THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Susan S. Barden, Commissioner
Gene McCaskill, Commissioner
Andrea C. Roche, Commissioner

APPELLATE CASE NO.: 2015-000493

Thomas Chad Hilton..... PETITIONER.

v.

Flakeboard America Limited, Employer, and Liberty Mutual Insurance Company, Carrier .....RESPONDENTS.

BRIEF OF PETITIONER

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I. QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals err in dismissing Mr. Hilton's appeal for lack of "a final decision in" this contested case when: (a) S.C. Code Ann. Section 1-23-380 (Supp. 2013) explicitly provides that ". . . [a] preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy"; (b) the commission's May 21, 2014 Order vacated/erased numerous unappealed factual findings contained in the single commissioner's June 4, 2013 Order, which constitute the law of this case; (c) as these factual issues have now been decided with absolute finality, Mr. Hilton is entitled to rely upon these determinations, rather than be required to relitigate them; (b) the commission's action completely ignores the well-established/longstanding legal maxim that parties are conclusively bound by determinations of this nature; and (e) requiring him to engage in the *de novo* relitigation of these facts is grossly prejudicial, to the extent no adequate remedy short of immediate appellate review exists?

2. Did the Court of Appeals err in dismissing Mr. Hilton's appeal for lack of "a final decision in" this contested case when: (a) S.C. Code Ann. Section 1-23-380 (Supp. 2013) explicitly provides that ". . . [a] preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy"; (b) the commission's rulings not only exceeded the scope of Respondents' exceptions, but also impermissibly redefined the nature/parameters of the parties' disputes by injecting unpreserved "issues" into the litigation; (c) this attempt to avoid ruling on the issues framed by the parties (as identified through the single commissioner's Order, as well as Respondents' Form 30) and

materially reshape/revise basic elements of this dispute unquestionably exceeded the statutory authority granted by the General Assembly through S.C. Code Ann. Section 42-17-50 (1976, as amended); (d) this procedure impermissibly deprives Mr. Hilton of an absolute entitlement to rely upon the contents of an undisputed record and well-framed issues, while affording Respondents a "do over" and obliging him to litigate heretofore uncontested points, in clear violation of Section 42-17-50; and (e) requiring him to engage in the *de novo* relitigation of these facts is grossly prejudicial, to the extent no adequate remedy short of immediate appellate review exists?

3. Did the Court of Appeals err in dismissing Mr. Hilton's appeal for lack of "a final decision in" this contested case when: (a) S.C. Code Ann. Section 1-23-380 (Supp. 2013) explicitly provides that ". . . [a] preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy"; (b) Respondents' Form 30 exceptions neither contest Mr. Hilton's competency to testify nor seek further medical evaluation; (c) given these facts, in light of Respondents' Form 30 exceptions and brief to the full commission panel, Mr. Hilton was never notified that "issues" existed as to his competency or the contents of the evidentiary record; (d) the commission's creation of previously unpreserved "issues" was violative of due process; and (e) requiring him to engage in the *de novo* relitigation of these facts is grossly prejudicial, to the extent no adequate remedy short of immediate appellate review exists?

4. Did the Court of Appeals err in dismissing Mr. Hilton's appeal for lack of "a final decision in" this contested case when: (a) S.C. Code Ann. Section 1-23-380 (Supp. 2013) explicitly provides that ". . . [a] preliminary, procedural, or intermediate

agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy"; (b) the commission's "findings", which literally constitute three sentences (seven lines) of its May 21, 2014 Order, provide absolutely no insight as to its rationale for vacating the single commissioner's June 4, 2013 Order (which contained 54 detailed factual findings and 9 "Conclusions of Law"); (c) the presence of numerous unappealed factual findings, which decided these points with absolute finality, necessarily triggered the requirements of S.C. Code Ann. Section 42-17-40 (1976, as amended); (d) it was consequently incumbent upon the commission to enter specific factual findings and legal rulings, as well as a thorough explanation of the reasoning behind its rulings; (e) the absence of any factual findings, legal analysis or identification of its underlying rationale rendered the May 21, 2014 Order illegal on its face; and (f) requiring him to engage in the *de novo* relitigation of these facts is grossly prejudicial, to the extent no adequate remedy short of immediate appellate review exists?

II. STATEMENT OF THE CASE

On August 17, 2011, Mr. Hilton was bitten in his buttocks/upper leg area by an insect as he was operating a tractor trailer for Flakeboard America Limited. This injury initially prompted treatment, including operative debridement, through Marlboro Park Hospital and a surgeon. (See, Appendix, pp. 8 – 11). Following his release from treatment by this surgeon, Mr. Hilton was directed by Respondents' to a neurologist, who performed diagnostic testing, confirmed additional consequences of the August 17, 2011 injury and made several treatment recommendations. (See, Appendix, pp. 13 – 14). However, Respondents challenged the causal relationship of these additional medical conditions, alleged Mr. Hilton has achieved maximum medical improvement on his release by the surgeon in September, 2011 and sought an Order of the Commission terminating his entitlement to either continued temporary total disability compensation or further medical care.

As confirmed by a review of the "Statement of the Case" contained in the single commissioner's June 4, 2013 Decision and Order, Respondents sought to terminate Mr. Hilton's temporary total disability compensation based upon three grounds: (a) "Claimant has made direct and material misrepresentations that directly pertain to his alleged disability"; (b) he was "not currently disabled, and ha[d] . . . not been disabled since September 12, 2011"; and (c) "[C]laimant . . . ha[d] reached maximum medical improvement with no impairment . . . ." (See, Appendix, p. 2).

In response to these allegations, Mr. Hilton maintained: (a) any inconsistent and/or inaccurate statements contained in the record (deposition testimony or otherwise) were the product of cognitive deficits stemming from his physical brain damage, rather

than a purposeful/intentional/volitional attempt to mislead; (b) he had not achieved maximum medical improvement as to the consequences of his compensable accident; (c) Respondents were obliged to authorize the various treatments which had been prescribed/recommended by Dr. R. Joseph Healy, their designated treating physician; and (d) he remained temporarily totally disabled at this time. (See, Appendix, pp. 2 – 3).

