THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Common Pleas Case No. 2012-CP-32-02093
Common Pleas Case No. 2012-CP-32-02111
Appellate Case No. 2014-001258

Ricky Kneece, Respondent

v.

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

BRIEF OF RESPONDENT RICKY KNEECE

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STATEMENT OF THE ISSUES ON APPEAL

I. **DID THE RESPONDENT SUFFER SEVERE AND PERMANENT PHYSICAL BRAIN DAMAGE TOTALLY AND PERMANENTLY DISABLING HIM WITH PHYSICAL BRAIN DAMAGE THAT IS COMPENSABLE PURSUANT TO S. C. CODE ANN. § 42-9-10(C)?**

II. **DID THE RESPONDENT SUFFER A TOTAL LOSS OF EARNING CAPACITY NOTWITHSTANDING THE FINANCIAL SUPPORT OFFERED HIM BY HIS FAMILY FARM?**

III. **DID THE CIRCUIT COURT CORRECTLY HOLD THAT THE RESPONDENT IS ENTITLED TO PAYMENT OF WEEKLY COMPENSATION FROM THE DATE OF THE 1999 ACCIDENT CONTINUING FOR LIFE AND THAT APPELLANTS HAD BEEN GIVEN ALL CREDITS TO WHICH THEY WERE ENTITLED?**

IV. **DID THE CIRCUIT COURT CORRECTLY HOLD THAT THE APPELLANTS WERE RESPONSIBLE FOR PAYMENT OF RESPONDENT'S MEDICAL TREATMENT, MILEAGE AND PRESCRIPTION MEDICINE?**

V. **DID THE CIRCUIT COURT CORRECTLY HOLD THAT THE RESPONDENT SUFFERED CAUSALLY RELATED AND COMPENSABLE INJURIES RELATED TO HIS BRAIN, HEAD, FACE AND FINGER?**

STATEMENT OF THE CASE

This matter was commenced by the filing and service of a Form 50 dated November 7. 2001, alleging that the Respondent, Ricky Kneece, had suffered an injury by accident to his head/brain, face, mouth/teeth, nasal passage, sinus, left eye and left knee on or about November 22, 1999, while employed by Appellant Kneece Farms (the employer was insured by Legion Insurance Company which has been liquidated and the claim is now covered by the Appellant South Carolina Property and Casualty Insurance Guaranty Association).

After a hearing held January 11, 2005, the Hearing Commissioner Michelle Childs issued her order dated April 18, 2005, finding that the Respondent had suffered compensable injuries to his brain/head, face, nasal passage, sinus, left eye, left knee, and teeth ("2005 Order"). The Hearing Commissioner also found that the Respondent also sustained compensable injuries to his left shoulder, left elbow and for depression (R. pp. 104-105; 2005 Order at pp. 10-11). The 2005 Order also found that as a result of his injury, the Respondent was diagnosed with conditions which include a closed head injury, chronic olecranon bursitis of his left elbow, intra articular left biceps tendon rupture, patello femoral syndrome of symptomatic plica, interior instability of the shoulder, diffuse cerebral edema with subarachnoid hemorrhage, neurocognitive deficits, left femoral condyle fracture, and a fracture of the nasal bridge and left nasal bone. The 2005 Order found that the Respondent was not at MMI (R. pp. 104-106; 2005 Order at pp. 10-12).

The 2005 Order held the Appellants responsible for treatment rendered by Dr. L. Randolph Waid, a licensed clinical psychologist, for Respondent's brain and head injury. In addition, the 2005 Order found the Respondent was entitled to future treatment for depression by Dr. Lawrence Bergmann as recommended by Dr. Waid and follow-up treatment with Dr. Waid

for Respondent's closed head injury. (R. pp. 106-107; 2005 Order at pp. 12-13).

While the Appellants appealed the 2005 Order, the parties reached a settlement of the issues on appeal whereby the Appellants commitment agreed to provide medical treatment authorized by the 2005 Order, and the Respondent agreed to try to return to work and to permit the Appellants to stop making temporary total disability payments holding all issues of temporary total disability and permanent disability in abeyance. (R. p. 1109; Elliott correspondence to Stubley dated September 27, 2005).

On or about July 9, 2010, the Respondent filed a Form 50 requesting a hearing seeking an Order of this Commission finding him to be permanently and totally disabled with physical brain damage compensable pursuant to S.C. Code Ann. § 42-9-10; Respondent sought all benefits to which he was entitled under the act. After a full hearing on all matters raised by the parties, by Order dated April 28, 2011, the Hearing Commissioner found the Respondent totally and permanently disabled with physical brain damage and ordered the Appellants to provide the Respondent with the relief afforded him under the Workers' Compensation Act for life (R. p. 58; 2011 Order).

In particular, the Hearing Commissioner found in his 2011 Order:

(1) That the Respondent was permanently and totally disabled with physical brain damage pursuant to S. C. Code Ann. § 42-9-10 (C) (R. p. 85; 2011 Order at p. 28);

(2) That the Respondent has not returned to work for the Appellant Kneece Farms and that the Respondent's employment on his family farm is sheltered employment, benevolent in nature (R. p. 86; 2011 Order at p. 29);

(3) That the Respondent was 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 and that Respondent was unable to perform services other than those that are so limited in quality, dependability, and quantity as a reasonable, stable market for them does not exist (; R. p. 86; 2011 Order at p. 29);

(4) That Respondent sustained causally related injuries to his left knee (10% impairment) (R. p. 87; Order 2011 at p. 30) and his left shoulder and elbow (17% impairment) (R. p. 87; 2011 Order at p. 30);

(5) That the Respondent has benefited from the treatment of his physicians Drs. Bergmann, Deal, White, Wicker, Shissias and Ugino and that the Respondent will benefit from future treatment by these physicians (R. pp. 85-86; 2011 Order at pp. 28-29);

(6) That the Appellants failed to pay for all medications in the amount of $14,010.77 prescribed by Respondent's physicians as required by Commission Order; (R. p. 87; 2011 Order at p. 30);

(7) That the Respondent had accumulated mileage to which he was entitled reimbursement. (R. p. 87; 2011 Order at p. 30).

The Hearing Commissioner concluded that the Respondent was totally and permanently disabled with physical brain damage and entitled to treatment for his injuries by Drs. Bergmann, Deal, White, Wicker, Shissias, and Ugino, together with payment of and reimbursement for related medical treatment, prescriptions and mileage. The Commissioner concluded that the Respondent suffered a loss of earning capacity. Giving the Appellants all credit for temporary total disability benefits paid to the Respondent, the Commissioner awarded the Respondent benefits for life as provided by S. C. Code Ann. § 42-9-10(C) (R. pp. 90-92; 2011 Order at pp. 33- 35).

The Appellants appealed the Hearing Commissioner's 2011 Order to the Full Commission. By order dated April 19, 2012, the Full Commission reversed the Hearing Commissioner's finding that the Respondent had suffered a physical brain damage (2012 Order). In particular, the Full Commission found as follows:

> The Commissioners find a Claimant who can drive a "complicated" computer-operated tractor for fifty (50) hours per week has not sustained a physical brain injury. The Claimant sustained an injury pursuant to Regulation 67-1101.
> (R. p. 56; 2012 Order at page 10).

Based on its finding, the Full Commission reversed the findings of fact and conclusions of law of the Hearing Commissioner in his 2011 Order that the Respondent was totally disabled accompanied by physical brain damage pursuant to S. C. Code Ann. § 42-9-10(C). The Commission concluded that the Respondent sustained an injury pursuant to Regulation 67-1101. The Full Commission affirmed all other findings of fact and conclusions of law set out in the Hearing Commissioner's 2011 Order.

The Respondent filed and served his notice of intent to appeal the 2012 Order of the Full Commission to the Clerk of Court for Lexington County May 18, 2012. On May 21, 2012, the Appellants filed and served their petition for judicial review of the 2012 Order. After a hearing held March 20, 2013, the Honorable R. Knox McMahon reversed the Full Commission by order dated July 18, 2013 holding that the evidence of record was only capable of the inference that the Respondent was totally and permanently disabled with physical brain damage and awarded the Respondent benefits to which he was entitled under the Workers Compensation Act. The Circuit Court dismissed the Appellants' appeal. By order dated April 24, 2014, the Circuit Court denied the Appellants' Rule 59(e) motion to alter or amend judgment.

By notice of appeal dated June 2, 2014, the Appellants appealed the Circuit Court's April 24, 2014, order to the South Carolina Court of Appeals.

STATEMENT OF FACTS

Accident. The Respondent was injured November 22, 1999, while in the employ of Appellant Kneece Farms when a tire which he was changing violently exploded while under pressure causing him injury to the head, brain, and face as well as the left side of his body. The explosion was severe enough to cause the Respondent to lapse into a coma after the explosion and he had to be transported by helicopter to the hospital where he was treated for his many injuries.

(R. p. 433, l. 7 – p. 435, ll. 6-11; 2011 Hearing Tr. p. 44, l. 7 – p. 46, ll. 6-11).

Physical Brain Damage. It is undisputed that the Respondent suffered a permanent and severe head and brain injury. As characterized by the Hearing Commissioner, the 2005 Order sets forth the evidence of the Respondent's admitted physical brain damage as follows:

> Both Dr. Lenwood Smith, a neurologist, and Dr. Randolph Waid, a clinical psychologist opined that the Respondent suffered injuries to his head and brain creating mental and emotional deficits which would cause Respondent difficulties in coping with everyday life. Dr. Smith noted in his report dated September 30, 2001....

that the Respondent's injuries, both permanent and severe, interfere with his abilities to operate equipment safely or enjoy farming or recreation. (R. p. 102; 2005 Order at p. 8).

