's finding that Petitioner did not sustain related RSD/CRPS. This is factual determination made by the Commission. Voluminous evidence exists to show that the Commission correctly concluded that Petitioner's alleged RSD/CRPS was not related to her January 17, 2008, repetitive trauma injury. This evidence is substantial and includes: (1) Dr. Zgleszewski's medical reports and testimony; (2) the medical records and testimony of Dr. Mancuso and Dr. Bitting; (3) the three-phase bone scan; and (4) Petitioner's failure to complain of the symptoms commonly associated with RSD/CRPS.

**1. Dr. Zgleszewski:**

Dr. Timothy Zgleszewski's was hired by Petitioner to perform an independent medical examination prior to the November 3, 2009, hearing before the original Single Commissioner. (R. pp. 517) In his report of September 8, 2009, he diagnosed Petitioner with, "1. Left and right carpal tunnel syndrome 2. Cervical myofascial pain." (Id.) Nowhere in this report (one year and eight months after she last worked for Defendant) did he make observations typically associated with RSD/CRPS, such as allodynia, mottled skin, cold skin, hair loss or brittle nails. Nowhere in his report was a diagnosis of RSD/CRPS made. Nowhere in his report did Dr. Zgleszewski state that he felt Petitioner needed treatment for RSD/CRPS. In fact, Dr. Zgleszewsk recommended "myofascial stretch and release rehabilitation as well as rehabilitation therapy to address the upper crossed muscle imbalances," and "trigger point injections the bilateral upper trapezius, levator scapulae and teres minor muscles ... The examinee will require carpal tunnel injections to the bilateral wrists." (R. p. 516)

After the November 3, 2009, hearing, Respondents agreed to allow Dr. Zgleszewski to treat Petitioner's wrists, based on his Sept 8, 2009, report.

In his deposition testimony, Dr. Zgleszewski testified that:

- He did not believe Petitioner had RSD/CRPS when he first treated her on September 8, 2009, approximately one year and nine months after her Januar 17, 2008, repetitive trauma injury to her wrists; (R. p. 237, lines 5-17)
- Admitted that what caused him to perform the first unsuccessful stellate ganglion block on January 26, 2010, was not his objective findings ("she was still reporting the same symptoms"), but rather that Petitioner had told him that she had already received a successful stellate ganglion block from another physician; (R. p. 227, lines 6-16)
- He never "personally witnessed," noted in his reports, many of the commons signs of RSD/CRPS, including; cyanotic skin, mottled skin, edema, trophic changes, soft tissue atrophy, nail changes, or hair growth changes; (R. pp. 244-247)

- Petitioner did not meet enough criteria for a diagnosis of RSD/CRPS under the *A.M.A. Guides Fifth Edition*, the very same treatise he used to render Petitioner's impairment ratings; (R. p. 248, lines 6-11)

## **2. Dr. Mancuso & Dr. Bitting:**

Dr. Lisa Mancuso and Dr. George Bitting treated Petitioner for eight months, from January 26, 2009, through August 26, 2009. (R. p. 554-567) This treatment was initiated by Petitioner. Petitioner treated on numerous occasions with both doctors. Both Dr. Mancuso and Dr. Bitting were unequivocal in their opinions that Petitioner did not have RSD/CRPS. (R. p. 558) Dr. Bitting was questioned extensively by both parties at his deposition regarding his opinion that Petitioner did not have RSD/CRPS. (R. p. 190, lines 23-25; p. 191, lines 1-7)

## **3. Three-Phase Bone Scan:**

Petitioner underwent a three-phase bone scan on February 3, 2009, which was later interpreted as being negative for signs of RSD/CRPS by Dr. Bitting. (R. p. 567, 559) Dr. Zgleszewski, in his September 8, 2009, report, stated that the report from this bone scan had been reviewed. Given Dr. Zgleszewski's diagnoses of Petitioner at the time of the September 8, 2009 report, there was no evidence that he felt that it was indicative of RSD/CRPS, either. (R. p. 516) No medical opinion exists in the record of this case that interprets this diagnostic test as positive for RSD/CRPS.

