ATTACHMENT A

SOUTH CAROLINA WORKERS' COMPENSATION EMPLOYER'S FIRST REPORT OF INJURY OR ILLNESS
CONTAINS ALL ITEMS REQUIRED BY OSHA FORM 101 (Enter all dates in MM/DD/YY format)

EMPLOYER: US FOODSERVICE
120 LONGS POND ROAD P O BOX 8
120 LONGS POND ROAD P O BOX 8
LEXINGTON SC 29072-

CARRIER CLAIM #: 104000001589901

JURISDICTION CLAIM #: 0506205

SIC CODE:

UNEMPLOY/FED. TAX I.D. NO.:

INSURANCE CARRIER: ACE
45 DAN ROAD
CANTON MA 02021-2852

CC#: 952371728 00461
POLICY/SELF-INSURED#:
POLICY PERIOD: TO
SELF INSURED: N

EMPLOYEE NAME (Last, First, Middle): GUICE ALEXANDER

SOCIAL SECURITY NUMBER:

PHONE NO. (A/C No): (843)756-6479

ADDRESS: 2996 GASTON DR
LORIS SC 29569-

DATE OF BIRTH:

MARITAL STATUS: M

MALE/FEMALE: M

DEPENDENT CHILDREN: 00

DATE OF HIRE: 10/01/01
OCCUPATION: DRIVER

WAGE INFORMATION
RATE: $1,161.00 WEEKLY
FULL PAY FOR DAY OF INJURY? N

DATE RETURN(ED) TO WORK:
DID SALARY CONTINUE? N

OCCURRENCE
PLACE OF ACCIDENT OR OCCURRENCE: 29405-
CHARLESTON

DATE OF INJ: 05/05/05

TIME OF INJ: 06 AM

EMPLOYER'S PREMISES?: N

LAST WORKDATE: 05/05/05

DATE EMPL'R NOTIF'D: 05/05/05

DESCRIBE NATURE OR INJURY OR ILLNESS IN DETAIL

CAUSE: STRUCK BY
NATURE: SPRAINS/BRUISES/CONTUSIONS
LOCATION: HEAD/FACE

DESCRIBE EMPLOYEE'S ACTIVITIES WHEN INJURY OCCURED WITH DETAILS OF HOW EVENT OCCURRED

THERE WAS A BROKEN DOWN VEH WITHOUT ANY WARNING

IF FATAL, GIVE DATE OF DEATH:

ELECTRONIC FILING. Original date sent: 05/21/05 Date processed: 05/24/05

Trading Partner: MAC RISK MANAGEMENT
P O BOX 9227
BOSTON MA 02209-9935

ATTACHMENT B

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803)737-5700

WCC # 0506205
Carrier File # 104/0000015899/01
Carrier Code # 00461
Employer FEIN

Alexander Guice
Claimant's Name
SSN
2996 Gaston Dr — Lorts — SC — 29569
Address — City — State — Zip
843-756-6479 — Home Phone #
803-951-4200 — Work Phone #

Us Foodservice
Employer's Name
120 LONGS POND ROAD P.O. BOX 6
120 LONGS POND ROAD P.O. BOX 869 — Lexington — SC — 29072
Address — City — State — Zip
Mac
Insurance Carrier

Larry Grant
Preparer's Name
781-298-4909
Phone #

1. Date of injury: 05/05/2005 (month day year)

2. Total Weeks of Compensation Paid: 10460.16

3. Type of Compensation Paid (TP or TT)/Periods of Payment:

Type:	TTD	From:	5/6/05	To:	6/19/05
Type:	TPD	From:	6/20/05	To:	11/6/05
Type:	TTD	From:	11/7/05	To:	12/4/05

4. Date of First Payment: 5/13/05 (month day year)

5. Total Amount Paid (a) Compensation: 10460.16

(b) Medical (Include Nursing, Hospital Drugs, Etc): 9387.57

6. Informal Conference is Requested: ☐ yes X☐ no (check one)

7. Use these lines to send a memo to the Commission:

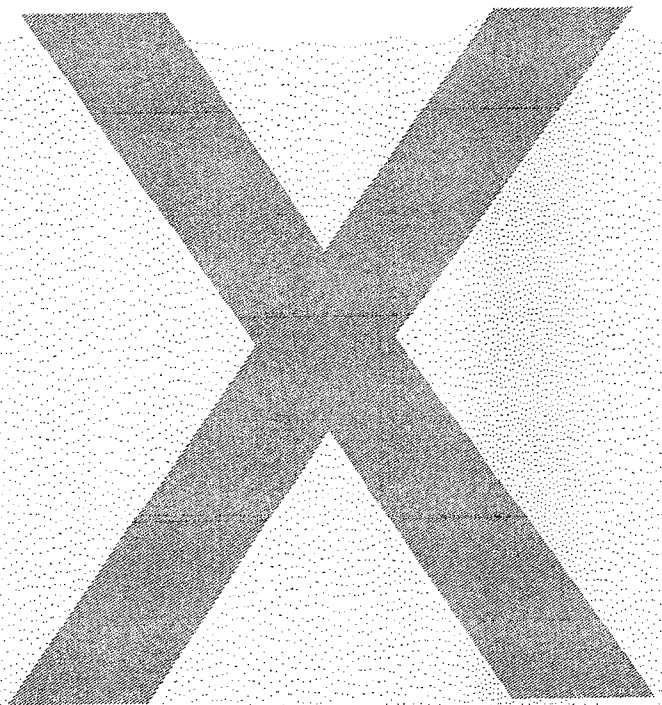
Larry Grant
Employer's Representative
781-298-4909
Phone #
December 01, 2005
Date

Type or print all information. File this form 6 months after the alleged injury date and each 6 months until the Commission's File is closed Form 18 must be filed whether or not compensation is ongoing Check "yes" after number 6 to request an informal conference. Refer to R.67-413, R.67-507, and R.67-804 for further information.

WCC FORM # 18 REV. DATE 3/96

18

PERIODIC REPORT



00002-00002

MAC Risk Management, Inc.
Mailing Address: P O Box 200001 Woodstock, GA 30189-0400

RD

GUICE, ALEXANDER
2996 GASTON DR
LORIS, SC 29569

Check No.	0000678272
Check Date	12/01/2005
Check Amount	$2,370.24
Reference No.	104/0000015899

CLAIM #	LOSS DATE	CLAIMANT	LOCATION	REMARKS	AMOUNT
0000015899	05/05/05	GUICE, ALEXANDER	5D	FROM 11/07/05 TO 12/04/05	2,370.24

00883-00883

MAC *Risk Management, Inc.*
Mailing Address: P.O. Box 200001 Woodstock, GA 30189-0400

US

GUICE, ALEXANDER
2996 GASTON DR
LORIS, SC 29569

Check No.	0000680043
Check Date	12/02/2005
Check Amount	$1,185.12
Reference No.	104/0000015899

CLAIM #	LOSS DATE	CLAIMANT	LOCATION	REMARKS	AMOUNT
0000015899	05/05/05	GUICE, ALEXANDER	5D	FROM 12/05/05 TO 12/17/05	1,185.12

MAC Risk Management, Inc.
Mailing Address: P.O. Box 20000 Woodstock, GA 30189-0400

00884-00884

US

GUICE, ALEXANDER
2996 GASTON DR
LORIS, SC 29569

Check No.	0000680044
Check Date	12/02/2005
Check Amount	$578.74
Reference No.	104/0000015899

CLAIM #	LOSS DATE	CLAIMANT	LOCATION	REMARKS	AMOUNT
0000015899	05/05/05	GUICE, ALEXANDER	5D	FROM 07/07/05 TO 10/27/05	578.74

ATTACHMENT C

GENEX

October 28, 2005

Alexander Guice
2996 Gaston Drive
Loris, SC 29569

RE:

Claimant:	Alexander Guice
Claim #:	104/0000/5899/01-US
GENEX Case #:	CNG38B
Employer:	U S Food Service
DOI:	05-May-2005

Dear Mr. Guice:

This letter is in follow-up to the appointment with Dr. Tamadon. He has recommended that you have long term working restrictions, to prevent further injury to yourself. You should always use proper body mechanics and ask for assistance when needed, at home or at work. He has recommended that you avoid lifting greater than 25 pounds on an occasional basis.