The Commissioner found:

> 9. That as a result of his injury, the Respondent was diagnosed with conditions, including a closed head injury, chronic olecranon bursitis of his left elbow, intraarticular left biceps tendon rupture, patellofemoral syndrome of symptomatic plica, anterior instability of the shoulder, diffuse cerebral edema with subarachnoid hemorrhage, neurocognitive deficits, left femoral condyle fracture and a fracture of the nasal bridge and left nasal bone. (R. p. 105; 2005 Order at p. 11).

The Commissioner ordered as follows:

> 4. That the Defendants are responsible for treatment for the Respondent's closed head injury and depression including all past treatment by Dr. Waid and for all future treatment including that from Dr. Waid and his referral to Dr. Larry Bergmann. (R. p. 107; 2005 Order at p. 13).

The 2005 Order constitutes the law of the case and is binding on the parties.

Dr. Lenwood P. Smith, Jr., the Respondent's treating neurologist, in his September 30, 2001 report opined as follows:

> "[Respondent] . . . was very severely injured when he had a compression-type truck wheel blow apart and strike him in the head. He had injuries to the right frontal pole, diffuse cerebral edema was seen, he had

> subarachnoid hemorrhage across the tentorium, and a left tentorial subdural hematoma. He had high right posterior frontal epidural and very thin bilateral convexity subdural hematomas. He had a left posterior frontal parasagittal contusion." (R. p. 1046; Claimant's APA 11 at p. 202).

Dr. Smith further opined that:

> [Respondent's] problems **are severe and will be permanent**. I agree that their concerns are well founded. These concerns can be summarized by saying that Mr. Kneece may no longer be able to be the same competitive businessman that he would have been in the past and our society and culture has provided for these people to be compensated. [Emphasis added] (R. p. 1047; Claimant's APA 11 at p. 203).

Dr. Carl A. White confirmed the Respondent's physical brain damage. From an MRI taken in 2007, Dr. White, found a 32 x 43 mm area in the Respondent's right frontal lobe which Dr. White found compatible with encephalomalacia (or softening of the brain) related to the Respondent's 1999 head injury and skull fracture. In essence, Dr. White found a dead zone in the Respondent's brain. Dr. White opined in 2007 that the Respondent's hypothyroidism was related to his head trauma. Further, Dr. White opined that Respondent's hypothyroidism was related to pituitary insufficiency and results in lethargy, weight gain, and general lack of energy and desire. Moreover, Dr. White confirmed that the Respondent's emotional changes and memory loss were related to his head trauma and frontal lobe damage. After his diagnosis, Dr. White began treating Respondent for his hypothyroidism and headaches with medication (R. p. 1027; Claimant's APA 9). Dr. Christopher Wicker has now succeeded Dr. White as Respondent's family physician (R. p. 1014; Claimant's APA 8). Dr. Wicker continues to treat the Respondent for his injuries.

In 2010, Dr. Charles Shissias, a neurologist, began treating the Respondent for chronic daily headaches, memory loss and depression arising from Respondent's 1999 accident. Dr. Shissias concluded that the Respondent was suffering from Organic Brain Syndrome secondary

to traumatic brain injury which Respondent suffered when he was hit with the locking ring tire and experienced an injury to his right frontal lobe and a right supra orbital fracture. Dr. Shissias also found that the Respondent has fragmented sleep, chronic daily headaches, and chronic mood disturbance. In fact, Dr. Shissias found that the Respondent was unable to make major decisions without input from his wife and that without her, the Respondent would require a legal guardian or payee to manage his affairs. Dr. Shissias is treating the Respondent with medication (R. p. 855; Claimant's APA 2).

The Respondent has benefited from the treatment by Dr. Shissias and further treatment was warranted. Dr. Shissias states that the Respondent is responding to treatment (R. p. 855; Claimant's APA 2). Mrs. Kneece testified that Dr. Shissias' treatment for the Respondent's headaches and depression was of benefit to the Respondent. (R. p. 472, l. 17 – p. 473, l. 14; 2011 Hearing Tr. p. 83, l. 17 – p. 84, l. 14).

Dr. L. Randolph Waid, a licensed psychologist, performed neuropsychological evaluations in 2007 and 2002. Dr. Waid determined that radiographic studies conducted at the time of the Respondent's injury revealed disruptive physical injury to the brain. Dr. Waid further concluded that the Respondent had a full scale IQ of 76 and continued as a result to experience difficulties with sustaining attention, concentration, and suffered from slowed mental processing speed. In particular, Dr. Waid described the impact of the Respondent's brain and head injury as follows:

> Mr. Kneece's intellectual functioning is in the low average range. Neurocognitive evaluation revealed Mr. Kneece to continue to experience difficulties with the effective sustainment of attention/concentration and slowed mental processing speed. Assessment of anterograde memory continued to reveal a lateralized pattern of impairment as Mr. Kneece continues with difficulties with immediate visual learning/memory capacities. There is also continuing impairment of visual spatial skills compared to estimates of his premorbid level of functioning. Mr. Kneece

continues to demonstrate mild executive dysfunction both with regard to cognitive and emotional/psychological functioning.

Assessment of emotional/psychological functioning revealed Mr. Kneece to continue with social executive changes to his personality that are common after a traumatic brain injury, particularly when there is injury to the anterior portion of the brain. He is assessed as experiencing disruptive difficulties associated with apathy, executive dysfunction, and disinhibition/emotional dysregulation. Overall, he is more irritable, with lower frustration tolerance and remains quite withdrawn with regard to social and recreational pursuits. (R. p. 867; Claimant's APA 3).

As a result of his evaluation, Dr. Waid made the following assessment of the Respondent:

Axis 1
Cognitive Disorder NOS (294.90) secondary to the sustainment of a traumatic brain injury

Personality change labile/apathetic type (DSM-IV 310.10) due to sustainment of a traumatic brain injury

Axis III
Status post traumatic brain injury; headaches; residual pain and discomfort affecting the left knee and left shoulder

Based on his evaluation, Dr. Waid opined that as a result of his neurocognitive impairments resulting from a severe traumatic brain injury, the Respondent was assessed as having a Class 2 impairment to the whole person with a 22% impairment as a result of his neurocognitive deficits (R. p. 868; Claimant's APA 3).

Dr. Lawrence H. Bergmann, PhD and Dr. Roger W. Deal, MD have treated the Respondent since March of 2005 and corroborate the opinion of Dr. Waid. Dr. Bergmann, a psychotherapist, treats the Respondent for headaches, sleep loss, dizziness, fatigue, irritability, memory impairment, anger and depression. Dr. Deal similarly treats the Respondent for sleep disturbance, headaches, poor concentration, memory loss, loss of interest, irritability, fatigue and depression. In addition, Dr. Deal treats the Respondent with various medications for his symptoms and illness. Dr. Bergmann found the Respondent at maximum medical improvement in January of 2007. Dr. Bergmann found that Respondent continued to have symptoms of

dysphoria, difficulties adjusting to his cognitive disability, irritability and withdrawal and symptoms consistent with the head injury (R. p. 878 and p. 919; Claimant's APA 4 and 5). Both Dr. Bergmann and Dr. Deal opined that the Respondent experienced an 11% whole person, permanent impairment (R. p. 1210; Bergmann corres. dated January 11, 2007). However, Drs. Bergmann and Deal opined in 2007, and again as recently as September of 2010, that the Respondent will require the use of psychotropic medication and medication management as long as he is experiencing chronic pain and cognitive difficulties. Dr. Bergmann further opined in September of 2010 that the Respondent will require the use of psychotropic medication for the foreseeable future (R. p. 878; Claimant's APA 4).

Both the Respondent and his wife testified that the Respondent has benefited from the treatment of Drs. Deal and Bergmann but that the Respondent was in need of additional medical treatment by Drs. Deal and Bergmann. (R. p. 470, ll. 14-18; 2011 Hearing Tr. page 81, lines 14-18). Mrs. Kneece explained that the Respondent sought to be reimbursed for all prescriptions purchased in treating the Respondent's injuries. In particular, Mrs. Kneece testified that the Carrier has not reimbursed the Respondent for prescriptions purchased since 2005. (R. pp. 1094 - 1102; Claimant's Exhibit E-2; R. p. 470, l. 19 – p. 472, l. 5; 2011 Hearing Tr. page 81, lines 19 - page 83, line 5).

Importantly, the Appellants' clinical psychologist Tora Brawley, PhD, after performing a neuropsychological evaluation of the Respondent in January of 2011, concluded that the Respondent suffered from several vegetative symptoms, chronic pain, and stressors. In fact, Dr. Brawley concluded that the Respondent was not at maximum medical improvement with regard to his vegetative symptoms such as fatigue, weight gain, decreased energy level, loss of interest in recreational activities, feelings of depression, feelings of anxiety, increased irritability, and

decreased frustration tolerance. Dr. Brawley's findings corroborate those of Dr. Waid, Dr. Bergmann, Dr. Deal, Dr. White, and Dr. Shissias, all of whom have treated or continue to treat the Respondent for his physical brain damage. Moreover, Dr. Brawley accepted Dr. Waid's test results reflecting that the Respondent had a full-scale IQ of 76. Last, Dr. Brawley concluded that the Respondent would benefit from continued treatment for his personality and psychological symptoms for which he is being treated by his physicians. (R. p. 1237; Defendants' APA 13).

Left Arm and Leg Injuries. Complicating his permanent and severe physical brain damage, the Respondent's left side was severely injured in the tire explosion as well. The Respondent sustained an injury to his left knee; his injuries to his left knee were so severe as to require two (2) surgeries and as a result of Respondent's injuries, Dr. James O'Leary assigned a 10% impairment rating to the Respondent's lower left extremity (R. p. 998; Claimant's APA 7). The Respondent also suffered a causally-related injury to his left shoulder and elbow. These injuries were so severe as to require two (2) surgeries as well. As a result of these injuries, Dr. Michael Green assigned a 17% impairment to the Respondent's upper left extremity (R. p. 946; Claimant's APA 6).

