THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2014-001258

Ricky Kneece, Respondent,

v.

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

FINAL BRIEF OF THE APPELLANTS

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STATEMENT OF THE CASE

This matter comes before the Court of Appeals from an appeal of the decision of the Honorable R. Knox McMahon, which reversed the decision of the Full Commission of the South Carolina Workers' Compensation Commission. Appellants assert that, among other errors, that the Circuit Court incorrectly applied the substantial evidence standard in his review of the Full Commission Order.

The prior matter before the Court of Common Pleas addressed Petitions for Judicial Review submitted by both parties in response to the Order of the South Carolina Workers' Compensation Appellate Panel dated April 19, 2012. The Defendants subsequently moved to alter or amend judgment on August 5, 2013. This motion was denied by Judge Knox McMahon on April 24, 2014. (R. p. 4).

Previously, this matter came before the Full Commission on September 20, 2011, on appeal from the Decision and Order of Commissioner Derrick L. Williams filed on April 28, 2011, by Kneece Farms, Legion Insurance Company in Liquidation, and The South Carolina Property and Casualty Insurance Guaranty Association (hereinafter "Defendants").

The Claimant/Respondent, Ricky D. Kneece (hereinafter "Claimant"), sustained compensable injuries on November 22, 1999, while working for Kneece Farms, which was owned by the Claimant's uncle, including injuries to his head/brain, left lower extremity and left upper extremity. The Defendants provided medical as well as indemnity benefits for the Claimant's work injuries.

At the time of the accident at Kneece Farms, the Claimant was also employed with Delano R. Kneece & Son Farms, Inc. (hereinafter "Delano Kneece & Son"), which is a family

farm that is owned and operated by Claimant and his father. The Claimant and his father farmed their own land while also working as sharecroppers on land owned by Kneece Farms. The Claimant never returned to employment with the Defendant Employer in this claim – Kneece Farms. However, he did return to full time employment with the family farming operation, Delano Kneece & Son Farms.

The Claimant returned to limited work duties with Delano R. Kneece & Son Farms within months of his accident and admitted, per a signed Form 17, that he was able to return to full time work with Delano Kneece & Son during 2005. (R. p. 1241).

The Claimant, per testimony during the hearing, has never been without his salary or wages as a result of his injuries. During the hearing, the Claimant's Wife, who is also the bookkeeper for Delano R. Kneece & Son Farms, Inc., testified that the Claimant's wages from the family farm for 2007 and 2009 were $76,600.00 and $77,600.00 respectively. (R. p. 482 lines 22-24). She also testified that these yearly amounts were over two times the amount of the Claimant's yearly salary at the time of the accident. (R. p. 483 lines 1-4).

On April 16, 2004, Claimant's treating physician for his left lower extremity, Dr. James O'Leary, released Claimant at maximum medical improvement (MMI) with a 10% impairment rating to his left lower extremity. (R. p. 998). The Claimant treated with Dr. Michael Green for his left upper extremity injury. Dr. Green released the claimant at MMI with a 17% impairment rating to his left upper extremity on September 23, 2004. (R. p. 946).

Accordingly, the Defendants filed a Form 21 Request to stop payment of temporary total disability (TTD) benefits. The hearing on Defendants' Form 21 was held on January 11, 2005, before Commissioner Childs. On April 18, 2005, Commissioner Childs issued her Decision and Order finding and concluding, in pertinent part, that: (1) Claimant sustained compensable

injuries to his brain/head, face, nasal passage, sinus, left eye, left knee, left shoulder, left elbow and depression; and (2) Claimant had not yet reached MMI all of those injuries. As a result, the hearing Commissioner ordered Defendants to provide additional medical treatment for injuries to the Claimant's left knee and shoulder, as well as treatment for Claimant's closed head injury, and depression with Dr. Randy Waid and Dr. Larry Bergmann. (R. pp. 104-107).

In addition, the Hearing Commissioner found that although the Claimant was earning wages from Kneece & Son during the same time period he was receiving TTD benefits from the Carrier, the Defendants were not allowed to receive an off-set or credit for those TTD benefits because the Claimant's wages were paid by a "collateral source." This "collateral source" was the salary Claimant earned at Kneece & Son. (R. p. 106).

The Defendants timely appealed this 2005 Decision and Order of Commissioner Childs. However, prior to the Full Commission Hearing on the matter the Claimant agreed to execute a Form 17 acknowledging that he was able to return to work at full duty as of October 4, 2005. (R. p. 1241). Accordingly, TTD payments were terminated as of October 4, 2005; Defendants provided Claimant with additional medical treatment for his closed head/brain injury, as well as the injuries to Claimant's left lower extremity (knee) and left upper extremity (shoulder) pursuant to the 2005 Order and the Agreement between the parties.

The Claimant was re-evaluated by Dr. Green on March 20, 2006. During this evaluation, the Claimant informed Dr. Green that he drove his tractor for long periods of time on his farm (Kneece & Son). (R. p. 1195). The Claimant's physical examination at this appointment was normal except for a "little bit of discomfort." Dr. Green opined at that time that the claimant was able to *work full duty* as of March 20, 2006. (R. p. 1195).

The Claimant was also evaluated by Dr. Randy Waid for his closed head injury. In his report of February 8, 2007, Dr. Waid indicated that the Claimant continued to "demonstrate mild executive dysfunction both with regard to cognitive and emotional/psychological functioning." He also noted that the Claimant continued to be employed on his family farm. On February 8, 2007, Dr. Waid released the Claimant at MMI with a 22% impairment rating to the whole person for this injury. The Claimant had previously been released at MMI with regard to his left upper and left lower extremity in 2004, as stated above. (R. pp. 862-868).

On May 14, 2008, the Claimant underwent a neurological examination with Dr. Julian Adams of the South Carolina Neurological Clinic. Dr. Adams diagnosed Claimant with a "mild to moderate head injury with a contusion to his right frontal lobe" and he found the Claimant's examination to be "absolutely normal." (R. p. 1219). Dr. Adams subsequently ordered an electroencephalogram (EEG) test to measure brain electrical activity which was also normal. (R. p. 1222). Consequently, no further treatment was recommended by Dr. Adams.

Following that 2008 evaluation with Dr. Adams, neither Claimant nor his attorney ever made any demand or request for any additional medical treatment other than a request that Claimant be allowed to continue his psychological treatment with Dr. Bergmann and Dr. Deal, which the Defendants authorized. However, in March of 2010, the Claimant decided to seek additional medical treatment on his own without any notice to Defendants with Dr. Charles Shissias of Lowcountry Medical Group in Beaufort.

Following the commencement of unauthorized treatment with Dr. Shissias, Claimant filed a Form 50 on July 9, 2010, requesting additional medical treatment, as well as an award of

permanent and total disability based upon a general disability/loss of earning capacity pursuant to S.C. Code Ann. § 42-9-10. (R. p. 386).

This Form 50 hearing request was Claimant's first such request since before the hearing in front Commissioner Childs in 2005. This was also the first notice to Defendants that: (1) The Claimant was alleging he was permanently and totally disabled as a result of a loss of earning capacity under S.C. Code Ann. § 42-9-10; (2) That the Claimant had been receiving treatment from Dr. Shissias; and (3) That the Claimant intended to rely upon the opinions of the unauthorized physician, Dr. Shissias, as well as Claimant's own vocational expert, William Stewart, to establish his claim for permanent and total disability. The Defendants answered Claimant's Form 50, denying he was entitled to an award of permanent and total disability under S.C. Code Ann. § 42-9-10, or any other provision of the Workers' Compensation Act. (R. p. 384).

A hearing on the Forms 50 and 51, which ultimately give rise to this appeal, was originally scheduled before Commissioner Williams on October 4, 2010; however, the parties agreed to mediate this claim. Mediation was held on November 29, 2010, but was unsuccessful. Following mediation, Defendants sought to obtain evaluations with a neuropsychologist, a neurologist, and a vocational specialist to address the new and updated opinions of Claimant's experts, specifically with regard to any ongoing neurological issues or deficits.

On December 7, 2010, counsel for the Defendants notified Claimant's counsel of a neuropsychological evaluation appointment set for January 4, 2011, with Dr. Tora Brawley of the University of South Carolina Specialty Clinics, Department of Neuropsychiatry and Behavioral Science (R. p. 1349). Subsequently, Defendants received correspondence from Claimant's attorney to Dr. Brawley indicating that he was refusing to allow Claimant to attend

the scheduled appointment with Dr. Brawley. (R. p. 1351). The Defendants kept the appointment scheduled; however, the Claimant failed to participate or attend this evaluation.

On December 14, 2010, Counsel for the Defendants requested, via written correspondence to Claimant's attorney, dates that Claimant was available to meet with Defendants' vocational expert, Cynthia P. Grimley. (R. p. 1354). In addition, Ms. Grimley separately phoned and wrote to Claimant's counsel requesting available dates for the interview for the vocational evaluation. Although Claimant's counsel indicated he spoke with Ms. Grimley in December and was "checking her references," he subsequently advised that he would not agree to make the Claimant available for a vocational evaluation with the Defendants' expert.

