THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2014-002416

William Lee Turner, Employee, ... Appellant,

v.

SAIIA Construction, Employer, and
Old Republic General Insurance Corporation
c/o Gallagher Bassett Services, Inc.,
Carrier, ... Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

This case arises out of a workers' compensation claim in which the Claimant filed a SCWCC Form 50 Request for Hearing on November 25, 2013 based on the claim for benefits he had filed alleging that he had sustained injury by accident on April 19, 2012. (ROA, pp. 38-39). A SCWCC Form 51, Employer's Answer to Request for Hearing was filed on December 5, 2013. (ROA, p. 40). A hearing was set on the claim for February 4, 2014 (ROA, p. 425) and the Claimant submitted the Claimant's Pre-Hearing Brief including Administrative Procedures Act submissions and exhibits on January 23, 2014. (ROA, pp. 41-81). The Defendants filed a responsive Pre-Hearing Brief with their Administrative Procedures Act submissions and exhibits on January 24, 2014. (ROA, pp. 82-125). At the hearing held on February 4, 2014, a legal Memorandum supporting the position of the Claimant that since his accident was unwitnessed and since due to his injuries he had no memory of the facts surrounding the accident that the Commission should apply the unexplained death and injury presumption. The depositions of Paul Barnette, David Bolden, James Speegle, and two (2) discovery depositions of the Claimant, William Lee Turner, of August 1, 2012 and January 16, 2014 were also made a part of the Record as Exhibits. The

Commission file with the exception of self-serving declarations and unstipulated medicals was made a part of the Record as well. (ROA, p. 188). Subsequent to the hearing, a request for a proposed Order was submitted by Commissioner Barden (Request for Proposed Order from Commissioner Barden) denying the claim and the Decision and Order of Commissioner Barden was filed on April 14, 2014 denying the claim for benefits in its entirety. Among other conclusions of law, in a case where it is undisputed that the actual accident was unwitnessed, the Hearing Commissioner made specific findings that the Owens v. Oceans Forrest Club Opinion establishing the unexplained death and injury presumption did not apply because the Claimant did not meet his burden of proof by failing to prove the cause of his injury because co-worker, Mr. Barnette, stated that he could only, "speculate as to how the fall occurred"; that "there is no dispute that claimant injured his head in the fall, but the dispute is whether claimant fell from a standing position or from the steps of the cab"; and that, "if Barnette had seen Claimant on the steps of the cab just prior to alleged accident, then the result in this case might be vastly different . . .". (ROA, p. 12). A timely request for review was filed with the Workers' Compensation Commission requesting a review of

all findings of fact, conclusions of law and the Order and Award including all rulings and decisions by the Hearing Commissioner and eleven (11) other specific errors of fact and/or law made by the Hearing Commissioner in her Decision, specifically including the failure of the Hearing Commissioner to apply the unexplained death and injury presumption to this unwitnessed injury where the Claimant's injury admittedly arose out of and in the course of his employment. (ROA, pp. 131-135).

After the filing of the Claimant's/Appellant's and the Defendants/Respondents' Full Commission Briefs, a Full Commission hearing was held on August 11, 2014 (ROA, pp. 136-152; pp. 164-174; pp. 258-278). Subsequent to the Full Commission Hearing on August 11th, on August 29, 2015 the Full Commission issued a Full Commission request for proposed decision form requesting a proposed Order with the only direction being "a Full Affirmation". (ROA, p. 430). The Decision and Order of the Full Commission was filed on October 10, 2014 containing additional findings of fact and conclusions of law (ROA, pp. 20-37) and this appeal to the Court followed with the filing of a timely Notice of Intent to Appeal with Grounds for the appeal as required by the Workers' Compensation Act on November 7, 2014.

STATEMENT OF FACTS

Mr. Lee Turner worked for Saiia Construction Co. for approximately six (6) years prior to the accident. He is a heavy equipment operator but while working for Saiia, he drove dump trucks exclusively. (ROA, p. 203, l. 18 - p. 204, l. 6; p. 207, ll. 9-13).