The parties also entered stipulations as to the contested issues specifying they involved "whether: (a) Defendants have established an entitlement to terminate the payment of temporary total disability compensation; (b) Mr. Hilton has achieved maximum medical improvement; (c) he requires further treatment for the consequences of his compensable accident; and (d) Mr. Hilton remains temporarily totally disabled." (See, Appendix, p. 5).

As these issues involve the impact of preexisting physical brain damage on Mr. Hilton's current functional status, receipt of further medical care and purported attainment of maximum medical improvement, it was incumbent upon the parties to present medical evidence in support of their respective positions. See, S.C. Code Ann. Sections 42-9-35 (2007) and 42-15-60 (2007); See also, Williams v. South Carolina Department of Mental Retardation, 308 S.C. S.C. 438, 418 S.E. 2d 555 (Ct. App. 1992) (Commission's finding of maximum medical improvement on date that was not identified by physician determined to be erroneous). Accord, Clark v. Wal-Mart, 163 N.C. 686, 594 S.E. 2d 433, 439 (2004), rev'd. on other grounds, 360 N.C. 41, 619 S.E. 2d 491 (2005) ("MMI is a purely medical determination").

Notwithstanding their awareness as to the standard of proof in this context, Respondents' medical evidentiary submissions were limited to: (a) the deposition

testimony of Dr. Healy (the treating neurologist), who verified the presence/impact of Mr. Hilton's cognitive deficits, as well as the fact he had **not achieved maximum medical improvement**; (b) the deposition of Dr. Chi-Dai Chen (treating general surgeon), who ultimately acknowledged his lack of expertise as to the symptoms ("nerve irritation or nerve damage") for which Mr. Hilton had not reached maximum medical improvement per Dr. Healy, while deferring to the neurologist's opinion on this point; and (c) pre and post-injury medical records generated by various providers. (See, Appendix, pp. 7 – 9). Additionally, Respondents: (a) **elicited testimony from Mr. Hilton as an adverse party witness during their case in chief**; (b) offered video surveillance footage; and (c) submitted records from Carnival Cruise Lines. (See, Appendix, pp. 8 – 9, 216 – 218).

Mr. Hilton introduced: (a) opinions from four medical experts (authorized treating neurologist, forensic psychiatrist and two neuropsychologists) establishing, to a reasonable degree of medical certainty, both the presence of cognitive deficits resulting from physical brain damage **and** the fact Mr. Hilton's purported "misrepresentations" were the product of these cognitive deficits, rather than the fraudulent conduct alleged by Respondents; and (b) confirmation from both Dr. Healy and a pain management/non-operative spine specialist (Dr. Ezra B. Riber) relative to the causal relationship of Mr. Hilton's persistent physical (back and left leg) symptoms, as well as his need for further treatment and nonattainment of maximum medical improvement as to these injury components. He similarly relied upon portions of Dr. Chen's deposition, particularly this physician's: (a) inability (due to lack of expertise) to identify the source of persistent

neurologic symptoms; and (b) deference to Dr. Healy as to the causal relationship between these symptoms and the compensable accident. (See, Appendix, pp. 6 – 7).

After considering the medical evidence relative to these unquestionably complex medical issues (implications of physical brain on cognition; neurologic consequences of spider venom), the single commissioner entered an extremely detailed Order, which determined in pertinent part:

> (a) great weight should be afforded to the opinions expressed by Dr. Healy, particularly with respect to the issue of maximum medical improvement, as this authorized treater not only had the opportunity to assess Mr. Hilton on multiple occasions, but also considered Defendants' allegations (including the assertion his current left leg and back symptoms are purely the result of preexisting conditions) and the products of their surveillance; (b) after reviewing the surveillance footage and being apprised as to aspects of prior medical history which Defendants believe to be particularly relevant, Dr. Healy concluded Mr. Hilton had not achieved maximum medical improvement and required further treatment through Dr. Riber; (d) he similarly verified the consequences of Mr. Hilton's compensable injury continued to prohibit resumption of his pre-injury employment activities; (e) upon reviewing the results of neuropsychological testing, in light of his own clinical observations, Dr. Healy agreed Mr. Hilton's 2000 head trauma had produced appreciable cognitive deficits secondary to physical brain damage; and (f) Defendants' designated authorized treater likewise validated Mr. Hilton's credibility, repeatedly declining to endorse Defendants' contention that this gentleman had presented himself and/or testified in a dishonest, deceptive or misleading fashion. (See, Appendix, pp. 40 – 41).

He similarly found:

> (a) any discrepancies, inconsistencies, errors, etc. in connection with either Mr. Hilton's testimony or conduct result from the cognitive dysfunction confirmed by no less than four medical specialists; (b) the testimony and conduct which Defendants maintain warrants termination of Mr. Hilton's claim were/are neither volitional nor reflective of dishonesty; (c) entry of a finding as to a lack of credibility is not warranted in this instance; (d) I would not find him not to be credible; (e) the issues currently

> in dispute, including the presence of cognitive dysfunction explaining/rebutting Defendants' allegations as to a lack of credibility, are clearly medically driven; and (f) the evidence of record amply supports Mr. Hilton's contentions as to this issue. (See, Appendix, pp. 42 – 43).

The single commissioner concluded: (a) "achievement of maximum medical improvement is a purely medical determination"; (b) "the existence of physical brain damage in the context of the . . . [current] disputes . . . is a medically driven issue"; (c) "the medical evidence of record, including opinions expressed by Mr. Hilton's designated authorized treating neurologist, unequivocally verifies any inaccuracies/inconsistencies in Mr. Hilton's testimony, as well as incorrect/erroneous information he has provided in the context of this litigation, result from cognitive deficits produced by physical brain damage confirmed by four duly qualified medical specialists, rather than a purposeful, intentional, volitional or preconceived attempt to mislead and/or knowingly provide false information"; (d) the medical evidence upon which Respondents relied (Dr. Chen's opinions) "limit any determination of maximum medical improvement to the August 24, 2011 debridement procedure itself"; (e) Dr. Chen "consistently defer[red] . . . to Dr. Healy's judgment/conclusions as to the effects of Mr. Hilton's neurologic/nerve injury"; and (f) the evidence of record (opinions expressed by Drs. Healy and Riber) "firmly establishes Mr. Hilton has not achieved maximum medical improvement". (See, Appendix, pp. 43 – 45).