Unfortunately, US Foods can not accommodate long term work restrictions, and your light duty job availability will end on November 6th. You need to discuss available option with your employer, as soon as possible.

Dr. Tamadon has agreed to provide you with the Flexeril and Hydrocodone on a long term basis. You will need to call his office when prescriptions are needed and arrange to pick them up.

I have provided Mr. Larry Grant at MAC Risk Management with an update, and anticipate that I will be closing your file, when I receive Dr. Tamadon's documentation.

In the interim, if I can be of assistance in any fashion, please do not hesitate to contact me. I can be reached at 910-579-4720.

Sincerely,

Cathy Dayton

Cathy Dayton, RN, CCM
Medical Case Manager

Rehabilitation Medicine Services, P.C.

Musculoskeletal Injury, Electrodiagnostics
Workers Compensation and Coordination of Care

1709-B South 16th Street
Wilmington, N.C. 28401
Phone:(910) 362-1112
Fax: (910) 362-1115

215-A Station Street
Jacksonville, N.C. 28546
Phone: (910) 577- 4300
Fax: (910) 577-6630

Notice of Work Status

Employee: Alex Grice DOB: _____

Diagnosis: Neck & LSP Next Appt: 2pcs

Date: _____ Time: _____

☐ Return to work without *restriction* on _____
☐ Off balance of this shift only
☐ Temporary total disability until: _____
☒ Modified work description. Please describe: (permanent)

No lifting > 25 pounds occasionally
No lifting > 10 Pounds frequently or Constantly

☐ Physical / Occupational Therapy: ☐ YES ☒ NO Next Appointment: _____

Frequency: _____ days per week, for _____ weeks.

☐ Patient referred to specialist for: _____

Physician: _____ Specialty: _____

Phone #: _____ Appt Date: _____

☐ Patient referred for: _____

☒ Patient Released

Physician Signature: _____ Date: 10/27/05
Alan Tamadon, MD

Revised 09/04

REHABILITATION MEDICINE SERVICES, P.C.
4237 River Hills Drive, Suite 130
Little River, S.C. 29566
(910) 362-1112
Fax (910) 362-1115

PATIENT: Alex Guice DOB:
CHART #: T02447

OUTPATIENT FOLLOW-UP
October 27, 2005

CC: Neck and low back pain, stable.

HPI: Mr. Guice presents here in follow-up of his work-related injuries. He states that, as work restrictions have been once again incorporated, his pain is under acceptable control. He occasionally has bouts of pain for which he resorts to prescription medications provided. He reports to be comfortable today.

REVIEW OF SYSTEMS:
Patient denies any bowel or bladder changes, saddle dysesthesias, or new onset weakness.

CURRENT MEDICATIONS:
Ibuprofen, hydrocodone, Flexeril.

SOCIAL HISTORY:
Patient was placed on a 25 lb work restriction and no truck driving previously.

PAST MEDICAL HISTORY:
Reviewed.

PHYSICAL EXAM:
General: Patient is well developed, well nourished, in no acute distress.

Gait: Gait is physiologic with physiologic arm swing and velocity.

Neurologic: Cranial nerves II through XII are grossly intact. Memory, insight, and judgment are within normal limits. Patient is alert and oriented x 4.

Neck: On inspection, no asymmetry is noted. Range of motion is within functional limits with pain on the extremes of motion. Myofascial pain is noted in the cervical and trapezius region. Provocative maneuvers are negative.

Upper limbs: Range of motion is full. Sensation is intact to light touch. Strength is graded as overall good. Neurovascular exam is otherwise intact.

Back: On palpation, once again, myofascial pain is noted. Lumbosacral range of motion is within functional limits with pain reported on the extremes of motion. No frank muscle spasm is noted on today's visit.

Continued

PHYSICAL EXAM (Continued):

Lower limbs: Seated straight leg raise test is negative. Strength is graded as overall good. Patient is able to walk on heels and toes. Deep squats are associated with right knee pain. Range of motion of the right knee is within normal limits with full extension and flexion greater than 120 degrees. No varus or valgus laxity or ankylosis is noted. Neurovascular exam is otherwise intact.

ASSESSMENT:

(1) Neck pain.
(2) Low back pain.
(3) Right knee pain.
(4) Other medical problems per chart, stable.

PLAN/DISCUSSION:

Approximately 45 minutes was spent with patient face to face out of which greater than 50% was for counseling. Functional Capacity Evaluation done was reviewed. Patient was made aware of the good effort placed and the results to be valid. Indeed, the results have yielded performing physical work at light level as defined by US Department of Labor. For this reason, he will be placed on permanent restrictions of no lifting greater than 25 lbs occasionally and no lifting greater than 10 lbs if to be done constantly or frequently. Medications were reviewed. Patient has adequate refills for the present time, however, may continue with these medications as needed in the future and is able to contact this office for refills on an as needed basis. With patient's permission, case manager was asked to enter the room for rehab nurse conference.

REHAB NURSE CONFERENCE:

Cathy Dayton, RN, patient's case manager, was made aware of the permanent restrictions. She was further made aware that patient is at maximal medical improvement. Subject of rating was raised. MRI results of the right knee were reviewed. It is noted that right knee MRI was essentially within normal limits with the exception of quadriceps which showed evidence of mild tendinitis. Electrodiagnostic studies were reviewed which showed no evidence of radiculopathy or otherwise nerve impingement and, indeed, an improvement from last comparison study done. In view of such findings, recommend a five percent (5%) impairment rating of the whole person for neck, low back, and right knee pain as a result of this injury. All other questions were answered. His follow-up is left open.

Alan Tamadon, M.D.

/dh

cc. Dr. Bauerle

Summary Letter

Physical Work Performance Evaluation Summary

Date: 10-19-05

Re: Mr. Alexander Guice

Dear Dr. Tamadon:

The following letter provides a summary of the results of the Physical Work Performance Evaluation administered to your client, Mr. Alexander Guice. The results of this evaluation are substantiated by reliability and validity research conducted at the University of Alabama at Birmingham.[1] The comprehensive Physical Work Performance Evaluation consists of 36 tasks divided into 7 sections. However, this evaluation was administered with respect to the work demands of "delivery driver" with U.S. Foods. This letter provides a summary of your client's performance on these essential functions.

Overall Level of Work:

Based on the information summarized in the Dynamic Strength, Position Tolerance, and Mobility sections of the evaluation, the client is capable of performing physical work at the **light level**, as defined by the U.S. Department of Labor in the Dictionary of Occupational Titles. Based on this evaluation, **the client is capable of sustaining the light level of work for an 8-hour day.**

Overall Level of Client Participation:

Throughout the evaluation, participation was determined by comparing the client's willingness to exert a maximal effort to the evaluator's observations of client effort. Based on the Dynamic Strength, Position Tolerance, and Mobility sections of the evaluation, the client:

Participated fully in 17 out of 21 tasks.

Demonstrated **self-limiting participation** by stopping on 4 out of 21 tasks.

Self-limiting participation during the evaluation means that the client stopped the task before specific physical signs of a safe maximal effort were observed. The values reported for the 4 tasks in which the client self-limited represent, therefore, what the client was willing to do rather than a safe maximum physical effort. The values for the remaining tasks represent the client's maximum physical effort.