On Monday before the accident on Thursday, he did see a doctor for minor back problems but he was not having any problems with dizziness, his ability to walk, problems with feeling faint or being unsteady on his feet. There is no evidence in the Record from that doctor visit that he was reporting or was found to have any of those problems at that time. He had already been taking Ultram for his minor back pain which he was again prescribed and was sent home. On Tuesday, he was again seen due to, "vomiting one time" on Monday. (ROA, p. 114). On examination at that visit he was found to have no weakness, full active range of motion, normal ambulation, normal neurological signs and no report of dizziness, feeling faint or weakness. (ROA, pp. 114-115). The doctor recorded that patient had been advised by a pharmacist that vomiting could be a possible side effect of his medications for back pain. (ROA, p. 115).

On Wednesday before the accident on Thursday the undisputed evidence in the Record reflects Mr. Turner

worked, was having no problems and was absolutely fine. (ROA, p. 211, l. 16 - p. 212, l. 22; p. 205, ll. 5-19; p. 114).

As for Thursday, April 19, 2012, the day of the accident, at the hearing he testified that he had absolutely no memory of the day of or of the accident other than what he had been told and that after the accident he was in a coma for three (3) days and remembered nothing about that period of time. (ROA, p. 209, ll. 3-6). He did remember the Tuesday and Wednesday before the accident happened on Thursday and testified he was having no problems of dizziness, syncope, balance or weakness at that time. (ROA, p. 211, ll. 13-21). He further testified that there is absolutely no history of seizure or any other type of disorder in his family. (ROA, p. 209, ll. 16-22). He has never had high blood pressure, diabetes, or heart problems and/or any other health problems other than the back problems that he had had prior to the date of the accident. (ROA, p. 212, ll. 2-10).

The testimony and evidence concerning the events of the day of the fall came from Mr. Turner's fellow employees and friends, Mr. Paul Barnette and Mr. Bolden. Mr. Barnette testified that he and Mr. Turner were real close; that they discussed personal matters; that he knew about

Mr. Turner's past back problems; that he felt if Mr. Turner was having any problems he would have discussed those with him freely; that he never heard him complain of any type of dizziness or syncope prior to the date of the accident; and that Mr. Turner was a very energetic young man. (ROA, p. 435, l. 11 - p. 283, l. 1; p. 283, ll. 22-23). On the date of the accident, Mr. Turner was feeling real good; he was very energetic; he was cutting up while driving the truck, blowing the horn and giving thumbs up; and in Mr. Barnette's opinion Mr. Turner was, "hundred percent that day". (ROA, p. 284, l. 1-10).

Mr. Barnette testified that he and Mr. Turner had pulled their trucks in to wash them and that he had backed his on one side of Mr. Turner's. Mr. Turner's was on the wash rack and he had actually helped Mr. Turner wash about half of the truck when he suggested that Mr. Turner go and get their time sheets straight and get Mr. Barnette's lunch cooler and his bag while Mr. Barnette washed his truck. (ROA, p. 285, l. 21 - p. 286, l. 15). Mr. Turner pulled his truck over to the parking lot and stopped about 40, and no more than 60, feet away. Approximately 7-8 minutes, and no more than 10 minutes, later, Mr. David Bolden stepped out of the hut (different building from the Office) and walked over to Mr. Barnette and was talking to him on the

side of the truck away from where Mr. Turner was at that time and then as Mr. Barnette moved around to the back of the truck to wash off the tailgate he caught a glimpse and saw Mr. Turner on the ground on his back. (ROA, p. 286, l. 17 - p. 287, l. 8).

Mr. Barnette testified that after Mr. Turner had gone to the Office Trailer to get their time sheets straight and to get their two backpacks and after he was found on the ground, that they found Mr. Barnette's 12 pack lunch sack and his backpack placed neatly on the seat of the truck. Mr. Barnette testified that there was no question that his backpack and his stuff had been, "placed" on the seat and had not been simply thrown in there nor was it lying on the, "floorboard". He testified that to be able to do that that it would require Mr. Turner or whoever was putting something like that on the seat in the truck to climb the first and second steps of the truck. The truck steps were approximately 18 inches and 36 inches off of the ground and Mr. Turner was 5'3" - 5'4" tall. Just prior to the accident, they had been washing Mr. Barnette's truck with soap and water. He also stated that the steps on the truck were perforated steps and that the steps would catch a cleat of a boot or shoe and that he had caught his foot on the steps but had been able to correct and not fall. He

himself had lost his balance on the steps of the truck. (ROA, p. 290, ll. 4-18; p. 291, l. 21 - p. 292, l. 13; p. 294, l. 2 - p. 295, l. 9).