## **4. Petitioner's Failure to Report RSD/CRPS Symptoms:**

On January 26, 2009, Petitioner completed a health history questionnaire when her treatment at First Choice Healthcare began. She was asked to "check all symptoms or illnesses that you have currently." (R. p. 555; R. pp. 617-620) Petitioner did not report any neurological or skin changes on this form, which she signed and dated. (Id.)

This questionnaire was completed more than one year after Petitioner's injury. If Petitioner sustained RSD/CRPS related to her January 11, 2008, injury, some sign or indication would have existed by January 26, 2009, and she would have reported it accordingly. This evidence is especially compelling given that the reason for Petitioner's referral to FirstChoice Healthcare was for a diagnosis of possible RSD/CRPS.

Further, the medical notes from Dr. Zgleszewski, as well as his deposition testimony, indicate that Petitioner made virtually no complaints of symptoms that would be associated with RSD/CRPS. Dr. Zgleszewski's diagnosis of RSD/CRPS on January 26, 2010, nearly four months after his initial evaluation of September 8, 2009, was based primarily on Petitioner's unsubstantiated verbal report that she had received prior successful stellate ganglion blocks by another physician and that one of her arms had been placed in a cast sometime in 2008. Dr. Zgleszewski went on to perform a series of three admittedly unsuccessful stellate ganglion blocks and ultimately sent Petitioner for a surgical evaluation for carpal tunnel syndrome, which had been one of his original diagnoses. His opinion regarding RSD/CRPS was faulty and not based on credible objective criteria.

Substantial evidence exists to support the Commission's denial of Petitioner's claim for alleged RSD/CRPS. The Commission's decision should be affirmed.

**II. SUBSTANTIAL EVIDENCE EXISTS TO SUPPORT THE COMMISSION'S PERMANENT PARTIAL DISABILITY AWARD.**

"The commission may find a degree of disability different from that suggested by expert testimony." Lyles v. Quantum Chemical Co., 315 S.C. 440, 434 S.E.2d 292 (Ct.App. 1993). "No fact finding body is compelled to blindly accept an expert's opinion". Id., quoting Windham v. City of Florence, 221 S.C. 350, 359, 70 S.E.2d 553, 556 (1952). Petitioner's argument that she is

permanently and totally disabled rests entirely upon a request for a finding that she suffers from related RSD/CRPS.

Petitioner treated with Dr. Gerald J. Shealy, an orthopedic hand surgeon, from December 2, 2010, through May 23, 2011. (R. p. 399-415) The language quoted supra from Dr. Shealy's deposition shows that it was Petitioner who requested a 5-pound lifting restriction which Respondent's submit was an effort to increase the value of her claim and delay its conclusion. This mirrors Petitioner's earlier self-diagnosed RSD/CRPS and request for a stellate ganglion blocks from Dr. Zgleszewski. Had it not been for her own verbal request, Dr. Shealy would have placed Petitioner back on regular duty work, as had Dr. Bitting, on July 29, 2009. (R. p. 182, lines 10-25 of Tr. p. 10; R. p. 182, lines 1-25 of Tr. p. 11; R. p. 182, lines. 1-3 of Tr. p. 12)

Because the Commission found that Petitioner did not sustain a compensable RSD/CRPS injury, the only work restrictions of any relevance involved in this claim were those of Dr. Shealy, who admitted that they were actually self-imposed restrictions that Petitioner requested. Despite the self-imposed work restrictions for her carpal tunnel release surgeries, Respondents' vocational expert still found jobs that Petitioner could perform. The Commission correctly took these employment suggestions by Respondents' expert into account in finding that Petitioner was not permanently and totally disabled. Petitioner, refused to seek any work within her restrictions. (R. p. 323, lines 20-22) Petitioner failed to meet her burden of proving that she was not employable. Substantial evidence supports this conclusion, including Respondent's Vocational Assessment and Petitioner's admission that she had failed to apply for any available jobs whatsoever.