Self-limiting participation may be due to one, or any combination, of several factors. Some common factors contributing to self-limiting participation are: pain, fear of pain, fear of injury/re-injury, depression, anxiety, lack of familiarity with a safe physical maximum, and lack of motivation to perform maximally secondary to perceived financial gain. The client's reported **reason(s)** for self-limiting participation **was/were low back pain, neck pain, fear of re-injury or new injury.**

The Physical Work Performance Evaluation is a test of physical abilities and cannot be used to assess the complex factors underlying self-limiting participation. However, the research substantiating this evaluation suggests a correlation between the number of self-limiting tasks and these factors. If your client self-limited on 4 or fewer tasks, overall participation is considered to be good and does not warrant further evaluation. If your client self-limited on 5 to 7 of the tasks, **further evaluation of the psychosocial and motivational aspects of**

[1] Lechner DE, et al. *Journal of Occupational Medicine*. September 1994 Volume 36, No. 9: pages 997-1004.

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participation may be warranted. If your client self-limited on 8 or more of the tasks, further evaluation of the psychosocial and motivational aspects of participation is recommended.

Occasional Lifting Limits, other Specific Abilities and Limits, and Job Match Information:

The client's job match information is based on a job description provided by Ms. Cathy Dayton of MacRisk Management.

Activity	Patient Abilities*	Job Demand	Match?
Floor to waist lift	40 lbs	100 lbs	No
Waist to eye level lift	27 lbs	40 lbs	No
Two handed carrying	30 lbs	100 lbs	No
One handed carrying	27 lbs	? lbs	?
Pushing	33 lbs**	40 lbs**	No
Pulling	13 lbs**	90 lbs**	No
Sitting	Occasionally	Frequently	No
Standing	Occasionally	Occasionally	Yes
Work arms over head-standing	Frequently	Frequently	Yes
Work bent over-standing/stooping	Occasionally	Frequently	No
Work kneeling	Occasionally	Occasionally	Yes
Work bent over-sitting	Occasionally	Frequently	No
Work squatting/crouching	Occasionally	Frequently	No
Work arms over head-supine	Occasionally	?	?
Climbing stairs	Occasionally	Frequently	No
Repetitive squatting	Occasionally	Frequently	No
Walking	Frequently	Frequently	Yes
Crawling	Occasionally	Never	Yes
Climbing a ladder	Occasionally	?	?
Repetitive trunk rotation-standing	Occasionally	Frequently	No
Repetitive trunk rotation-sitting	Occasionally	Frequently	No
Balance on level surfaces	Adequate	Frequently	Yes
Balance on uneven surfaces	Inadequate	Frequently	No
Balance on ladder	Inadequate	?	?
Balance on beam/scaffold	Inadequate	?	?
Grip Strength	R- 11lb/L-10lb	65lb	No

* The Dictionary of Occupational Titles (D.O.T.) defines Occasionally as up to 1/3 of the day, Frequently 1/3 to 2/3 of the day, and Constantly as 2/3 to the full day. The weights reported above are for the Occasional category. The following algorithms, derived from unpublished research, are used by the D.O.T. to extrapolate Frequent or Constant lifting from Occasional lifting: Frequent lifting equals 50% (1/2) of Occasional and Constant lifting equals 20% (1/5) of Occasional. PLEASE NOTE: the D.O.T. extrapolations from Occasional to Frequent and Constant lifting were not studied in the research validating the Physical Work Performance Evaluation.

** Pounds of force is the amount of force the client exerted during the pushing and pulling tasks. If your client is required to push or pull for any work activities, the force required for the job task should be measured with a force gauge and compared to the abilities documented above.

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Summary Letter

Factors Underlying Limitations:

Based on this evaluation, the factors underlying the client's limitations appear to be:

1. Pain: primary site low back, secondary sites neck and right knee
2. Fear of re-injury or new injury
3. Decreased trunk strength

Job Match:

According to the job description provided by Mac Risk Management, the client's abilities do not match the job requirements, with the areas of discrepancy noted in prior table.

Interventions for Consideration:

Mr. Guice may benefit from a physical therapy program which emphasized strengthening of his lower and upper extremities and trunk, and stretching for his cervical spine, right shoulder, legs, and back. He may also benefit from modalities and manual therapy in conjuction with the exercise program. He did receive physical therapy for 9-16-05 to 8-17-05 with noted improvement, however it does not appear he reached a level of functioning that would prepare him for the work demands of delivery driver. I would encourage him to continue light duty work with physical therapy three times per week for 3 to 4 weeks. After this period he could be re-evaluated on the tasks he is currently deficient in compared to the job demands of driver.

If you have any further questions after examining this summary, please contact me.

Sincerely,

James L. Cole PT

James R. Cole, PT
Phone: (843) 249-1843

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Summary Form Section & Task

PHYSICAL WORK PERFORMANCE EVALUATION SUMMARY BY SECTION AND TASK

I. DYNAMIC STRENGTH

Tasks	Maximum Safe Level of Performance						SA Score*		
	Very Heavy > 100 lbs	Heavy 100-51 lbs	Medium 50-21 lbs	Light 20-11 lbs	Sedentary 10-1 lbs	Unable <1 lb	A	OE	SL
1. Floor to Waist			40				X		
4. Waist to Eye Level			27				X		
5. Bilateral Carry			30				X		
6. Unilateral Carry			27				X		
7. Pushing			33						X
8. Pulling				12.5					X

Overall Level of Work for the Dynamic Strength Section:

1. Very Heavy
2. Heavy
3. Medium
4. Light
5. Sedentary
6. Unable to perform even Sedentary

Client Participation Score:

For this section, overall the client:

1. Participated fully
2. *Demonstrated limited participation* on 2 out of 6 tasks.

Limiting Factors

Limited primarily by:

1. Back Pain
2. *Fear of re-injury or new injury*
3. Min/Mod antalgic gait Right LE
4. Knee pain with endrange flexion
5. Decreased back strength

*SA (Self-Assessment) Score

This table compares agreement on client participation between client and therapist. Agreement is scored as either:

A (Agrees)-Client and therapist agree that client has reached a safe, maximal effort.

OE (Over-Extending)-Client wishes to continue the task, but therapist observes signs of a safe, maximal effort.

SL (Self-Limiting)-Client refuses to continue the task, but therapist does not observe signs of a safe, maximal effort.

Comments: *This client has a history of lumbar and cervical strains that he reports have been exacerbated when he has attempted to return to work full-duty and resume lifting tasks.* He stopped himself on the pushing and pulling tasks before he was observed to produce the signs of a safe, maximal effort. He noted he was concerned of re-injury or further injury since his reported level of pain was increasing. He also demonstrated poor trunk stability with the above tasks, often resulting in the loss of proper trunk alignment anteriorly and laterally.

Summary Form Section & Task

II. Position Tolerance

Tasks	Overall Level of Frequency				SA Score*		
	Constantly 2/3-Full day	Frequently 1/3-2/3 of day	Occasionally Up to 1/3 of day	Never	A	OE	SL
9. Sitting			X		X		
13. Standing			X		X		
16. Elevated Work (Std)		X			X		
17. Lowered Work (Std)			X		X		
18. Kneeling			X		X		
19. Lowered Work (Sit)			X		X		
20. Squatting			X		X		
21. Reclining Reach			X		X		

Overall Level of Work for the Position Tolerance section:

1. Very Heavy
2. Heavy
3. Medium
4. Light
5. Sedentary
6. Unable to perform even Sedentary

Client Participation Score:

For this section, overall the client:

1. Participated fully
2. Demonstrated limited participation on ____ out of 8 tasks.

Limiting Factors:

Limited primarily by:

1. Low Back Pain
2. Decreased WB tolerance right LE
3. Decreased right shld. elevation
4. Decreased lumbar strength
5. Fear of re-injury, injury

*SA (Self-Assessment) Score

This table compares agreement on client participation between client and therapist. Agreement is scored as either:

A (Agrees)-Client and therapist agree that client has reached a safe, maximal effort.

