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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 1206355

Frances Baron, Employee,

RECEIVED
Appellant,
JUL 31 2015

v.

Sanctuary Hospice, Employer, and
Guarantee Insurance Company c/o
Patriot National Insurance Group, Carrier,

SC Court of Appeals

Respondents.

JOINT MOTION TO DISMISS APPEAL

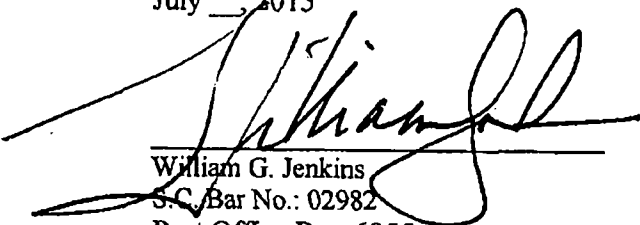
The parties to this appeal hereby move to dismiss the appeal in the above-reverenced matter pursuant to Rule 260(c) SCACR. This matter is currently pending before this Court on appeal from an Order of the South Carolina Worker's Compensation Commission. Appellant Frances Baron is represented by William G. Jenkins, Esquire and Respondents Sanctuary Hospice and Guarantee Insurance Company c/o Patriot National Insurance Group are represented by Helen F. Hiser, Esquire and Kathleen Grey Lyall, Esquire. The parties have reached a settlement agreement regarding the issues on appeal. The parties have further agreed that each party will bear its own costs with respect to this appeal.

The parties hereby move to dismiss this appeal with prejudice. Under § 42-9-390 (Voluntary Settlements), for injuries occurring after July 1, 2007; and so long as both parties are represented by an attorney, the employer only needs to file a copy of the

settlement agreement with the Commission. Appellant Frances Baron alleged injuries arising out of a May 21, 2012 accident, and both parties have been represented throughout this case by counsel. The settlement agreement has been filed with the Commission and is attached hereto for the Court's files. As a result, no Commission approval is necessary in order to make this settlement final and binding. Therefore, this appeal should be dismissed without further delay.

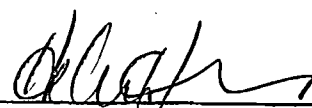
This motion conforms with Rule 240 and Rule 267, SCACR.

July 2015



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July 21, 2015

Claims Department
S. C. WORKERS' COMPENSATION COMMISSION
Post Office Box 1715
Columbia, South Carolina 29202-1715

RE: Frances Baron vs. Sanctuary Hospice and Guarantee Insurance Company
c/o Patriot National Insurance Group
Date of Accident: May 21, 2012
WCC File No.: 1206355
Our File No.: 20748.12021
Claim No.: 319-111-165

Dear Sir or Madam:

We have enclosed the original and two (2) copies of a Clincher Agreement for filing in the above matter. Also enclosed is a check in the amount of \$25.00 as payment of associated filing fees. Please return a stamped copy of the document to us and Claimant's attorney listed below once it has been processed by the Commission.

With kind personal regards, we are

Very truly yours,



Kathleen G. Lyall

KGL/jcn
Enclosures

cc: William G. Jenkins, Jr., Esquire, Jenkins & Esquivel, P.A.

MCANGUS GOUDELICK & COURIE, L.L.C


Check Number: 00025624
Check Date: 06/16/2015

DATE	DESCRIPTION	INVOICE NUMBER	NET AMOUNT
6/15/2015	Jessie Ninestein/Baron/Clincher Filing Fee	20748.12021	25.00
Vendor: SCWCC			TOTAL 25.00

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THIS DOCUMENT CONTAINS SECURITY FEATURES - SEE BACK FOR DETAILS

<p>MCANGUS GOUDELICK & COURIE, L.L.C 1320 Main Street, 10th Floor Columbia, SC 29201 PH: (803) 779-2300</p>	<p>No. 00025624</p> <p>The National Bank of South Carolina Columbia, South Carolina 67-119/539</p>
<p>Twenty-Five & no/100 Dollars</p>	<p>DATE: 06/16/2015</p> <p>PAY THIS AMOUNT: \$*****25.00</p>
<p>PAY TO THE ORDER OF: SCWCC Post Office Box 1715 Columbia, South Carolina 29202-1715</p>	<p>OPERATING ACCOUNT</p> 

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1206355

FRANCES BARON, }
 }
 Employee, }
 }
 Claimant, }
 }
 vs. }
 }
 SANCTUARY HOSPICE, }
 }
 Employer, }
 }
 AND }
 }
 GUARANTEE INSURANCE COMPANY }
 C/O PATRIOT NATIONAL INSURANCE }
 GROUP, }
 }
 Carrier, }
 }
 Defendants: }

**SETTLEMENT AGREEMENT
AND RELEASE**

Frances Baron "Claimant" alleges to have injured her bilateral eyes, back, left ankle, right ankle, right foot, right leg, left leg, face, head, and brain, by accident arising out of and in the course of her employment with Sanctuary Hospice "Employer" on or about May 21, 2012 when she suffered a syncopal episode and was involved in a single car motor vehicle accident as a result of the same. This matter was previously heard before the South Carolina Workers' Compensation Commission and was denied at the Single Commissioner Hearing in a Decision and Order dated June 14, 2013 (See Exhibit "A"). The matter was appealed to the Full Commission of the South Carolina Workers' Compensation Commission by Claimant. The Full Commission affirmed the Single Commissioner's denial of the claim in an Order dated December 12, 2013 (See Exhibit "B"). Defendants maintain their denial of this claim and further

dispute allegations of injured body parts and extent of Claimant's alleged injuries.

Claimant's average weekly wage is \$1,095.15; and the compensation rate is \$725.47.

Claimant contends that she sustained an accidental injury arising out of and in the course of employment; that she is in need of additional medical examination and treatment; that she has lost compensable time from work and wages; that she has sustained permanent disability in excess of any ratings by treating physicians; that she sustained injuries to other members and/or organs of the body while working for Employer, which Defendants expressly deny; and Defendants dispute the Claimant's allegations and deny that any benefits are due.