In her Petition for Writ of Certiorari, Petitioner argues that the PDL definition of “Sedentary Work” excludes the existence of a reasonably stable market for her services. As stated, this definition of sedentary work includes the ability to exert up to 10 pounds of force, occasionally. Based on this definition, Petitioner makes the illogical leap that, since she was placed on a 5-pound lifting restriction by her treating physicians, she could not perform jobs that were categorized as sedentary by Respondent’s vocational expert. However, jobs that were within Petitioner’s permanent work restrictions would still be included in the sedentary category, even though they do not require lifting up to 10 pounds. In other words, many of the jobs found in Myers’ labor market survey do not require lifting up to 10 pounds, but are considered to be in the sedentary category because, by definition, sedentary jobs require lifting *up to* 10 pounds. These jobs include collections clerk and customer services representative, (R. pp. 568-570) Under Petitioner’s logic, any claimant placed on work restrictions of 9-pounds or less would be automatically deemed permanently and totally disabled, regardless of the other factors used to make this determination, such as age, education level, and work experience. If Petitioner’s line-of-reasoning is enforced, the doctor rendering the permanent work restrictions would effectively become the sole arbiter of a claimant’s permanent disability, rather than the Commission.

The Commission’s disability award of 20% to each arm is quadruple the impairment ratings of 5% rendered by both Dr. Zgleszewski and Dr. Shealy for her CTS release surgeries. Dr. Zgleszewski, in his deposition, admitted that his impairment ratings he rendered to Petitioner’s whole person combined with her 5% impairment ratings of 5% to each arm for the CTS releases would equate to impairment of 15% to each arm for both the CTS and the alleged RSD/CRPS. Thus, the Commission’s disability award is higher than Dr. Zgleszewski’s impairment ratings, even including the increase for the alleged but denied RSD/CRPS. The Appellate Panel’s award of

20% permanent partial disability to each arm is supported by substantial evidence and should be affirmed.

Substantial evidence existed in the record to support the Commission's award and the Court of Appeals should be affirmed on this issue.

**III. WAIVER AND ESTOPPEL DO NOT BAR RESPONDENTS FROM MAINTAINING A DENIAL OF PETITIONER'S ALLEGED RSD/CRPS.**

Whether the above legal doctrines apply to the factual scenario of this case is the only legal issue appealed and, therefore, is the only issue not governed by the substantial evidence standard. Petitioner repeatedly states in her Petition for Writ of Certiorari that Respondents' authorization Dr. Zgleszewski to treat Petitioner after the November 3, 2009, hearing is somehow proof that they were conceding the issue of compensability of the alleged RSD/CRPS and are, therefore, not entitled to maintain a denial of the RSD/CRPS claim. As stated supra, Dr. Zgleszewski did not diagnose RSD/CRPS until January 26, 2010. Petitioner fails to explain how or why Dr. Zgleszewski would or could have been chosen and authorized to treat a condition for which he had not made any diagnosis. If Respondents had wished to concede the issue of RSD/CRPS, they would have authorized Dr. Moore, who was the only doctor during that time period to have given any opinion that Petitioner may have RSD/CRPS. Respondent's decision to authorize Dr. Zgleszewski and the reasoning behind said authorization is irrelevant to the issues at hand.

The elements of estoppel have been summarized as: (as to the party being estopped): (1) Conduct which is calculated to convey the impression that the facts are inconsistent with those which the party subsequently attempts to assert (including misrepresentation or concealment of material facts); (2) Intention or an expectation that such conduct may be acted upon by the other

party; and (3) Actual or constructive knowledge of the true facts; (as to the party asserting estoppel): (1) Lack of knowledge or means to know the true facts; (2) Reliance on the conduct of the other party; (3) Change of position to the extent that one party would be prejudiced or injured. *See Provident Life & Accident Ins. Co. v. Driver*, 371 S.C. 471, 451 S.E.2d 924 (Ct. App. 1994).