OE (Over-Extending)-Client wishes to continue the task, but therapist observes signs of a safe, maximal effort.

SL (Self-Limiting)-Client refuses to continue the task, but therapist does not observe signs of a safe, maximal effort.

Comments: This client participated fully throughout this portion with appropriate position adjustments during the tasks. He had poor tolerance for sustained right shoulder elevation in the standing and reclining reach tasks, and noted increased right shoulder and neck pain when trying to sustain these positions. Also had poor tolerance for sustained static weight bearing through right lower extremity in the standing, kneeling, and squatting tasks.

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III. Mobility

Tasks	Overall Level of Frequency			
	Constantly 2/3-Full day	Frequently 1/3-2/3 of day	Occasionally Up to 1/3 of day	Never
2. Stair Climbing			X	
3. Repetitive Squat			X	
22. Walking		X		
23. Crawling			X	
24. Ladder Climbing			X	
25. Trunk Rotation (Std)			X	
26. Trunk Rotation (Sit)			X	

SA Score*		
A	OE	SL
X		
		X
X		
X		
X		
X		
X		

Overall Level of Work for the Mobility section:

1. Very Heavy
2. Heavy
3. Medium
4. Light
5. Sedentary
6. Unable to perform even Sedentary

Client Participation Score:

For this section, overall the client:

1. Participated fully
2. Demonstrated limited participation on __1__ out of 7 tasks.

Limiting Factors:

Limited primarily by:

1. Low back pain
2. Antalgic gait
3. Decreased weight bearing Right Leg
4. Right knee pain

*SA (Self-Assessment) Score:

This table compares agreement on client participation between client and therapist. Agreement is scored as either:

A (Agrees)-Client and therapist agree that client has reached a safe, maximal effort.

OE (Over-Extending)-Client wishes to continue the task, but therapist observes signs of a safe, maximal effort.

SL (Self-Limiting)-Client refuses to continue the task, but therapist does not observe signs of a safe, maximal effort.

Comments: ***During this portion of the test, the client attempted all tasks, but he declined to continue on the repetitive squat due to the complaint of low back pain before a maximal effort was observed. He did demonstrate good eccentric control of right knee flexion when he utilized a step over step pattern for stair climbing, however he chose to utilize a step to step pattern for most of the stair climbing and ladder climbing tasks. During the seated trunk rotation test an empty milk crate weighing 1.5 pounds was substituted for the standard crate that weighs 15 pounds so the client could perform the task.***

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IV. Fine Motor

Comments: Not tested

V. Balance

Based on the balance screening, the client has Adequate or Inadequate balance for the following Work Conditions:

Work Conditions	Adequate	Inadequate
1. Walking on Level Surfaces	X	
2. Walking on Uneven Surfaces		X
3. Ladder Climbing		X
4. Beam / Scaffold Walking		X

Comments: The client demonstrated significant difficulty with the balance screen. He averaged less than 7 seconds on each leg with the unilateral balance screen (The minimum requirement for this test is an average of 15 seconds in 3 trials.) His inability to maintain unilateral balance of at least 15 seconds precludes him from achieving an adequate score on the uneven surfaces, ladder climb, and beam / scaffold walk. He was, however, able to maintain balance on a level surface during the Walking task.

VI. Coordination

Comments: Not tested

VII. Endurance

Tasks	Percent Change in Heart Rate Response	
	% Increase	% Decrease
34. Lift Floor to Waist Height		19
35. Stair Climbing		12
36. Repetitive Squat		7
Overall Average		13

Tasks	Percent Change in Performance	
	% Increase	% Decrease
34. Lift Floor to Waist Height		12.5
35. Stair Climbing		12.5
36. Repetitive Squat		9
Overall Average		11

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Summary Form Section & Task

The client was:

_X_ **Able to complete the 3 1/2 -hour evaluation without added rest periods, with the exception of not participating in the above noted tasks.**

_____ **Unable to complete the ___-hour evaluation without added rest period(s).**
_____ **Unable to complete the evaluation due to fatigue.**
_____ **Not given the complete evaluation due to the limited nature of their testing needs.**
_____ **Not given the complete evaluation due to time constraints of an unforeseen nature, unrelated to client performance.**

Based on the above factors:

X ___ **The client is capable of sustaining the __ light _____ level of work for an 8-hour day.**
_____ **The client is incapable of sustaining the _____ level of work for an 8-hour day.**
___ **It is difficult to predict whether the client is capable of sustaining the _____ level of work for an 8-hour day.**

Comments:

James R. Cole, PT
Evaluator

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Rehabilitation Medicine Services, P.C.

Musculoskeletal Injury, Electrodiagnostics
Workers Compensation and Coordination of Care

1709-B South 16th Street
Wilmington, N.C. 28401
Phone:(910) 362-1112
Fax: (910) 362-1115

215-A Station Street
Jacksonville, N.C. 28546
Phone: (910) 577- 4300
Fax: (910) 577-6630

Notice of Work Status

Employee: Alex Guice DOB: _____

Diagnosis: Neck pain/low Back pain Next Appt: after FCE
knee pain

Date: _____ Time: _____

☐ Return to work without restriction on _____
☐ Off balance of this shift only
☐ Temporary total disability until: _____
☒ Modified work description. Please describe:

No lifting > 25 pounds
No truck driving

☐ Physical / Occupational Therapy: ☐ YES ☐ NO Next Appointment: _____

Frequency: _____ days per week, for _____ weeks.

☐ Patient referred to specialist for: _____

Physician: _____ Specialty: _____

Phone #: _____ Appt Date: _____

☒ Patient referred for: FCE

☐ Patient Released

Physician Signature: _____ Date: 10/6/05
Alan Tamadon, MD

Revised 09/04

ATTACHMENT D

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0506205

ALEXANDER GUICE,

Employee,

Claimant,

vs.

US FOOD SERVICE, INC.

Employer,

AND

MAC RISK MANAGEMENT, INC.,

Carrier,

Defendants.

SETTLEMENT AGREEMENT AND RELEASE

APPROVED

JAN 5 2006

S. C. Workers' Comp. Comm.

WHEREAS, the undersigned, Alexander Guice, hereinafter referred to as Claimant, alleges to have sustained an injury to his low back, right knee and neck, by accident arising out of and in the course of his employment with US Food Service, Inc., hereinafter referred to as Employer, on or about May 5, 2005 when he allegedly was involved in a motor vehicle accident; and

WHEREAS, MAC Risk Management, Inc., hereinafter referred to as Carrier, is the Insurance Carrier for the Employer; and

WHEREAS, the average weekly wage is $1,154.00; and the compensation rate is $592.56; and

WHEREAS, all parties are operating under and are subject to the provisions of the South Carolina Workers' Compensation Act; and

WHEREAS, the Claimant contends that that he has sustained a permanent impairment in excess of the rating(s) of the physician(s); and the Employer and Carrier deny the same; and

WHEREAS, the Claimant has been treated and/or evaluated by Dr. Alan Tamadon, who found the Claimant at maximum medical improvement on October 27, 2005 and who rated the Claimant's permanent impairment at five (5%) percent to the whole person. The Claimant has also been treated and/or evaluated by Dr. Wayne B. Bauerle, Doctor's Care of Conway, Genex and Long Bay Diagnostic Imaging; and

WHEREAS, there is a bona fide dispute between the Claimant and the Employer and Carrier as set forth above; and