After the accident he was the first to see Mr. Turner and when they ran over to Mr. Turner, he was laying on his back. He was trying to move but he was not flailing or thrashing about and was basically laying with his arms straight out with his palms up. He had a small amount of blood on the back of his head and in his opinion, Mr. Turner had not been laying there more than 3-4 minutes before they saw him and got to him. (ROA, p. 299, ll. 5-17; p. 301, ll. 15-20). He repeated his testimony that on the date of the accident Mr. Turner had no complaints of headache, no complaints of dizziness, no complaints of feeling ill, and no complaints of feeling unusual. (ROA, p. 295, ll. 15-25).

Very importantly, Mr. Barnette also testified specifically that the door of the truck was still open when Mr. Turner was found lying on the ground; in addition to the cooler and the backpack being neatly arranged on the seat; and that it would require climbing the steps to put those on the seat. (ROA, p. 305, ll. 2-13.)

Mr. David Bolden, the other fellow employee that came to Mr. Turner's side, testified that Mr. Turner was laying

on his back just beside the truck and that his feet were nearer to the truck than his head was. He also stated that he was lying flat on his back with his arms outstretched like he was holding his hands above his head. (ROA, p. 312, ll. 1-20). He testified that he had worked for Saiia for approximately 4 years and that he considered himself to be a friend of Mr. Turner's. He had never known Mr. Turner to complain of any problems with dizziness or passing out or seizures, nor taking any medicine or any of those type problems and that Mr. Turner was in good health as far as he knew the day of the accident from the way he was acting. (ROA, p. 318, l. 24 - p. 319, l. 16). Mr. Bolden actually observed Mr. Turner walking towards the truck after he had gone to the trailer and most importantly he specifically observed him putting the cooler while standing on the ground into the, "floor board" of the truck but he did not see him move the backpack and/or cooler from the floorboard of the truck to the seat of the truck where it was found neatly placed after the accident. While he was observing him and watching him place the cooler inside the truck, the door of the truck was open and the door of the truck was still open when they found him minutes later. (ROA, p. 320, l. 2 - p. 321, l. 13). There is no testimony of any witness actually to the accident and the Claimant has

absolutely no memory of the day of the accident or days that followed it.

The undisputed factual evidence establishes that Mr. Turner was last seen standing on the ground putting a cooler and back pack into the floor board of the truck wherein after the accident those were found placed neatly on the seat. The undisputed evidence is that one would have to climb the steps of the truck to place items on the seat. He was then found lying with his feet towards the truck and his head away from the truck with the door open and lying on his back with the back of his head flat against the ground. (Emphasis added). The medical evidence establishes he sustained a subdural hematoma of the anterior lateral (front left) temporal lobe. The temporal lobe is in the middle and to the front of the brain; not the back of the head or brain on which Mr. Turner was found lying. The occipital lobe is the back of the brain.

ARGUMENTS

I. THE COMMISSION ERRED AS A MATTER OF LAW BY FAILING TO APPLY THE UNEXPLAINED DEATH OR INJURY PRESUMPTION AND BY APPLYING THE IDIOPATHIC FALL CONCEPT TO AN UNWITNESSED INJURY.

The undisputed, uncontradicted evidence as specifically found by the Commission is that there were no witnesses to the fall and that Mr. Turner had absolutely no

memory of the day prior to the alleged accident; the day of the alleged accident, specifically including, "absolutely no memory of it or what might have precipitated the fall", or the day after the date of the accident. (ROA, pp. 27-28). The Commission also found and the undisputed evidence establishes that,

> "there is no dispute that claimant injured his head in the fall . . .".

However the Commission went on to make the unsupported finding that the dispute was, "whether claimant fell from a standing position or from the steps of the cab". (ROA, pp. 29-30), (Emphasis added).

Where the injury to a worker is unwitnessed and where either due to the death of the worker or where the injury is such that the worker has no memory the Supreme Court has held that this establishes and entitles the worker to a presumption of fact. The presumption as set out in the case of Owens v. Oceanforest, Inc., 196 S.C. 97, 12 S.E.2d 839 (1941) is that:

> "There is a natural presumption, or presumption of fact, that one charged with the performance of a duty and injured while performing such duty, or found injured at a place where his duty may have required him to be is injured in the course of, and as a consequence of, the employment." Owens v. Ocean Forest Club, Inc., supra. (Emp. Added).