Dr. Zgleszewski was authorized by Respondents sometime after the November 3, 2009, hearing. At that point in time, Dr. Zgleszewski had not diagnosed Petitioner with RSD/CRPS. Dr. Zgleszewski admitted, under oath, that he did not believe when he evaluated her on September 8, 2009, that she had RSD/CRPS. Dr. Zgleszewski made no mention of a diagnosis of RSD/CRPS in his report from his September 8, 2009, evaluation; however, Dr. Zgleszewski did specific recommendations for treatment, none of which included treatment for RSD/CRPS. (R. p. 516)

After Respondents had authorized treatment, Dr. Zgleszewski performed a series of 3 unsuccessful stellate ganglion blocks. Though these stellate ganglion blocks were authorized by Respondents, this was the only treatment rendered by Dr. Zgleszewski for the alleged RSD/CRPS. After it became apparent, even to Dr. Zgleszewski, that these were not helping Petitioner, he then reverted back to his original diagnosis of bilateral CTS, performed several more CTS injections, and ultimately referred Petitioner to Dr. Shealy. Respondents provided and continued to provide, treatment for Carpel Tunnel Syndrome with Dr. Zgleszewski and Dr. Shealy.

Petitioner argues that an employer who provides any level of treatment for a certain condition is forever barred from raising the issue of said condition's or causal relation to the work injury. For policy-driven reasons, this argument is faulty because it would only encourage delay or denial of medical treatment, whether causally related or not, for fear that providing any treatment for an unrelated condition would irrevocably affect the disability fate of a worker's compensation claim. This would only increase the time and cost of litigation of workers' compensation claims as

well as result in a claimant's injuries being permanently worsened due to medical treatment not being provided in a timely manner. It is well-known that the provision of medical treatment by a party is not evidence of an admission of liability. This result would be a step backwards for claimants as well as for employers and carriers.

Respondents should not be punished with a finding of compensable RSD/CRPS because they authorized three stellate ganglion blocks, rather than refusing to authorize them. A refusal to authorize the stellate ganglion blocks would have likely resulted in at least one additional hearing and further delay of the resolution of this claim.

In order for Petitioner to prove Estoppel, she must prove conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert. Provident Life & Accident Ins. Co. v. Driver, 371 S.C. 471, 451 S.E.2d 924 (Ct. App. 1994). Petitioner cannot show evidence of such conduct. Respondents' authorization of Dr. Zgleszewski at a time when he had not diagnosed Petitioner with RSD/CRPS cannot be interpreted as a "false representation" or "concealment."

In her Petition, Dozier attempts to argue Estoppel by referring to the Single Commissioner's November 4, 2009, email request for Petitioner's attorney to draft an order finding compensable injuries to "both arms, including RSD, and her neck. Defense to pay all causally-related medical bills to date and additional treatment to be directed by Dr. Moore." In making this point, Petitioner argues against her position on this issue because the Single Commissioner's decision to change his ruling indicates that he affirmatively intended to deny the RSD/CRPS portion of the claim.

For whatever reason, the Single Commissioner, between November 4, 2009, and December 17, 2009, changed his mind on this issue of the alleged RSD/CRPS. The December 17, 2009, Decision & Order also does not mention the issues of the compensability of Petitioner's alleged neck condition or depression. Both the neck and depression were raised by Petitioner prior to and during the November 3, 2009, hearing. The fact that the Single Commissioner may have originally requested that Petitioner's counsel draft an Order finding compensable RSD and ordering medical treatment by Dr. Moore, but later issued an actual Order silent as to the issue of compensability of RSD, but permitting Respondents to retain control of the medical treatment of the claim logically indicates that the Single Commissioner's intentions were to fully set forth in the actual order that did not specifically find the RSD/CRPS compensable. In addition, Petitioner must have interpreted the December 17, 2009, Order as a denial of the neck, depression and RSD/CRPS because she filed a Form 30 appealing these very issues, including the neck and the failure to provide medical treatment through Dr. Moore. (R. p. 105; R. p. 114-115; R. pp. 600-601)

In order to prevail on her argument, Petitioner must convince this Court to believe that Respondents' authorization for treatment with Dr. Zgleszewski was a "false representation" designed to fool Petitioner into also believing that her back/neck had been accepted as parts of this claim because Dr. Zgleszewski had also opined that she had sustained compensable injuries to them (although only the left wrist was admitted on the record and the Single Commissioner's Order does not find the neck/back compensable).

As stated above Estoppel requires that the authorization of Dr. Zgleszewski was calculated by Respondents to "convey the impression that the *facts* are otherwise than, and inconsistent with, those which the party subsequently attempts to assert." The authorization of Dr.