Claimant has been treated and/or evaluated by Jasper County EMS, who did not rate the Claimant's permanent impairment, by Coastal Carolina Medical Center for Hyperbarics and Wound Healing, who did not rate the Claimant's permanent impairment, by George B. Sutherland, Jr., M.D., who did not rate the Claimant's permanent impairment, by Rerin W. Diana, Jr., M.D., who did not rate the Claimant's permanent impairment, by Savannah Cardiology, who did not rate the Claimant's permanent impairment, by Mark T. Wagner, PhD, who did not rate the Claimant's permanent impairment and by Coastal Carolina Hospital, who did not rate the Claimant's permanent impairment.

In consideration of the sum of Two Hundred Ten Thousand Dollars and No Cents (\$210,000.00), Claimant does hereby release and forever discharge Defendants from any and all claims, demands, actions or causes of action under the South Carolina Workers' Compensation Act, on account of any and all injuries, disability, disfigurement, specific loss, death, operations, medical, hospital or like expense, continuances, recurrences, aggravations, changes of condition, ailments, illnesses, and diseases or other damages, consequences or results, past, present or future in any way connected with, or arising from the alleged injury sustained by Claimant on or

about May 21, 2012, or any other injury or disease to any other body part or organ sustained while working for Employer, and does hereby acknowledge that Defendants have fully, finally and completely paid and discharged all of their obligations, liabilities and responsibilities under the South Carolina Workers' Compensation Act, and that the sum set forth above is being paid to, and received by, Claimant in full and final satisfaction of all claims whatsoever as a result of the alleged accident described above and that Defendants shall not be liable for any additional payments whatsoever.

It is expressly understood and agreed that Defendants deny all liability for medical expenses and are not responsible for payment to any medical providers.

Pursuant to 42 USC §1395y, 42 CFR §411.46 and §411.47, the Medicare intermediary manual, and the Medicare carriers manual, the parties to this settlement believe that any rights or interests Medicare may have in the within settlement have been adequately considered and protected by allocating a specific amount of the settlement proceeds for payment of the Medicare-covered medical expenses that Claimant may incur in the future for treatment of her work injury.

Based upon the review of Claimant's medical records, age, life expectancy, future cost projections, historical treatment trends, and the denied status of this claim the parties propose that \$0 of the total settlement will be allocated to pay for the anticipated future Medicare covered medical expenses Claimant may incur for treatment of the work injury. The Medicare Set-Aside (hereinafter MSA) was reviewed and approved by the Centers for Medicare & Medicaid Services (hereinafter CMS) on April 10, 2015. In CMS' correspondence dated April 10, 2015, it was noted that the MSA was evaluated and CMS determined that Medicare's interests have been adequately considered and no MSA amount is deemed necessary in this case. CMS' April 10,

2015 approval letter is attached hereto as Exhibit "C".

Claimant agrees to release as part of this agreement any right to bring any possible future action under the Medicare Secondary Payer Statute (MSP) against Defendant/Employer. Further, Claimant agrees to hold harmless Defendant/Employer for any loss of Social Security or Medicare benefits he/she may sustain in the future as a result of this settlement.

Defendant/Employer agrees to be responsible for reimbursing any payments made by the COB&R and/or Tricare up to the date of this settlement as long as such expenses are related to the within injury. Furthermore, Defendant/Employer retain the right to appeal or seek reduction of any payments made by the COB&R, Tricare or any entity and Claimant will agree to consent and provide any necessary authorization to appeal such payments.

The parties further agree the Claimant will be responsible for satisfaction of any overpayments or conditional payments made by Medicare or Tricare on behalf of the Claimant for treatment related to the work accident which is incurred subsequent to the execution of this release. The Claimant further acknowledges and understands that the Defendants are not obligated to repay any conditional payments subsequent to the execution of this release on the Claimant's behalf, and that Claimant's failure to repay Medicare or Tricare for such overpayments or conditional payments subsequent to the execution of this release may result in the loss of right to Social Security and/or Medicare and/or Tricare benefits to the extent Claimant would have been entitled to those benefits in the absence of this settlement agreement, and/or other adverse consequences.

Claimant and her attorney represent that Claimant has been fully advised of her rights under the South Carolina Workers' Compensation Act and that they are of the opinion that the proposed settlement is reasonable and fair. Claimant's attorney represents that he has reviewed

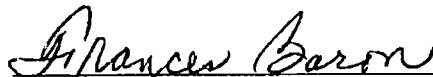
the settlement and has explained the terms fully to Claimant and Claimant voluntarily and without coercion agreed to the terms.

Claimant hereby relinquishes and releases each and every claim which she or anyone on her behalf now has, or may hereafter have, so that she shall not have any other or future claim or demand of any kind or nature as a result of the alleged accident described above.

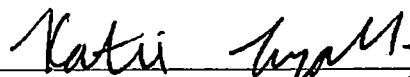
The parties are hereby filing this SETTLEMENT AGREEMENT AND RELEASE with the South Carolina Workers' Compensation Commission as required by S.C. Code Ann. § 42-9-390.

WE CONSENT:

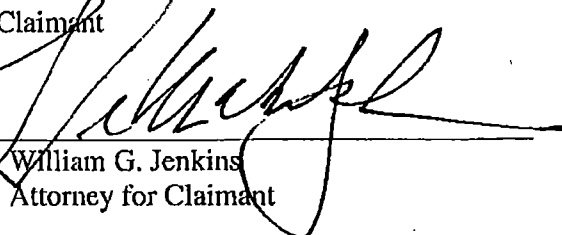
McAngus Goudelock & Courie, L.L.C.



Frances Baron
Claimant



Kati Wyatt
Attorney for Defendants



William G. Jenkins
Attorney for Claimant

Columbia, South Carolina

Date: 7/20/15

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1206355

FRANCES BARON,

Employee,

Claimant,

vs.

SANCTUARY HOSPICE,

Employer,

AND

GUARANTEE INSURANCE COMPANY
c/o PATRIOT NATIONAL INSURANCE
GROUP,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING: Hearing held in Yemassee, South Carolina on February 27, 2013.

APPEARANCES: Claimant appeared and represented by William G. Jenkins, Jr., Esquire, of Jenkins & Esquivel, P.A. of Hilton Head, South Carolina.

Defendants represented by Kathleen G. Lyall, Esquire of McAngus Goudelock & Courie, L.L.C. of Greenville, South Carolina.

PURPOSE OF THE HEARING: To determine all issues as set forth in Forms 50, 51 and 58.