WHEREAS, on account of the doubts that exist as to what benefits, if any, the Claimant would be adjudged to be entitled to recover under the Workers' Compensation Act, the Claimant and the Employer and Carrier, with the approval of the South Carolina Workers' Compensation Commission, have deemed it advisable, proper and in the best interests of all parties to compromise and settle all possible liabilities and controversies between them, now and in the future, the basis of such settlement being as follows:

WHEREAS, in consideration of the sum of Twenty Thousand and 00/100 Dollars ($20,000.00), the undersigned, Alexander Guice, does hereby release and forever discharge US Food Service, Inc. and MAC Risk Management, Inc. from any and all claims, demands, actions or causes of action under the South Carolina Worker's Compensation Act, on account of any and all injuries, disability, disfigurement, specific loss, death, operations, medical, hospital or like expense, continuances, recurrences, aggravations, changes of condition, ailments, illnesses, and diseases or other damages, consequences or results, past, present or future in any way connected with, or arising from the alleged injury sustained by the Claimant on or about May 5, 2005, and does hereby acknowledge that US Food Service, Inc. and MAC Risk Management, Inc. have fully, finally and completely paid and discharged each and every of their obligations, liabilities and responsibilities under the South Carolina Workers' Compensation Act and that the sum set forth above is being paid to, and received by, the undersigned, Alexander Guice, in full and final satisfaction of all claims whatsoever as a result of the alleged accident described above and that US Food Service, Inc. and/or

MAC Risk Management, Inc. shall not henceforth be liable for the payment of any amount whatsoever; and

WHEREAS, without in any way affecting the overall terms of this settlement insofar as the Defendants are concerned, and with the Claimant and the Claimant's attorney acknowledging that the Defendants make no representations as to the effect such allocation may have on the Claimant's receipt of other benefits, the Claimant and his attorney hereby request this Commission to approve the allocation of the proposed settlement sum of $20,000.00; and

Prior to the trial of this case being held before the South Carolina Workers' Compensation Commission, the parties commenced settlement negotiations and, in view of the real dispute which exists between the parties, the parties agreed upon a full, final and complete settlement and termination of all claims by the Claimant against the Defendants, for any and all claimed injuries or accidents heretofore sustained in connection with the Claimant's employment by the named employer, subject to the approval of the South Carolina Worker's Compensation Commission, the terms of the settlement agreement between the parties being that the Defendants will pay to the Claimant in lump sum, with the Defendants expressly waiving all rights to commutation thereof, the sum of $20,000.00 in full and final satisfaction for any and all compensation benefits or other payments under the Worker's Compensation Act to be allocated as follows:

$13,333.34 in compromise settlement of disputed future disability benefits at the rate of $6.489 per week commencing on December 15, 2005, for a period of 39.51 years representing the Claimant's life expectancy pursuant to Section 19-1-150 of the South Carolina Code of Law (1976), and pursuant to Section 42-9-10 and 42-9-20 of the 1976 Code of Laws as interpreted by the South Carolina Supreme Court decision of Utica Mohak Mills v. Orr, 277 S.C. 226, 87 SE 2d 593; Sciarotta v. Bowen, 837 F 2d 135; Lemire v. Secretary of Health and Human Services, 682 F. Supp. 102 (D.C.N.H. 1988) and Hatch v. Heckler, 626 F. Supp. 1367 (N.D. California 1986); and $6,666.66 as attorney's fees pursuant to a written agreement between the Claimant and his attorney; and

WHEREAS, the Employer and Carrier have paid or have agreed to pay authorized medical expenses through December 1, 2005 incurred as a result of the alleged accident described above, in such amounts as may be approved by the South Carolina Workers' Compensation Commission; and

WHEREAS, this Settlement Agreement and Release is full, final and complete regardless of whether the Claimant is able to keep any employment whatsoever, or is able to earn any wages at any time in the future; and

WHEREAS, full and complete medical reports are on file with the South Carolina Workers' Compensation Commission and these are duly considered by it in approving this Settlement Agreement and Release.

WHEREAS, the Claimant represents that he has been fully advised of his rights under the South Carolina Workers' Compensation Act and that he is of the opinion that the proposed settlement is reasonable and fair, and requests that the South Carolina Workers' Compensation Commission approve this settlement as set forth in this Settlement Agreement and Release. The parties acknowledge that the Commission relies upon the representation of counsel for the claimant that the claimant has been fully apprised of his rights under the laws of the South Carolina Workers' Compensation Act and that he believes the settlement is reasonable and fair and thus requests that the South Carolina Workers Compensation Commission approve this settlement as set forth herein.

NOW THEREFORE, upon approval of this settlement by the South Carolina Workers' Compensation Commission, the Claimant hereby relinquishes and releases each and every claim related to this accident, which he now has, or may hereafter have, so that he shall not henceforth have any other or future claim or demand related to this accident, as a result of the alleged accident described above, nor shall anyone on his behalf or claiming by, through or under him or as dependent, have any claim or demand on account of this accident; as a result of the alleged accident described above; and

The undersigned further acknowledges that the consideration herein expressly recited is the sole and only consideration for the execution hereof, and that no promise, agreement or suggestions of any other or additional consideration has been made to, or received by, me.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Myrtle Beach, this 22 day of December 2015.

Alexander Guice

IN THE PRESENCE OF:

ATTORNEY'S CERTIFICATE

I, Robert G. Bacon, Esquire, a practicing attorney of Myrtle Beach, South Carolina, do hereby certify that I represent Alexander Guice and as his attorney and with his approval, I negotiated and secured the foregoing Agreement for the payment of the amount recited therein, on the conditions and terms and for the reasons therein stated, and that as attorney for Alexander Guice it is my opinion that such disposition is for the best interest of Alexander Guice, under all circumstances and that the consideration as recited in Agreement is full and adequate under the circumstances, and that as his attorney, I approve the Agreement, and I further certify that, before Alexander Guice signed and executed the above Agreement, the same was read over and explained to him and understood by him, and was executed freely and voluntarily on his part, and that the consideration therein recited is the sole and only consideration for the execution thereof.

Dated at Myrtle Beach, South Carolina, this 22 day of December, 2005.

RGB

Robert G. Bacon, Esquire
Attorney for Claimant

ORDER AND AWARD

Upon examination and consideration of the foregoing Agreement and Release, the Attorney's Certificate of Robert G. Bacon, Esquire, and the Workers' Compensation Commission File No. 0506205, and it appearing that the settlement set forth in the Agreement and Release is proper and complies with the requirements of the South Carolina Workers' Compensation Act;

Further, upon representation of the claimant and his counsel that his rights have been fully explained to him and that he understands them, that the settlement is reasonable and fair, and that it is the claimant's desire that the settlement as set forth herein be approved;

IT IS ORDERED AND AWARDED that the Settlement Agreement and Release be, and the same hereby is, approved and made the Order and Award of the South Carolina Workers' Compensation Commission, and that upon the payment of the amount recited, the Employer, US Food Service, Inc., and the Carrier, MAC Risk Management, Inc., be, and are forever discharged from each and every liability or responsibility under the South Carolina Workers' Compensation Act on account of the Claimant's injuries on or about May 5, 2005, whether for compensation, disfigurement or for medical or related services or for any account whatsoever and each and every consequence or result thereof, past, present or future, whether for continuation, aggravation, recurrence or otherwise as a result of this accident.

The sum set forth in the Settlement Agreement and Release shall be paid to the Claimant in a lump sum without commutation; whereupon, the Employer and Carrier are authorized to close their files in this matter and the Commission's files shall be, and they are hereby finally closed.

All orders, awards, and opinion heretofore issued by the South Carolina Workers' Compensation Commission in this case are hereby set aside, abrogated, and nullified.