The Respondents appealed this decision to the commission's appellate panel. Their Form 30 reveals a multitude of exceptions that focus on particular factual findings and associated legal rulings, as well as four "General Exceptions" addressing the parties' basic disputes (attainment of maximum medical improvement, continued receipt of

compensation, entitlement to further medical treatment and alleged lack of credibility/fraud). (See, Appendix, pp. 49 – 60). **None of these exceptions either assert or imply that Respondents were denied the opportunity to obtain further evaluation of Mr. Hilton by a physician of their choice, a right afforded by S.C. Code Ann. Section 42-15-80 (2007).** Had this been their desire, Respondents could have: (a) directed him for evaluation during the approximately six month period which elapsed followed filing of their hearing request; or (b) elected to withdraw the hearing request to ensure they were afforded sufficient time to obtain this evaluation. **In the same fashion, Respondents' exceptions did not challenge Mr. Hilton's competency to testify or allege that he required a Guardian ad Litem.**

ARGUMENTS

I. THE COURT OF APPEALS ERRED IN DISMISSING MR. HILTON'S APPEAL FOR LACK OF "A FINAL DECISION IN" THIS CONTESTED CASE BECAUSE: (A) S.C. CODE ANN. SECTION 1-23-380 (SUPP. 2013) EXPLICITLY PROVIDES THAT ". . . [A] PRELIMINARY, PROCEDURAL, OR INTERMEDIATE AGENCY ACTION OR RULING IS IMMEDIATELY REVIEWABLE IF REVIEW OF THE FINAL AGENCY DECISION WOULD NOT PROVIDE AN ADEQUATE REMEDY"; (B) THE COMMISSION'S MAY 21, 2014 ORDER VACATED/ERASED NUMEROUS UNAPPEALED FACTUAL FINDINGS CONTAINED IN THE SINGLE COMMISSIONER'S JUNE 4, 2013 ORDER, WHICH BECAME THE LAW OF THIS CASE; (C) AS THESE FACTUAL ISSUES HAVE NOW BEEN DECIDED WITH ABSOLUTE FINALITY, MR. HILTON IS ENTITLED TO RELY UPON THESE DETERMINATIONS, RATHER THAN BE REQUIRED TO RELITIGATE THEM; (D) THE COMMISSION'S ACTION COMPLETELY IGNORES THE WELL-ESTABLISHED/LONGSTANDING LEGAL MAXIM THAT PARTIES ARE CONCLUSIVELY BOUND BY DETERMINATIONS OF THIS NATURE; AND (E) REQUIRING HIM TO ENGAGE IN THE *DE NOVO* RELITIGATION OF THESE FACTS IS GROSSLY PREJUDICIAL, TO THE EXTENT NO ADEQUATE REMEDY SHORT OF IMMEDIATE APPELLATE REVIEW EXISTS.

Section 1-23-380 provides in pertinent part:

> A party who has exhausted all administrative remedies available within the agency and who is aggrieved by the final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress or relief or trial *de novo* provided by law. **A preliminary, procedural or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.**
>
> . . .
>
> (5) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of statutory authority;

(c) made upon unlawful procedure;

(d) affected by other error of law; [or] . . .

(e) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. (Emphasis added).

In Island Packet v. Kittrell, 365 S.C. 332, 617 S.E. 2d 730, 734 (2005), this Court recognized the pertinent language of Section 1-23-380 "indicates that whether an intermediate action or ruling is immediately reviewable is to be decided on a case-by-case basis, *i.e.* whether a review of the final decision would not provide an adequate remedy." As the appealability provision clearly hinges upon the adequacy of remedy absent review, logic dictates application of the exhaustion of administrative remedies standard is appropriate. Two commonly recognized exceptions to the general rule requiring exhaustion of administrative remedies include situations where: (a) "an agency has acted outside of its authority." Brown v. James, 389 S.C. 41, 697 S.E. 2d 604, 611 – 612 (Ct. App. 2010); and (b) "a party demonstrates that pursuit of administrative remedies would be a vain or futile act." Brown, 697 S.E. 2d at 611; Storm M. H. ex rel. McSwain v. Charleston County Board of Trustees, 400 S.C. 478, 735 S.E. 2d 492, 497 (2012).

A. AUTHORITY OF THE APPELLATE PANEL

S.C. Code Ann. Regs. 67-701 (A) (3) (2012) prescribes that when a party seeks appellate panel review of the single commissioner's decision, ". . . [t]he grounds for appeal **must be set out in detail on the Form 30** in the form of questions presented."

(Emphasis added). This regulation further requires that ". . . [e]ach question presented **must be concise and concern one finding of fact**, conclusion of law, or other proposition the appellate believes is in err." See, S.C. Code Ann. Regs. 67-701 (A) (3) (a) (2012). (Emphasis added).

Given these explicit directives, it is clear: (a) a party must identify, in the Form 30, the particular findings of fact which it maintains are erroneous; and (b) general assertions of error "are insufficient to preserve an issue" involving a specific factual finding. See, Clark v. Aiken County Government, 366 S.C. 102, 620 S.E. 2d 99, 102 (Ct. App. 2005). Absent compliance with this regulation, the "findings of fact . . . by the hearing commissioner become and are the law of the case . . . ." Green v. City of Columbia, 311 S.C. 78, 427 S.E. 2d 685, 687 (Ct. App. 1993); Transportation Ins. Co. and Flagstar Corp. v. South Carolina Second Injury Fund, 389 S.C. 422, 699 S.E. 2d 687, 692 (2010) ("The Fund failed to appeal the single commissioner's finding to the full commission; thus, it is the law of the case."). See also, Ham v. Mullins Lumbar Co., 193 S.C. 66, 7 S.E. 2d 712, 716 (1940) (". . . [A]ll findings of fact and law by the Hearing Commissioner became and are the law of this case, except only those within the scope of the exception of defendant and the notice given to the parties by the Commission . . . ."); Smith v. South Carolina Department of Mental Health, 329 S.C. 485, 494 S.E. 2d 630, 639 (Ct. App. 1997) (specifically noting commission's *sua sponte* reduction in unappealed disability assessment was violative of Ham); Hendricks v. Pickens County, 335 S.C. 405, 517 S.E. 2d 698, 703 (Ct. App. 1999) (unappealed finding of maximum medical improvement as to one body part constituted the law of the case in subsequent

proceeding following attainment of maximum medical improvement for all other injuries).