COMMISSIONER: Commissioner Gene McCaskill

FILED: June 14, 2013



STIPULATIONS

The parties stipulated at the hearing to the following:

1. All parties received timely and proper notice of the scheduled hearing.
2. There is no objection to venue.

APA SUBMISSIONS

Without objections, the following medical and documentary evidence was submitted into the record pursuant to the South Carolina Administrative Procedures Act and Regulations for the South Carolina Workers' Compensation Commission.

Claimant's APA Submissions:

Tab No.	Facility or Physician	Dates	Pages
1.	Jasper County EMS	5/21/12	1-5
2.	Coastal Carolina Medical Center	5/21/12 to 05/23/12	6-69
3.	Optim Orthopaedics	5/24/12 to 07/09/12	70-82A
4.	Palmetto Eye Specialists	05/24/12 to 06/14/12	83-113
5.	Coastal Carolina Medical Center	5/29/12	114-123
6.	Dr. Cotter (wound care)	05/31/12 to 08/02/12	124-308
7.	Savannah Cardiology	09/15/09 – 05/25/12	309-319
8.	Mileage Reimbursement Requests	05/24/12 – 11/20/12	320-327

Defendants APA Submissions:

APA #	DOCTOR	PRACTICE	DATES	PAGES
9.	Mark Wagner, PhD	MUSC Department of Neurology	08/23/2012	328-335
10.		Coastal Carolina Medical Center	09/10/2009	336

STATEMENT OF THE CASE

Claimant was involved in a car accident on May 21, 2012 when she was driving from a patient's home back to the office, had a syncopal episode and was involved in a single car automobile accident as the result of the same. A hearing was held before the undersigned Commissioner on February 27, 2013 in Yemassee, South Carolina to determine compensability of the claim.

Claimant alleges she sustained a compensable accident by injury arising out of an in the scope and course of her employment. She requests payment of all causally related medical bills and alleges entitlement to temporary total disability benefits from the date of accident to the present and continuing.

Defendants deny that Claimant sustained a compensable injury under S.C. Code Ann. §42-1-160. Specifically, Defendants stipulate that Claimant was in the course of her employment at the time of the accident, but Defendants deny the accident arose out of employment as the accident was caused by Claimant's syncopal episode and unrelated to her employment. Defendants submitted a detailed Memorandum of Law to support their position, citing numerous cases on point including Edge v. Dunean Mills, 202 S.C. 189; 24 S.E.2d. 268 (1943). Defendants further assert that should the claim be found compensable, Claimant's

compensation rate and entitlement to temporary total disability benefits should be limited as Claimant was not planning on returning to work full-time starting a week following the accident.

A hearing was held before the undersigned Commissioner on February 27, 2013 in Yemassee, South Carolina to evaluate these facts and decide these issues.

EVIDENCE OF THE CASE

Without objection, the Commission's files and the Commissioner's notes were part of the record of the hearing. Claimant's attorney called Claimant to testify. The Defendants called Penny Abbott to testify on behalf of Sanctuary Hospice.

Claimant testified that she is 71 years old. (Hrg. Trs. p. 11, line 22). She graduated as a Registered Nurse in 1962 and has been working as a Registered Nurse since that time. (Hrg. Trs. p. 12, lines 1-4). Claimant testified that she was injured in an automobile accident on May 21, 2012 on her way back to the office after visiting her last patient of the day. (Hrg. Trs. p. 12, lines 10-16). Claimant testified that she does not remember anything about the accident and the first thing that she remembers is opening her eyes after she hit a tree. She was able to get out of the car and walk several steps before her legs got shaky and she sat down. (Hrg. Trs. p. 13, lines 5-18).

Claimant testified that she hit her head in the accident and now has scars on her forehead and above her eye from the blow that she received to her head. (Hrg. Trs. p. 13, lines 19-25). Claimant testified that she has permanent nerve and muscle damage over the right eye with drooping eye lids that keep her from seeing clearly. (Hrg. Trs. p. 14, lines 8-13). She testified to short term memory loss as a result from the blow to the head. (Hrg. Trs. p. 15, lines 5-8). Further, she testified that she had a fracture of the left ankle that she had surgically repaired, a

large hematoma on her right leg that had to be drained and a scar above her right eye. (Hrg. Trs. P. 16, lines 15-16).

Claimant has not returned to work since the accident in May 2012. (Hrg. Trs. p. 17, lines 7-9). She testified that she would be able to perform the nursing part of her job, but stated that she has not driven since the date of her accident due to her eyesight. (Hrg. Trs. p. 17, lines 12-21). Finally, Claimant testified that she was not planning to retire prior to the accident, but that she was going from a full time to part time position following the vacation she planned to take after the accident. (Hrg. Trs. p. 20, lines 1-6).

On cross-examination, Claimant testified again that she cannot remember anything immediately prior to the accident. (Hrg. Trs. p. 21, lines 15-17). She stated that she was driving down the road and the next thing she knew, she was looking at the sky and the smoke. (Hrg. Trs. p. 22, lines 1-5). Claimant admitted that she was not planning to return to full duty work following the accident. (Hrg. Trs. p. 22, lines 6-9). She testified that she had talked to Sanctuary Hospice about working part time, but they did not have any set hours or set plans for her return to work. (Hrg. Trs. p. 22, lines 15-18).

Claimant again testified that she has been suffering memory loss since the accident. (Hrg. Trs. p. 23, lines 3-5). She indicated that she started noticing memory loss when she stopped taking pain pills. (Hrg. Trs. p. 23, lines 20-23). At this time, Claimant's deposition transcript was submitted into the evidence for purposes of impeachment. (Hrg. Trs. p. 24, lines 1-2). In her deposition, Claimant was asked whether she had any cognitive deficits to which she answered "I hope not. No, not that I know of." (Hrg. Trs. p. 25, lines 14-16). Claimant testified that no treatment has been recommended for her alleged memory loss and that she has not received any treatment for her alleged memory loss. (Hrg. Trs. p. 26, lines 12-15).

With regards to her right leg, Claimant testified that no additional treatment has been recommended. She last received treatment in August 2012 for her right leg. (Hrg. Trs. p. 27, lines 2-8).