Further, the Respondent's unsteadiness or staggers have led to further injury. In November of 2010, the Respondent became dizzy and suffered a fall requiring treatment from Dr. Michael R. Ugino for a left hand injury. (R. p. 412, l. 12 – p. 413, l. 6; 2011 Hearing Tr. page 23, line 12 - page 24, line 6). Mrs. Kneece testified that Dr. Ugino treated the Respondent for his left hand injury in November of 2010. (R. p. 473, l. 25 – p. 474, l. 9; 2011 Hearing Tr. page 84, line 25 - page 85, line 9). Both the Commission and Circuit Court ordered the Appellants to provide the Respondent with treatment by Dr. Ugino.

Mrs. Kneece explained that the Respondent had not been reimbursed for mileage and that

the Respondent is seeking reimbursement of the mileage found on Respondent's Exhibit 1. Mrs. Kneece testified that she had calculated the amount of mileage due to date and requested reimbursement for any mileage from the date of the hearing forward. (R. p. 1093; Claimant's Exhibit-1; R. p. 472, ll. 6-16; 2011 Hearing Tr. page 83, lines 6-16).

Loss of Earning Capacity. Dr. William W. Stewart, a Board-Certified vocational rehabilitation counselor, recognized that the Respondent enjoyed a "benevolent and sheltered employment situation" and opined that, "In an open, competitive labor market [the Respondent] would find himself vocationally disabled and unable to work gainfully." (R. p. 843, 846; Claimant's APA 1).

Dr. Stewart opined as follows:

> ......based on Mr. Kneece's original and update (sic) vocational and rehabilitation evaluations it is concluded that to a reasonable degree of vocational and rehabilitation certainty he 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. (R. p. 846; Claimant's APA 1).

Dr. Stewart, who evaluated the Respondent in 2004 and again in September of 2010, explained his opinion as follows:

> This vocational opinion is consistent with the mental, emotional and physical problems and limitations and the combination of those mental/cognitive, emotional and physical conditions and the findings and opinions contained in the medical/neurological/psychiatric/professional/trauma counseling records, the number of years/length of time his problems and limitations have continued, the multiple prescribed medication he continues to have to take, the deterioration in his overall ability to work and be productive and need for help from others, and Dr. Shissias' statement concerning "...He is unable to make major decisions without input from wife, his primary caregiver. Believe that without her, he would require legal guardian or payee to manage his affairs..." (R. p. 846; Claimant's APA 1).

Dr. Stewart recommended that the Respondent continue with "medical care, medical pain management care, neurological care, psychiatric care and professional/trauma counseling care, continue prescribed medications, and medical case management services to coordinate his care/needs." (R. p. 846; Claimant's APA 1).

The Family Farm. The Respondent was injured while working for the Appellant Kneece Farms. Kneece Farms was owned by the Respondent's uncle Everett Kneece. In addition to his work for the Appellant, the Respondent also worked on his family farm, Delano R. Kneece and Son, Inc. The Respondent has not worked for the Appellant Kneece Farms since the accident (R. pp. 98-99; 2005 Order at pp. 4-5).

Delano R. Kneece & Son, Inc. operates a farm on approximately 2,000 acres in Lexington County. Delano R. Kneece & Son, Inc. is a corporation owned by the Respondent, his father, Delano R. Kneece, and other family members (Depos. of Roxanne Kneece at p. 13; R. p. 510). The Respondent's wife, Roxanne Kneece, is the corporate treasurer and bookkeeper and works on the family farm (R. p. 433, l. 17 – p. 434, l. 24; 2011 Hearing Tr. p. 44, l. 17 – p. 45, l. 24). Prior to his accident, the Respondent was a general decision-maker for Delano R. Kneece & Son, Inc. The Respondent lives on the Delano R. Kneece & Son, Inc. farm (the family farm). His home is steps away from the farm, fields and shops (R. p. 445, ll. 3-15; 2011 Hearing Tr. p. 56, ll. 3-15). After his accident, the Respondent was no longer able to perform the chores required by the family farm.

The Respondent. The Respondent's 1999 injuries affected his physical strength, his memory and his temperament. The Respondent's forgetfulness interfered with his ability to seek and obtain medical treatment. The Respondent is unable to remember the nature of his treatment and the instructions given him by his physicians. (R. p. 441, ll. 1-7; 2011 Hearing Tr. page 52, lines 1-7).

The Respondent's memory loss has affected his ability to farm effectively. A farmer must be able to manage the farm's finances. A farmer must be able to determine the appropriate crops to be planted, the appropriate pesticides and fertilizer to be applied. A farmer must be able

to calculate the amount of seed to be planted and pesticide and fertilizer to be broadcast. A farmer must be able to calibrate and repair the equipment. He must be able to drive a farm tractor and other equipment to plant the seed or broadcast the fertilizer or pesticide. A farmer must be able to operate irrigation equipment. The Respondent's memory does not permit him to perform these tasks. (R. p. 441, l. 8 – p. 443, l. 2; 2011 Hearing Tr. p. 52, l. 8 – p. 54, l. 2). The Respondent can no longer program or adjust the irrigation equipment so as to avoid repetition or excess watering. (R. p. 406, ll. 13-23; 2011 Hearing Tr. page 17, lines 13-23).

Prior to Respondent's accident, he was able to perform very physical farm chores which required climbing, stooping, lifting and bending. He had no limitations in this regard. His chores would include climbing grain bin legs, performing irrigation duties, and doing roof work. The Respondent was able to climb sheds in need of repair. He was able to climb elevator legs which are 200 feet tall. The Respondent was able to stoop and bend. A farmer or farm hand must be able to crawl under farm implements and behind tractors to repair or adjust them. A farmer must be able to stoop to get around grain facilities and unloading facilities. The Respondent was able to stoop so as to get under farm implements or behind the tractor and make repairs or to get around grain facilities and unloading facilities. The Respondent had no restrictions on the use of farm equipment. The Respondent's physical injuries no longer permit him to perform these farm chores. (R. p. 404, l. 7 – p. 405, l. 9; 2011 Hearing Tr. page 15, line 7 - page 16, line 9).

The Respondent is unable to stay focused on a task. He will spend hours on the cell phone talking with others or visiting with a stranger that may come by the farm. His time spent on the farm is not productive for the farm. (R. p. 445, l. 16 – p. 446, l. 9; 2011 Hearing Tr. page 56, line 16 - page 57, line 9).

The Respondent is no longer able to manage the farm's finances or his own. Prior to the

accident, the Respondent understood the family farm's revenue and expenses, deliveries and inventory and the family farm's financial position. He is no longer able to do so. Often, Delano R. Kneece & Son, Inc. will order farm supplies for smaller neighboring farms and advance payment for these supplies. The neighbors will reimburse the farm for these supplies. As a result of his injury, the Respondent will forget to bill his neighbors for these supplies, and it is only by virtue of the honesty of these neighbors to volunteer repayment that the farm gets reimbursed. The Respondent's forgetfulness has almost certainly caused loss to the farm. Dr. Shissias affirms the fact that the Respondent can no longer manage his finances. (R. p. 443, l.14 – p. 445, l. 2; 2011 Hearing Tr. page 54, line 14 - page 56, line 2).

The Respondent cannot effectively calculate or broadcast chemicals, seeds or fertilizer. An appropriate amount of seed must be planted and were the fertilizer to be misapplied, the crops could be damaged or killed. These chemicals are expensive and in the event the Respondent misjudges what to plant or how to fertilize, he would not only waste the costly chemicals but also damage the crop. The Respondent is no longer able to perform these functions, and they are carried out by another. (R. p. 441, l. 19 – p. 443, l. 8; 2011 Hearing Tr. page 52, line 19 - page 54, line 8).

The Respondent can no longer safely operate most farm equipment. There are certain farm implements which the Respondent's family refuses to allow him to operate. However, to permit the Respondent to participate on his farm, the family farm has purchased a fully-automated tractor complete with a GPS device, programmed planting devices and alarm systems which the Respondent is permitted to drive. However, another farm hand must follow the Respondent to the field he is to work. A farm hand must program the GPS equipment and computer. Once at the field on the pre-programmed tractor, the Respondent "mashes" a button

and the tractor plows the fields using the GPS coordinates. The equipment prompts the Respondent turn the steering wheel to turn the tractor when necessary. The Respondent need not perform any other functions while driving the tractor. Even then, the Respondent makes costly mistakes. Farm hands must often go back to the field and re-plow where the Respondent has misused the computerized equipment. If the tractor loses the GPS satellite signal, the Respondent is unable to reestablish contact with the satellite, and a farm hand must recalibrate the GPS equipment. The tractor is completely mechanized and requires no physical exertion to drive. While, the Respondent may be permitted by his family to drive a tractor for up to 5 to 7 hours at a time during unusual planting or harvesting, the Respondent's family has accommodated him by going to what would otherwise be unnecessary expense to permit him to attempt some farming chores thus allowing some dignity and self-worth. (R. p. 447, l. 6 – p. 452, l. 1; 2011 Hearing Tr. page 58, line 6 - page 63, line 1; R. p. 513, l. 14 – p. 515, l. 13; Roxanne Kneece depos. p. 16, l. 14- p. 18, l. 13).

The family farm has taken additional measures to accommodate the Respondent's inability to farm. The farm has bought a corn dryer which is operated by the push of a button which the Respondent is capable of operating. However, the corn dryer is also equipped with an alarm which shuts off the dryer and notifies others on the farm when the Respondent has experienced a problem operating the corn dryer. These devices are as foolproof as humanly possible. (R. p. 452, l. 5 – p. 453, l. 13; 2011 Hearing Tr. page 63, line 5 - page 64, line 13).