This Court has likewise held: (a) rulings that constitute the law of the case are "*res judicata* between the parties." Greenwood County v. Watkins, 196 S.C. 51, 12 S.E. 2d 545, 550 (1940); (b) ". . . [n]o principle of law is better settled, or more firmly adhered to by the courts, than . . . [the concept] that parties are concluded by . . . [determinations of] questions which have once been litigated between them." Earle v. City of Greenville, 84 S.C. 193, 65 S.E. 2d 1050 (1909); and (c) this "doctrine is founded upon principles of wise public policy . . . and the wholesome maxim of the common law that no man should be twice vexed for the same cause . . . ." Jenkins v. Southern Railway Co., 145 S.C. 161, 143 S.E. 2d 13, 14 (1928).

Application of the law of the case doctrine results in "a party [being] . . . precluded from re-litigating issues decided in . . . [the prior] order . . . ." Hudson ex. rel. Hudson v. Lancaster Convalescent Center, 407 S.C. 112, 754 S.E. 2d 486, 490 (2014). It similarly entitles the adverse party to rely upon the law of the case, to the extent he "is not required to relitigate unchallenged findings . . . ." Brunson v. American Koyo Bearings, 367 S.C. 161, 623 S.E. 2d 870, 872 (Ct. App. 2005).

In this instance, Respondents obviously recognized the specificity requirement of Regulation 67-701, as their Form 30 contains no less than 102 exceptions which attribute error to particular factual findings, legal conclusions and rulings. However, inspection of this request for appellate review likewise confirms the absence of any exceptions to Finding of Fact Nos. 1 – 7, 11, 14 – 15, 18 – 21, 23 – 24, 26 – 27, 29, 40 – 42 and 44, which cumulatively comprise 42% of the single commissioner's

exhaustive factual findings. While Respondents maintain their mere mention of the single commissioner's ultimate determinations ("not reached maximum medical improvement"; "entitled to ongoing temporary disability"; "entitled to further medical treatment"; declining to find "his claim for ongoing benefits is fraudulent") under the guise of "General Exceptions" was sufficient to contest each of these findings before the appellate panel, this lack of specificity: (a) is violative of regulation 67-701 (A) (3) (a); (b) gives no insight as to the purported errors committed in connection with the entry of these factual findings, so as to oblige any reviewing tribunal "to 'grope in the dark' to ascertain the precise point at issue" (See, Solley v. Weaver, 247 S.C. 129, 146 S.E. 2d 164 (1966); Connolly v. People's Life Ins. Co. of South Carolina, 299 S.C. 348, 384 S.E. 2d 738, 740 (1989)); (c) clearly did not preserve any objection to these 23 factual findings, resulting in their becoming the law of this case; and (d) the Commission's obliteration of these findings not only exceeded the authority granted by the General Assembly through passage of S.C. Code Ann. Section 42-17-50 (1976, as amended), but also violated basic hornbook law.

As verified by the above-cited authorities, these 23 factual determinations have been decided with **absolute finality**. In view of this fact, Mr. Hilton has an unassailable right to rely upon each of these determinations, which are legally deemed to be set in stone, throughout the duration of this litigation. Consequently, the panel's attempt to extinguish the law of this case is necessarily "null and void." Bazzle v. Huff, 319 S.C. 443, 462 S.E. 2d 273, 274 (1995) (commission's attempts to require submission/approval of attorney fees prior to effective date of empowering regulation "exceeded their statutory authority and thus were null and void"); Responsible Economic

Development v. South Carolina Department of Health and Environmental Control, 371 S.C. 547, 641 S.E. 2d 425, 428 (2007) (action taken by administrative agency outside its statutory authority "is null and void").

B. FUTILITY OF DELAYED APPEAL--ABSENCE OF ADEQUATE REMEDY

From the outset of this appeal, Mr. Hilton has consistently identified the untenable ramifications panel's unceremonious erasure of the law of this case as a primary basis for seeking immediate appellate review. Despite the untenable implications of this action, Respondents have heretofore ignored this issue, effectively acknowledging there is simply no way to justify, rationalize, explain or defend the panel's attempt to nullify the law of this case, upon which Mr. Hilton has an absolute right to rely throughout the remainder of this litigation. As the panel's ruling is legally null and void, it is equally certain that any subsequent rulings by the commission will likewise have no legal effect, leaving the parties to futilely "go through the motions" until this fundamental error of law is corrected by the Court.

Mr. Hilton respectfully submits: (a) absent immediate appellate review, he will be required to relitigate the multitude of factual findings which comprise the law this case; (b) this relitigation, which will be both time consuming and costly, is wholly inconsistent with the *res judicata* effect demanded by the law of the case doctrine; (c) his participation in these extended proceedings will prove to be a futile endeavor given the invalidity of the panel's actions; and (d) this amalgamation of factors firmly establishes the absence of any adequate remedy short of immediate review by this Court.

Additionally, the panel's refusal to recognize/apply this basic doctrine necessarily raises concerns as to: (a) whether it will identify other unpreserved "issues"

on subsequent review; and (b) when there will be a truly final decision, rather than future efforts to supplement the contents of a record which was **never a source of dispute**.

Given the presence of two mutually exclusive exceptions to the general preference for exhaustion of administrative remedies, Mr. Hilton respectfully requests this Court to hold: (a) the 23 unappealed factual findings constitute the law of this case; (b) the panel's May 21, 2014 Order is null and void; (c) this matter must be remanded to the panel for rehearing; and (d) this rehearing must be restricted to consideration of the issues framed by Respondents' exceptions and the current evidentiary record.