Dated at Columbia, South Carolina on _____.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

BY: _____
1/5/06

I CONSENT:

Walter H. Barefoot

Walter H. Barefoot
Attorney for Employer and Carrier

ATTACHMENT E

TURNER PADGET
TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE

Kara Motegi
Email: KMotegi@TurnerPadget.com
Writer's Direct Dial: 843-656-4461

December 30, 2005

S. C. WORKERS' COMPENSATION COMMISSION
Attn: Ms. Mary Bost
Post Office Box 1715
Columbia, SC 29202

RE:	Claimant:	Alexander Guice
	Employer:	US Food Service, Inc.
	Carrier:	MAC Risk Management, Inc.
	Claim No.:	104/0000015899/01
	WCC File No.:	0506205
	Our File No.:	3796.00213

Dear Ms. Bost:

Per your request, enclosed please find the signed Clincher Agreement and Form 19s for filing in the above matter. Please submit the Clincher to the appropriate Commissioner for their review and approval. After it is approved, please return a copy to the Claimant's attorney listed below and us.

With kind personal regards, we are

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.

Kara Motegi

Kara Motegi
Paralegal to Walter H. Barefoot

Enclosure
(1) Settlement Agreement
(2) Form 19
(3) Self-addressed, stamped envelopes

RECEIVED
JAN 04 2006
Division of Claims
Claims Administrator
S.C. Workers' Comp. Comm.

cc: Robert G. Bacon, Esquire
Mr. Larry Grant

ATTACHMENT F

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Alexander Guice,)
Employee, Claimant,)
)
Appellant,)
)
vs.)

US Foodservice, Inc., and Ace)
American Insurance Company,c/o)
Gallagher Bassett Services, Inc.,)
Employer and Carrier,)
)
Respondents.)

IN THE CIRCUIT COURT FOR
THE ELEVENTH JUDICIAL CIRCUIT

C.A. #: 2014-CP-32-399
2013-CP-32-1272

ORIGINAL

ORDER GRANTING APPELLANT/ CLAIMANT'S MOTION FOR NEW TRIAL AND ORDER FOR RECUSAL

FILED
2014 SEP 29 A 11:50
BETH H. CARRIGO
CLERK OF COURT
LEXINGTON, S.C.

This matter has a convoluted and detailed procedural history. It also originates from a Workers Compensation action that was purportedly resolved in 2005. Mr. Guice, hereinafter "Appellant/Claimant", seeks to overturn the decision of the Workers Compensation Commission which among other things upheld the validity of a settlement, clincher agreement, and release he signed back in 2005. This matter has been in litigation for quite some time and the Court heard this matter back on June 16, 2014 in Lexington County.

Prior to the hearing, Appellant/Claimant had emailed the Court several times providing the Court with various briefs and memoranda in support of his position. Appellant/Claimant resides in Florida and has participated in this litigation via email and mail without making an actual appearance in Court during hearings. Appellant/Claimant was not present in Court at the hearing on June 16, 2014. Respondent/Carrier appeared though its counsel who made an oral

argument to the Court in support of its position to dismiss this matter. The Court took the matter under advisement.

ORIGINAL

Soon after the Court took the matter under advisement, Appellant/Claimant commenced with more numerous email submissions with voluminous attachments to the Court regarding any proposed Order that the Court may issue. The Court reviewed these submissions but ultimately decided against Appellant/Claimant's position and ruled in favor of Respondent/Carrier. This Order was signed on July 21, 2014 and entered on July 30, 2014. The Order was prepared by counsel for Respondent/Carrier at the direction of the Court.

FILED
SEP 29 A 11:50
CLERK OF COURT
LEXINGTON, S.C.

Appellant/Claimant timely filed a motion for new trial pursuant to Rule 59 of the SCRCP along with an incorporated motion for recusal detailing numerous matters where he felt the Court had either not ruled on, or where he disagreed with the Court. Appellant/Claimant has also "served" the Court with an inappropriate pleading entitled "Verified Notice to Court" which seems to insert the Court into the litigation process as a party. In addition, Appellant/Claimant in more disparaging filings has falsely suggested that the Court was unethical, fraudulent, partial, and dishonest in reaching its decision. Respondent/Carrier timely filed a return requesting the Court to uphold its decision in the July 30th Order and deny the motion for new trial and incorporated motion for recusal.

Among other arguments which need not be addressed, Appellant/Claimant contends that the Court ignored the remand decision of the SC Court of Appeals which in its remand order instructed the Circuit Court to "consider the merits of this appeal in conjunction with Appellant's appeal from

the commission's final order." (emphasis added). It appears that the intent of the remand order was for the Circuit Court to meticulously consider each and every argument Appellant/Claimant has presented both in front of the Workers Compensation Commission and Circuit Court to preserve the record on Appeal for the Appellate Court to reconsider in the future, if necessary, for either party.

ORIGINAL

The Court does not recall all of these arguments and matters coming up at the June 16, 2014 hearing, specifically the allegations contained in Case No. 13-CP-32-1272. The Court does not recall reviewing the file in Case No. 13-CP-32-1272 when presiding in Lexington County. Both parties have substantially briefed this issue, and each was afforded an additional opportunity to brief it as well. Based upon the Court's review of the record, to comply with the remand instructions for the Court of Appeals, and in the interest of justice, the Court must grant Appellant/Claimant's motion for new trial to allow everything to be developed, on the record, for the Court of Appeals to consider if these matters continue to move on through that appellate process.

FILED
2014 SEP 29 A 11:50
BETH H. CARRIGER
CLERK OF COURT
LEXINGTON, SC

Since my written Order of July 30, 2014 does not appear to set forth the Court's decision in detail and since it does not specifically address matters contained in 2013-CP-32-1272 as instructed by the SC Court of Appeals, the Court agrees with Appellant /Claimant that he should be granted a new trial or hearing in Circuit Court. This Court of course could have reopened this matter for further consideration, but declines to do as explained more fully below.

The remaining grounds for a new trial argued by the Appellant/Claimant do not need to be addressed, since Appellant/Claimant prevailed on his motion for new trial.

ORIGINAL

Further, for this Court to continue to be the presiding judge, after receiving numerous pages of meritless and spurious allegations of unethical, incompetent, and impartial behavior from the Appellant/Claimant would put the Court in a precarious ethical posture. This Court, while categorically denying any unethical behavior in how this matter was heard and decided, simply cannot, in the future avoid an appearance of impropriety to this litigant on any rehearing in this matter. While the Court is mindful of the disdain of allowing disgruntled litigants to seek recusal for adverse rulings, the integrity of the Court simply must be upheld in this instance. The Court is also mindful of the additional cost and delay this decision means for both parties, however, the Court sees no other way to resolve this matter on this level to allow for a complete record for further appellate review if either party desires. As such, in the interest of justice, and to avoid a future appearance of impropriety, this Court must recuse itself on its own motion from anything further in this matter, and hereby does so.

FILED
SEP 2 2014 AM 11:50
CLERK OF CIRCUIT COURT
MIAMI-DADE COUNTY, FLORIDA

THEREFORE, IT IS ORDERED:

1. The Appellant/Claimant's motion for new trial or hearing is GRANTED as to all particulars set forth in his motion and that my Order of July 30, 2014 be and hereby is VACATED;
2. That Appellant/Claimant's motion for recusal is DENIED as it is baseless and meritless;
3. That the Court sua sponte RECUSES itself from any further action in this matter for the reasons above stated; and
4. That this matter be reassigned in the discretion of the Chief Administrative Judge of the Eleventh Judicial Circuit for a de novo

hearing on all matters instructed by the SC Court of Appeals in both pending Case Numbers 13-CP-32-1272 and 14-CP-32-399.

AND IT IS SO ORDERED.