In addition to equipment purchases made to accommodate the Respondent's mental and physical infirmities, additional farm hands have been employed to do the work that the Respondent was able to do prior to his accident but can no longer perform. After the accident, the Respondent's son, Kain Kneece, was employed to work full time on the farm. Kain Kneece

performs 95% of the duties that the Respondent performed prior to his accident. (R. p. 454, l. 7 – p. 455, l. 15; 2011 Hearing Tr. page 65, line 7 - page 66, line 15). Although he retired, the Respondent's father, Delano Kneece, continues to work on the family farm. Since the Respondent's accident, the family farm has been forced to employ farm hands on temporary part time and full time bases to make up for the Respondent's inability to perform as a farmer. (R. p. 460, l. 21 – p. 464, l. 9; 2011 Hearing Tr. page 71, line 21 - page 75, line 9; R. p. 1118; Respondent's Ex. 4). These farm hands have been hired to help with fencing, electrical work, weed pulling, truck driving, shop work on equipment, cattle vaccination and records, and making sure everything runs smoothly when Respondent is in the field. (R. p. 462, l. 8 – p. 464, l. 9; 2011 Hearing Tr. page 73, line 8 - page 75, line 9). In particular, the farm employed Willie Dobbs to take over many of the Respondent's responsibilities. For instance, Mr. Dobbs drives tractors, spreads chicken manure, spreads fertilizer, sprays, feeds cows, helps dry corn, helps harvest and dry peanuts, and helps harvest cotton. In other words, Mr. Dobbs performs farm chores that the Respondent could perform without help prior to the accident. (R. p. 487, ll. 8-19; 2011 Hearing Tr. page 98, lines 8-19).

The Respondent attempts to help with the cattle. Whereas before the accident, the Respondent could give the cattle shots and vaccinations by himself, after the accident other farm hands must help perform these chores. The Respondent cannot remember how much medicine is required for the shots or which cows he has vaccinated. At times, four or five farm hands might help the Respondent give the shots to the cattle; a chore Respondent could perform by himself before the accident. In fact, there are occasions when the farm hires farm hands simply to watch the Respondent in the field. (R. p. 464, ll. 1-20; 2011 Hearing Tr. page 74, lines 1-20).

Respondent's physical brain damage has affected his temper. Before the accident, the

Respondent was mild-mannered. Since the accident, Respondent has developed a "very short fuse." The Respondent's temper was so bad that he alienated his oldest son, other family members, and people around him. Indeed, the Respondent was almost arrested for an outburst against the County Fire Marshal. Treatment by Drs. Bergmann and Deal has helped the Respondent control his anger. (R. p. 438, l. 1 – p. 439, l. 15; 2011 Hearing Tr. page 49, line 1 - page 50, line 15).

Since his accident, the Respondent has been unable to get a good night's sleep. The Respondent yells in his sleep, has nightmares, he jumps, jerks twitches and falls off the bed; he never has a restful night. Drs. Deal and Shissias are trying to treat this Respondent for the causes of his fitful sleep, and their treatment has been somewhat helpful. (R. p. 439, l. 25 – p. 440, l. 17; 2011 Hearing Tr. page 50, line 25 - page 51, line 17).

Prior to the accident, the Respondent was energetic and active. However, he has become lifeless since his accident. He is also depressed. Drs. Deal, Bergmann, and Shissias are working with the Respondent to address his depression. (R. p. 446, l. 10 – p. 447, l. 2; 2011 Hearing Tr. page 57, line 10 - page 58, line 2).

Sheltered Employment. Farming is very strenuous; however, the Respondent is no longer able to farm. The Respondent's wife, who the Hearing Commissioner found to be a very credible witness, described the Respondent to be a completely different man after his accident than he was prior to his accident. It was only with great difficulty that the Respondent's wife was able to describe the Respondent and his weaknesses which resulted from the accident. The Respondent's wife testified, "I was married to one man for 17 years. I'm married to a totally different man now. Same body. There's a shell there but there's not a person. And it's hard. Excuse me. And it really hurts to have to talk about him in front of him. His dignity is worth

something." (R. p. 438, ll. 9-11; 2011 Hearing Tr. page 49, lines 9-11).

The Respondent is paid $4,175 per month by the family farm. The Respondent has no idea what he is paid or how his check is calculated. The Respondent's check is not calculated based on performance. The Respondent's father directs Mrs. Kneece, the bookkeeper for the family farm, to write the Respondent's check and in what amount. (R. p. 458, ll. 2-25; 2011 Hearing Tr. p. 69, ll. 2-25; R. p. 492, l. 20 – p. 494, l. 12; p. 103, l. 20 – p. 105, l. 12). In addition, the Respondent's father directs Mrs. Kneece to write a check to the Respondent for a dividend or bonus for the purpose of providing the Respondent with the ability to make payments on additional land purchased by the farm. (R. p. 460, ll. 7-16; 2011 Hearing Tr. p. 71, ll. 7-16). In order to afford to make these payments, the Respondent's father, Delano Kneece, who retired after the Respondent's accident in 1999, reduced his pay by approximately half so the Respondent might be paid that amount notwithstanding his inability to farm. In addition, the Respondent's mother retired from her employment on the family farm and her salary was put back into the farm budget.. The Respondent's father's justification for these monthly payments is because "we love him that much". In fact, the Respondent's wife writes the check and deposits it; the Respondent never sees it. These payments are made out of love and affection for the Respondent by his family. (R. p. 456, l. 4 – p. 460, l. 18; 2011 Hearing Tr. page 67, line 4 - page 71, line 18; R. p. 468, ll. 13-17; 2011 Hearing Tr. p. 79, lines 13-17). Mrs. Kneece describes these payments as a "love offering." (R. p. 507, l. 14 – p. 508, l. 22; Roxanne Kneece depos. p. 10, l. 14 - p. 11, l. 22).

To increase farm revenues so as to have the financial resources to accommodate the Respondent's loss of productivity resulting from his injuries, the family farm determined to stop planting less productive crops such as soybeans and wheat and to grow peanuts which are more

productive. Whereas prior to his accident the Respondent was able to make all such production decisions, after the accident and because of the Respondent's incapacity, the family farm hired a grain broker to assist in making marketing decisions. (R. p. 457, l. 8 – p. 458, l. 5; 2011 Hearing Tr. page 68, line 8 - page 69, line 5).

The job market in farming is very competitive. With the availability of migrant farm workers and others, the Respondent cannot compete for these farm jobs or any farm jobs in today's market. Moreover, no employer would tolerate the lack of productivity, errors, and costs such as those caused on the family farm by the Respondent. (R. p. 465, l. 25 – p. 468, l. 4; 2011 Hearing Tr. page 76, line 25 - page 79, line 4). It is clear that the Respondent could never compete in the job market for farm positions and that the family farm would never hire a stranger with the Respondent's disabilities. (R. p. 468, l. 25 – p. 469, l. 21; 2011 Hearing Tr. page 79, line 25 - page 80, line 21).

When asked to explain why the Respondent's family has incurred the additional cost and expense of farm equipment and farm help, the Respondent's wife explained that the Respondent's family had gone to great cost so that "Ricky's dignity can be saved. The work has to get done. He can't do it. So, we hire people to help us get it done. And he sort of hangs out with them." (R. p. 468, ll. 13-17; 2011 Hearing Tr. page 79, lines 13-17).

ARGUMENT

STANDARD OF REVIEW

The Administrative Procedures Act (the APA) "governs appellate review of a final decision from an administrative agency." Hill v. Eagle Motor Lines, 373 S.C. 422, 427, 645 S.E.2d 424, 428 (2007) *see* S.C. Code Ann. §§1-23-310, et. Seq. Under the APA, this Court "may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380 (A)(5); Shealy v. Aiken Cnty., 341 S.C. 448, 455, 535 S.E.2d 442 (2000). It is not within the appellate court's province to reverse the Full Commission's factual findings if they are supported by substantial evidence. Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action. The Full Commission's factual findings will normally be upheld; however, such a finding may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Houston v. Deloach & Deloach, 378 S.C. 543, 663 S.E.2d 85 (Ct. App. 2008). Moreover, the court may reverse the Commission decision if the substantial rights of the Respondent have been prejudiced because the Commission's findings, inferences, conclusions or decisions are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Beckman v. Sysco Columbia, LLC., et al., 408 S.C. 501, 759 S.E.2d 750 (Ct. App. 2014). See also Crisp v. SouthCo. Inc. and Pennsylvania National Mutual Casualty Insurance Co., 401 S.C. 627, 738 S.E.2d 835 (2013). Where the evidence of record is susceptible of but one

reasonable inference, the question is one of law for the court, rather than one of fact for the Commission. Moreover, if the Commission's finding of facts are based on surmise, speculation or conjecture, the issue becomes one of law for the court. Sharpe v. Case Produce Company, 329 S.C. 534, 495 S.E.2d 790 (Ct. App. 1998); Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995);

ARGUMENT I

THE RESPONDENT SUFFERED SEVERE AND PERMANENT PHYSICAL BRAIN DAMAGE AND IS TOTALLY AND PERMANENTLY DISABLED WITH PHYSICAL BRAIN DAMAGE THAT IS COMPENSABLE PURSUANT TO S. C. CODE ANN. § 42-9-10(C).

The Workers' Compensation Commission found that: "a Claimant who can drive a 'complicated' computer-operated tractor for fifty hours per week has not sustained a physical brain injury. The Respondent sustained an injury pursuant to Regulation 67-1101." (R. p. 56; 2012 Order page 10). There is no evidence in the record to support the Commission's finding. Instead, the reliable, probative and substantial evidence of record compels the conclusion that the Respondent is totally and permanently disabled with physical brain damage compensable pursuant to S. C. Code Ann. § 42-9-10(C) and the Circuit Court so concluded. For the reasons set out, the Order of the Circuit Court should be affirmed.

The Supreme Court has held that "physical brain damage" as contemplated by S. C. Code Ann. § 42-9-10(C) requires severe and permanent physical brain damage as a result of a compensable accident. S. C. Code Ann. § 42-9-10(C) provides as follows:

> 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 is a paraplegic, a quadriplegic, or who has suffered physical brain damage is not subject to the five-hundred-week limitation and **shall** receive the benefits for life. (Emphasis added)

The statute makes no exceptions.