Finally, on January 21, 2011, counsel for the Defendants notified the Claimant's counsel of a neurological examination scheduled for the Claimant with Dr. Ben Bashinski of Neurological Associates of Augusta, Georgia, for February 4, 2011 (R. p. 1359). The Defendants offered to provide transportation for the Claimant to this appointment if needed. However, Claimant's counsel responded by letter dated January 24, 2011, that the Claimant would not submit to the neurological evaluation with Dr. Bashinski. (R. p. 1360).

On January 26, 2011, the Defendants moved for an Order compelling the Claimant to attend and cooperate with the examinations to be conducted by the Defendants' neurologist, neuropsychologist and vocational rehabilitation expert as set forth above. (R. p. 361, Motion to Compel dated January 26, 2011). The Defendants also requested an Order suspending Claimant's right to further benefits and cancelling the hearing that had been scheduled for February 14, 2011, due to the Claimant's noncompliance with S.C. Code Ann. § 42-15-80 permitting an independent medical evaluation by the Defendants. On February 2, 2011, the Defendants' Motion to Compel the medical and vocational evaluations and to postpone the

hearing was denied by a Form Order of the Commission without explanation. (R. p. 93). However, prior to the hearing, the Claimant complied with the neuropsychological evaluation with Dr. Brawley and this was performed on January 28, 2011. In her report, Dr. Brawley was essentially in agreement with Dr. Waid that the Claimant had experienced a "mild residual brain dysfunction as a result of his accident." (R. pp. 1237 - 1239, Dr. Brawley report, dated February 11, 2011).

At the Hearing on February 14, 2011, Defendants renewed their Motion to compel discovery and the medical evaluation, and also to postpone the hearing. At that time the Defendants also objected to the introduction of various records reflecting certain expenditures submitted by Claimant through his APA submissions. (R. pp. 1093 and 1094). The Defendants' objection to the introduction of this evidence as well as their 'Motion to Compel and Postpone the Hearing' were each denied by the hearing Commissioner. Specifically, the Hearing Commissioner stated that these evaluations could have been performed prior to the Hearing; however, no finding or disposition was made with regard to the Motion to Compel in the hearing Commissioner's Order.

At the Hearing on February 14, 2011, the Claimant asserted that he was entitled to permanent and total disability benefits as a result of a physical brain injury pursuant to S.C. Code Ann. § 42-9-10. It was the position of the Defendants that the Claimant had not sustained a loss of earning capacity and that Claimant was not permanently and totally disabled. However, both parties agreed the Claimant was at MMI for all injuries.

On April 28, 2011, Commissioner Derrick L. Williams issued his Decision and Order, finding and concluding in pertinent part, that:

1. The job and work offered by Claimant's family farm, Delano R. Kneece & Son, Inc., is sheltered employment and benevolent in nature and the accommodations made by

Claimant's family that enabled Claimant to perform certain limited services for Delano R. Kneece & Son, Inc., is not evidence that a reasonably stable market exists for the services Claimant provides for the family farm.

2. The amounts paid the Claimant by Delano R. Kneece & Son, Inc. are not intended to represent wages earned and the amount is not calculated on the basis of services performed by Claimant. Instead, those amounts paid to the Claimant are in the nature of a gift and do not constitute wages. Additionally, that Claimant was entitled to weekly compensation for all previously unpaid weeks (despite earning significantly more yearly income from his employer than he received at the time of his accident).

3. The Claimant is permanently and totally disabled in terms of performing his past job as a farmer/owner/operator of a farm supply and farming operation, or any other kind of job or gainful employment on a reliable, sustained basis in accordance with the opinion of Dr. Stewart and, therefore, the Claimant is unable to perform services other than those that are so limited in quality, dependability, and quantity that a reasonable stable market for them does not exist.

4. That the Claimant sustained injuries to the brain/head, nasal passage, sinus, left eye, left knee, left shoulder, left elbow (left upper and lower extremities), finger, zygomatic arch, thyroid, scarring, teeth, and psychological.

5. The Claimant is permanently and totally disabled, with a physical brain injury, pursuant to §42-9-10, and is entitled to lifetime benefits in terms of weekly compensation and medical treatment.

6. The Defendants have failed to pay for all medications prescribed by Claimant's physicians, to include Drs. Deal, Wicker, Shissias, and Ugino.

7. The Claimant will benefit from future treatment and Defendants are ordered to pay for those medications for all causally related injuries.

8. The Claimant has accumulated mileage of 3,658 for which he is entitled to reimbursement, (despite failing to submit any prior requests for over ten years of treatment).

9. The Claimant has accumulated charges of $14,010.77 in prescriptive medications for which he is entitled to reimbursement.

(R. pp. 84-91).

Based upon the Hearing Commissioner's Findings of Fact and Conclusions of Law, the Defendants were ordered to pay Claimant weekly compensation in the amount of $461.67 from

November 22, 1999, to the present and continuing for Claimant's lifetime, with a credit for 157 $^{1}/_{7}$ weeks of weekly compensation already paid to Claimant.

In addition, the Defendants were ordered to provide Claimant lifetime medical treatment for his compensable injuries to be directed by Drs. Bergmann, Deal, Shissias, Wicker and Ugino, as well as reimbursement for all causally related medical expenses incurred up to that date, including reimbursement for all prescription medication and mileage listed by Claimant in his Exhibits.

From this Decision and Order issued by Commissioner Williams, the Defendants timely filed a Form 30 Request for Review to the Appellate Panel of the South Carolina Workers' Compensation Commission, raising 39 Grounds for Review. (R. p. 349). The Defendants' appeal was heard by the Full Commission on September 20, 2011.

Pursuant to S.C. Code Ann. § 42-17-50 (1985), the Appellate Panel reviewed the Award and weighed the evidence as presented at the initial hearing, finding good grounds to reverse and remand the prior Order on grounds that Claimant was not permanently and totally disabled with accompanying physical brain damage. (R. p. 47, SCWCC Appellate Panel Order dated April 19, 2012). Puzzlingly, the Full Commission signed a proposed Order submitted by Claimant's Counsel without removing or amending the multitude of Findings of Fact and Conclusions of Law that conflicted with the Panel's primary holding, which reversed the single Commissioner's original finding of permanent total disability.

Subsequently, both parties timely appealed the Order of the Full Commission for the reasons outlined below and in their respective Petitions for Review to the Circuit Court of Lexington County. (R. pp. 214; 225, Notice of Intent to Appeal dated May 18, 2012; Petition for Judicial Review dated May 21, 2012). Judge Knox McMahon reversed the holdings and

conclusions of the Appellate Panel of the full Commission, reinstating the holdings of the single Commissioner, and finding that the Claimant was permanently totally disabled with a physical brain injury, and therefore entitled to life time medical and indemnity benefits associated with this claim. (R. pp. 21-46). These Defendants filed a Rule 59(e) motion for rehearing, which was denied on April 24, 2014. This appeal by the Defendants to the Court of Appeals follows.

STANDARD OF REVIEW

The question of whether there is a sufficiency of evidence is strictly a matter of fact, and the findings of the Commission thereabout are final. *Phillips v. Dixie Stores, Inc.*, 186 S.C. 374, 195 S.E. 646 (1938) [additional citations omitted]. It is well settled that findings of fact by the Industrial Commission are conclusive and binding upon both the court of common pleas and the Supreme Court, if there is any competent evidence reasonably tending to support them, even though there is evidence that would have supported a finding to the contrary. *Willard v. Commissioners of Public Works of City of Spartanburg*, 219 S.C. 477, 65 S.E.2d 874 (1951). In reviewing the finding of an administrative agency, neither the Court of Appeals nor the Circuit Court may substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. *Grant v. South Carolina Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995). Furthermore, a reviewing court will not disturb findings of the Workers' Compensation Commission if its findings are supported by substantial evidence on the record as a whole. *Pearson v. JPS Converter & Indus. Corp.*, 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). Where there is a conflict in evidence, either by different witnesses or in testimony of the same witness, findings of fact of the South Carolina Workers' Compensation Commission are conclusive. *Tiller v. National Health Care Center of Sumter*, 334 S.C. 333, 513 S.E.2d 843 (1999). If evidence is susceptible to more than one reasonable inference, the full Commission's

finding must be sustained. *Wilson v. City of Darlington*, 229 S.C. 62, 91 S.E.2d 714 (1956). The courts may not weigh the evidence in their review of a factual finding by the Commission. *Walker v. City of Columbia*, 247 S.C. 241, 146 S.E.2d 856 (1966).

Based on the foregoing, the Circuit Court should have been by the findings of the Commission if they were supported by substantial evidence. The Full Commission's Order thoroughly explains its analysis of the issues and the reasonable evidence it relied on in reversing the lower Order. The Circuit Court, in its appellate capacity, is not permitted to substitute its own judgment for that of the Appellate Panel of the Workers' Compensation Commission with regards to the weight of the evidence. It is not the court's duty, when sitting in an appellate capacity, to weigh the testimony but only to determine whether the record contain[ed] competent evidence to support the findings of the Workers' Compensation Commission. *Kay v. South Carolina Public Service Authority*, 246 S.C. 168, 143 S.E.2d 130 (1965), or determine if the Order of the Appellate Panel was affected by some other error of law.