Claimant testified that she has not contacted anybody at Sanctuary Hospice about the possibility of returning to work. (Hrg. Trs. p. 27, lines 21-23). She indicated that she did not contact Sanctuary Hospice because she could not drive, but admitted that she does not have any written driving restrictions from doctors. (Hrg. Trs. p. 28, lines 1-4). Claimant next testified that the car accident occurred on a Monday and that she was going to stop working as a full time employee of Sanctuary Hospice the following Friday. (Hrg. Trs. p. 29, lines 7-10). She was planning on taking two weeks of paid vacation and then would discuss with Sanctuary Hospice how many days she was going to work. (Hrg. Trs. p. 29, lines 20-24). Claimant testified that she assumed she would still be covering River Oaks following her return from vacation and that she would have worked three days a week on Mondays, Wednesdays and Fridays. (Hrg. Trs. p. 30, lines 22-25). Claimant testified that she likely would have worked six hours a day for the three days a week equaling a total of 18 hours per week. (Hrg. Trs. p. 34, lines 8-10).

On redirect examination, Claimant again testified that she was not planning to return to work full time following her vacation. However, she was not sure exactly how many hours she would have eventually been working because it would have depended on the number of patients that were admitted or actively dying. (Hrg. Trs. p. 35, lines 16-19).

Penny Abbott testified next on behalf of Sanctuary Hospice. Ms. Abbott testified that she is one of the principal owners and the director of community relations with Sanctuary Hospice. (Hrg. Trs. p. 38, lines 24-25). In that position, she is in charge of a lot of the decision making. (Hrg. Trs. p. 39, lines 1-3). It was her understanding that Claimant was not going to return to

work full time following her vacation, but nothing was determined with regards to her exact schedule following vacation. (Hrg. Trs. p. 39, lines 8-15). At most, it was her understanding that Claimant would be working part time, but more likely she would have been just filling in. (Hrg. Trs. p. 39, lines 23-25). According to Ms. Abbott, the maximum number of hours you can work per week and still be considered part time is 25 hours. (Hrg. Trs. p. 40, lines 1-4). Further, Ms. Abbott stated that the River Oaks position that Claimant indicated she was planning to return to part time would provide between 9 to 10 hours per week at the most. (Hrg. Trs. p. 41, lines 7-12).

On cross-examination, Ms. Abbott again stated that they had not discussed how frequently Claimant would be working following her vacation. (Hrg. Trs. p. 42, lines 1-10). Ms. Abbott admitted that Sanctuary Hospice does not have any part time employees, but that they were going to try to accommodate Claimant's request as she had worked for a long time. (Hrg. Trs. p. 43, lines 16-20). Ms. Abbott finally testified that Claimant was being paid \$25.00 an hour and would still be paid \$25.00 per hour if she worked part time. (Hrg. Trs. p. 45, lines 17-21).

On redirect examination, Ms. Abbott testified that the decision to move to part time was Claimant's decision. (Hrg. Trs. p. 46, lines 8-9). Further, she testified that part time positions are not eligible for medical benefits or paid time off. (Hrg. Trs. p. 46, lines 20-21).

The medical evidence indicates that EMS responded to the scene of Claimant's car accident on May 21, 2012. (APA 1, p. 2). It was noted that Claimant had a Glasgow Coma Scale of 15, a hematoma to above the right eye with bruising, a laceration to the right side above the eye, and no other abnormalities. (APA 1, p. 3). It was noted that there were no abnormalities with her mental status. (APA 1, p. 3).

Claimant was transported to Coastal Carolina Medical Center where she was diagnosed with a syncopal episode. (APA 2, p. 20). It was noted that she had a syncopal episode while driving and lost consciousness. She reported that she does not remember going off the road and believes that she was unconscious for ten minutes. (APA 2, p. 21). On May 23, Claimant was again evaluated and she reported feeling well on the day of the accident when she suddenly lost consciousness and ran off the road into a tree. (APA 2, p. 25). Again, she was diagnosed with a syncopal episode. (APA 2, p. 26).

A CT scan was taken of her head on May 21, 2012 which showed no acute intracranial abnormality. (APA 2, p. 43). A CT scan was taken of her left ankle which showed a minimally displaced fracture of the medial malleolus. (APA 2, p. 52). An MRI of the brain showed no acute cerebral edema or infarct noted. (APA 2, p. 56).

Claimant began treating at Optim Orthopaedics for her left ankle fracture on May 24, 2012. (APA 3, p. 76). She reported that she either fell asleep at the wheel or passed out when she was involved in a motor vehicle accident. (APA 3, p. 76). She was diagnosed with a right ankle hematoma and a left ankle fracture and underwent surgery on May 29, 2012. (APA 3, p. 78-79). Claimant continued to treat with Optim Orthopaedics through September 10, 2012 at which point she was released to return to activities as she tolerates and instructed to return back only if any increased pain or problems. (APA 3, p. 82A).

Claimant treated with Coastal Carolina Hospital for wound care for her right ankle hematoma from May 31, 2012 to August 2, 2012. (APA 6, pgs. 124-308). On August 2, 2012, it was noted that her right ankle wound was healed. (APA 6, p. 304).

Claimant was evaluated by Dr. Mark Wagner of the MUSC Department of Neurology on August 23, 2012. (APA 9, pgs. 328-335). Dr. Wagner was able to review all medical records

from Coastal Carolina Medical Center, Jasper County EMS and Palmetto Eye Specialist. Further, Dr. Wagner interviewed and examined Claimant. (APA 9, p. 328). Dr. Wagner opined that Claimant experienced an unexplained syncopal event that was not caused by any condition relating to her employment. (APA 9, p. 335).

FINDINGS OF FACT

Based upon the testimony, the workers' compensation file and medical evidence submitted, the undersigned Commissioner makes the following findings of fact:

1. The Claimant was in an automobile accident on May 21, 2012. This fact is not in dispute by either party.
2. The Claimant lost consciousness, ran off of the road and hit a tree. This fact is not in dispute by either party.
3. Dr. Scott Condie, the attending physician at Coastal Carolina Medical Center, opined that the Claimant suffered a syncopal event which resulted in the accident. Neither Dr. Condie nor Dr. MacCabe, to whom the Claimant was referred for a consultation, opine as to a cause for this syncopal event.
4. On the Form 58, the Claimant alleges injuries to her head/brain, eyes, face, both legs, both ankles, and both feet.
5. The questions at bar is whether Claimant's injuries are compensable and what benefits, if any, she is entitled to under the Act.
6. The answer to these questions hinges on whether or not Claimant's injuries arose out of and were within the course and scope of her employment.
7. The Defendants have stipulated that the Claimant was in the course of her employment when the accident occurred.