Construing S. C. Code Ann. § 42-9-10(C), the Supreme Court explained:

> S. C. Code Ann. § 42-9-10(C) awards lifetime benefits for totally disabled Respondents suffering "physical brain damage" as an exception to the normal five-hundred-week limitation along with only two other conditions: paraplegia and quadriplegia. Thus, the context implies the General Assembly meant to require severe, permanent impairment of normal brain function in order for an injured worker to be deemed physically brain damaged under S. C. Code Ann. § 42-9-10(C).

Sparks v. Palmetto Hardwood, Inc. and Palmetto Timber S.I Fund, 406 S.C. 124, 129; 750 S.E.2d 61 (2013).

In explicating upon its decision in Sparks v. Palmetto Hardwood, Inc., the Supreme Court in Crisp v. SouthCo. Inc., *supra*, relying on S.C. Code Ann. §42-9-400(d) which addresses brain damage as a permanent physical impairment, concluded that to be compensable pursuant to S.C. Code Ann. § 42-9-10(C), the physical brain damage must be "severe." The Court held that a worker with severe physical brain damage must be unable to return to suitable gainful employment. S.C. Code Ann. § 42-9-400(d) defines "permanent physical impairment" as follows:

> As used in this section, 'permanent physical impairment' means any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a **hindrance or obstacle to obtaining employment or to obtaining reemployment** if the employee should become unemployed. S.C. Code Ann. § 42-9-400(d) [Emphasis added]

Crisp v. SouthCo. Inc. and Pennsylvania National Mutual Casualty Insurance Co, 738 S.E.2d at 642.

The statute does not require total and permanent disability to be solely the result of the physical brain damage. Pearson v. JPS Converter and Indus. Corp., 327 S.C.393, 489 S.E.2d 219 (Ct. App. 1996). If the Respondent's physical brain damage combines with the Respondent's other injuries and characteristics to totally and permanently disable him under the Workers' Compensation Act ("the Act"), he is entitled to lifetime benefits under S.C. Code Ann. § 42-9-10(C).

The holding in Crisp v. Southco, Inc., is consistent with existing case law which provides that total disability does not require complete abject helplessness; rather total disability is an inability to perform services other than those that are so limited in quality, dependability, or quantity that no reasonably stable job market exists for them. McCollum v. Singer, Co., 300 S.C. 103, 386 S.E. 2d 471 (Ct. App. 1989); Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 580 S.E.2d 100 (2003). The mere fact of employment is not necessarily evidence of earning capacity. Stephenson v. Rice Services, Inc., 323 S.C. 113, 473 S.E.2d 699 (1996) [recognizing that wages earned by Respondent totally and permanently disabled by virtue of paraplegia is not necessarily evidence of earning capacity; see footnote (2) at 473 S.E.2d 703]. In Lyles v. Quantum Chemical Co., 315 S.C. 440, 434 S.E.2d 292 (Ct. App. 1993), the Court recognized that a Respondent who was totally and permanently disabled as a result of an injury to his back may continue to work notwithstanding a finding of total and permanent disability.

The Supreme Court in Crisp v. Southco, Inc., recognized that there are essentially three ways to determine whether a person has sustained physical brain damage: CT or MRI scanning; cognitive behavioral level of functioning; and neuropsychological testing. Crisp v. SouthCo Inc., *supra*.

The medical evidence, when viewed from the record as a whole, compels the finding that the Respondent suffered physical brain damage resulting in severe and permanent impairment of his normal brain function. Dr. Smith, the treating neurologist, found that the impact to the Respondent from his physical brain damage **was severe and permanent**. Dr. Smith concluded that the Respondent would no longer be the "same competitive businessman" that he would have been prior to his accident. Moreover, Dr. Smith opined that the Respondent's social skills and ability to interact with others would be adversely affected by the Respondent's injuries. Dr. Carl White, the Respondent's internist, diagnosed the Respondent to have suffered from a mass of soft tissue or dead zone in his brain. In particular, from an MRI taken in 2007, Dr. White found a 32 x 43 mm area in the Respondent's right frontal lobe compatible with encephalomomalacia or a softening of the brain tissue. In addition, Dr. White opined that the Respondent's hypothyroidism was related to his head trauma resulting in lethargy, weight gain and general lack of energy and desire. Moreover, Dr. White confirmed that the Respondent's emotional changes and memory loss were related to his head trauma and frontal lobe damage.

Having performed his neuropsychological evaluations, Dr. Waid found the Respondent to have suffered from a physical injury to the brain and diagnosed the Respondent as suffering from cognitive disorder, personality change and headaches resulting from severe traumatic brain injury. Dr. Waid, who conducted a battery of tests on the Respondent, concluded that the Respondent who functioned in the low average IQ range would have difficulties concentrating, memory impairment, and dysfunction in regard to both cognitive and emotional/psychological function. Dr. Waid assessed a 22% impairment to the whole person as a result of the Respondent's traumatic brain injury. Similarly, Dr. Larry Bergmann and Dr. Roger Deal treated the Respondent for headaches, sleep loss, dizziness, fatigue, irritability, memory impairment,

anger and depression from 2005 to the date of the hearing below and recommended ongoing treatment for the Respondent. Dr. Bergmann assigned an 11% whole person impairment to the Respondent. In 2010, Dr. Shissias, a neurologist, began treating the Respondent for chronic daily headaches, memory loss and depression arising from Respondent's 1999 accident. Dr. Shissias, who is of the opinion that the Respondent is suffering Organic Brain Syndrome secondary to traumatic brain injury, finds that the Respondent is unable to make major decisions without input from his wife and that without her, the Respondent would require a legal guardian to handle his financial affairs.

The Appellants point to the opinion of Dr. Julian Adams who reported no evidence of physical brain damage. Dr. Adams saw the Respondent on only two occasions. Dr. Adams concedes that he "did not perform extensive psychological testing" to ascertain the existence of physical brain damage, whereas Dr. Waid conducted two neuropsychological examinations finding neurocognitive impairments as well as psychiatric impairment resulting from severe traumatic brain injury. Moreover, Dr. Brawley's neuropsychological examination revealed that the Respondent continued to suffer from several vegetative symptoms, chronic pain and stressors and that he was not at MMI with respect to his vegetative symptoms recommending reassessment of his medication. Dr. Adams did not employ any of the diagnostic tools recognized in Crisp v. SouthCo. Inc., to determine whether the Respondent suffered physical brain damage, whereas Dr. White's MRI reflected a mass of soft brain tissue or dead zone in Respondent's brain. Dr. Adams' opinion is not credible, reliable or probative on the issue of the Respondent's physical brain damage. More important, Dr. Adams articulated no nexus between the Respondent's driving a tractor and the existence of physical brain damage and the

Appellants' reliance on Dr. Adams' opinion in support of the Full Commission's finding is misplaced.

Furthermore, Dr. Adams' conclusions are not credible when viewed against the record as a whole. Instead of corroborating Dr. Adams' opinion, Dr. Brawley's findings corroborate those of Drs. Smith, White, Shissias, Waid, Bergmann and Deal. Moreover, Dr. Brawley also recommends continued treatment for his psychological symptoms as did Dr. Smith, Dr. Bergmann, Dr. Deal, Dr. White, Dr. Wicker, and Dr. Shissias. While the Defendants point to Dr. Adams' report to support their contention that the Respondent's physical brain damage was mild to moderate, the Court may not view the evidence blindly from the Defendants' side of the case. Not only is Dr. Adams' opinion not supported by reliable, probative and substantial evidence, his opinion is not supported by the Appellants' evidence.

In her 2005 Order in this matter, Commissioner Childs, relying on the evidence of Dr. Smith that the Respondent's brain injury was both permanent and severe, found that the Respondent suffered a closed head injury giving rise to neurocognitive deficits. She ordered the Defendants to treat the Respondent for his closed head injury.

In reviewing a finding of fact of the Workers' Compensation Commission, this Court is not required to suspend disbelief. The evidence of record, when viewed as a whole, compels the finding that the Respondent suffered physical brain damage with a severe and permanent impairment of his normal brain function.

Moreover, the Circuit Court correctly held that the full Commission finding that "a Claimant who can drive a 'complicated' computer-operated tractor for fifty (50) hours per week has not sustained a physical brain injury," is wholly unsupported by the facts and evidence of record.

First, there is no credible, probative medical evidence to support the Commission finding that a Claimant who can drive a 'complicated' computer-operated tractor for fifty hours per week has not sustained a physical brain damage. Neither the Respondent's medical providers nor the Appellants' medical providers render an opinion with respect to the Respondent's driving a tractor and his physical brain damage. There is no medical evidence that addresses the matter of the Respondent's driving at all. While there is evidence that the Respondent can and does drive a farm tractor, there is no evidence that the Respondent can operate the tractor's very technical equipment purchased and installed to accommodate the Respondent's limitations resulting from his physical brain damage. The Respondent's family bought a tractor equipped with GPS and computer-operated equipment which accommodates the Respondent's limitations by automatically operating the tractor and its equipment, allowing him to plow, plant and fertilize. It is undisputed that the Respondent drives the tractor, but it is undisputed that the Respondent cannot program or operate the equipment. The Respondent is only required to "mash" a button to start the equipment. A family member must program the equipment and accompany him to the field to assist the Respondent in the event the equipment fails. Moreover, the Respondent's family accommodates the Respondent's mistakes. This evidence has not been refuted by the Appellants.