"The statute empowers the full Commission to make its own findings of fact and to reach its own conclusions of law consistent with or inconsistent with those of the hearing commissioner. *Green v. Raybestos-Manhattan, Inc.*, 250 S.C. 58, 156 S.E.2d 318 (1967).

If the evidence is all one way, or if the findings of the Commission are based on surmise, speculation, or conjecture, the issue becomes one of law for the court and not of fact for the Commission. *Herndon v. Morgan Mills, Inc.*, 246 SC 201, 143 SE2d 376 (1965).

Upon admitted or established facts the question of whether an accident is compensable is a question of law, and review thereof is not an invasion of the fact-finding field of the Commission on the part of the Court. *Jordan v. Dixie Chevrolet, Inc.*, 218 SC 73, 61 SE2d 654 (1950). A Court may reverse or modify the Workers' Compensation Commission's decision if

substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are affected by other error of law. *Etheredge v. Monsanto Co.*, 349 SC 451, 562 SE2d 679 (2002).

ARGUMENT

I. THE CIRCUIT COURT MISSAPPLIED THE SUBSTANTIAL EVIDENCE STANDARD IN REVERSING THE FULL COMMISSION'S ORDER

The Employer/Carrier assert that the Circuit Court, in reversing the findings of the Appellate Panel as to the Claimant's degree of permanency, by finding that the Claimant was not permanently totally disabled, has misapprehended either the appropriate standard of review for a factual finding of disability, or failed to address how the Claimant's injury has rendered him permanently totally disabled as a matter of law. The Order of the Circuit Court overturned the findings of the Appellate Panel which had ruled, under the facts of this case, the Claimant was not permanently totally disabled.

There are only two ways in which a claimant can be found permanently totally disabled as a matter of law. First is by the loss of two hands, feet, eyes, shoulders, hips, arms or legs, or any combination thereof. (S.C. Code Ann. §42-9-10(B)). None of those circumstances exist in the present case as the Claimant did not suffer a loss of any body part, or parts. Secondly, to be declared permanently totally disabled as a matter of law, a claimant may suffer a disability of over 50% to the back. (See S.C. Code Ann. §42-9-30). The Claimant in the instant case did not suffer an injury to the back, nor receive a disability rating thereto. Therefore, the Claimant is not permanently disabled as a matter of law under either theory.

Under a factual determination by the Commission, a Claimant may also be determined to be permanently totally disabled under S.C. Code Ann. §42-9-10(A) if it is determined he has suffered an injury to a "non-scheduled" body part, or to two or more scheduled member body

parts (See S.C. Code Ann. §42-9-30 and S.C. Code of Regs. §67-1101), which has resulted in a total loss of earning capacity. Similarly, if a claimant has suffered a permanent physical brain injury which has rendered him or her to have lost all earning capacity, he or she can be determined permanently totally disabled and entitled to life time benefits under S.C. Code Ann. §42-9-10(C).

Nevertheless, neither of these two types of permanent total disability (wage loss under §42-9-10(A) or (C)) are findings that can be made as a matter of law. Rather, such a determination of disability under this model is adjudicated as a factual question; therefore the ultimate determination of disability in such circumstances *must* be determined by the Workers' Compensation Commission as the trier of fact. The Supreme Court recently clarified in two opinions, Sparks v. Palmetto Hardwood, Inc., 406 S.C. 124, 750 S.E.2d 61 (2013) and Crisp v. SouthCo., Inc., 401 S.C. 627, 738 S.E.2d 835 (2013) that a physical brain injury in and of itself was not enough to make a finding that a Claimant was therefore permanently totally disabled under S.C. Code Ann. §42-9-10(C).

The petitioner in Crisp, similarly to the Claimant/Respondent Kneece in the case *sub judice*, argued that the mere presence of a permanent physical brain injury or damage, triggers the operation of section 42-9-10(C) entitling an injured worker to life time indemnity benefits – which Crisp had essentially argued required a finding as a matter of law of permanent total disability. The Sparks and Crisp courts summarily rejected this argument, finding that such an interpretation would be contrary to legislative intent, and to the manner in which our courts have awarded compensation for injuries to the brain. Further support for the proposition that §42-9-10(C) does not implicate a finding of permanent total disability for brain injuries as a matter of law, is that S.C. Code of Regs. §67-1101 provides scheduled compensation up to 250 weeks for

injuries to the brain. That is, §67-1101 is for permanent *partial* disability cases where a brain injury had occurred, but where the injured worker has not been rendered permanently totally disabled by the injury.

The Order of the Circuit Court in this claim made a finding that that Respondent was indeed permanently totally disabled, countermanding the Appellate Panel of the Commission's findings that he is not permanently totally disabled, and was only entitled to benefits under S.C. Code of Regs. §67-1101. Such a finding by the Circuit Court cannot have been as a matter of law, as both §42-9-10(B)(amputation and member loss) and §42-9-30(21)(back injuries) are not even at issue in the instant case, yet as outlined by the *Crisp* and *Sparks* Courts, a finding of permanent total disability in brain injury cases is not as a matter of law. Therefore, the finding of permanent total disability by the Court must have been a determination of fact as to the degree and severity of the injury to the Claimant's brain. However, this would have required additional findings that the Appellate Panel's factual findings as to disability were unsupported by substantial evidence.

Finally, on this point, the Circuit Court Order on page 11, in weighing the evidence of the record held that: "[t]he evidence of the record, when viewed as a whole, compels the finding that the Claimant suffered physical brain damage with a severe and permanent impairment of his normal brain function." (R. p. 31). However, this newly instituted finding by the Circuit Court, in contradiction to the Appellate Panels' findings on this point, is also contradictory to the 'substantial evidence rule.' First, a finding of the degree of severity of an injury is a question of fact for the Commission. The Commission's failure to find a, "severe and permanent brain injury," is most certainly supported by the evidence in the record, even if the Circuit Court were

to conclude it was not by the greater weight of the evidence. Nonetheless, the Appellate Panel's ruling should stand under the applicable standard of review.

Appellants assert there is competent and substantial evidence in the record to support the Commission's failure to find a "severe permanent brain injury," with "severely impaired" function of the Respondent's brain. For example, On May 14, 2008, the Respondent underwent a neurological examination with Dr. Julian Adams of the South Carolina Neurological Clinic. Dr. Adams diagnosed Claimant with a "mild to moderate head injury with a contusion to his right frontal lobe" and he found the Respondent's examination to be "absolutely normal." (R. p. 1219). Dr. Adams subsequently ordered an electroencephalogram (EEG) test to measure brain electrical activity which was also normal. (R. p. 1222, Dr. Julian Adams – SC Neurological Clinic). No further treatment was recommended by Dr. Adams. See also report of Dr. Tora Brawley who was in agreement with Dr. Waid (Claimant's expert) that the Respondent had experienced a "mild residual brain dysfunction as a result of his accident." (R p. 1237, Dr. Tora Brawley dated February 11, 2011).

However, if the finding was made as a factual determination, Appellants contend that such a finding by the Circuit Court is improper, in that the Appellate Panel of three Commissioners in weighing the evidence as to disability, unanimously found that the Respondent was <u>not</u> totally disabled. Moreover, the Appellate Panel's finding was supported by substantial evidence in that the Respondent continued to work 50 hours plus per week, and is now making significantly higher wages than he did at the time of the accident, filing tax returns on such money as wages, and previously signing a Form 17 to be filed with the SCWCC representing that he had returned to work making the same wages (or higher, than) he earned at

the time of his injury as of October 2005. (R. p. 1241). Therefore, under the applicable standard of review this finding of the Appellate Panel is binding on appeal and should have been affirmed.

Whether the Circuit Court upon its review finds that the greater weight of the evidence may have supported a finding of permanent total disability or not, such weighing of the evidence is not permitted at this point in the appeal. The only question upon appellate review of this issue is indeed whether or not the finding of the Appellate Panel (that the Respondent's injuries had not resulted in permanent total disability) was supported by substantial evidence in the record. Appellants assert that such findings were so supported, and to find otherwise was in error. Similarly on page 12 of the Order, the Circuit Court improperly engaged in weighing the evidence by finding, "[t]here is no evidence that he can operate a complicated computer operated tractor." (R p. 32). To the contrary, there is substantial evidence in the record, to include the Respondent's own testimony at the hearing and his sworn deposition testimony. Therefore, this finding should not have been disturbed on appeal by the Circuit Court.

In addition, the Circuit Court improperly reinstated the trial Commissioner's Order of April 28, 2011, thereby making findings of fact contrary to, and in conflict with, the Appellate Panel's April 19, 2012 determination(s) that the Respondent was capable of operating a complicated computer operated tractor up to 50 hours per week and therefore was not permanently totally disabled. Also, the Circuit Court improperly relies on the "sheltered employment" doctrine to find the Respondent was permanently totally disabled through a total loss of earning capacity, when such a finding by the single Commissioner had been inherently overturned by the Appellate Panel. (R. p. 56).