See also: Halpern v. DeJay Stores, Inc., 236 S.C. 587, 115 S.E.2d 297 (1960), Packer v. Corbit Canning Co., 238 S.C. 431, 120 S.E.2d 398 (1961), Jake v. Jones, 240 S.C. 574, 126 S.E.2d 721 (1962), and Jennings v. Chambers Development Co., 335 S.C. 249, 516 S.E.2d 453 (S.C. App. 1999).

Since in this case the injury was unwitnessed and since Mr. Turner has no memory, this presumption applies and under the SC Rules of Evidence, SCRCP Rule 301:

> "A presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption . . . ".

A presumption of fact establishes a prima facie case meaning that the presumed fact is so likely to be true in the common experience of humanity that it should be accepted as true until the adversary comes forth with proof that it is not in fact true. Where the basic fact is proven, in this case that Mr. Turner was performing the duties of his employment at a time and place his employment required him to be, then it is a presumed fact that his injury arose out of and in the course of his employment. This prima facie showing requires that the adversary, in this case the Defendants, come forth with proof and evidence contrary or to rebut the presumed fact, meaning evidence that is conflicting or from which a different

inference can reasonably be drawn. The Guide to Evidence Law in South Carolina, Presumptions, John P. Thames, 2nd Rev. Ed. of Dreher on Evidence, 1987. See also: Gilland v. Peter's Dry Cleaning Co., 195 S.C. 417, 11 S.E.2d 857 (1940); Hadfield v. Gilcrest, 343 S.C. 88, 538 S.E.2d 268 (S.C. App. 2000).

In making the decision not to apply the unexplained death or injury presumption in this case, the Commission found that this case was distinguishable from Owens due to the fact that, "the cause of claimant's injury is unknown". At hearing, the Defendants had argued that this was an idiopathic fall that is to say stemming from an unknown cause and as defined in the dictionary, "idiopathic" means either arising from an unknown cause or peculiar to the individual. Recently in the case of Barnes v. Charter One Realty, Sup. Ct. Op. No. 27479 (1/14/15), 2015 WL 161731, the Supreme Court held that idiopathic falls are an exception to the general rule that a work-related injury is compensable and should be strictly construed. In further defining the concept of an idiopathic fall (personal in nature), the Supreme Court per Justice Hearn found that,

> "an idiopathic fall is one that is 'brought on by a purely personal condition unrelated to the employment, such as heart attack or seizure' . . . the idiopathic fall doctrine is based on the notion that

> an idiopathic injury does not stem from the accident but is brought on by a condition particular to the employee that could have manifested itself anywhere."

The Court went on to reason that,

> "an idiopathic fall arises from an internal breakdown personal to the employee, thus negating any causal connection. A finding that a fall is idiopathic is not warranted simply because the claimant is unable to point to a specific cause of her fall." (Emphasis added).

The Court went on to find in the Barnes case that there was no evidence that the claimant's leg gave out or that there was some other type of internal breakdown.

While the Commission is the ultimate fact finder, where there are no disputed facts, the question of whether an accident is compensable is a question of law. Nicholson v. S.C. Dept. of Social Services, Sup. Ct. Op. No. 27478 (1/14/15), 2015 WL 161719. In Nicholson the Court also reiterated a time honored basic principle in a workers' compensation case that the Act must be liberally construed in favor of coverage to serve the beneficial purposes of the Workers' Compensation Act.

As noted above in this case, the undisputed facts are that Mr. Turner was at a time and place and was performing the duties of his employment at the time that the injury occurred and the injury was unwitnessed and he has no

memory of the day or the events surrounding the injury, thus the unexplained death and injury presumption applies establishing a prima facie case of an injury arising out of and in the course of his employment. There is absolutely no evidence that the injury was caused by something personal to Mr. Turner.