Zgleszewski in no way changed the facts of this claim or the wording of the December 17, 2009, Decision & Order. In fact, had the Single Commissioner issued an Order consistent with his November 4, 2009, email request to Petitioner's attorney, Respondents would have filed a Form 30 appealing the issue of the compensability of the alleged RSD/CRPS. As such, Estoppel and waiver should also apply to bar Petitioner's position, as Respondents also relied upon the wording of the December 17, 2009, final Decision & Order.

Petitioner further incorrectly asserts in her Petition for Writ of Certiorari that Respondents did not raise a denial to Petitioner's claim of RSD/CRPS until they filed their Form 58, ten days before the February 6, 2012, hearing. This is simply untrue. The hearing transcript from the November 3, 2009, hearing proves otherwise. (R. p. 144, lines 23-25, R. p. 145, lines 1-14)

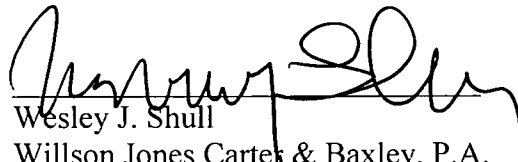
In addition, Respondents filed a November 15, 2011, Form 51 that admitted an injury to "only to the bilateral wrists. All other alleged injuries are denied."

Petitioner's reliance on Jervey v. Martint Environmental, Inc., 406 S.C. 210, 750 S.E.2d 90 (S.C. 2013), is misplaced. Jervey dealt with the issue of whether an employer could be time-barred under S.C. Code Ann. §42-9-260 (1996) or under waiver/*Laches* from denying the *compensability* of an accident and terminate benefits after the expiration of the 150-day period. In the instant case, Petitioner's accident was admitted. Respondent's denial of the RSD/CRPS is essentially a denial of the extent of the injuries resulting from the trauma, not a denial of the compensability of the accident itself. To the extent Petitioner attempts to use it, Jervey does not apply.

## **CONCLUSION**

Substantial evidence exists in the record of this case to support the Commission's denial of Petitioner's alleged RSD/CRPS injury. The Commission's permanent partial disability award

and was supported by substantial evidence. The legal doctrines argued, supra, do not affect the Commission's award, and Petitioner has shown no error of law, as required.



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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM THE SOUTH CAROLINA COURT OF APPEALS  
AND S.C. WORKERS' COMPENSATION COMMISSION

Gene McCaskill, S.C. Workers' Compensation Commissioner

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W.C.C. File No.: 08006600

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Cindy Ella Dozier, Employee

Appellant,

v.

American Red Cross, Employer  
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Respondents.

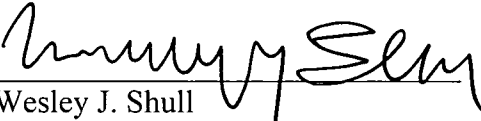
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**CERTIFICATE OF COUNSEL**

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I certify that I have served the Return to Petition for Writ of Certiorari on Cindy Ella Dozier by depositing copies of it in the United State Mail, postage prepaid, on March 26, 2015, addressed to her attorney of record, Stephen B. Samuels, Esquire, SAMUELS LAW FIRM, 1320 Richland Street, Columbia, SC 29201.

March 26, 2015

  
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March 26, 2015

The Honorable Daniel E. Shearouse  
Clerk  
The Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

**RECEIVED**

MAR 31 2015

**S.C. Supreme Court**

Re: Cindy Ella Dozier vs. American Red Cross and Sedgwick CMS  
WCC File No.: 0800660 2015-000395

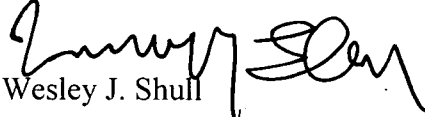
Dear Mr. Shearouse:

I am enclosing the original and six copies of Respondents' Return to Petition for Writ of Certiorari. I am also enclosing a Certificate of Service indicating that a copy of the Return is being served upon Mr. Stephen B. Samuels, Attorney for Petitioner.

With cordial best wishes, I am

Very truly yours,

WILLSON JONES CARTER & BAXLEY, P.A.

  
Wesley J. Shull

WJS  
Enclosure

cc: Stephen B. Samuels, Esquire  
Ms. Charmaine Holtz (via email)