That is, the Appellate Panel abandoned this finding of "sheltered employment" in the instant case, by making its finding that the Respondent was in fact gainfully employed by virtue

of his work driving a tractor up to 50 hours per week, and contemporaneously ruling that he was indeed not permanently totally disabled. (R. p. 56). For the Circuit Court to have found otherwise was an impermissible weighing of the evidence as to this factual determination made by the Appellate Panel on this point. Furthermore, the "sheltered employment" doctrine has not been formally adopted in South Carolina. Nevertheless, even in states where "sheltered employment" has been adopted, the facts of this case are materially different. For example, the Respondent Kneece is essentially self-employed. He is no longer employed by the Appellant employer in this claim. He has continually received raises over the past ten years since the accident, and he actually works, in almost the same capacity – driving tractors for up to three quarters of the week, for close to 50 hours or more per week, as he did prior to the date of accident and confirmed in his deposition testimony. (R. p. 544 line 21 to p. 545 line 19).

No authority was cited by the Circuit Court for the premise that sheltered employment may be provided by a non-party employer, as was the case here. In fact, sheltered employment should not extend to a non-party employer. This standard is a safeguard to protect an employee from a risk of continuing employment simply for an employer to avoid a finding against that employer of permanent and total disability, even though an injured worker may be unable to work post injury. By juxtaposition, in the instant case, Respondent's employment with Appellant employer ended and he has subsequently worked at a much greater salary with a non-party employer that has provided years of stable employment. (R. p. 1395). Moreover, Ricky Kneece's current employer, Delano Kneece & Son Farms, has no financial interest in minimizing Mr. Kneece's own financial recovery from his prior employer, Kneece Farms.

The Appellants further argue, that any rights flowing from such a finding of permanent total disability, are in error in that life time medical benefits under S.C. Code Ann. §42-9-10 and

§42-15-60 would be improper to the degree that the Respondent was incorrectly adjudicated to be permanently totally disabled. Similarly, to the degree that the Respondent was incorrectly determined to be found permanently totally disabled, lifetime/ongoing permanent disability benefits under S.C. Code Ann. §42-9-10(C) would not be available.

II. THE CIRCUIT COURT INAPPROPRIATELY REVERSED THE FULL COMMISSION'S ORDER WHICH HAD FOUND THE CLAIMANT WAS NOT PERMANENTLY AND TOTALLY DISABLED PURSUANT TO S.C. CODE ANN. § 42-9-10(C)

The Full Commission properly determined that Respondent was not permanently and totally disabled due to the combination of the injury to the brain and other injuries. Specifically, based upon the greater weight of evidence in the record as outlined below:

1. Claimant made no allegation of permanent and total disability based upon a specific disability;

2. Claimant failed to establish any presumption of permanent and total disability under S.C. Code Ann. § 42-9-10 or 42-9-30;

3. Claimant experienced no loss of earning capacity;

4. Claimant returned to work full time with a different employer making the same or greater earnings as prior to the work accident; and

5. Claimant executed a Form 17 on April 18, 2005, affirming and attesting to his ability to return to work.

6. Without evidence that Claimant's brain injury has rendered him unable to work, the presence of a brain injury alone is not sufficient to qualify for lifetime benefits under the Act.

As stated above, the full commission based its finding that Respondent was not permanently and totally disabled with a physical brain injury, (but rather was limited to benefits for a scheduled member injury to the brain under S.C. Code of Regs. § 67-1101), on reasonable, cogent and competent evidence of Respondent's continuing abilities to maintain gainful employment, which does satisfy the substantial evidence standard.

As stated above, a claimant may establish his entitlement to an award of permanent and total disability under S.C. Code Ann. § 42-9-10, in limited ways:

> First, a claimant may be presumptively totally disabled. As such, a claimant must show a physical injury enumerated in § 42-9-10. However, because the Legislature has categorized certain types of injuries as *per se* totally disabling, the claimant need not show a loss of earning capacity....
>
> Second, a claimant may establish total disability under § 42-9-10 by showing an injury, which is not a § 42-9-30 scheduled injury, caused sufficient loss of earning capacity to render him totally disabled....
>
> Third, a claimant may establish total disability through multiple physical injuries. Under this scenario a claimant who has a § 42-9-30 scheduled injury must show an additional injury....

Wigfall, 580 S.E.2d at 105.

Respondent's Form 50 expressly alleges that he is permanently and totally disability due to a general disability only. (R. p. 386, Form 50 dated July 9, 2010). The Respondent makes no allegation of permanent and total disability based upon a specific disability pursuant to S.C. Code Ann. § 42-9-30. As enunciated in the recent case of *Hutson v. South Carolina State Ports Authority*, 390 S.C. 108, 700 S.E.2d 462 (Ct. App 2010), "[u]nder the South Carolina Workers' Compensation Act, a claimant may proceed under § 42-9-10 or § 42-9-20 to prove a general disability; alternatively, he or she may proceed under § 42-9-30 to prove a loss, or loss of use of, a member, organ, or part of the body for which specific awards are listed in the statute." *Hutson*, 700 S.E.2d at 465.

Therefore, because the Respondent alleges that he is permanently and totally disabled as a result of a general disability, the Respondent has the burden of proving that he is either presumptively permanently and totally disabled or that his non-scheduled injury caused a

complete loss of earning capacity, rendering him permanently and totally disabled. The Respondent failed to meet his burden of proving he is entitled to an award of permanent and total disability under either theory.

A. THE RESPONDENT DID NOT SUSTAIN A LOSS OF EARNING CAPACITY AND, THEREFORE, RESPONDENT IS NOT PERMANENTLY AND TOTALLY DISABLED PURSUANT TO S.C. CODE ANN. § 42-9-10 OR § 42-9-20:

The evidence in the record clearly shows that since the time of the Respondent's work injury, he has earned the same and/or a *greater income* than when he was originally injured in the same capacity as an employee and part owner of Delano Kneece & Son Farms (which is a separate business entity from Kneece Farms). (R. at pp. 1243 -1348, 1362-1395, Tax Returns of the Claimant 1999-2009).

Specifically, a review of Respondent's tax records introduced into evidence demonstrates that the Respondent's earnings have consistently increased since the injury in 1999, and that Respondent currently earns approximately twice as much as he did prior to the accident. There was no evidence presented at the hearing to indicate that this trend of increasing earnings will change. (R. at *id.*).

In addition, the Respondent's wife, Bookkeeper for the Claimant's farm, testified that he received a raise in 2007, which resulted in an increase in Claimant's compensation from $3,500.00 per month to $4,170.00 per month. (R. p. 507 line 21 to p. 508 line 7, 2010 Deposition of Roxanne Kneece). Moreover, the Respondent himself testified that he had a substantial work life following his injury despite his limitations. (R. p. 725 at line 23 to p. 730 line 3).

As outlined below, the Respondent's testimony and other evidence in the record demonstrates that since Respondent returned to full time work with Kneece & Son almost nine years ago, he has:

(1) Regularly worked approximately fifty (50) hours per week; (R. p. 544 line 21 to p. 545 line 19).

(2) Performed the same kind of work with similar or the same responsibilities he had when he was injured in 1999. In fact, the Respondent testified both in his deposition on September 23, 2010, and at the Hearing on November 11, 2005, that he works at Kneece & Son approximately six (6) days a week, eight (8) to twelve (12) hours per day, and spends 75% of his working time driving a tractor. (R. p. 729 line 16 – p. 730 line 2).

(3) Earned the same income, or much greater income, than when he was originally injured in the same capacity as a full time employee and part owner of Delano Kneece & Son. (R. at pp. 1243 -1348, 1362-1395, Tax Records of Respondent); and

(4) Signed a Form 17 indicating that he was able to return to work without restrictions as of October 4, 2005. (R. p. 1241; Form 17 dated June 16, 2006).

The Respondent also testified that after the accident, his job duties at Kneece & Son were essentially the same job duties he was performing prior to the accident. Specifically, the Respondent testified that the majority of his work day following the accident involves driving a complicated computer operated tractor, which is the same job duties Respondent primarily performed prior to his injury. The Respondent's wife confirmed this fact as she testified that the Respondent currently drives a tractor for five to seven hours per day, six days a week, and rarely misses a day of work. (R. p. 514 lines 19-23, R. 516, lines 3-17).

In addition to demonstrating no loss of earning capacity, the evidence in the record further demonstrated that if the Respondent did not perform the job duties at Delano Kneece & Son that he has been performing since at least 2005; then someone else would have had to perform them in order to maintain the business. Therefore, the evidence clearly shows the existence of a need for the farming functions the Respondent has been performing since his work accident, and that it is financially beneficial service he provides to the farm through his labor from which he is being paid.