Chester, SC

September 25, 2014

Brian M. Gibbons
Circuit Court Judge

ORIGINAL

FILED
2014 SEP 29 A 11:50
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3200399

PLAINTIFF(S)	DEFENDANT(S)	
Alexander Guice	US Foodservice Inc Gallagher Bassett Services Inc	Ace American Insurance Company

Submitted by: Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

10/2/2014

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on **2nd October 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **2nd October 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Alexander Guice P O Box 13281 Tampa, FL 33681

Erin Leigh Hantske PO Box 650007 Mt. Pleasant, SC 29465

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ATTACHMENT G

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON) Civil CASE NO: 2014-CP-32-00399

FILED
2014 AUG -6 P 1:00
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Alexander Guice,
Employee, Claimant,
Appellant,

Versus

US Foodservice, Inc., and Ace American Insurance Company, c/o Gallagher Bassett Services, Inc.,
Employer AND Carrier,
Respondents'.

MOTION FOR NEW TRIAL
(No Oral Arguments Requested)

COPY

YOU WILL PLEASE TAKE NOTICE that ALEXANDER GUICE (Hereafter "Claimant" or "Employee" or "Injured Worker" or "Appellant"), the Appellant in the above styled caption PROCLAIMS that the pleadings in this matter are being filed by Appellant in *propia persona*, wherein pleadings are to be considered without regard to technicalities. In *propria*, pleadings are not held to the same high standards of perfection and expertise as practicing lawyers. See Haines v. Kerner, 92 Sct 594, also See Power 914 F2d 1459 (11th Cir 1990), also See Hulsey v. Ownes, 63 F3d 354 (5th Cir 1995). *Pursuant to Rule 59(a) of the South Carolina Rules of Civil Procedure* (SCRCP), Appellant presents this "MOTION FOR NEW TRIAL" seeking the Court to amend the findings of fact and conclusions of law and enter a new judgment with respect to the Order issued in this matter on July 21st, 2014, filed with the Clerk on July 30th, 2014 with receipt of the written entry of judgment by Appellant on August 4th, 2014. In support of this motion, Appellant

would further state as follows;

BRIEF FACTUAL STATEMENT OF THE CASE

This case is an appeal from the Appellate Panel of the Workers' Compensation Commission (hereafter "Commission") with respect to the "Decision and Order" issued by the Commission on July 17th, 2013 in the matter of Alexander Guice v. US Foodservice, et al, Workers' Compensation Case Number 0506205 which constitutes a final order (Rule 201 South Carolina Appellate Court Rules (SCACR)). Appellant timely appealed the Commission's Order to the Court of Appeals; however, Erin L. Hantske, Esq. and McAngus Goudelock & Courie, LLC (hereafter "Attorney Hantske") the counsel of record to US Foodservice, Inc. (hereafter "Employer" or "Respondent") and Ace American Insurance Company, c/o Gallagher Bassett Services, Inc. (hereafter "Carrier" or "Respondent") argued to the Court of Appeals that this case should be appealed before the Court of Common Pleas, which the Court of Appeals accepted.

Pursuant to the remitter, Appellant timely appealed the Commission's aforementioned Order before this Court, which is not contested. As such, this Court serves in official appellate capacity to review the aforementioned Order dated July 17th, 2013 from the Commission. The timely appeal of the final Order of the Commission by Appellant is not contested.

Appellant argued seven (7) specific issues on appeal. First, Appellant challenged the "Findings of Fact" of the commission, arguing that the Commission erred by omitting relevant facts and factors contained in the record, as the findings of fact section of the Commission's Order began with the

Commission's approval of the "Settlement Agreement and Release" (hereafter "clincher") on January 5th, 2006. In particular, the Commission failed to include relevant and mandatory facts contained in the record, to include, but not limited to, the following; (a) the date Appellant was hired by employer; (b) the date Appellant was injured regarding the accepted compensable injury; (c) whether or not the parties are bound by the South Carolina Workers' Compensation Act (hereafter "Act"); (d) the former representation afforded to Appellant from on or around May 2005 to on or around December 2012 by Robert Glenn Bacon, Esquire and Harry Pavilack & Associates, P.A. and later The Bacon Law Firm, LLC (hereafter "Attorney Bacon"); (e) the amount of the mutually agreed average weekly wage; (f) the date Appellant reached Maximum Medical Improvement (MMI); (g) the discharge of Appellant's employment by employer on or around November 2nd, 2005; (h) the amount of consecutive days Appellant received temporary compensation payments; and (i) the manner in which the employer's representative terminated temporary total compensation payments (*See* Appellant's "Appeal Brief", p. 15-17).

Second, Appellant argued that the Commission's Order failed to address or rationalize any of the Appellant's arguments on appeal before the commission, to include the argument that Commissioner Susan S. Barden lacked jurisdictional authority when she issued the February 22nd, 2013 Order cancelling Appellant's hearing before the commission and dismissing any and all motions filed in the matter of W.C.C. # 0506205 (Appellant's Brief, p. 17-19).

Third, Appellant argued the same was afforded "negligent misrepresentation by Attorney Bacon, to include but not limited to the fact(s) that; (a) Attorney Bacon took no legal action on behalf of Appellant when the employer unlawfully discharged Appellant on or around November 2nd, 2005 on the grounds of "permanent lifting restrictions" and "no position available"; (b) Attorney Bacon took no legal action on behalf of Appellant when the employer's representative unlawfully reduced Appellant's temporary total compensation weekly payments on or around November 6th, 2005 from $1,161.00 to $592.56 per week subsequent the unlawful discharge of Appellant by employer; (c) Attorney Bacon took no legal action on behalf of Appellant when the employer's representative unlawfully withheld temporary total compensation payments from Appellant on or around November 2nd, 2005 to on or around December 22nd, 2005 subsequent Appellant entering into the clincher agreement with Respondents; and (d) Attorney Bacon continues to be in willful noncompliance with a duly served Subpoena commanding the same provide Appellant with the client copy of the workers' compensation commission case file (Appellant's Brief, p. 26-27).

Fourth, Appellant argued the Commission failed to correct the error(s) of law contained in the record with respect to the Respondents' unlawful discharge of Appellant's employment on November 2nd, 2005 and unlawful termination of Appellant's entitled temporary total compensation payments on or around December 4th, 2005, both actions in willful violation of S.C. Code Ann. § 42-1-610 & 620; S.C. Code Ann. § 42-9-260(F); and S.C. Code Reg. § 67-506(D) of the Act (Appellant's Brief, p. 23-25).

Finally, Appellant argued that the Commission misconstrued and misapplied a statute, in particular, S.C. Code Reg. § 67-801 and S.C. Code Reg. § 67-801(E) with respect to a clincher legally serving as a means for Respondents to terminate protected employment afforded to Appellant and also serve as a means for the employer's representative to terminate entitled temporary total compensation payments to Appellant, particularly after Appellant received compensation payments after and including the first 150 days.

TABLE OF AUTHORITIES

APPELLANT'S STATUTORY RIGHT TO APPEAL

Rule 201 SCACR states in relevant part, "(a) Judgments, Orders and Decisions Subject to Appeal. Appeal may be taken, as provided by law, from any final judgment, appealable order or decision... (b) Who May Appeal. Only a party aggrieved by an order, judgment, sentence or decision may appeal."). As previously stated, this action is an appeal from the Appellate Panel of the Commission, which constitutes a final judgment, appealable by law.