II. THE COURT OF APPEALS ERRED IN DISMISSING MR. HILTON'S APPEAL FOR LACK OF "A FINAL DECISION IN" THIS CONTESTED CASE BECAUSE: (A) S.C. CODE ANN. SECTION 1-23-380 (SUPP. 2013) EXPLICITLY PROVIDES THAT ". . . [A] PRELIMINARY, PROCEDURAL, OR INTERMEDIATE AGENCY ACTION OR RULING IS IMMEDIATELY REVIEWABLE IF REVIEW OF THE FINAL AGENCY DECISION WOULD NOT PROVIDE AN ADEQUATE REMEDY"; (B) THE COMMISSION'S RULINGS NOT ONLY EXCEEDED THE SCOPE OF RESPONDENTS' EXCEPTIONS, BUT ALSO IMPERMISSIBLY REDEFINED THE NATURE/PARAMETERS OF THE PARTIES' DISPUTES BY INJECTING UNPRESERVED "ISSUES" INTO THE LITIGATION; (C) THIS ATTEMPT TO AVOID RULING ON THE ISSUES FRAMED BY THE PARTIES (AS IDENTIFIED THROUGH THE SINGLE COMMISSIONER'S ORDER, AS WELL AS RESPONDENTS' FORM 30) AND MATERIALLY RESHAPE/REVISE BASIC ELEMENTS OF THIS DISPUTE UNQUESTIONABLY EXCEEDED THE STATUTORY AUTHORITY GRANTED BY THE GENERAL ASSEMBLY THROUGH S.C. CODE ANN. SECTION 42-17-50 (1976, AS AMENDED); (D) THIS PROCEDURE IMPERMISSIBLY DEPRIVES MR. HILTON OF AN ABSOLUTE ENTITLEMENT TO RELY UPON THE CONTENTS OF AN UNDISPUTED RECORD AND WELL-FRAMED ISSUES, WHILE AFFORDING RESPONDENTS A "DO OVER" AND OBLIGING HIM TO LITIGATE HERETOFORE UNCONTESTED POINTS, IN CLEAR VIOLATION OF SECTION 42-17-50; AND (E) REQUIRING HIM TO ENGAGE IN THE *DE NOVO* RELITIGATION OF THESE FACTS IS GROSSLY PREJUDICIAL, TO THE EXTENT NO ADEQUATE REMEDY SHORT OF IMMEDIATE APPELLATE REVIEW EXIST.

At the commencement of the hearing before the single commissioner, the parties entered several stipulations, which included framing of the disputed issues. (See, Appendix, pp. 5 – 6). Per these stipulations, the single commissioner was requested to determine two medically driven issues that each required submission of expert opinion, as well as a derivative question as to Mr. Hilton's disability status.

"A stipulation is an agreement, admission, or concession made in judicial proceedings by the parties thereto or their attorneys. . . [and is] binding upon those who make them." Thompson v. South Carolina Steel Erectors, 369 S.C. 606, 632 S.E. 2d 874, 879 (Ct. App. 2006); McCrea v. City of Georgetown, 384 S.C. 328, 681 S.E. 2d 918, 921 (Ct. App. 2009). In view of the parties' stipulations, no dispute existed as to either the

adequacy of the evidentiary record or their desire to obtain determinations on the merits of the framed issues.

The parties also introduced various documents pursuant to the Administrative Procedures Act, including relatively extensive deposition testimony elicited from two treating physicians. As outlined above, Mr. Hilton relied upon the opinions of his treating neurologist and Dr. Riber, who each concluded he had not achieved maximum medical improvement for consequences of his compensable accident and required further treatment of these causally related conditions. Additionally, he submitted uncontradicted opinions from his treating neurologist, a forensic psychiatrist and two neuropsychologists, as well as the valid/reliable results of neuropsychological testing, in support of his contention that any prior testimonial inconsistencies were the product of cognitive deficits stemming from (at minimum) a well documented pre-injury brain injury, rather than the conscious/intentional deception alleged by Respondents.

Although Respondents were acutely aware their medical expert (Dr. Chi-Dai Chen) had ultimately acknowledged his lack of expertise and resulting deference to the opinions of the neurologists relative to the symptoms ("nerve irritation or damage") for which Mr. Hilton had not reached maximum medical improvement, while declining to offer any opinion as to the nature of Mr. Hilton's cognitive status, they nonetheless: (a) **insisted the January 3, 2013 hearing proceed** to address these stipulated issues; (b) chose to simply characterize Mr. Hilton as a liar, **rather than attempting to obtain the medical evidence required to legally contest his medical evidentiary submissions**; (c) **elicited his testimony**, despite their obvious receipt of overwhelming medical evidence verifying his cognitive deficits; and (d) **sought neither leave to submit additional**

evidence nor postponement of the hearing to further address the uncontradicted opinions offered by Mr. Hilton's medical experts.

In this regard, S.C. Code Ann. Regs. 67-613 (A) (2012) provides in pertinent part that the parties "shall arrange and present **all evidence at the hearing**" before the single commissioner. (Emphasis added). As this instruction is contained in a legislatively-approved regulation and has "the force of law", it is a requirement, not a recommendation. See, Glover by Cauthen v. Suitt Construction Co., 318 S.C. 465, 458 S.E. 2d 535, 537 (1995); James v. Anne's, Inc., 390 S.C. 188, 701 S.E. 2d 730, 737 (2010). It also obviously goes without saying that an administrative agency "must . . . follow its own regulations . . . ." Triska v. Department of Health and Environmental Control, 292 S.C. 190, 355 S.E. 2d 531, 533 (1987).

Following entry of the single commissioner's Order, which fully addressed the stipulated issues through exhaustive analysis of all evidence of record, Respondents sought appellate panel review. As previously noted, their Form 30 specifically challenged roughly 60% of the single commissioner's factual findings and essentially all legal rulings, while advancing four "General Exceptions" which essentially stated they should have prevailed on all disputed issues. However, consistent with Respondents' prior course of action, the **Form 30 exceptions did not**: (a) seek further medical evaluation; (b) maintain they were denied an opportunity to obtain further medical evaluation prior to proceeding with the merits hearing; (c) question Mr. Hilton's competency to testify; or (d) even imply appointment of a Guardian *ad Litem* was warranted.

Notwithstanding the absence of any of these contentions, the appellate panel declined to address the previously stipulated issues in dispute, instead electing to "rewr[i]te . . . the entire case." Ham, 7 S.E. 2d at 715. Essentially, for reasons unknown, the panel: (a) disagreed with the single commissioner's determination; (b) certainly recognized the evidence of record was **uniformly adverse to Respondents' position**, to the extent it **could not legally support modification of the appealed ruling**; (c) chose to vacate the underlying Order in its entirety; and (d) instructed **Respondents "to send the Claimant to a neurologist of their choice for an evaluation** as to causation and the extent of the Claimant's problems", **despite the absence of any request for this relief**!