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

As a result, the Respondent failed to meet his burden of proving a sufficient loss of earning capacity necessary to render him permanently and totally disabled as required by S.C. Code Ann. § 42-9-10, nor for a partial wage loss under S.C. Code Ann. § 42-9-20.

B. THE RESPONDENT IS NOT ENTITLED TO A PRESUMPTION OF PERMANENT AND TOTAL DISABILITY:

While certain provisions contained in S.C. Code Ann. §42-9-10 and §42-9-30 provide a presumption of permanent and total disability, none of these provisions are applicable in this case. Specifically, under S.C. Code Ann. §42-9-10, there is a presumption of permanent and total disability when the injured worker suffers "[t]he loss of both hands, arms, shoulders, feet, hips, or vision in both eyes, or any two thereof...." (Note, the loss of shoulders and hips were

added after the 2007 amendments to this statute). As no amputation or loss of a bodily appendage is applicable to this case, none of the Claimant's injuries from this injury implicate this provision, therefore, the permanent and total disability presumption provision in S.C. Code Ann. §42-9-10 does not apply.

The second presumption of permanent and total disability arises under S.C. Code Ann. §42-9-30, when an injured worker is found to have sustained 50% or more loss of use of his back. The Respondent has not alleged a back injury in this claim, and, therefore, the presumption under S.C. Code Ann. §42-9-30 is also not applicable to this case.

However, Respondent's counsel previously argued that pursuant to S.C. Code Ann. §42-9-10, a physical brain injury in and of itself constitutes a statutory presumption of permanent and total disability. Yet a review of the Workers' Compensation Act and its accompanying Regulations demonstrates that such a presumption does not exist. Therefore, to the extent the Hearing Commissioner's Order may be read as finding or concluding that the Respondent is entitled to a presumption of permanent and total disability by virtue of the existence of a physical brain injury, such determination constitutes reversible error.

Specifically, S.C. Code Ann. §42-9-10(C), states that:

> "Notwithstanding the five-hundred-week limitation prescribed in this section or elsewhere in this title, any person *determined to be totally and permanently disabled* who as a result of a compensable injury...has suffered physical brain damage is not subject to the five-hundred-week limitation and shall receive the benefits for life."

S.C. Code Ann. §42-9-10(C)(Emphasis added).

In addition, Regulation 67-1101 of the South Carolina Workers' Compensation Act specifically lists the scheduled value of the brain at 25 to 250 weeks, thereby demonstrating that a physical brain injury in and of itself does not create a presumption of permanent and total

disability. Instead, only when the Claimant is permanently and totally disabled and has sustained an accompanying physical brain injury may he be entitled to lifetime benefits under S.C. Code Ann. §42-9-10.

As noted previously, in *Crisp v. SouthCo., Inc.*, 401 S.C. 627, 738 S.E.2d 835 (2013), the petitioner argued that the mere presence of any physical brain injury or damage, regardless of degree, triggers the operation of § 42-9-10(C). The Court found this argument was not persuasive, as it was contrary to legislative intent and to the manner in which our courts have awarded compensation for injuries to the brain.

Similarly, the South Carolina Supreme Court clarified, "we view the inclusion of 'physical brain damage,' along with quadriplegia and paraplegia, in § 42-9-10(C) as indicative of the General Assembly's intent to compensate an employee-claimant for life only in the most serious cases of injury to the brain, separate and apart from other scheduled injuries, resulting in permanent brain damage." *Sparks v. Palmetto Hardwood, Inc.*, 406 S.C. 124, 750 S.E.2d 61 (2013). Furthermore, "Thus, we conclude that 'physical brain damage' as used in § 42-9-10(C) is physical brain damage that is both permanent and severe." *Id.*

The Court in *Crisp*, relied on the *Sparks* decision in noting that, "permanency and physicality are requirements. However, the severity of the injury is the lynchpin of the analysis. *Cf. James v. Anne's Inc.*, 390 S.C. 188, 199, 701 S.E.2d 730, 736 (2010) ("The 500 weeks limitation, however, represents the limit of the monetary amount of compensation that may be recovered. It has no relation to the duration or the extent of the injury. A permanent impairment, by definition, lasts for a lifetime. (emphasis in original))." Furthermore, "[i]nherent in the requirement that the injury to the brain be severe is the requirement that the worker is

unable to return to suitable gainful employment. *See* Floyd v. C.B. Askins & Co., 382 S.C. 84, 90, 675 S.E.2d 450, 453 (Ct. App. 2009)"

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

This interpretation is in harmony with the entire purpose of our workers' compensation regime and recognizes the other avenues of compensation available under the scheme for brain injuries that do not render the worker unemployable. *See* Shealy v. Algernon Blair, Inc., 250 S.C. 106, 112, 156 S.E.2d 646, 649 (1967) ("The object of the act is to relieve an injured workman from the loss or impairment of his Capacity to earn wages."). Thus, only in cases of physical brain damage that are both permanent and severe would an employee-claimant be entitled to benefits for life."

Based on the above, the Full Commission correctly determined that Claimant did not meet the accepted standard to prove entitlement to lifetime permanent and total disability for physical brain damage; therefore the decision of the Circuit Court should be reversed.

III. THE "BENEVOLENT EMPLOYMENT" DOCTRINE DOES NOT APPLY TO THIS CASE AND SHOULD NOT HAVE BEEN UTILIZED AS A BASIS FOR FINDING PERMANENT AND TOTAL DISABILITY

In addition to arguing he is permanently and totally disabled under S.C. Code Ann. § 42-9-10, the Respondent argues that he is permanently and totally disabled because his employment with Delano Kneece & Son constitutes "benevolent employment." The Hearing Commissioner agreed and found and concluded that the job offered by Delano Kneece & Son is "sheltered employment" and "benevolent in nature," and that the accommodations made by Kneece & Son that enabled Claimant to perform certain "limited services" for Kneece & Son further supports a Finding and Conclusion that the "benevolent employment" doctrine applies in this case.

However, the Hearing Commissioner, and later the Circuit Court, went against established South Carolina law as well as the clear and unequivocal evidence in this case to find that Respondent was permanently and totally disabled because Respondent's post injury employment at his family farm, Delano Kneece & Son, was "benevolent employment."

South Carolina has not adopted the Doctrine of "Benevolent Employment" and, therefore, the Hearing Commissioner relied upon decisions from other jurisdictions to support his Findings and Conclusions that Respondent was permanently and totally disabled under this doctrine.

The Respondent is a part owner of his family farm from which all of his post injury wages have been paid. He is for all purposes self-employed. The Respondent's tax return lists him as "sole proprietor" of the farm operation. (R. at pp. 1243 -1348, 1362-1395). The Finding

of the Hearing Commissioner that the Respondent's employment is benevolent belies the very meaning of the word benevolent. Specifically, the Merriam-Webster dictionary defines the adjective benevolent as: "having or marked by sympathy and consideration for *others*." (*Heilker v. Zoning Bd. Of Appeals for City of Beaufort*, 346 S.C. 401, 409, 552 S.E.2d 42, 46 (Ct.App.2001) (holding dictionaries can be helpful tools for the purpose of defining terms) (emphasis added).

The Hearing Commissioner relied upon the Respondent's argument that his employment with Kneece & Son is "benevolent employment" because his work there after the accident was so limited and valueless to *the farm* that the increasing wages he received from Kneece & Son were merely "a gift." In addition, the Respondent alleges that he essentially "costs" the farm money as a result of the installation of upgrades and the hiring of other full and part time employees to do work he previously did. However, the business model of the farm, profitable or otherwise, is not a basis for finding a wage loss of or loss of earning capacity *to the Respondent himself.* In any event, the evidence in the record demonstrates that since the Respondent's work injury, Kneece and Son has continued to remain profitable.

Furthermore, the contention that Respondent's earnings were a "gift" is not supported by Respondent's tax treatment of the earnings. The Federal Tax Code allows for gifts to be excluded up to a certain value per year from one or more people. For tax years 1999 to 2001 individuals could exclude $10,000 per source from any income or gift tax (i.e. he could receive up to $20,000 total tax free from a father and a mother, depending on the number of family members connected to the business, Respondent could have presumably receive several multiples of the $10,000 limit on an entirely tax free basis). For tax years 2002-2005 the annual exclusion amount increased to $11,000 per source per year. For years 2006-2008, the exclusion

amount increased to $12,000 per source per year. For 2009, the exclusion amount increased to $13,000 per source per year. At a bare minimum, if Respondent's earnings were truly a "gift" his tax return should have excluded between $10,000-$13,000 per year between 1999-2009. Instead, all earnings were treated alike for tax purposes and Social Security contributions.