The medical evidence supports the finding that the Respondent suffered physical brain damage. The record, when read as a whole, simply does not support the Commission's finding that the Respondent's ability to drive a tractor is evidence that the Respondent did not suffer physical brain damage. The Commission cherry picked evidence from only one side of the case in making its finding, and as a consequence, the finding appealed from does not withstand scrutiny when viewed in context of the record as a whole. The full Commission's finding is

based on surmise, conjecture and speculation. Houston v. Deloach & Deloach; Sharpe v. Case Products Co., *supra.*

In addition, severe and permanent physical brain damage is not compensable under Regulation 67-1101. Regulation 67-1101 addresses brain injury. The application of Regulation 67-1101 to Respondent's claim is arbitrary and capricious. The Regulation purports to address total loss, partial loss or loss of use of the brain and would assign a period of compensation of 25 to 250 weeks. A claimant who has suffered the total loss of use of the brain would be in a vegetative state. Yet, in that condition, he would not be deemed totally disabled under Regulation 67-1101 but would be eligible for benefits of up to 250 weeks. Further, the Regulation 67-1101 assigns a higher value to the total loss of the scrotum and testicles, tongue, biliary tract, small intestine, and skin to that of a total loss to the brain which is far more debilitating. The regulatory scheme of Regulation 67-1101 defies logic, and its application here is arbitrary, capricious and violates due process.

Under the Court's decision in Crisp v. SouthCo. Inc., to be compensable under S.C. Code Ann. § 42-9-10(C), the physical brain damage must be severe so as to pose a hindrance or obstacle to obtaining employment or obtaining reemployment should the employee become unemployed. The Respondent's permanent and severe physical brain damage interferes with his abilities to operate farm equipment safely and reliably operate the family farm. The Respondent now functions in the low average IQ range and has no formal education beyond high school. Farming is all the Respondent knows. The Respondent's family has purchased farming equipment which accommodates the Respondent's disabilities. The Respondent's family has hired farm hands to assist the Respondent with his chores and to perform the Respondent's chores. The Respondent's father has eliminated his income from the farm to free up funds with

which to pay the Respondent. The Respondent's son now works on the farm and performs much of the Respondent's former responsibilities. The family has managed its farming practices to maximize the farm's income while permitting the Respondent the opportunity to work around the farm. The Respondent can no longer manage the farm's financial affairs and without his wife, Respondent would need a legal guardian to manage his affairs.

Dr. Stewart, a Board Certified Rehabilitation Counselor and Board Certified Vocational Evaluator, concluded that the Respondent has suffered a complete loss of earning capacity because of his injuries. Dr. Stewart recognized that the Respondent enjoyed a "benevolent and sheltered employment situation," and opined that, "[i]n an open, competitive labor market [the Respondent] would find himself vocationally disabled and unable to work gainfully." (R. p. 846; Claimant's APA 1). The impact of the Respondent's injuries is best described by Dr. Stewart who stated that the Respondent's:

> ...mental, emotional and physical problems and limitations and the combination of those mental/cognitive, emotional and physical conditions and the findings and opinions contained in the medical/neurological/psychiatric/professional/trauma counseling records, the number of years/length of time his problems and limitations have continued, the multiple prescribed medication he continues to have to take, the deterioration in his overall ability to work and be productive and need for help from others, and Dr. Shissias' statement concerning '...He is unable to make major decisions without input from wife, his primary caregiver. Believe that without her, he would require legal guardian or payee to manage his affairs....' (R. p. 846; Claimant's APA 1)

The Respondent's wife who also performs chores on the farm, including that of the farm bookkeeper, testified that because of Respondent's disabilities he would be unable to compete in an open job market. In fact the family farm would not hire a farm hand with Respondent's disabilities. No farming operation would go to the cost and expense of providing work accommodations for a farm hand such as the Respondent. Her testimony is consistent with that of Dr. Stewart.

Based on the foregoing, the substantial evidence of record reflects that the Respondent suffered a complete loss of earning capacity and the Full Commission so held. As a consequence of the Respondent's loss of earning capacity, his permanent and severe physical brain damage in and of itself is totally disabling and he is entitled to lifetime benefits under S.C. Code Ann. § 42-9-10(C) in addition to all other benefits under the Act. Crisp v. Southco, Inc.; Wigfall v. Tidelands Utilities, Inc., *supra*.

Based on the evidence of record as a whole, the only inference to be drawn from the evidence of record supports the finding that the Respondent suffered permanent and severe physical brain damage as concluded by the Circuit Court.

Under Wigfall v. Tideland Utilities, Inc., the Respondent may demonstrate total disability through multiple physical injuries. Under this scenario, a Respondent who has a S. C. Code Ann. § 42-9-30 scheduled injury must show an additional injury. Singleton v. Young Lumber Company and Granite State Fire Insurance Company, 236 S. C. 454, 114 S.E.2d 837 (Ct. App. 1960); see also McCollum v. Singer Co., 300 S.C. 103, 386 S.E.2d 471 (Ct. App. 1989) [Court found Respondent totally disabled due to combined partial impairments to the back, stomach and leg].

In addition to permanent and severe physical brain damage, the Respondent suffered extensive injuries to his left upper and lower extremities, head and face. After two surgeries to his left arm and elbow, Dr. Michael Green assigned a 17% impairment to the Respondent's upper left extremity. After two surgeries to Respondent's left knee, Dr. James O'Leary assigned a 10% impairment rating to the Respondent's lower left extremity. It is undisputed that the Respondent's physical brain damage was disabling. The Respondent's permanent and severe physical brain damage has caused him memory loss, depression, irritability, chronic daily

headaches, mood swings, loss of sleep and dizziness. The Respondent's mental and emotional deficits cause him difficulties in coping with everyday life. After his psychological testing, Dr. Waid assigned a 22% whole person impairment to the Respondent for his injuries and Dr. Bergmann assigned an 11% impairment to the Respondent for the injuries for which he and Dr. Deal treated the Respondent.

The Respondent's injuries to his left upper extremity and his left lower extremity are S.C. Code Ann. § 42-9-30 schedule injuries. The Respondent's schedule injuries in combination with each other and the Respondent's non-schedule injuries are likewise totally disabling. Wigfall v. Tideland Utilities, Inc., *supra.* Because the Respondent's severe and permanent physical brain damage combines with the Respondent's other injuries and characteristics to totally and permanently disable him under the Act, he is entitled to lifetime benefits under S.C. Code Ann. § 42-9-10(C) in addition to all other benefits under the Act.

For the foregoing reasons, it is clear that based on the reliable, probative and substantial evidence of record, the Respondent is totally and permanently disabled with physical brain damage and entitled to benefits provided for in S. C. Code Ann. § 42-9-10. Crisp v. SouthCo., Inc.; Wigfall v. Tideland Utilities, Inc., *supra.* The Circuit Court was correct in reversing the Full Commission.

ARGUMENT II

THE RESPONDENT HAS SUFFERED A TOTAL LOSS OF EARNING CAPACITY NOTWITHSTANDING THE FINANCIAL SUPPORT OFFERED HIM BY HIS FAMILY FARM.

The Full Commission affirmed the holding of the Hearing Commissioner that the Respondent has suffered a loss of earning capacity, notwithstanding the financial support offered

him by his family farm. The Circuit Court affirmed the Commission on this point and denied the Appellants' appeal. The Circuit Court order holding that the Respondent suffered a complete loss of earning capacity should be affirmed.

The Commission correctly found the Respondent to be permanently and totally disabled in terms of performing his past job as a farmer/owner/operator of a farm supply and farming operation or of any other kind of job or gainful employment on a reliable sustained basis. In addition, the Commission also correctly concluded the Respondent is unable to perform the services other than those that are so limited in quality, dependability, and quantity that a reasonable stable market for them does not exist. Last, the Commission correctly found that the services that the Respondent performs for his family farm, given the accommodations his family has made to enable him to perform certain limited services, are not evidence that a reasonably stable market exists for the services the Respondent provides for the family farm. In so finding, the Commission found and concluded that the work offered by Respondent's family farm is sheltered employment and benevolent in nature.

The Appellants argue South Carolina law does not recognize the doctrine of sheltered or benevolent employment. The Appellants misapprehend the nature of the sheltered or benevolent employment doctrine. In applying the benevolent employer doctrine to the facts of this claim, the Commission was applying or extending longstanding South Carolina case law to the facts below.

To be totally disabled under the Act, the Respondent must be unable to perform services other than those that are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist. Eaddy v. Smurfit-Stone Container Corp., 355 S.C. 154, 584 S.E. 2d 390 (Ct. App. 2003). Total disability under the Workers' Compensation Act does not require

complete, abject helplessness. McCollum v. Singer Co., 300 S.C. 103, 386 S.E. 2d 471 (Ct. App. 1989). South Carolina courts have held that the mere fact of employment is not necessarily evidence of earning capacity. Stephenson v. Rice Services, Inc., 323 S.C. 113, 473 S.E. 2d 699 (1996).

Evidence that a Respondent has been able to earn occasional wages or perform certain kinds of gainful work does not necessarily rule out a finding of total disability. McCollum v. Singer Co.; Stephenson v. Rice Services, Inc., *supra*. The Supreme Court pointed out in Stephenson v. Rice Services, Inc. that a person who becomes a paraplegic, as a result of a work-related accident, may recover for permanent and total disability under S. C. Code Ann. § 42-9-10 yet continue to work. The Respondent, who has suffered physical brain damage as a result of a work-related accident, may likewise recover for permanent and total disability under S. C. Code Ann. § 42-9-10 yet continue to work.

Because the South Carolina Workers' Compensation Act was based on the North Carolina Act, the Commission and Circuit Court appropriately turned to North Carolina case law for guidance. See Nelson v. Yellow Cab Co., 349 S.C. 589, 564 S.E. 2d 110 (2002). Citing Peoples v. Cone Mills Corp., 316 N.C. 426, 342 S.E. 2d 798 (1986) the North Carolina Commission held "an injured employee's earning capacity must be measured not by the largesse of a particular employer, but by the employee's own ability to compete in the labor market. The fact that an employee is capable of performing employment tendered by employer is not, as a matter of law an indication of plaintiff's ability to earn wages." Saums v. Raleigh Community Hospital, 346 N.C. 760, 487 S.E. 2d 746 (1997).