8. That being the case, the question as to compensability rests on whether or not the Claimant's injuries arose out of her employment.
9. It is on whether Claimant's injuries arose out of her employment that Claimant fails to meet her burden of proof under S.C. Code Ann. §42-1-160.
10. The fact that the syncopal event occurred while Claimant was working is not sufficient to meet the burden of proof required under S.C. Code Ann. §42-1-160.
11. The Claimant was evaluated by Mark Wagner, PhD., Clinical Neural Psychologist, Professor of Neurology, MUSC Department of Neurology, at the request of the Defendants on August 23, 2012. Dr. Wagner's report is part of the record at Defendant's APA No. 9, pages 328-335. Dr. Wagner concludes his evaluation by saying, "ultimately, this is an unexplained syncopal event. It does not appear that the syncopal event was caused by any condition related to her employment. Although, the event did occur during her employment when she was traveling from one location to another". This is based on Defendant's APA No. 9, p. 335.
12. The Defendant site Edge v. Dunean Mills as supporting case law. In that case, the Court concluded that Claimant's injuries were caused when he suffered an epileptic seizure at work and fell down a flight of stairs. The Court concluded by saying, "... the only inference to be drawn from all of the testimony is that respondent's injury was caused by an attack of epilepsy."
13. The Court in Edge v. Dunean Mills denied benefits to the claimant where his injuries were caused by an attack of epilepsy.

14. As in Edge where the Claimant fell down the stairs at work, the fact Mrs. Baron suffered the syncopal event while driving to see patients is not sufficient to meet her burden as to "arising out of" under S.C. Code Ann. §42-1-160.
15. The claim is not compensable under S.C. Code Ann. §42-1-160 as it did not arise out of her employment.
16. As a result, the Claimant is not entitled to any benefits under the Act.

CONCLUSIONS OF LAW


Accordingly, as provided in S.C. Code §42-17-40 and pursuant to other applicable law, it is the determination of this Commissioner that:

1. That under §42-1-160 and other applicable law, the Claimant did not sustain injuries by an accident arising out her employment.
2. That under §42-1-160, Claimant is not entitled to any benefits under the Act.

ORDER

IT IS HEREBY ORDERED ADJUDGED AND DECREED that Claimant's claim for workers' compensation benefits is **DENIED**. The Defendants shall not be responsible for making any payment in any form or fashion for the Claimant's workers' compensation benefits.

AND IT IS SO ORDERED.


Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

June 14, 2013

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

APPELLATE PANEL DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1206355

Frances Baron

EMPLOYEE,
CLAIMANT/RESPONDENT

VS.

Sanctuary Hospice

EMPLOYER,

AND

Guarantee Insurance Company c/o Patriot National
Insurance Group

CARRIER,
DEFENDANTS/APPELLANTS,

Appellate Panel Review held in Columbia, South
Carolina, on October 15, 2013 per notices timely
And properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

12-12-13

APPEARANCES: Claimant/Appellant represented by William G. Jenkins, Jr., Esquire

Defendants/Respondents represented by Kathleen G. Lyall, Esquire of
McAngus, Goudelock, and Courie LLC.



STATEMENT OF THE CASE

Claimant was involved in a car accident on May 21, 2012 when she was driving from a patient's home back to the office, had a syncopal episode and was involved in a single car automobile accident as the result of the same. A hearing was held before the undersigned Commissioner on February 27, 2013 in Yemassee, South Carolina on Forms 50 and 51 to determine compensability of the claim.

Claimant alleged she sustained a compensable accident by injury arising out of an in the scope and course of her employment. She requested payment of all causally related medical bills and alleged entitlement to temporary total disability benefits from the date of accident to the present and continuing.

Defendants denied that Claimant sustained a compensable injury under S.C. Code Ann. §42-1-160. Specifically, Defendants stipulated that Claimant was in the course of her employment at the time of the accident, but Defendants denied the accident arose out of employment as the accident was caused by Claimant's syncopal episode and unrelated to her employment. Defendants submitted a detailed Memorandum of Law to support their position, citing numerous cases on point including Edge v. Duncan Mills, 202 S.C. 189; 24 S.E.2d. 268 (1943). Defendants further asserted that should the claim be found compensable, Claimant's compensation rate and entitlement to temporary total disability benefits should be limited as Claimant was not planning on returning to work full-time starting a week following the accident.

In a Decision and Order dated June 14, 2013, the Single Commissioner found as fact that Claimant was in an automobile accident on May 21, 2012; that Claimant lost consciousness, ran off of the road and hit a tree; that Dr. Scott Condie, the attending physician at Coastal Carolina Medical Center, opined that Claimant suffered a syncopal event which resulted in the accident;

that neither Dr. Condie nor Dr. MacCabe, to whom Claimant was referred for a consultation, opined as to a cause for this syncopal event; that on the Form 58, Claimant alleges injuries to her head/brain, eyes, face, both legs, both ankles, and both feet; that the question at bar is whether Claimant's injuries are compensable and what benefits, if any, she is entitled to under the Act; that the answer to these questions hinges on whether or not Claimant's injuries arose out of and were within the scope and course of her employment; that the Defendants have stipulated that the Claimant was in the scope and course of her employment when the accident occurred; that Claimant failed to meet her burden of proof under S.C. Code Ann. §42-1-160 as to whether her injuries arose out of her employment; that the fact the syncopal event occurred while Claimant was working is not sufficient to meet the burden of proof required under S.C. Code Ann. §42-1-160; that Dr. Wagner evaluated Claimant and concluded his evaluation by saying, "ultimately, this is an unexplained syncopal event. It does not appear that the syncopal event was caused by any condition related to her employment. Although, the event did occur during her employment when she was traveling from one location to another"; that the Defendants cite Edge v Dunean Mills as supporting case law and that in that case, the Court concluded that Claimant's injuries were caused when he suffered an epileptic seizure at work and fell down a flight of stairs; that the Court in Edge v Dunean Mills denied benefits to the claimant where his injuries were caused by an attack of epilepsy; that as in Edge where the claimant fell down the stairs at work, the fact that Mrs. Baron suffered the syncopal event while driving to see patients is not sufficient to meet her burden as to "arising out of" under S.C. Code Ann. §42-1-160; and that the claim is not compensable under S.C. Code Ann. §42-1-160, thus the Claimant is not entitled to benefits under the Act. This appeal timely was timely filed thereafter.