Our State's constitution provides in pertinent part that "[n]o person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights . . . unless by a mode or procedure prescribed by the General Assembly . . . ." S.C. Const. art I, Section 22. In view of this limitation, the South Carolina Workers' Compensation Commission, a state administrative agency, "can only exercise those powers which have been conferred upon it by the South Carolina General Assembly." Triska, 355 S.E. 2d at 533; Bazzle, 462 S.E. 2d at 274.

Although the panel can obviously reweigh the evidence when rendering a decision, ". . . [o]nly issues within the application for review under . . . Section 42-17-50 (1976) are preserved for" appellate purposes. See, Green, 427 S.E. 2d at 687; Creech v. Ducane Company, 320 S.C. 559, 467 S.E. 2d 114, 116 (Ct. App. 1995). Consequently, the panel: (a) simply possesses a qualified *de novo* review, to the extent it may only address the specific issues raised on appeal, but cannot "answer questions . . . [it is] not asked." Langley v. Boyter, 284 S.C. 162, 325 S.E. 2d 550, 561 (Ct. App. 1984), quashed

on other grounds, 286 S.C. 85, 332 S.E. 2d 100 (1985); Atlantic Coast Builders and Contractors, LLC v. Lewis, 398 S.C. 323, 730 S.E. 2d 282, 286 (2012); (b) is prohibited from disrupting unappealed factual findings, which "became and are the law of this case . . ." Ham, 7 S.E. 2d at 716; Smith, 494 S.E. 2d at 639; (c) must honor the binding effect of the parties' unqualified stipulations. American Surety Company v. Hamrick Mills, 194 S.C. 221, 9 S.E. 2d 433, 438 (1940); Porter v. S.C. Public Service Commission, 333 S.C. 12, 507 S.E. 2d 328, 338 (1998); and (d) cannot ignore its own regulations. Triska, supra.

In addressing analogous situations, the Arkansas Court of Appeals concluded allowing further medical evaluation of the nature ordered by the panel was wholly inappropriate and violative of a similar requirement that all evidence be presented at the initial hearing. Specifically, in Sea Ark Marine, Inc. v. Pippinger, 2009 Ark. App. 223, 303 S.W. 3d 102, 105 - 106 (2009) the Court concluded: (a) where the record was "replete" with evidence supporting one litigant's position relative to the absence of any need for further medical care, the Commission's deferring determination of the issue to allow further development of the medical evidence was "a tacit admission that the record did not contain evidence sufficient to rule outright that additional treatment" was warranted; (b) if evidence supporting the need for further treatment was lacking and requiring bolstering "the time for that to have occurred should have been prior to the hearing"; and (c) the commission committed legal error when affording this litigant "a 'second bite at the apple' by giving her another opportunity to present evidence substantial enough to carry her burden." See also, Burkett v. Exxon Tiger Mart, Inc., 209 Ark. App. 93, 304 S.W. 3d 2, 6 (2009).

While Respondents argue the panel's ruling relative to the additional neurological examination was authorized by Section 42-15-80 (A), it should be noted the current circumstances do not involve a situation where the commission is directing an injured employee to a physician of its choice. See, e.g., S.C. Code Ann. Section 42-17-30 (1976, as amended). Rather, the panel's Order instructs Respondents "to send the Claimant to a neurologist **of their choice** for an evaluation as to the causation and extent of the Claimant's problems." (Emphasis added).

Had there been conflicting medical evidence, the panel could have properly directed Mr. Hilton to its appointed physician per Section 42-17-30. However, as the medical evidence relating to the stipulated issues in dispute was completely one-sided, the panel's actions can only be deemed the product of an impermissible formulation of a medical opinion, which can hardly support its current action. See, Burnette v. City of Greenville, 401 S.C. 417, 737 S.E. 2d 200 (Ct. App. 2012). Further, given the nature of the panel's ruling - - allowing Respondents to select an evaluator - - logic and fundamental fairness demands that this action be consistent with the parties' stipulation and Respondents' Form 30 exceptions. Absent this connection, the granting of an unsolicited "mulligan", which clearly exceeds the scope of the commission's legislatively created authority, cannot be upheld.

In this instance, Respondents: (a) never sought to submit additional medical evidence before either the single commissioner or full commission panel; (b) consistently denied the presence of cognitive deficits in the face of unanimous medical opinion to the contrary; (c) neither disputed Mr. Hilton's competency to testify, nor asserted there was a need for appointment of a Guardian ad Litem; (d) knew the medical opinion upon which

their contention of maximum medical improvement rested was fatally flawed; and (e) not only chose, but actually demanded, that the parties proceed with a merits hearing relative to these "medically driven" issues.

Based upon these undisputed facts, in light of the relevant legal authorities, Mr. Hilton would respectfully submit: (a) the parties' identification/framing of the issues, per their hearing stipulations, is binding on the appellate panel; (b) the Form 30 exceptions, which do not deviate from the stipulations, likewise limit the scope of appellate panel review; (c) as Respondents never sought to introduce additional evidence, the record cannot be supplemented through introduction of the medical evidence identified by the appellate panel; and (d) the panel's directive to this effect is null and void. To hold otherwise would undoubtedly: (a) provide Respondents "with a 'second bite at the apple'", notwithstanding their insistence on proceeding with a merits hearing utilizing the current record; (b) constitute "a significant . . . [, unjustified] departure from our rules." Therrell v. Jerry's, Inc., 370 S.C. 22, 633 S.E. 2d 893, 897 (2006); and (c) require lengthy and futile litigation toward an ultimate reversal as a matter of law.

He would also reiterate: (a) despite the obvious impropriety of the commission's action, he will be obliged to engage in extensive relitigation of unpreserved "issues" unless afforded the opportunity for immediate review by this Court; (b) this lengthy process can only be characterized as a futile undertaking, as the commission's *sua sponte* creation of unpreserved "issues" will ultimately necessitate nullification of its May 21, 2014 Order; and (c) no adequate remedy, short of immediate review by this Court, exists, as delay will force his active and costly participation in senseless litigation of "non-issues".