A thorough review of the evidence submitted in this clearly displays that the Respondent's arguments and the Hearing Commissioner's Findings and Conclusions on this issue are untenable. Specific evidence which rejects these arguments is outlined as follows:

1. Respondent is part owner and the majority shareholder of Kneece & Son;

2. Since the accident in 1999, Respondent has regularly worked 50 hours per week, or more, performing the same or similar job duties he performed prior to the accident; namely, operating the complicated computer operator tractors for the majority of every work day;

3. Respondent testified that he has had a *substantial work life* following his injury despite his limitations. (R. p. 725 line 1 – p. 730 line 3);

4. Following the accident in 1999, Respondent continued to earn the same wages / income at Delano Kneece & Son and since 1999, his income has consistently increased. In fact, Respondent and his wife both testified that Respondent currently earns a much greater income than when he was originally injured; (R. at pp. 1243 -1348, 1362-1395)

5. Respondent's wife testified via deposition that the Respondent received a raise in 2007, which resulted in an increase in Respondent's compensation from $3,500.00 per month to $4,175.00 per month. (R. p. 507, line 21 to p.509 line 5);

6. Despite the fact that the Respondent characterizes the payments made to him on a monthly basis as a "gift," he clearly treats it differently by virtue of the fact that he reports these payments to the IRS and the South Carolina Department of Revenue as taxable income and does not take any tax-free exclusions for gifts from one or more sources within the family business. Therefore, as a result of the earnings Respondent has made since his accident, Respondent is eligible to file for social security insurance benefits, unemployment benefits or other benefits based on the fact that he and Delano Kneece & Son pay/file/withhold and otherwise treat this money as taxable earnings;

7. Respondent testified both in his deposition on September 23, 2010, and at the Hearing on November 11, 2005, that he works at Delano Kneece & Son

approximately six (6) days a week, eight (8) to twelve (12) hours per day, and spends 75% of his working time driving a "complicated" tractor;

8. Respondent voluntarily executed a Form 17 indicating that he was able to return to work without restrictions as of *October 4, 2005*; (R. p. 1241)

9. A review of the Federal and State Income taxes filed by Respondent individually as well as the taxes filed by Kneece & Son, clearly demonstrate that since the work accident in 1999, the Respondent is listed as the "sole proprietor" of Kneece Farms on "Schedule F – Profit or Loss from Farming" of the IRS tax returns;

10. "Section E" of Respondent's applicable 1040 tax returns from 2000-2006, specifically asks: "*Did you 'materially participate' in the operation of this business during" the year of the filing.*" (Emphasis added) On every tax return filed following the work accident, the Respondent answered this question posed by the IRS *in the affirmative*; (R. at pp. 1243 -1348, 1362-1395)

11. While the parties concede that the Respondent's work duties were modified to some extent as a result of Respondent's injuries, there is substantial evidence in the record demonstrates that these modifications have not and do not render the Respondent's employment at Delano Kneece & Son "benevolent" nor do they render his increasing wages from Delano Kneece & Son a "gift."

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

A. RESPONDENT'S WORK INJURY OCCURRED WHILE WORKING FOR KNEECE FARMS, A SEPARATE ENTITY FROM DELANO KNEECE & SON AND, THE BENEVOLENT EMPLOYMENT DOCTRINE HAS NO APPLICATION TO THIS CLAIM

The testimony and evidence presented on behalf of the Respondent and relied upon by the Hearing Commissioner to support his Findings and Conclusions that Respondent's current employment with Kneece & Son is benevolent employment, is logically inconsistent.

As outlined above, the Respondent is part owner and the largest stake holder in Kneece & Son, and he has continued working full duty and is currently earning more money now than he did prior to his 1999 accident. Following his 1999 work accident at Defendant/Employer Kneece Farms, the Respondent never returned to perform any work for Kneece Farms and the Respondent has never alleged that Defendant/Employer Kneece Farms was the employer that provided him with Benevolent Employment.

Instead, since his work accident at Kneece Farms, Respondent has worked solely for Delano Kneece & Son Farms. Yet it was Found and Concluded by the Hearing Commissioner that the Respondent's self-employment with Delano Kneece & Son, *who is not a party to this claim*, was "benevolent employment." The Appellate Panel was correct in overturning the single Commissioner on these points, and their ruling should have been affirmed by the Circuit Court.

This point distinguishes this claim from the North Carolina cases relied upon by the Respondent and the Hearing Commissioner in support of the adoption of the "Benevolent Employment" Doctrine. Specifically, not one of the injured workers in the cases cited by the Respondent and relied upon by the Hearing Commissioner and Circuit Court, accepted or were

able to accept the offers of benevolent employment and, as a result, they did not receive wages in addition to their compensation benefits.

A review of the cases from North Carolina cited by the Respondent and relied upon by the Hearing Commissioner in issuing his Decision and Order, indicates that the "Benevolent Employment" Doctrine only applies when *the employer with whom the injured worker was employed at the time of the accident*, provides "benevolent employment" in one of two ways: (A) An employee who is otherwise unable to work is paid a gratuitous wage by the employer who wishes to keep the claimant as his employee for the purpose of defending and defeating an allegation of permanent total disability (PTD) (based upon his continued employment with that employer); or (B) By a truly benevolent employer who, out of guilt/kindness/good will or otherwise, chooses to keep and pay a totally disabled worker who was injured in their employ, but has been rendered unable to earn wages from his work place injury. In each of the North Carolina cases cited in the Single Commissioner's Order, the employment found to be benevolent was post injury employment with or offered by a claimant's *employer at the time of the accident*. By contrast in this case, Respondent's post injury return to work, with similar job duties, at increased earnings, for an entity that he owns, *is not the same employer as he worked for at the time of the accident*. Thus, the Benevolent Employment Doctrine has no application to the facts of the present case.

Moreover, with regard to any modifications made for Respondent, a review of case law from other States that utilize the "Benevolent Employment" Doctrine such as Florida, indicate that reasonable job modifications for the purpose of accommodating an injured or partially disabled employee will not place the job outside of the definition of gainful employment. See *Cooper v. Escambia County School Bd.*, 734 So. 2d 1072, 1073 (Fla. 1st DCA 1999)("The

modifications the employer made in the claimant's job to accommodate her disability do not, as a matter of law, render it sheltered employment so as to place this job outside of 'gainful employment'...." See also, *Goodwill Indus. v. Heard*, 863 So. 2d 389, 390-391 (Fla. Dist. Ct. App. 1st Dist. 2003).

To the extent that such accommodations have been made, allowing the Respondent to work full time, if any, above and beyond such technological upgrades that would have been made over time on a farm regardless to realize increased production and profits generally, these are indeed reasonable accommodations. Such accommodations therefore, do not render Respondent's employment sheltered or "benevolent" employment. Moreover, as noted and testified to by employees of Kneece & Son Farms, the business is and has remained profitable since the Respondent's return to full time work in 2005, and the Respondent himself has continued to receive raises in salary throughout that time period.

Therefore, this case is not analogous to the cases from other states cited by the Respondent and relied upon by the Hearing Commissioner in applying the "benevolent employment" doctrine to this case. Furthermore, the law in South Carolina is clear that "an employee who is capable of performing other work that is continuously available to him will not be deemed totally disabled because he is unable to resume the duties of the particular occupation in which he was engaged at the time of his injury." *Wynn v. Peoples Natural Gas*, 238 S.C. 1, 118 S.E.2d 812 (S.C. 1961).

Moreover, as demonstrated by the tax returns filed by the Respondent for the years following his 1999 work injury, it is uncontroverted that the Respondent is self-employed as the majority stakeholder in Kneece & Son and that he has earned wages performing his daily job

duties since his work accident and that those wages have consistently increased since 1999. Accordingly, the "benevolent employment" doctrine does not apply to this case.

B. Respondent's Argument that his Brain Injury Prevents him from Handling the Finances of Kneece & Son is without Merit and does not Demonstrate that his Employment with Kneece & Son is Benevolent

Claimant/Respondent Ricky Kneece contended before the trial Commissioner, and Circuit Court agreed, that as a result of his brain injury, he can no longer take care of the farm's finances. However, the greater weight of evidence demonstrates that the Respondent *never* handled the finances of his farm either before or after his 1999 injury.

Instead, the Respondent's wife handles the finances of the farm and has done so since January of 1999, when she took over this position from her mother-in-law who had handled the finances prior to 1999. (R. p. 501 line 23 – p. 503 line 25). According to Mrs. Kneece, her job as the secretary/treasurer of Kneece & Son is a 40 hour per week job. (R. p. 503 lines 2-18). In addition, the farm has a CPA who helps with its tax filings. (R p. 502 line 18). This testimony of Mrs. Kneece, which the Hearing Commissioner found "very credible" does not support Respondent's assertion that his responsibilities with the farm have been curtailed due to his injury. The Respondent's assertion that his employment is "benevolent" simply, is without merit as the Respondent himself never handled the farm finances in this his capacity either *before* or after his injury.