The undisputed evidence from the witnesses was that on the day of the injury Mr. Turner was feeling good; he was very energetic; he was cutting up while driving the truck; blowing the horn and giving a thumb up; and in the opinion of the witnesses, Mr. Turner, "was 100% that day". There is no evidence at the time of the injury or at any time that he had ever had any problem with high blood pressure, diabetes, heart problems, seizure, epilepsy or other brain lesion or disorder. Days before the injury when he was evaluated by a physician there is no evidence that he was suffering from dizziness; any problems with ambulation; feeling faint and all witnesses that testified as to the day of the accident testified that he was not having any problems with dizziness; feeling ill; headache; faintness; syncope; balance or any type of weakness or any other type of complaints concerning feeling unusual; or that his accident resulted from a condition peculiar to him such as a personal medical condition. Adapting the holding in

Nicholson v. S.C. Dept. of Social Services, supra:

> "Because' . . . (Mr. Turner's) . . . 'fall happened at work and was not caused by a condition peculiar to' . . . (him) . . . 'it was causally related to' . . . 'his employment".

Therefore, the Commission erred as a matter of law based on the undisputed evidence by failing to apply the unexplained death and injury presumption where there is no conflicting or contradictory evidence even having a tendency to rebut the presumption that the accident and injury did not arise out of and in the course of the Claimant's employment. His injury resulted from a fall and there is no evidence that that fall was caused by anything personal to his nature.[1]

II. THE COMMISSION ERRED AS A MATTER OF LAW BY SPECIFICALLY AFFIRMING THE HEARING COMMISSIONER'S FINDINGS OF FACT #4, #5, #6, #9, #10 AND #11, AND BY FAILING TO APPLY UNDER CONCLUSIONS OF LAW #9 AND #10 THE UNEXPLAINED INJURY OR DEATH PRESUMPTION AND BY TRYING TO "FACTUALLY" DISTINGUISH THAT LEGAL PRESUMPTION UNDER CONCLUSION OF LAW #10.

In every unwitnessed death or injury case where the unexplained death or injury presumption must be applied where the injury resulted from a physical injury type cause, our Appellate Courts have applied the presumption

[1] In past decisions applying the unexplained injury and death presumption, in all cases where the cause was accidental in nature such as a fall or drowning, our Courts and the Commission have applied the presumption without a showing of causal connection. The Courts have required an additional requirement of a causal relationship in cases where the death or injury is occasioned by a, "natural condition". For an excellent discussion between the application of the presumption where death or injury is caused by accidental means, (i.e., either clearly or inferentially not natural) versus injuries or death caused by natural causes such as aneurysms, heart attack or stroke, see Jennings v. Chambers Dev. Co., supra.

without any additional work related causal relationship, i.e. that the injury was caused by the work. Examples without all citations: Owens v. Ocean Forrest Club, supra, (gunshot wound); Jake v. Jones, supra, (drowning); Eagles v. Golden Cove, Inc. 260 S.C. 113, 116, 194 S.E.2d 397, 398 (1973) (bee sting).

Only in cases where the injury and death is caused by a medical condition such as heart attack or thrombosis, have our Courts required a causal relationship to the work activities. For example: Packer v. Corbit Canning Co., supra, (heart attack but **no proof** of electrical shock, not compensable) versus Buff v. Columbia Baking Co. 215 S.C. 41, 53 S.E.2d 879 (1949) (heart attack **but proof** of electrical shock, compensable).

In this case the undisputed evidence is that his injury stemmed from an accidental physical type injury; i.e., his fall, and there is no evidence that this fall was caused by a medical condition. The Commission tried to distinguish and refused to apply the presumption because Mr. Turner did not prove the cause of his fall. The requirement of proof of the cause has never been required and would eviscerate the presumption.

III. **THE COMMISSION ERRED BASED ON THE RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE IN THE RECORD BY NOT APPLYING THE UNEXPLAINED INJURY PRESUMPTION AND BY FINDING THAT THE CLAIMANT DID NOT ESTABLISH A CAUSE FOR THE ACCIDENTAL (FALL) INJURY.**

The Commission is the fact-finding body but its findings of fact and decision on the facts must not be based upon surmise, conjecture or speculation but must be based upon the reliable, probative, substantial evidence in the Record; that is to say evidence of sufficient substance to afford a reasonable basis for the decision. Where there is no dispute as to the material facts, the issue becomes one of law for decision by the Court. Barnes v. Charter One Realty, supra. Where the undisputed facts establish that Mr. Turner was performing a work task and fell, those facts alone clearly establish a causal connection between his employment and the injuries he sustained unless there is evidence that it was, "caused by a condition peculiar to" Mr. Turner. Nicholson v. S.C. Dept. of Social Services, supra. In this case, there is simply no evidence in the Record that his fall was caused by a medical condition or a condition particular to Mr. Turner.