Accordingly, Mr. Hilton respectfully requests that the Court issue a decision finding: (a) the commission's May 21, 2014 rulings violates S.C. Const. art I, Section 22, as it clearly exceeds the statutory authority granted by Section 42-17-50, as these determinations do not fall within the scope of Respondents' Form 30 exceptions; (b) the commission's May 21, 2014 Order is null and void; (c) this matter must be remanded to the commission for rehearing by the panel; and (d) this rehearing must be restricted to consideration of the issues framed by Respondents' exceptions and the current evidentiary record.

III. THE COURT OF APPEALS ERRED IN DISMISSING MR. HILTON'S APPEAL FOR LACK OF "A FINAL DECISION IN" THIS CONTESTED CASE BECAUSE: (A) S.C. CODE ANN. SECTION 1-23-380 (SUPP. 2013) EXPLICITLY PROVIDES THAT ". . . [A] PRELIMINARY, PROCEDURAL, OR INTERMEDIATE AGENCY ACTION OR RULING IS IMMEDIATELY REVIEWABLE IF REVIEW OF THE FINAL AGENCY DECISION WOULD NOT PROVIDE AN ADEQUATE REMEDY"; (B) RESPONDENTS' FORM 30 EXCEPTIONS NEITHER CONTEST MR. HILTON'S COMPETENCY TO TESTIFY NOR SEEK FURTHER MEDICAL EVALUATION; (C) GIVEN THESE FACTS, IN LIGHT OF RESPONDENTS' FORM 30 EXCEPTIONS AND BRIEF TO THE FULL COMMISSION PANEL, MR. HILTON WAS NEVER NOTIFIED THAT "ISSUES" EXISTED AS TO HIS COMPETENCY OR THE CONTENTS OF THE EVIDENTIARY RECORD; (D) THE COMMISSION'S CREATION OF PREVIOUSLY UNPRESERVED "ISSUES" WAS VIOLATIVE OF DUE PROCESS; AND (E) REQUIRING HIM TO ENGAGE IN THE *DE NOVO* RELITIGATION OF THESE FACTS IS GROSSLY PREJUDICIAL, TO THE EXTENT NO ADEQUATE REMEDY SHORT OF IMMEDIATE APPELLATE REVIEW EXISTS.

Article I, section 22 also "requires an administrative agency to give procedural due process to parties that come before it . . . ." Garris v. Governing Board of South Carolina Reinsurance Facility, 333 S.C. 432, 511 S.E. 2d 48, 52 (1998); South Carolina Ambulatory Surgery Center Association v. South Carolina Workers' Compensation Commission, 389 S.C. 380, 699 S.E. 2d 146, 152 (2010).

"If there is such a thing as due process of law, under it a litigant is entitled to notice of the issues to be met on trial, hearing or appeal." Ham, 7 S.E. 2d at 715; Green, 427 S.E. 2d at 687. "Administrative agencies are required to meet minimum standards of due process", which limits the commission's focus to "[o]nly issues within the application for review", while restraining it from "rewr[iting] . . . the entire case." Smith, 494 S.E. 2d at 638; Green, supra.; Ham, supra.

As previously noted, Respondents' W.C.C. Form 30: (a) neither requests an opportunity to obtain additional medical evidence nor disputes the legal capacity of Mr. Hilton (whose testimony was introduced in their case in chief) to testify; (b) **specifically**

identified the factual findings it intended to challenge; and (c) did not afford Mr. Hilton even a semblance of notice that the issues ultimately **created** by the panel, much less the unappealed factual findings, remained the subject of further litigation.

The panel's determination to erase all aspects of the single commissioner's Order (including the law of this case), while directing the parties to obtain further evidence for the purpose of litigating "issues" it arbitrarily spawned was clearly violative of due process. As due process must be afforded "before any binding decree, order, or judgment can be made", its denial rendered the May 21, 2014 order "a nullity". LaSalle Bank National Association v. Davidson, 386 S.C. 276, 688 S.E. 2d 121, 122 (2009); Adams v. H.R. Allen, Inc., 397 S.C. 652, 726 S.E. 2d 9, 12 (Ct. App. 2012).

In this regard, Mr. Hilton respectfully submits: (a) absent immediate review by this Court, it will be incumbent upon him to actively engage in the timely and costly litigation of multiple unpreserved issues; (b) given the obvious implications of the panel's denial of due process, his necessary participation in these extended proceedings will prove to be a futile endeavor; and (c) pursuit of this extensive litigation in the face of numerous fatal legal errors certainly does not constitute an adequate remedy in this instance.

Accordingly, Mr. Hilton respectfully request this Court to issue a decision finding that: (a) the panel's actions, as embodied in the May 21, 2014 Order, are violative of due process; (b) the May 21, 2014 Order is null and void; (c) this matter must be remanded to the panel for rehearing; and (d) this rehearing must be restricted to consideration of the issues framed by Respondents' exceptions and the current evidentiary record.

IV. THE COURT OF APPEALS ERRED IN DISMISSING MR. HILTON'S APPEAL FOR LACK OF "A FINAL DECISION IN" THIS CONTESTED CASE BECAUSE: (A) S.C. CODE ANN. SECTION 1-23-380 (SUPP. 2013) EXPLICITLY PROVIDES THAT ". . . [A] PRELIMINARY, PROCEDURAL, OR INTERMEDIATE AGENCY ACTION OR RULING IS IMMEDIATELY REVIEWABLE IF REVIEW OF THE FINAL AGENCY DECISION WOULD NOT PROVIDE AN ADEQUATE REMEDY"; (B) THE COMMISSION'S "FINDINGS", WHICH LITERALLY CONSTITUTE THREE SENTENCES (SEVEN LINES) OF ITS MAY 21, 2014 ORDER, PROVIDE ABSOLUTELY NO INSIGHT AS TO ITS RATIONALE FOR VACATING THE SINGLE COMMISSIONER'S JUNE 4, 2013 ORDER (WHICH CONTAINED 54 DETAILED FACTUAL FINDINGS AND 9 "CONCLUSIONS OF LAW"); (C) THE PRESENCE OF NUMEROUS UNAPPEALED FACTUAL FINDINGS, WHICH DECIDED THESE POINTS WITH ABSOLUTE FINALITY, NECESSARILY TRIGGERED THE REQUIREMENTS OF S.C. CODE ANN. SECTION 42-17-40 (1976, AS AMENDED); (D) IT WAS CONSEQUENTLY INCUMBENT UPON THE COMMISSION TO ENTER SPECIFIC FACTUAL FINDINGS AND LEGAL RULINGS, AS WELL AS A THOROUGH EXPLANATION OF THE REASONING BEHIND ITS RULINGS; (E) THE ABSENCE OF ANY FACTUAL FINDINGS, LEGAL ANALYSIS OR IDENTIFICATION OF ITS UNDERLYING RATIONALE RENDERED THE MAY 21, 2014 ORDER ILLEGAL ON ITS FACE; AND (F) REQUIRING HIM TO ENGAGE IN THE *DE NOVO* RELITIGATION OF THESE FACTS IS GROSSLY PREJUDICIAL, TO THE EXTENT NO ADEQUATE REMEDY SHORT OF IMMEDIATE APPELLATE REVIEW EXISTS.