C. If Respondent was Properly Deemed Permanently and Totally Disabled, the Circuit Court Erred in Awarding Temporary Total Disability Benefits for Periods Prior to the Date of Maximum Medical Improvement

Even assuming *arguendo* that the Circuit Court accurately determined the Respondent to be permanently totally disabled accompanied by a physical brain injury as a result of his accident under S.C. Code Ann. §42-9-10(C), such permanency benefits for a lifetime indemnity award

would only be payable from the date of maximum medical improvement as adjudicated by the Workers' Compensation Commission, and not from the date of injury. Indemnity benefits from the date of accident up through the date of maximum medical improvement are only awardable to a claimant as temporary indemnity benefits under S.C. Code Ann. §§42-9-200 et seq. No such finding of additional temporary total disability benefits was made by the single Commissioner, the Appellate Panel or the Circuit Court in the instant case. Therefore, no further temporary benefits should be provided in the instant case between the date of accident and the date the Respondent was adjudicated to have reached maximum medical improvement; as the Respondent previously voluntarily terminated his right to further temporary indemnity benefits back in 2006 prefaced upon his 2005 return to full time employment at the same or greater earnings. (R. p. 1241). Also, see *Curiel v. Environmental Management Services* 376 S.C. 23, 655 S.E.2d 482 (2007) which states in part:

> Essentially, workers' compensation benefits accrue along a time continuum: temporary total disability benefits are available from the date of injury through the date of maximum medical improvement; post-MMI benefits may then be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member. *Smith v. NCCI, Inc.*, 369 S.C. 236, 631 S.E.2d 268 (Ct.App.2006). Accordingly, the date of maximum medical improvement signals the end of entitlement to temporary total benefits.

Additionally, even if the Respondent were entitled to lifetime benefits, the Circuit Court erred in failing address appellate ground No. 10 raised by the Employer/Carrier in their request for appellate review to both to the Appellate Panel of the Commission and the Circuit Court. Namely, that the Appellate Panel and the Circuit Court erred in affirming an award for weekly compensation benefits to the Respondent while failing to address credit for wages/earnings of the Respondent from his date of return to full time employment in 2005 to present, the error being that such issue was raised by Appellants in their appeal but not ruled upon.

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

The Circuit Court erred in affirming the Full Commission and Single Commissioner's findings and conclusions that Appellants are responsible for: (1) payment of Respondent's medical treatment with his unauthorized physicians; (2) reimbursement for mileage to and from his unauthorized treating physicians; (3) payment of prescriptions obtained from unauthorized physicians; (4) payment of future medical treatment with unauthorized physicians; and (5) payment of prescriptions submitted by Respondent as an Exhibit at the Hearing.

Specifically, pursuant to established South Carolina law, during the whole or any part of the Respondent's disability resulting from the work injury, the employer may furnish or cause to be furnished medical treatment to the claimant and "the employee *shall* accept" said medical treatment unless otherwise ordered by the Commission. The refusal of an employee to accept any medical, hospital, surgical or other treatment when provided by the employer shall bar the employee from further compensation until such refusal ceases and no compensation shall at any time be paid for the period of refusal. S.C. Code Ann. § 42-15-60.

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

Following the 2005 Order of Commissioner Childs, the Respondent requested and the Appellants authorized a neurological examination with Dr. Julian Adams of the South Carolina Neurological Clinic. This evaluation was performed on May 14, 2008, at which time Dr. Adams

found the Claimant's examination to be "absolutely normal" and he diagnosed Claimant with a "mild to moderate head injury with a contusion to his right frontal lobe." (R. pp. 1219 - 1223 – SC Neurological Clinic).

To further evaluate the mild/moderate head contusion, Dr. Adams ordered an electroencephalogram (EEG) test to measure Respondent's brain electrical activity which was also normal. (R. pp. 1222). No further treatment was recommended by Dr. Adams and Respondent was released from any further treatment with Dr. Adams.

Following his release by Dr. Adams, the Respondent never requested authorization from Appellants for another neurological evaluation or any other type of medical treatment (aside from ongoing psychological counseling). Instead, the Respondent sought unauthorized medical treatment with providers of his own choice. The Appellants were never notified of this unauthorized treatment until Respondent filed his Form 50 in 2010. (R. p. 386, Form 50request for hearing by Ricky Kneece).

Subsequent to Respondent's unauthorized treatment, he filed a new Form 50 on July 9, 2010, requesting additional medical treatment for multiple injuries and also alleged he was entitled to an award of permanent and total disability based upon general disability/loss of earning capacity pursuant to S.C. Code Ann. § 42-9-10. This 2010 Form 50 was the Claimant/Respondent's first hearing request since prior to the hearing before Commissioner Childs more than five (5) years earlier, and the first request for additional medical treatment since Respondent's request for treatment with Dr. Adams which the Appellants provided in 2008. (R. pp. 1219-1223).

In support of his Findings and Conclusions that the Respondent is permanently and totally disabled based upon an alleged loss of earning capacity, the Hearing Commissioner and

Circuit Court relied upon the opinions/reports of the unauthorized physicians. However, in contradiction to S.C. Code Ann. § 42-15-60, the Respondent did not have the right to seek his own treating physicians with no notice to the Appellants.

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

Additionally, the Appellants should not be responsible for payment of certain expenses related to medications as sought by the Respondent. Specifically, Respondent's counsel submitted as an Exhibit, a list of prescriptions dating back to 1999 that he requested be reimbursed. (R. p. 1093). Appellants should not be responsible for payment of these prescriptions as submitted by Respondent for several reasons:

First, it is impossible to tell from the list provided by the Respondent what these prescriptions are for, who they were prescribed by (authorized or unauthorized physician), and/or whether the prescriptions were needed as treatment for a causally related injury ordered compensable by Commissioner Childs and/or agreed to by the parties.

Secondly, the Respondent's wife testified at the hearing in 2011, that all of these prescriptions were paid for by their personal health insurance plan. (R. p. 489 lines 8-21). She further testified that neither she nor the Respondent ever sought authorization for payment of these prescriptions by the workers' compensation carrier although she obviously believed that her

husband was entitled – at that time, a period spanning over a decade – to obtain such treatment and prescriptions through workers' compensation. (at *Id.*).

Finally, the Respondent did not seek reimbursement for his alleged expenses for over ten years which is highly prejudicial to the Appellants and should be barred by *laches*. At the very least, Respondent had an opportunity to request reimbursement for medical expenses and mileage at the 2005 Hearing but chose not to pursue them; therefore, any expenses prior to the 2005 hearing before Commissioner Childs would be barred by doctrine of *res judicata.*

Based on the foregoing, the Circuit Court erred in affirming the Full Commission and Single Commissioner's Order Finding the Appellants are responsible for paying for the prescriptions as listed in Respondent's exhibit. (R. pp. 1094 – 1102).

V. THE CIRCUIT COURT ERRED IN AFFIRMING THE FULL COMMISSION AND HEARING COMMISSIONER'S FINDING AND CONCLUSION THAT RESPONDENT SUSTAINED COMPENSABLE INJURIES BY ACCIDENT TO HIS ZYGOMATIC ARCH, THYROID, SCARRING, AND FINGER

The Circuit Court erred in affirming the Full Commission and Hearing Commissioner's finding and conclusion that Respondent sustained compensable injuries by accident to his zygomatic arch, thyroid, scarring, and finger, and that Appellants are responsible for all medical treatment related to these injuries. As stated by the Decision and Order of Commissioner Williams dated April 28, 2011, the Findings and Conclusions from the 2005 Order from Commissioner Childs are the law of this case except as to certain provisions which the parties agreed in exchange for Defendants to withdraw their Form 30 appeal – back at that time – for Appellate Review (regarding the 2005 decision).

In the 2005 Order, Commissioner Childs found and concluded that the Respondent sustained the following compensable injuries: (1) brain/head/face; (2) nasal passage; (3) sinus;

(4) left eye[1]; (5) left lower extremity; (6) left upper extremity; and (7) depression. Following Commissioner Childs' issuance of her Decision and Order in 2005, the parties resolved several of the appealed items from Commissioner Childs' Order and the appeal was withdrawn. Specifically, the Appellants agreed to accept the injuries to Respondent's brain, left knee, and left shoulder, and to provide medical treatment for same.

In exchange for the Appellants to accept these three (3) injuries and to provide medical treatment for same, as well as withdraw their Form 30, the Respondent executed a Form 17, acknowledging that he returned to work as of October 4, 2005. (R. p. 1241). Therefore, Appellants were able to stop TTD payments as of October 4, 2005. Accordingly, the 2005 Decision and Order of Commissioner Childs has been and remains the law of the case. Moreover, the Respondent has reached MMI for all admitted injuries based upon the opinions of the authorized treating physicians.

Therefore, pursuant to the doctrines of *laches* and *res judicata*, the Circuit Court erred in failing to find and conclude the Respondent is now barred from asserting he is entitled to compensation for these injuries. The doctrine of *res judicata* is based upon the principles that public interest requires an end to litigation and that no one should be sued twice for the same cause of action. Hayes v. Hayes, 312 S.C. 141, 439 S.E.2d 305 (Ct. App. 1993). In order for a claim to be barred pursuant to the doctrine of *res judicata,* three elements must be shown:

(1) the prior judgment/order must be final, valid and on the merits;

(2) the parties in the subsequent action must be identical to those in the first action; and

(3) the second action must involve matters properly included in the first action.

See, Owenby v. Owens Corning Fiberglass, 313 S.C. 181, 437 S.E.2d 130 (Ct.App.1993).