EVIDENCE OF THE CASE

At the hearing before the Single Commissioner, the Commission's files and the Commissioner's notes were part of the record of the hearing without objection. Claimant's attorney called Claimant to testify. The Defendants called Penny Abbott to testify on behalf of Sanctuary Hospice.

Claimant testified that she is 71 years old. (Hrg. Trs. p. 11, line 22). She graduated as a Registered Nurse in 1962 and has been working as a Registered Nurse since that time. (Hrg. Trs. p. 12, lines 1-4). Claimant testified that she was injured in an automobile accident on May 21, 2012 on her way back to the office after visiting her last patient of the day. (Hrg. Trs. p. 12, lines 10-16). Claimant testified that she does not remember anything about the accident and the first thing that she remembers is opening her eyes after she hit a tree. She was able to get out of the car and walk several steps before her legs got shaky and she sat down. (Hrg. Trs. p. 13, lines 5-18).

Claimant testified that she hit her head in the accident and now has scars on her forehead and above her eye from the blow that she received to her head. (Hrg. Trs. p. 13, lines 19-25). Claimant testified that she has permanent nerve and muscle damage over the right eye with drooping eye lids that keep her from seeing clearly. (Hrg. Trs. p. 14, lines 8-13). She testified to short term memory loss as a result from the blow to the head. (Hrg. Trs. p. 15, lines 5-8). Further, she testified that she had a fracture of the left ankle that she had surgically repaired, a large hematoma on her right leg that had to be drained and a scar above her right eye. (Hrg. Trs. P. 16, lines 15-16).

Claimant has not returned to work since the accident in May 2012. (Hrg. Trs. p. 17, lines 7-9). She testified that she would be able to perform the nursing part of her job, but stated that

she has not driven since the date of her accident due to her eyesight. (Hrg. Trs. p. 17, lines 12-21). Finally, Claimant testified that she was not planning to retire prior to the accident, but that she was going from a full time to part time position following the vacation she planned to take after the accident. (Hrg. Trs. p. 20, lines 1-6).

On cross-examination, Claimant testified again that she cannot remember anything immediately prior to the accident. (Hrg. Trs. p. 21, lines 15-17). She stated that she was driving down the road and the next thing she knew, she was looking at the sky and the smoke. (Hrg. Trs. p. 22, lines 1-5). Claimant admitted that she was not planning to return to full duty work following the accident. (Hrg. Trs. p. 22, lines 6-9). She testified that she had talked to Sanctuary Hospice about working part time, but they did not have any set hours or set plans for her return to work. (Hrg. Trs. p. 22, lines 15-18).

Claimant again testified that she has been suffering memory loss since the accident. (Hrg. Trs. p. 23, lines 3-5). She indicated that she started noticing memory loss when she stopped taking pain pills. (Hrg. Trs. p. 23, lines 20-23). At this time, Claimant's deposition transcript was submitted into the evidence for purposes of impeachment. (Hrg. Trs. p. 24, lines 1-2). In her deposition, Claimant was asked whether she had any cognitive deficits to which she answered "I hope not. No, not that I know of." (Hrg. Trs. p. 25, lines 14-16). Claimant testified that no treatment has been recommended for her alleged memory loss and that she has not received any treatment for her alleged memory loss. (Hrg. Trs. p. 26, lines 12-15).

With regards to her right leg, Claimant testified that no additional treatment has been recommended. She last received treatment in August 2012 for her right leg. (Hrg. Trs. p. 27, lines 2-8).

Claimant testified that she has not contacted anybody at Sanctuary Hospice about the possibility of returning to work. (Hrg. Trs. p. 27, lines 21-23). She indicated that she did not contact Sanctuary Hospice because she could not drive, but admitted that she does not have any written driving restrictions from doctors. (Hrg. Trs. p. 28, lines 1-4). Claimant next testified that the car accident occurred on a Monday and that she was going to stop working as a full time employee of Sanctuary Hospice the following Friday. (Hrg. Trs. p. 29, lines 7-10). She was planning on taking two weeks of paid vacation and then would discuss with Sanctuary Hospice how many days she was going to work. (Hrg. Trs. p. 29, lines 20-24). Claimant testified that she assumed she would still be covering River Oaks following her return from vacation and that she would have worked three days a week on Mondays, Wednesdays and Fridays. (Hrg. Trs. p. 30, lines 22-25). Claimant testified that she likely would have worked six hours a day for the three days a week equaling a total of 18 hours per week. (Hrg. Trs. p. 34, lines 8-10).

On redirect examination, Claimant again testified that she was not planning to return to work full time following her vacation. However, she was not sure exactly how many hours she would have eventually been working because it would have depended on the number of patients that were admitted or actively dying. (Hrg. Trs. p. 35, lines 16-19).

Penny Abbott testified next on behalf of Sanctuary Hospice. Ms. Abbott testified that she is one of the principal owners and the director of community relations with Sanctuary Hospice. (Hrg. Trs. p. 38, lines 24-25). In that position, she is in charge of a lot of the decision making. (Hrg. Trs. p. 39, lines 1-3). It was her understanding that Claimant was not going to return to work full time following her vacation, but nothing was determined with regards to her exact schedule following vacation. (Hrg. Trs. p. 39, lines 8-15). At most, it was her understanding that Claimant would be working part time, but more likely she would have been just filling in.

(Hrg. Trs. p. 39, lines 23-25). According to Ms. Abbott, the maximum number of hours you can work per week and still be considered part time is 25 hours. (Hrg. Trs. p. 40, lines 1-4). Further, Ms. Abbott stated that the River Oaks position that Claimant indicated she was planning to return to part time would provide between 9 to 10 hours per week at the most. (Hrg. Trs. p. 41, lines 7-12).

On cross-examination, Ms. Abbott again stated that they had not discussed how frequently Claimant would be working following her vacation. (Hrg. Trs. p. 42, lines 1-10). Ms. Abbott admitted that Sanctuary Hospice does not have any part time employees, but that they were going to try to accommodate Claimant's request as she had worked for a long time. (Hrg. Trs. p. 43, lines 16-20). Ms. Abbott finally testified that Claimant was being paid \$25.00 an hour and would still be paid \$25.00 per hour if she worked part time. (Hrg. Trs. p. 45, lines 17-21).