The rationale behind the benevolent employment rule is simple: that the proffered employment would not accurately reflect earning capacity if other employers would not hire the

employee with the employee's limitation at a comparable wage level. The same is true if the accommodations or modification of the job to meet the employee's limitations are not ordinarily found in the competitive job market. Simply put, if the Respondent does not have the ability to earn wages competitively, he will be left with no income should his job be terminated. Peoples v. Cone Mills Corp., *supra*. See also Baker v. Sam's Club, 589 S.E. 2d 387 (N.C. App. 2003).

The Appellants argue that the North Carolina cases are distinguishable because the injured claimants in the cases cited returned to work with the employer/defendant, whereas here, the Respondent never returned to work with the Appellant Kneece Farms. However, the issue is whether the Respondent's employment on his family farm subsequent to his injury is evidence of earning capacity. Although the Respondent regularly worked for Kneece Farms prior to his accident, he has not worked for the Appellant Kneece Farms since his injury, evidence in and of itself of the loss of earning capacity. The evidence of record below is that the Respondent is not employable outside the family farm and that the family would never hire a stranger with the Respondent's physical and mental impairments. The reliable, probative and substantial evidence below is capable of only the inference that the Respondent has suffered a total loss of earning capacity.

The benevolent employment doctrine as articulated by the Commission below is application of long-standing South Carolina law to the evidence of record. See McCollum v. Singer Co., *supra;* Stephenson v. Rice Services, Inc., *supra*. See also Lyles v. Quantum Chemical Co., 315 S.C. 440, 434 S.E. 2d 292 (Ct. App. 1993); Wigfall v. Tideland Utilities, Inc., *supra*.

The Appellants object to the Commission's application of the benevolent employment doctrine to the facts of this case because the family farm makes regular payment to the

Respondent. The Appellants argue that because the amounts paid the Respondent meet or exceed the Respondent's wages prior to his workers' compensation injury, he has earning capacity and therefore Appellants argue that the benevolent employment doctrine is not applicable to the facts of this case.

The Appellants' argument overlooks the evidence of record that the services that the Respondent performs for his family farm, given the accommodations his family has made so as to enable the Respondent to perform certain limited tasks, are not evidence that a reasonably stable market exists for the services Respondent provides for the family farm. Dr. Stewart concluded that the Respondent suffered a total loss of earning capacity. Respondent's wife testified that the Respondent was not employable and that the Delano R. Kneece & Son, Inc. would not employ a stranger with the Respondent's disabilities. The Appellants also overlook the undisputed testimony of record that those amounts paid the Respondent by the family farm are not intended to represent wages earned and are not calculated on the basis of services performed by the Respondent on behalf of the family farm. Rather the amounts paid the Respondent are in the nature of a gift and do not constitute wages for work expended on behalf of the farm or wages calculated on the basis of productivity. The testimony of Respondent's wife, the family farm bookkeeper and treasurer, is undisputed on this point. Indeed, the Hearing Commissioner found the Respondent's wife to be a very credible witness who testified truthfully and accurately to the Respondent's physical and psychological limitations--testimony corroborated by the undisputed medical evidence of record. The Respondent's wife testified about the nature of the work the Respondent is able to perform and the fact that the family has essentially kept him working because he is family. The Respondent's wife described the Respondent as a "shell" of his former self. The fact that the Respondent's family, through

personal sacrifice and careful business practices, is able to afford to pay the Respondent any amount whatever is not evidence of the Respondent's earning capacity.

The Appellants argue that the payments made by the family farm to the Respondent must be in the nature of wages as opposed to a gift because he reports him on his income tax. The payments to the Respondent are taxable. However, this issue is not whether the payments made to the Respondent are wages. The issue is whether the Respondent has retained earning capacity. The undisputed evidence of record is that the Respondent's family is paying him out of love and affection and that the Respondent with his physical and mental limitations is not otherwise employable.

Last, the Appellants argue that in the event that the Commission's Order is allowed to stand, the Appellants should be entitled to a credit for the amount the Respondent receives from his employment from the family farm. The Appellants are entitled to no credit. The payments from the Delano R. Kneece and Son, Inc. family farm are a collateral source. This issue was decided in the 2005 Order and is the law of the case. See also McLeod v. South Carolina Insurance Company, 272 S.C. 254, 251 S.E.2d 193 (1979).

The Circuit Court was correct in affirming the Commission's findings of fact and conclusions of law with respect to the Respondent's total loss of earning capacity and should be affirmed.

ARGUMENT III

THE CIRCUIT COURT CORRECTLY HELD THAT THE RESPONDENT IS ENTITLED TO PAYMENT OF WEEKLY COMPENSATION FROM THE DATE OF THE 1999 ACCIDENT CONTINUING FOR LIFE AND THAT APPELLANTS HAD BEEN GIVEN ALL CREDITS TO WHICH THEY WERE ENTITLED.

The Circuit Court correctly held that the Respondent was entitled to benefits under the Workers' Compensation Act for life. The Appellants misapprehend the nature of the award authorized by statute in this matter. In particular, the Respondent was entitled to an award of weekly permanent disability payments and all necessary medical treatment from the date of his accident for life.

S.C. Code Ann. § 42-9-10(C) applies to the issue of lifetime benefits and provides as follows:

> 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 is a paraplegic, a quadriplegic, or who has suffered physical brain damage is not subject to the five-hundred-week limitation and **shall** receive the benefits for life. (Emphasis added)

S.C. Code Ann. § 42-9-10(C) provides that a Claimant who is totally and permanently disabled with a physical brain damage is entitled to weekly compensation from the date of the accident for life. The statute makes no exceptions. Crisp v. Southco, Inc., *supra.* The record reflects that the Appellants were given all credit for temporary total disability payments to the Respondent since his 1999 accident to which they are due.

The Appellants erroneously argue that because the Respondent attempted to return to work having executed a Form 17, he is barred from receiving weekly compensation from that date until the 2011 Order.

In 2005, in exchange for the Appellants' agreement to provide him with the medical treatment for his injuries as ordered in the 2005 Order, the Respondent agreed to stop payment of his temporary total disability benefits and attempt to go back to work on the family farm. (R. p. 1109; Respondent's Exhibit No. 3). As required, the Respondent executed a Form 17 authorizing the Appellants to stop payment of temporary total disability payments at that time. (R. p. 1241; Defendants' Exhibit 4). The Respondent's effort to return to work does not act as a waiver of his rights under the Act.

The Form 17 executed by the Respondent authorizing the Appellants to stop his temporary total disability benefits provides as follows:

> **I UNDERSTAND THAT MY WEEKLY TEMPORARY COMPENSATION CHECKS WILL STOP; HOWEVER, I GIVE UP NO RIGHTS TO COMPENSATION FOR FUTURE DISABILITY, FOR PERMANENT DISABILITY, DISFIGUREMENT, OR MEDICAL CARE**. (Bold and upper case on Form 17)

The parties' agreement on its face provides that the Respondent's efforts to return to work do not prejudice him from any future benefits. Further, the Form 17 does not operate as an adjudication of the Respondent's ability to work or lack of earning capacity. A signed Form 17 does not terminate the Respondent's claim nor affect his right to apply for additional benefits. Hamilton v. Bob Bennett Ford, 336 S.C. 72, 518 S.E. 2d 599 (Ct. App. 1999). See also Lyles v. Quantum Chemical Co., *supra*.

Moreover, the Appellants' argument conflicts with important public policy considerations advanced by the Act in general and S.C. Code Ann. § 42-9-10(C) in particular. First, the Act encourages injured workers to return to work. The Respondent attempted to return to work in 2005. The Appellant's argument would discourage injured workers from attempting to return to work by penalizing them from recovery of benefits in the event the injured worker finds himself

unable to remain at work. The Form 17 protects the Respondent from the loss of benefits for having tried to return to work and failed. Second, The General Assembly has afforded injured workers such as the Respondent with benefits commensurate with the serous nature of their physical brain damage. Crisp v. SouthCo. Inc., Sparks v. Palmetto Hardwood, Inc., *supra*. The Appellants would penalize the Respondent for attempting in good faith to return to work by depriving him of the benefits afforded him by §§ 42-9-10(C). Contrary to Appellants' argument, distinctions between temporary and permanent disability benefits are not relevant to application of S. C. Code Ann. § 42-9-10(C) which provides for lifetime benefits for injured workers with permanent and severe physical brain damage.

The Respondent agreed to return to work in exchange for the Appellants' agreement to provide all medical treatment required by the 2005 Order. The Appellants failed to fully honor their obligation under the parties' agreement to provide authorized treatment. While the Appellants did provide counseling by Dr. Deal, the Appellants refused to pay for Respondent's prescription medicine as prescribed by Dr. Deal (R. p. 1103; Respondent's Exhibit No. 3). The Act encourages injured employees to attempt to return to work and encourages employers to provide prompt medical treatment so as to enable employees to return to work. Here only the Respondent complied with the letter and spirit of the Act and the Appellants should not be permitted to profit from their failure to comply with the parties' settlement. Hamilton v. Bob Bennett Ford, *supra*.

The Appellants argue that the 2005 Order bars Respondent's right to benefits after the date of that Order. The opposite is true. The 2005 Order requires the Appellants to provide the Respondent not only with weekly temporary total disability payments but also with medical treatment. By failing to provide the Respondent authorized prescriptive medicine, the Appellants

failed to abide by the terms of the 2005 Order and are estopped from raising any objection to the Commission granting Respondent all benefits he is entitled to under the Act.