S.C. Code Ann. Section 42-17-40 (1976, as amended) provides in pertinent part that the commission's "award, together with a statement of the findings of fact, rulings of law and other matters pertinent to the questions at issue, must be filed . . . ." Additionally, S.C. Code Ann. Section 42-17-60 (2007) prescribes that any "award of the commission . . . may [be] . . . appeal[ed] . . . to the court of appeals."

"The Workers' Compensation Act should be read *in pari materia* when possible." United Technologies v. South Carolina Second Injury Fund, 318 S.C. 213, 456 S.E. 2d 901, 904 (1995). As Section 42-17-60 necessarily envisions various forms of "awards", including denial of compensation, this statute required inclusion of factual findings, legal ruling and explanation of the underlying rationale for any of the commission's

determinations. See, Brayboy v. Clark Heating Company, Inc., 306 S.C. 56, 409 S.E. 2d 767, 768 (1991) (Ruling that sufficiently detailed factual findings enabling a reviewing Court to determine presence of evidentiary support and consistency with controlling law were necessary where commission denied compensation entitlement.)

As recognized in Heater of Seabrook, Inc. v. Public Service Commission of South Carolina, 332 S.C. 20, 503 S.E. 2d 739, 742 (1998), given the "wide latitude . . . afforded . . . [to administrative agencies] in making decisions, . . . the writing of orders without sufficient detail or analysis, . . . can make their decisions as a practical matter unassailable on appeal." Recognizing this potential for "arbitrary or capricious" action on the part of the agency, the Court has "repeatedly emphasized the need for specificity in administrative orders." Id.

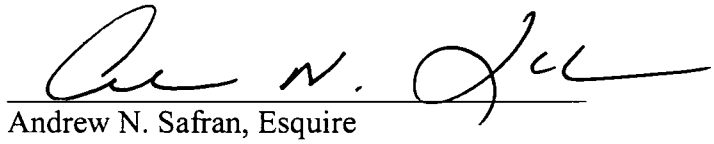
It cannot be seriously disputed "that the Commission is responsible for making factual findings and addressing matters pertinent to the questions and issues before it." James v. Anne's, Inc., 390 S.C. 188, 701 S.E. 2d 730, 737 (2010). This obligation has been exhaustively held to include: (a) entry of specific/express factual findings; and (b) a prohibition against implicit findings. In fact, "awards without . . . [these] specific findings do not comply with the requirements of the [workers' compensation] act and are illegal." Shealy v. Algernon Blair, Inc., 250 S.C. 106, 156 S.E. 2d 646, 648 (1967). The commission is also obliged to explain the reasoning behind its rulings, rather than leave the rationale to speculation. Able Communications, Inc. v. South Carolina Public Service Commission, 290 S.C. 409, 351 S.E. 2d 151, 152 (1986); Kiawah Property Owners Group v. Public Service Commission of South Carolina, 338 S.C. 92, 525 S.E. 2d 863, 865 (1999).

In this instance, the panel's order: (a) contains no factual findings (other than a listing of the findings contained in the single commissioner's Order that were mysteriously vacated); (b) declined to identify the legal authority for any of its rulings; and (c) offers no explanation as to the reasoning behind the panel's action.

Mr. Hilton respectfully submits: (a) the panel is statutorily required to identify the rationale underlying its rulings through entry of sufficiently detailed factual findings in conjunction with relevant legal analysis; (b) compliance with this obligation is crucial, where, as here, the single commissioner's Order contains elements of legally mandated finality that have far reaching implications on the course of this litigation; (c) noncompliance with this Court's prior rulings as to the contents of administrative decisions not only renders the May 21, 2014 Order illegal, but also establishes a process through which entry of a "final decision" can be indefinitely delayed (via repeated remands of this nature); (d) notwithstanding these legal deficiencies, he will nonetheless be forced to actively participate in the timely and costly relitigation of this claim; (e) given the inadequacy of the panel's May 21, 2014 Order, further litigation and compliance with these baseless directives will be futile; and (f) his only adequate remedy is immediate review by this Court.

Accordingly, Mr. Hilton respectfully requests the Court to issue a decision finding that: (a) the absence of factual findings, legal analysis and an explanation of the rationale for its rulings renders the panel's May 21, 2014 Order illegal on its face; (b) the Order is null and void; (c) this matter must be remanded to the panel for rehearing; and (d) the rehearing must be restricted to consideration of the issues framed by Respondents' exceptions and the current evidentiary record.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Susan S. Barden, Commissioner
Gene McCaskill, Commissioner
Andrea C. Roche, Commissioner

APPELLATE CASE NO.: 2015-000493

Thomas Chad Hilton..... PETITIONER.

v.

Flakeboard America Limited, Employer, and Liberty Mutual Insurance Company, Carrier .....RESPONDENTS.

CERTIFICATE OF SERVICE

I, Roxanne R. Moorer, paralegal for Andrew N. Safran, Esquire, Attorney for Petitioner, do hereby certify that on the 18th day of September, 2015, I caused to be filed, via hand delivery, the original and fifteen (15) copies of the Petitioner's Brief, as well as an additional thirteen (13) copies of the Appendix, with the Clerk of the South Carolina Supreme Court. One (1) copy of the Petitioner's Brief was furnished to counsel for Respondents via first class mail at the following address:

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September 18, 2015