On redirect examination, Ms. Abbott testified that the decision to move to part time was Claimant's decision. (Hrg. Trs. p. 46, lines 8-9). Further, she testified that part time positions are not eligible for medical benefits or paid time off. (Hrg. Trs. p. 46, lines 20-21).

The medical evidence indicates that EMS responded to the scene of Claimant's car accident on May 21, 2012. (APA 1, p. 2). It was noted that Claimant had a Glasgow Coma Scale of 15, a hematoma to above the right eye with bruising, a laceration to the right side above the eye, and no other abnormalities. (APA 1, p. 3). It was noted that there were no abnormalities with her mental status. (APA 1, p. 3).

Claimant was transported to Coastal Carolina Medical Center where she was diagnosed with a syncopal episode. (APA 2, p. 20). It was noted that she had a syncopal episode while driving and lost consciousness. She reported that she does not remember going off the road and believes that she was unconscious for ten minutes. (APA 2, p. 21). On May 23, Claimant was

again evaluated and she reported feeling well on the day of the accident when she suddenly lost consciousness and ran off the road into a tree. (APA 2, p. 25). Again, she was diagnosed with a syncopal episode. (APA 2, p. 26).

A CT scan was taken of her head on May 21, 2012 which showed no acute intracranial abnormality. (APA 2, p. 43). A CT scan was taken of her left ankle which showed a minimally displaced fracture of the medial malleolus. (APA 2, p. 52). An MRI of the brain showed no acute cerebral edema or infarct noted. (APA 2, p. 56).

Claimant began treating at Optim Orthopaedics for her left ankle fracture on May 24, 2012. (APA 3, p. 76). She reported that she either fell asleep at the wheel or passed out when she was involved in a motor vehicle accident. (APA 3, p. 76). She was diagnosed with a right ankle hematoma and a left ankle fracture and underwent surgery on May 29, 2012. (APA 3, p. 78-79). Claimant continued to treat with Optim Orthopaedics through September 10, 2012 at which point she was released to return to activities as she tolerates and instructed to return back only if any increased pain or problems. (APA 3, p. 82A).

Claimant treated with Coastal Carolina Hospital for wound care for her right ankle hematoma from May 31, 2012 to August 2, 2012. (APA 6, pgs. 124-308). On August 2, 2012, it was noted that her right ankle would be healed. (APA 6, p. 304).

Claimant was evaluated by Dr. Mark Wagner of the MUSC Department of Neurology on August 23, 2012. (APA 9, pgs. 328-335). Dr. Wagner was able to review all medical records from Coastal Carolina Medical Center, Jasper County EMS and Palmetto Eye Specialist. Further, Dr. Wagner interviewed and examined Claimant. (APA 9, p. 328). Dr. Wagner opined that Claimant experienced an unexplained syncopal event that was not caused by any condition relating to her employment. (APA 9, p. 335).

STANDARD OF REVIEW

Under S.C. Code Ann. § 42-17-50, an Appellate Panel is empowered to review the appealed award, weigh the evidence as presented at the initial hearing, and, if good grounds are shown, make its own factual findings and legal conclusions consistent with or inconsistent with the Hearing Commissioner.

Based upon its review of all the evidence on the record in this case, the Panel hereby affirms the Order of the Hearing Commissioner in full. Accordingly, the Panel makes the following Findings of Fact and Rulings of Law:

FINDINGS OF FACT

1. The Claimant was in an automobile accident on May 21, 2012. This fact is not in dispute by either party.
2. The Claimant lost consciousness, ran off of the road and hit a tree. This fact is not in dispute by either party.
3. Dr. Scott Condie, the attending physician at Coastal Carolina Medical Center, opined that the Claimant suffered a syncopal event which resulted in the accident. Neither Dr. Condie nor Dr. MacCabe, to whom the Claimant was referred for a consultation, opine as to a cause for this syncopal event.
4. On the Form 58, the Claimant alleges injuries to her head/brain, eyes, face, both legs, both ankles, and both feet.

5. The questions at bar is whether Claimant's injuries are compensable and what benefits, if any, she is entitled to under the Act.
6. The answer to these questions hinges on whether or not Claimant's injuries arose out of and were within the course and scope of her employment.
7. The Defendants have stipulated that the Claimant was in the course of her employment when the accident occurred.
8. That being the case, the question as to compensability rests on whether or not the Claimant's injuries arose out of her employment.
9. It is on whether Claimant's injuries arose out of her employment that Claimant fails to meet her burden of proof under S.C. Code Ann. §42-1-160.
10. The fact that the syncopal event occurred while Claimant was working is not sufficient to meet the burden of proof required under S.C. Code Ann. §42-1-160.
11. The Claimant was evaluated by Mark Wagner, PhD., Clinical Neural Psychologist, Professor of Neurology, MUSC Department of Neurology, at the request of the Defendants on August 23, 2012. Dr. Wagner's report is part of the record at Defendant's APA No. 9, pages 328-335. Dr. Wagner concludes his evaluation by saying, "ultimately, this is an unexplained syncopal event. It does not appear that the syncopal event was caused by any condition related to her employment. Although, the event did occur during her employment when she was traveling from one location to another". This is based on Defendant's APA No. 9, p. 335.
12. The Defendant cite Edge v. Duncan Mills as supporting case law. In that case, the Court concluded that Claimant's injuries were caused when he suffered an epileptic seizure at work and fell down a flight of stairs. The Court concluded by saying, "...

the only inference to be drawn from all of the testimony is that respondent's injury was caused by an attack of epilepsy."

13. The Court in Edge v. Duncan Mills denied benefits to the claimant where his injuries were caused by an attack of epilepsy.

14. As in Edge where the Claimant fell down the stairs at work, the fact Mrs. Baron suffered the syncopal event while driving to see patients is not sufficient to meet her burden as to "arising out of" under S.C. Code Ann. §42-1-160.

15. The claim is not compensable under S.C. Code Ann. §42-1-160 as it did not arise out of her employment.

16. As a result, the Claimant is not entitled to any benefits under the Act.

RULINGS OF LAW

Accordingly, as provided in S.C. Code §42-17-50 and pursuant to other applicable law, it is the determination of this Panel that:


1. That under §42-1-160 and other applicable law, the Claimant did not sustain injuries by an accident arising out her employment.
2. That under §42-1-160, Claimant is not entitled to any benefits under the Act.