The Appellants next argue that the Respondent's claims to weekly benefits are barred by the doctrine of *laches.* The Doctrine of *laches* does not apply. Here the Respondent timely filed his Form 50. There was no unreasonable delay. Throughout the pendency of the claim, the Respondent sought and the Appellants provided certain benefits under the Act. The Appellants can claim no prejudice arising from the length of time the claim. The Appellants' partial compliance with the Act disproves any such prejudice as is required by the Doctrine of *laches.* Muir v. C. R. Baird, Inc., 336 S.C. 266, 519 S.E. 2d 583 (Ct. App. 1999); Hopkins v. Floyd's Wholesale, 299 S.C. 127; 382 S.E.2d 907 (1989). In Muir v. C. R. Baird, Inc., the Respondent delayed filing his claim and the Court of Appeals recognized that the Doctrine of *laches* might apply to a late-filed claim. However, the Court found that the Respondent's tardiness in filing his claim was not barred by the Doctrine of *laches*. The Court in Muir held that delay in the ascertaining of a right does not in of itself constitute *laches;* rather the employer must be prejudiced by the delay. Here, the Appellants well knew that the Respondent suffered permanent and severe physical brain damage and was undergoing treatment for his injuries from Drs. Bergmann and Deal. The Appellants were paying for part of the Respondent's medical treatment for his injuries. Clearly, there was no delay in prosecuting the claim nor were the Appellants prejudiced. The Doctrine of *laches* does not apply.

The Circuit Court correctly applied the provisions of S. C. Code Ann. § 42-9-10(C) in the award of weekly compensation to the Respondent from the date of his accident and for life. The Appellants were granted the full credit for payments to which they were entitled.

ARGUMENT IV

THE CIRCUIT COURT CORRECTLY HELD THAT THE APPELLANTS WERE RESPONSIBLE FOR PAYMENT OF RESPONDENT'S MEDICAL TREATMENT, MILEAGE AND PRESCRIPTION MEDICINE.

The Circuit Court concluded that the Commission correctly found that the Respondent has benefited from the treatment of his personal physicians and ordered the Appellants to provide for treatment by Dr. White, Dr. Wicker, Dr. Shissias and Dr. Ugino. Moreover, the Commission found that the Appellants were responsible for all mileage associated with treatment and for prescriptive medicine prescribed by Respondent's physicians. The Commission's findings are clearly supported by the record and should be sustained.

Citing S.C. Code Ann. § 42-15-60, the Appellants argue that Drs. White, Wicker, Shissias, and Ugino were not authorized by the Appellants prior to treatment, and therefore, the Appellants were under no obligation to pay for past treatment or to provide future treatment by these physicians. The Appellants argue that S.C. Code Ann. § 42-15-60, provides that the employer and only the employer may determine an authorized medical treatment. The Appellants misread S.C. Code Ann. § 42-15-60.

S.C. Code Ann. § 42-15-60, vests the Commission with authority to direct an employer to provide medical treatment which in the judgment of the Commission will tend to lessen the period of disability. The Commission found that the Respondent suffered from hyperthyroidism as a consequence of his head trauma suffered in his 1999 accident and that the Respondent had benefited from the treatment by Drs. White and Wicker and that the Respondent will continue to benefit from the treatment of his hypothyroidism by Dr. Wicker. The Commission found that

Dr. Shissias treated the Respondent for his chronic daily headaches, memory loss and depression, causally-related injuries, and that the Respondent would continue to benefit from Dr. Shissias' treatment. The Respondent received treatment from Dr. Ugino on an emergency basis. The Commission found that Dr. Ugino's treatment of the Respondent's injury caused when his dizziness, which was causally related to Respondent's accident, lead to his falling and fracturing a bone in his left hand, was a benefit to the Respondent. The Commission was justified in ordering the treatment by these physicians based on the expert medical evidence of record.

Moreover, S.C. Code Ann. § 42-15-60, authorizes the Hearing Commissioner to order a change in medical treatment if circumstances justify it. When Respondent sought treatment of a neurologist, the Appellants sent the Respondent to Dr. Adams who declined to treat the Respondent. The Respondent then sought out the services of Dr. Shissias. In addition, the Appellants refused to pay for the prescription medications authorized by Dr. Deal, Respondent's treating physician. The Appellants have demonstrated their indifference to the Respondent's treatment needs, and the Respondent was certainly justified on these facts in seeking medical treatment on his own. The Appellants do not dispute the qualifications of the physicians in question. The reliable, probative, substantial evidence of record supports the opinions of these physicians. The Respondent was justified in seeking out his own treatment and under the circumstances, the Commission was justified in ordering the Appellants to provide treatment by Drs. White, Wicker, Shissias and Ugino.

The Appellants do not contend that the Respondent did not benefit from the treatment of these providers. Rather they complain about having to pay for the treatment. The Commission is afforded considerable discretion under S.C. Code Ann. § 42-15-60. The Commission may override the employer's choice of medical providers and order a change in the treatment services

provided and require payment of those services. Clark v. Aiken County Government, 366 S.C. 102, 620 S.E.2d 99 (Ct. App. 2005). S.C. Code Ann. § 42-15-60 does not require the Commission to limit its choice of medical care to the providers approved by the Appellants.

The Act should be liberally construed in furtherance of the purposes to which it was designed and any reasonable doubts as to its construction should be resolved in favor of the Respondent. The Appellants argue that they are the exclusive arbiter of the Respondent's medical treatment. Accepting the Appellants' argument would lead to the absurd result of depriving the Commission of any authority over a Respondent's treatment and violates the spirit and letter of the Act. Gattis v. Murrells Inlet VFW # 10420, 353 S.C. 100, 576 S.E. 2d 191(Ct. App. 2003).

Accordingly, the Circuit Court correctly affirmed the Commission's conclusion that treatment by Drs. White, Wicker, Shissias, and Ugino was justified and in authorizing the Appellants to pay for all past and future medical care including treatment, prescription medication, and mileage.

ARGUMENT V

THE CIRCUIT COURT CORRECTLY HELD THAT THE RESPONDENT SUFFERED CAUSALLY RELATED AND COMPENSABLE INJURIES RELATED TO HIS BRAIN, HEAD, FACE AND FINGER.

The Circuit Court correctly affirmed the Commission's Order requiring the Appellants to treat the Respondent for his injuries to his zygomatic arch, thyroid, scarring and/or finger.

In essence, the Appellants argue that although evidence of the injuries are undisputed in the evidence record, these injuries were not found in the 2005 Order to be compensable.

Therefore, the Commission below erred in finding injuries to be causally related to the Respondent's 1999 accident. While the 2005 Order is conclusive as to the injuries established therein, the findings of the Commission below are consistent with and related to the injuries to Respondent's brain/head/face.

As conceded by the Appellants, the Respondent's zygomatic arch or the temporal bond of the skull below the eye was injured in the Respondent's accident. The explosion causing his brain/head/face injury was so traumatic that it damaged his skull. The Appellants have no defense to the causal relationship between the accident and this particular injury.

The Appellants complain that the Commission erred in finding and concluding that the Respondent's hypothyroidism is related to the Respondent's accident. Dr. White did not diagnose this causal-related injury until after the 2005 order below. There is no medical record of evidence to dispute Dr. White's diagnosis of this causally-related injury. The Appellants' definition of hypothyroidism in their brief is not found anywhere in the record. The record does reflect that Dr. White's concern was for the mass of softened brain tissue located near the pituitary gland which is found tucked under the damaged portion of the Respondent's brain. Dr. White's concern was the impact of the physical brain damage on the function of the pituitary gland which ultimately gave rise to hypothyroidism. The reliable, probative, substantial evidence of record supports the Commission's finding and conclusion that the hypothyroidism is related to the Respondent's accident, and that the Respondent is entitled to treatment for his injuries. Beckman v. Sysco Columbia, LLC, *supra*.

Last, the Appellants complain about the finding and conclusion by the Commission that the Respondent's injury to his finger suffered when he became dizzy at work and fell breaking the metacarpal bone in his left hand was compensable under the Act. The evidence of record is

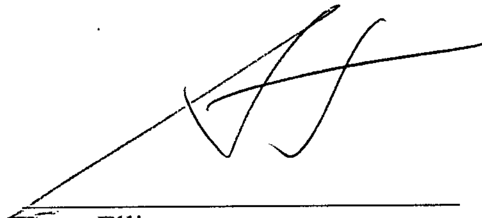
undisputed that a result of the damage to the Respondent's brain/head/face gave rise to dizziness or what the Respondent called "the staggers". The Respondent's unsteadiness caused by his physical brain damage caused him to fall causing the injury to Respondent's finger. It is axiomatic that all injuries flowing from the Respondent's admitted accident are compensable. The Commission correctly found and concluded that the injury to Respondent's finger arising after the 2005 Order was compensable. Whitfeld v. Daniel Construction Co., 226 S.C. 37; 83 S.E.2d 460 (1954); Mullinax v. Winn-Dixie Stores, 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995); Hamilton v. Bob Bennett Ford, *supra.*

The issues litigated and finally determined in the 2005 Order are unassailable. All remaining issues arising after the entry of the 2005 Order are the proper subject of this claim. The Commission found and concluded correctly that the zygomatic arch, hypothyroidism, and damage to Respondent's left metacarpal were compensable. Accordingly, the Circuit Court Order affirming the Commission on this point should be affirmed.

CONCLUSION

Based on the foregoing, it is respectfully submitted that Circuit Court correctly applied the standard of review and the applicable substantive law to the issues on appeal from the full Commission. Having done so, the Circuit Court correctly held that based on the evidence of record, viewed as a whole, the Respondent is totally and permanently disabled with physical brain damage and entitled to an award of benefits under S.C. Code Ann. § 42-9-10(C). The Circuit Court's reversal of the Full Commission on this issue was in all respects proper. In addition, the Circuit Court properly affirmed the Full Commission order on all issues raised by the Appellants' appeal therefrom and the Circuit Court's order denying the Appellants' appeal from the Full

Commission should be affirmed. For these reasons, the Respondent respectfully submits that the Circuit Court order below be affirmed.



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Columbia, South Carolina
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

RECEIVED
MAR 16 2015
SC Court of Appeals

Common Pleas Case No. 2012-CP-32-02093
Common Pleas Case No. 2012-CP-32-02111
Appellate Case No. 2014-001258

Ricky Kneece, Respondent

v.

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

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PROOF OF SERVICE

I certify that I have served the Respondent's Brief on the below-named parties, at the addresses given, by depositing a copy of it in the United States Mail, postage prepaid, on March 16, 2015.

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