The undisputed evidence is that Mr. Turner has no history of any problems with seizures, epilepsy or any other type of neurological or physical disorder in his family or in his past medical history. The medical

evidence establishes that two (2) days prior to the date of the injury when he attended medical care for unrelated reasons, on examination he was found to have no weakness, full active range of motion, normal ambulation, normal neurological signs, and no report of dizziness, feeling faint or weakness. (ROA, pp. 114-115). On Wednesday the day before the accident and on Thursday, the date of the accident, the testimony of his co-workers which is undisputed was that he was doing fine and neither before those days nor on those days had he ever or was he on those days complaining of any problems with dizziness, syncope, balance or weakness, or any other type of health problem. In fact on the day of the accident, he was feeling very good, he was very energetic, he was cutting up and in the opinion of his co-workers was, "100% that day". (ROA, p. 284, l. 1-10).

The undisputed evidence from his co-workers is that immediately prior to his fall he was observed with the door open to his dump truck placing backpacks and a lunch sack on the floorboard and immediately after the accident, those items were found not on the floorboard, but, "placed neatly" on the seat. (ROA, p. 290, ll. 4-18; p. 320, l. 2 - p. 321, l. 13). Mr. Barnette's, also uncontested, testimony was that one would have to climb up the steps of the truck

to place those items onto the seat of the truck. The undisputed factual evidence establishes further that after the fall Mr. Turner was found lying on his back with the back of his head flat against the ground. (Emphasis added). The objective medical evidence after the accident establishes that he sustained a subdural hematoma of the anterior lateral (front left) temporal lobe. The temporal lobe is in the middle to the front of the brain; not the back of the head or the occipital lobe on which Mr. Turner was found lying. The occipital lobe is the back of the head.

Therefore, there is not only no substantial evidence but there is no evidence that the fall was caused by anything personal to Mr. Turner such as a medical condition. Based on the undisputed evidence, the Commission should have found a compensable injury under law and Mr. Turner would ask this Court to so find as a matter of law based on the undisputed evidence.

IV. THE COMMISSION APPELLATE PANEL ERRED IN VIOLATION OF ITS STATUTORY REVIEW/DECISION OBLIGATION BY ALLOWING DEFENSE COUNSEL TO DRAFTS ITS OWN FINDINGS OF FACT AND CONCLUSIONS OF LAW ADDRESSING THE ISSUES RAISED FOR REVIEW AS REQUIRED BY LAW AND BY ISSUING AN ORDER THAT WENT BEYOND ITS DIRECTION.

Appellant's Counsel knows of and would submit there is no federal, state or local administrative or judicial

appellate review tribunal, such as this Court, where the consensus decision of a multiple member panel charged with reviewing legal and factual decisions affecting the rights of parties is drafted by a party for the panel/tribunal; and especially where no specific findings of facts and conclusions of law on each issue raised for review is made by the panel.

The Claimant/Appellant has no problem with nor questions the time-honored tradition of a singular judge or commissioner requesting that the prevailing party present a proposed Order for the Judge's or Commissioner's consideration and if the Court or Commissioner feels that the Order is in accordance with his or her decision in the case to adopt that Order as written. **However**, the issue that was presented in this case and with which Claimant's Counsel has great concern is that numerous legal issues were appealed to the Full Commission and the three-member panel of the Full Commission asked a party to write its **consensus decision** addressing all of those legal and factual issues that had been presented to the Commission for decision.

The law requires that the Full Commission write its Order and it abdicated that responsibility and gave it to the prevailing party to write its consensus, again consensus, order. A review of that Order and a review of the Form 30,

Request for Commission Review, will clearly establish that the Order of the Full Commission not only did not address all of the legal and factual issues that were presented for review by the Full Commission but went beyond the direction of the Full Commission.

The Commission asked Defense Counsel to draft the Appellate Panel Order but made no specific factual or legal conclusions in that form request and requested only a **"FULL AFFIRMATION** of the Single Commissioner's Decision and Order". (ROA, pp. 426-429).