ORDER

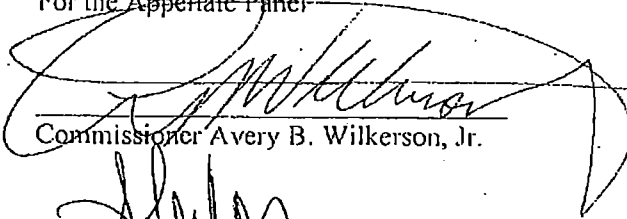
IT IS HEREBY ORDERED ADJUDGED AND DECREED that the Single Commissioner's denial of this claim is AFFIRMED IN FULL.

AND IT IS SO ORDERED.

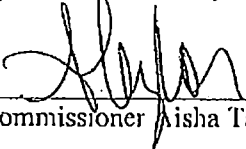
WE CONCUR:



Commissioner Melody L. James
For the Appellate Panel



Commissioner Avery B. Wilkerson, Jr.



Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Valerie Deller on December 12, 2013



04/10/2015

BURNS WHITE LLC
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

RE: Workers' Compensation Medicare Set-Aside Arrangement
Claimant: FRANCES BARON
HICN/SSN: ****2746A
Date of Injury: 05/21/2012
CMS Case Control Number: WC1509000456788

Dear Sir or Madam:

This letter is in response to your submission of a proposed Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) amount, related to the above-named claimant's workers' compensation claim, received on 03/31/2015.

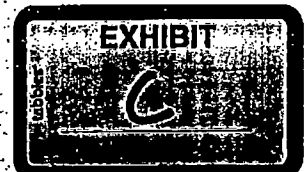
You proposed that no WCMSA amount is required to pay for future medical items and services, including prescription drugs, that are covered and otherwise reimbursable by Medicare (Medicare covered), related to the claimant's workers' compensation claim.

We have evaluated your proposal along with the supporting medical documentation you submitted and have determined that Medicare's interests have been adequately considered. Therefore, no WCMSA amount is deemed necessary in this case.

Please note that this decision regarding future medical treatment is independent of any determination regarding Medicare Secondary Payer recovery rights for conditional payments Medicare made for related items and services furnished before the date of the settlement, judgment, award, or other payment. Medicare has the right to recover (or take back) Medicare payments related to any workers' compensation settlement, judgment, award, or other payment. Any payments Medicare may have made that should have been paid from the workers' compensation settlement, judgment, award, or other payment must be repaid to Medicare.

This decision regarding the WCMSA is not effective until CMS receives a copy of the final executed WC settlement agreement. Please include the CMS Case Control Number listed at the top of this letter in any correspondence. Submit your settlement agreement via the Portal if your original submission was via the Portal. If you originally submitted outside of the Portal, submit the settlement agreement to the following address:

WCMSA Proposal/Final Settlement

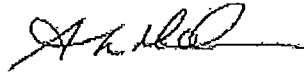


P.O. Box 138899
Oklahoma City, OK 73113-8899

If your settlement agreement is 10 pages or less, you may also fax it to (405) 869-3306. Note:
This number is not for initial submissions, only for additional documentation under 10 pages.

If you have any questions concerning this letter, please call CUSTOMER SERVICE at (214) 767
-6402.

Sincerely,



Sherri McQueen
Acting Director, Financial Services
Group
Office of Financial Management

cc: FRANCES BARON
NGHP
WILLIAM G. JENKINS, JR.
FRANCES BARON

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

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JUL 31 2015

SC Court of Appeals

WCC FILE NO.: 1206355

Frances Baron, Employee, Appellant,

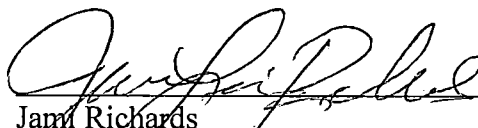
v.

Sanctuary Hospice, Employer, and
Guarantee Insurance Company c/o
Patriot National Insurance Group, Carrier, Respondents.

PROOF OF SERVICE

I certify that on the 29th day of July 2015, I served the parties **Joint Motion to Dismiss Appeal** on Frances Baron by depositing a copy of it in the United States Mail, postage prepaid, addressed to her attorney of record:

William G. Jenkins, Jr., Esq.
Post Office Box 6855
Hilton Head Island, SC 29938



Jami Richards
Legal Assistant to Helen F. Hiser
McAngus, Goudelock & Courie LLC
735 Johnnie Dodds Blvd., Suite 200
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900

*Attorneys for Respondents Sanctuary Hospice and
Guarantee Insurance Company c/o Patriot National
Insurance Group*

mgc

Reply To
HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

July 29, 2015

RECEIVED

JUL 31 2015

SC Court of Appeals

Via U.S. Mail

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

RE: Frances Baron vs. Sanctuary Hospice and Guarantee Insurance Company
c/o Patriot National Insurance Group
Date of Accident: May 21, 2012
WCC File No.: 1206355
Our File No.: 20748.12021
Claim No.: 319-111-165
Appeal Tracking No.: 2013-002666

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the parties' Joint Motion to Dismiss Appeal, 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.

Also, please note that Weston Adams, III is no longer with McAngus Goudelock & Courie and, consequently, should be removed from the record as counsel for Respondents in the above-referenced matter. Kathleen G. Lyall and I will continue to represent Respondents in this appeal.

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

Yours truly,

McAngus Goudelock & Courie, LLC



Helen F. Hiser

Enclosures

cc: William G. Jenkins, Jr., Esq.
Sarah Armstrong, Patriot National Insurance Group
Penny Abbott, Sanctuary Hospice

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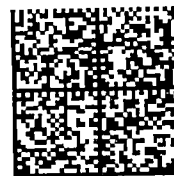
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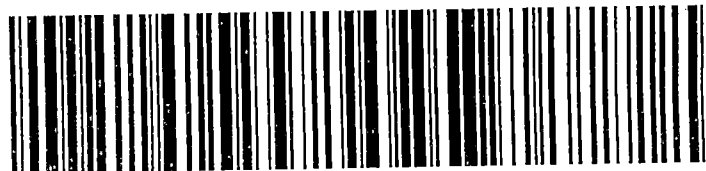
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The Honorable Jenny Abbott Kitchings
South Carolina Court Of Appeals
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