[1] The eye is not a part of this claim as Claimant conceded on p. 47 of his 12/17/2004 deposition, that the alleged eye problems do not specifically adversely affect his vision. (See S. C. Code of Regs.§ 67-1105 impairment ratings for the eye based on loss of vision) (R. p. 923).

More specifically, a final judgment on the merits in a prior action will preclude the parties from re-litigating any issues actually litigated or those that might have been litigated in the first action. *Foran v. USAA Casualty Ins. Co.*, 311 S.C. 189, 427 S.E.2d 918 (Ct.App.1993)(emphasis added). The South Carolina Supreme Court has specifically held that the doctrine of *res judicata* applies in workers' compensation action. See, *Cromer v. Newberry Cotton Mills*, 201 S.C. 349, 23 S.E.2d 19 (1942).

In *Bennett v. South Carolina Department of Corrections*, 305 S.C. 310, 408 S.E.2d 230 (1991), the Court found that when a request for benefits for an alleged injury could have been asserted by a claimant and/or awarded by the Hearing Commissioner in an original workers' compensation hearing, but is not done so, the original Order issued by the workers' compensation tribunal normally precludes the re-litigation of those issues addressed by that tribunal in a collateral action.

The defenses regarding application of *laches* and *res judicata* constitute errors of law. Upon admitted or established facts the question of whether an accident is compensable is a question of law, and review thereof is not an invasion of the fact-finding field of the Commission on the part of the Court. *Jordan v. Dixie Chevrolet, Inc.*, 218 S.C. 73, 61 S.E.2d 654 (1950). A Court may reverse or modify the Workers' Compensation Commission's decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are affected by other error of law. *Etheredge v. Monsanto Co.*, 349 SC 451, 562 SE2d 679 (2002).

Pursuant to the doctrines of *res judicata* and *laches* and the Defendants assert that the Respondent is barred from asserting or receiving compensation for the following injuries:

1. *Zygomatic Arch*: This term refers to the part of the temporal bone of the skull that forms the prominence of the cheek (the cheekbone). Immediately following the work accident, the Respondent was seen at Palmetto Richland Health. On November 22, 1999, the date of the work accident, Respondent underwent a neurology consult which specifically found that based upon the CT scan of Respondent's head, he sustained a right frontal and *zygomatic*/orbital fracture, but that no surgery was necessary. (R. p. 1154).

Accordingly, as of the date of the accident on November 22, 1999, the Respondent had been diagnosed with a zygomatic arch fracture. While Respondent may not have been informed of the diagnosis on the date of the accident, the Respondent was made aware of this diagnosis prior to the January 2005 hearing, as Respondent submitted the records from Palmetto Richland Health from the date of the accident as part of his APA's for the Hearing on January 11, 2005. (See R. p. 96, Claimant's APA No. 8). Therefore, this claim should be barred by *res judicata.*

2. *Thyroid/Hypothyroidism*: At the Hearing before Commissioner Williams on February 6, 2011, the Respondent alleged for the very first time in this case that his hypothyroidism is causally related to his 1999 head injury. Hypothyroidism is a condition characterized by abnormally low thyroid hormone production. Thyroid hormones are produced by the thyroid gland which is located below the 'Adams Apple,' of the throat.

As evidenced by the medical documentation in the record, there was never any mention of Respondent injuring his thyroid in the 1999 accident. Instead, when Respondent started seeing family practitioners Drs. White and Wicker prior to 2005, for what Respondent described as "staggers," he was incidentally diagnosed with hypothyroidism and given medication for same beginning in at least 2005. However, on June 17, 2009, Dr. Wicker states that he wanted to test Respondent's T4 levels regarding the cause of his fatigue. (R. pp. 1014 – 15, Narrative Reports

of Dr. Wicker). It was noted that Respondent had testosterone deficiency but that his thyroid was "okay." (R. pp. 1022 and 1024, respectively). Accordingly, the clear evidence in the record demonstrates that Respondent's alleged hypothyroidism is not causally related to the 1999 work injury. If the evidence is all one way, or if the findings of the Commission are based on surmise, speculation, or conjecture, the issue becomes one of law for the court and not of fact for the Commission. *Herndon v. Morgan Mills, Inc.*, 246 SC 201, 143 SE2d 376 (1965).

Additionally, this issue is moot as claimant failed to assert that this condition was a compensable injury, even though he was treated for it prior to 2005. Moreover, based upon a thorough review of all of the evidence in the record, there is no mention of this condition being compensable in the 2005 Order of Commissioner Childs. Therefore, this claim is also barred by *res judicata.*

3. *Finger:* Not only did Respondent not allege an injury to his finger at the Hearing in 2005, he did not assert an injury to his finger on his 2010 Pre-Hearing Brief or Amended Pre-Hearing Brief. (R. pp. 823, 834, pre-hearing position statements of the Claimant). However, Respondent alleged at the Hearing that on November 19, 2010, he experienced a "stagger" while climbing the steps to a grain bin, causing him to fall and injure his left index finger. (R. p. 436).

The Hearing Commissioner cited Defendants' APA's pp. 253-254, in support of his Finding that Respondent's left index finger injury is causally related to the 1999 work injury and that Appellants are responsible for the payment of Respondent's past and future medical treatment with Dr. Ugino. (R. p. 86; at Finding of Fact No. 12).

APA submissions cited by the Hearing Commissioner in support of his Finding are records from Palmetto Health dated November 22, 1999, which have nothing to do with any injury to Respondent's finger or treatment by Dr. Ugino for same. In fact, the primary records

from Dr. Ugino submitted into the record were submitted by Defendants as APA page #'s 293-296, which all reference Respondent's prior dislocations to his left shoulder. (R. p. 1189 -1193).

Furthermore, with regard to the statement by Respondent and his wife at the Hearing that claimant's "stagger" (which Respondent described as a feeling of dizziness upon standing up from a seated position) caused the Respondent to fall and injure his right hand, a review of the medical reports from HealthSouth indicate that other than Respondent's headaches and knee pain, "most of his other bothersome symptoms have improved." (R. p. 1040). Finally, the evidence in the record demonstrates that shortly before this alleged fall, Respondent's "staggers" had improved "in that when he changes posture and gets up, he feels steady and stable from the get-go." (R. p. 1040). In addition, in June of 1999, Respondent informed Dr. Wicker that he has not had any lightheadedness or dizziness since he began treatment for his unrelated hypertension. (R. p. 1014).

Accordingly, based upon evidence of record, the Appellants would respectfully show that the Circuit Court erred in affirming the finding that Respondent sustained a compensable injury to his index finger.

4. *Hypothyroidism and Weight Gain:*

At the Hearing before Commissioner Williams on February 14, 2011, the Respondent alleged for the very first time in this case that his hypothyroidism is causally related to his 1999 head injury. The Finding relating to hypothyroidism is addressed in the prior section.

However, based upon the medical evidence in the record, the record also shows there has been no significant weight gain by Respondent and even if Respondent had gained significant weight, the evidence in the record does not support a finding that such weight gain was related to the 1999 work accident.

In 1999, the Respondent weighed 205 pounds based upon the records from Palmetto Richland Health. In 2004, claimant' weight was also 205. (R. p. 851). A review of the medical evidence shows that claimant's weight never fluctuated more than 10 to 15 pounds.

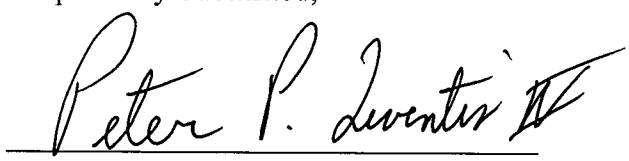
Accordingly, while the evidence in the record demonstrates that Respondent's alleged hypothyroidism and weight gain are not causally related to the 1999 work injury, the Hearing Commissioner erred in even addressing this issue as claimant failed to assert that this condition was a compensable injury (even though he was treated for it prior to 2005). Moreover, there is no mention of this condition as being compensable in the 2005 Order of Commissioner Childs.

Therefore, the Hearing Commissioner erred in failing to find the Respondent's claim for benefits for injuries as outlined above are barred by the doctrines of *res judicata* and *laches*.

CONCLUSION

BASED ON THE FOREGOING, the Appellants respectfully request the Court of Appeals reverse the ruling of the Circuit Court as to finding that the Respondent is permanently totaled disabled under S.C. Code Ann. §42-9-10(C), and that the claim should be remanded as ordered to a single Commissioner for a determination of permanency pursuant to S.C. Code Ann. §42-9-30 and Reg.§ 67-1101 for the schedule member injuries including Claimant's brain, and with further modifications as outlined herein above.

Respectfully Submitted,



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March 16, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case Nos.: 2012-CP-32-02093 & 2012-CP-32-02111

Ricky Kneece, Respondent,

v.

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

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b) SCACR.

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PROOF OF SERVICE

I certify that I have served the **Final Brief** on the attorney of record for **Ricky Kneece** by hand delivery, on **March 16, 2015**, addressed as follows:

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