S.C. Code §1-23-340, 350 and §42-17-40 and 50, all require the Commission to make their own, "Findings of Fact and Conclusions of Law separately stated", on each issue before it for decision. S.C. Code §1-23-340 provides specifically that, the proposal for Decision, "shall contain a statement of the reasons therefore and of each issue of fact or law necessary to the proposed Decision, **prepared by the person who conducted the hearing or one who has read the Record.**" (Emphasis added). **The Commission** is the **fact-finding body** and **its decisions**, if supported, are binding on appeal. Walker v. City of Columbia, 247 S.C. 241, 146 S.E.2d 856 (1966); Baldwin v. James River Corp., 304 S.C. 485, 405 S.E.2d 421 (S.C. App. 1991).

In addition to the statutory requirements, the Commission's own Regulations, Reg. 67-709(E)(2) require the Commission Appellate Panel to record its findings on appeal on vote sheets:

> "The Commissioners together shall agree upon a modification if any and **record their Findings of Fact and Conclusions of Law on a vote sheet.**" (Emphasis added).

In addition to the requirements set out in the statutes and the Commission's own Regulations, the Supreme Court held in Drake v. Raybestos-Manhattan, Inc., 241 S.C. 116, 127 S.E.2d 288 (1962) (as reaffirmed on numerous occasions in its subsequent decisions) that the,

> **"Duty to determine factual issues is solely on the Commission** and the Courts have no authority to determine such issues except in jurisdictional matters, and such duty requires that not only must Findings of Fact be made upon essential factual issues but they must be sufficiently definite and detailed to enable the Appellate Court properly to determine **whether the Findings of Fact are supported by the evidence and that the law has been properly applied to them.**" (Emphasis added).

Here again, the Supreme Court has specifically held that it is the responsibility of the Commission to make **its** Findings of Fact and Conclusions of Law and to set those out in the Record in its Orders.

In this case, the Single Commissioner's Order

contained eleven (11) Conclusions of Law whereas the Full Commission Order contained sixteen (16) Conclusions of Law. Who made those five (5) additional findings; the Commission or the Defense Attorney to bolster his case on appeal? This is a denial of the Claimant's right to substantive and procedural due process and this process cannot be affirmed. (To the extent that this Court's decision in Brown v. Peoplease Corp., 402 S.C. 476, 741 S.E.2d, 761 (S.C. App. 2013) allows for this procedure, the Appellant would seek to argue against precedent at hearing.)

CONCLUSION

For all the foregoing reasons, the Court should reverse the Decision of the Commission and find that the Claimant sustained an injury by accident under the law as a matter of law based on the undisputed facts in the Record and the Court should remand this matter to the Commission for a hearing on the Claimant's entitlement to benefits stemming from that accident.

Respectfully submitted,

Preston F. McDaniel
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(803) 771-7211
Attorney for the Appellant

June 25, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2014-002416

William Lee Turner, Employee, ...Appellant,

v.

SAIIA Construction, Employer, and
Old Republic General Insurance Corporation
c/o Gallagher Bassett Services, Inc.,
Carrier, ... Respondents.

CERTIFICATE OF COUNSEL

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

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PROOF OF SERVICE

I certify that I have served the **FINAL BRIEF OF APPELLANT** by depositing a copy of it in the United States Mail, postage prepaid, on June 29th, 2015, addressed to: Jason W. Lockhart, McAngus, Goudelock & Courie, Post Office Box 12519, Columbia, SC 29211 and Helen F. Hiser, Attorney, McAngus, Goudelock & Courie, Post Office Box 650007, Mt. Pleasant, SC 29465.

Dated: June 29th, 2015

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Proudly representing injured workers
for over 30 years.

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June 29, 2015

VIA HAND DELIVERY
Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: William Lee Turner, Employee, Appellant, v. SAIIA Construction, Employer, and Old Republic General Insurance Corporation c/o Gallagher Bassett Services, Inc., Carrier, Respondents.
Appellate Case No.: 2014-002416

Dear Ms. Kitchings:

Enclosed herewith for filing, please find the unbound original and sixteen (16) copies of the Final Brief of Appellant, along with our original Proof of Service showing that we have served a copy of the same upon Counsel of Record. Please file these documents and return a clocked-in copy to the courier.

Thank you for your time and attention to this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely yours,

Preston F. McDaniel

PFM/kth
Enclosures

cc: John Koon, Esquire
Jason W. Lockhart, Esquire
Helen F. Hiser, Attorney at Law