APPELLANT'S STATURTORY RIGHT TO REQUEST A NEW TRIAL

Rule 59(a) SCRCP states in relevant part, ("(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been

entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

In the instant case, the hearing was convened on June 16th, 2014; the Order of the Court was issued on July 21st, 2014, filed with the Clerk on July 30th, 2014; and received via regular mail by Appellant on August 4th, 2014, a copy of which is incorporated and enclosed herein as Exhibit "A". This motion has been duly submitted to the Court and the presiding judicial officer in question, within the required ten (10) days from receipt of service via regular by Appellant, and should be duly considered as a matter of law.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the workers' compensation commission. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Bass v. Isochem, 365 S.C. 454, 617 S.E.2d 369 (Ct. App. 2005); Hargrove v. Titan Textile Co., 360 S.C. 276, 599 S.E.2d 604 (Ct. App. 2004). A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions, or decisions of that agency are "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." Bursey v. South Carolina Dep't of Health & Envtl. Control, 360 S.C. 135, 141, 600 S.E.2d 80, 84 (Ct. App. 2004); S.C. Code Ann. § 1-23-380(5)(e) (2005). Under the scope of review established in the APA, this Court may not substitute its judgment for that of the appellate panel as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Liberty Mut. Ins. Co. v. South Carolina

Second Injury Fund, 363 S.C. 612, 611 S.E.2d 297 (Ct. App. 2005); Frame v. Resort Servs., Inc., 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004); Stephen v. Avins Constr. Co., 324 S.C. 334, 478 S.E.2d 74 (Ct. App. 1996); S.C. Code Ann. § 1-23-380(5)(d) (2005). Workers Compensation Commission's legal conclusions are reviewed *de novo*. *Grant v. Grant Textiles*, 372 S.C. 196, 200-201, 641 S.E.2d 869, 871 (2007). The Commission's factual findings are reviewed for "substantial evidence." Review is limited to whether reasonable minds could reach the conclusion that the agency reached: "Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached." *Holmes v. Nat'l Serv. Ind., Inc.*, 395 S.C. 305, 308-309, 717 S.E.2d 751, 752 (2011). In the instant appeal, Appellant is arguing both questions of law and issues of fact with respect to the aforementioned Final Order of the Commission.

ABUSE OF DISCRETION STANDARD

"An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.", citing State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011). Appellant asserts the abuse of discretion standard must be adopted and applied with respect to conclusions of the Court serving in the appellate review capacity. In the instant appeal, Appellant shall establish that the Court "abused its discretion" based on the fact the conclusions of the Court; (1) lacked evidentiary support; and (2) were controlled by an error of law.

FRAUD UPON THE COURT STANDARD

Fraud upon the Court is defined as either a fraud perpetrated by an officer of the court or "that species of fraud which does, or attempts to, subvert the integrity of the court itself." See Chewning v. Ford Motor Company, 354 S.C. 72, 579 S.E.2d 605 (2003). In the instant appeal, Appellant was, and continues to be subjected to "fraud upon the court" by Attorney Bacon, Attorney Hantske, and the Commission.

EXTRINSIC FRAUD STANDARD

Extrinsic Fraud is defined by the Court as "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." See 358 S.C. at 19, 594 S.E.2d at 483 (citing *Chewning*, 354 S.C. at 81, 579 S.E.2d 610). In the instant appeal, Appellant previously established the same was and continues to be subjected to "extrinsic fraud" by Attorney Bacon. Additionally, Appellant will further establish the same has been subjected to "extrinsic fraud" by the Court, with respect to the intentional failure of the Court to provide a rationale in support of; (1) overruling the arguments submitted by Appellant on appeal; (2) sustaining the Respondents motion to dismiss; (3) overruling Appellant's arguments in opposition to Respondents motion to dismiss; and (4) failing to comply with the Order of the Court of Appeals dated April 24th, 2014.

CODES OF LAW

S.C. Constitution, Article 1, Section 22- No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

S.C. Code Ann. § 1-23-380(5) - Judicial review upon exhaustion of administrative remedies.- A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy...(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 42-1-610 - Agreement or regulation shall not limit liability of employer.- No contract or agreement, written or implied, and no rule, regulation or other device shall in any manner operate to relieve any employer, in whole or in part, of any obligation created by this Title except as otherwise expressly provided in this Title.

S.C. Code Ann. § 42-1-620 - Agreements of employee to waive rights shall be invalid. - No agreement by an employee to waive his rights to compensation under this Title shall be valid.

S.C. Code Ann. § 42-9-260(F)&(G)- Notice to Commission when payments have begun; suspension or termination of payments. - (F) After the one-hundred-fifty-day period has expired, the commission shall provide by regulation the method and procedure by which benefits may be suspended or terminated for any cause, but the regulation must provide for an evidentiary hearing and commission approval prior to termination or suspension unless such prior hearing is expressly waived in writing by the recipient or the circumstances identified in Section 42-9-260(B)(1) or (B)(2) are present. Further, the commission may not entertain any application to terminate or suspend benefits unless and until the employer or carrier is current with all payments due.

(G) Failure to comply with this section shall result in a twenty-five percent penalty imposed upon the carrier or employer computed on the amount of benefits withheld in violation of this section, and the amount of the penalty must be paid to the employee in addition to the amount of benefits withheld. However, the penalty does not apply if the employer or carrier has terminated or suspended benefits when the employee has returned to any employment at the same or similar wage.

S.C. Code Ann. § 42-9-440- Suspected false statements or misrepresentations to be reported to Insurance Fraud Division of Office of Attorney General. - The commission shall report all cases of suspected false statement or misrepresentation, as defined in Section 38-55-530(D), to the Insurance Fraud Division of the Office of the Attorney General for investigation and prosecution, if warranted, pursuant to the Omnibus Insurance Fraud and Reporting Immunity Act.

S.C. Code Ann. § 38-55-530 – Definitions - As used in this article: (A) "Authorized agency" means any duly constituted criminal investigative department or agency of the United States or of this State; the Department of Insurance; the Department of Revenue; the Department of Public Safety; the Department of Motor Vehicles; the Workers' Compensation Commission; the State Accident Fund; the Second Injury Fund; the Department of Employment and Workforce; the Department of Consumer Affairs; the Human Affairs Commission; the Department of Health and Environmental Control; the Department of Social Services; the Department of Health and Human Services; the Department of Labor, Licensing and Regulation; all other state boards, commissions, and agencies; the Office of the Attorney General of South Carolina; or the prosecuting attorney of any judicial circuit, county, municipality, or political subdivision of this State or of the United States, and their respective employees or personnel acting in their official capacity.

(B) "Insurer" shall have the meaning set forth in Section 38-1-20(25) and includes any authorized insurer, self-insurer, reinsurer, broker, producer, or any agent thereof.

(C) "Person" means any natural person, company, corporation, unincorporated association, partnership, professional corporation, or other legal entity and includes any applicant, policyholder, claimant, medical providers, vocational rehabilitation provider, attorney, agent, insurer, fund, or advisory organization.

(D) "False statement or misrepresentation" means a statement or representation made by a person that is false, material, made with the person's knowledge of the

falsity of the statement and made with the intent of obtaining or causing another to obtain or attempting to obtain or causing another to obtain an undeserved economic advantage or benefit or made with the intent to deny or cause another to deny any benefit or payment in connection with an insurance transaction, and such shall constitute fraud. "False statement or misrepresentation" specifically includes, but is not limited to, an intentional:

(1) false report of business activities;

(2) miscount or misclassification by an employer of its employees;

(3) failure to timely reduce reserves;

(4) failure to account for Second Injury Fund reimbursements or subrogation reimbursements; or

(5) failure to provide verifiable information to public or private rating bureaus and the Department of Insurance.

An undeserved economic benefit or advantage includes, but is not limited to, a favorable insurance premium, payment schedule, insurance award, or insurance settlement.

(E) "Immune" means that neither a civil action nor a criminal prosecution may arise from any action taken pursuant to this article unless actual malice on the part of the reporting person or gross negligence or reckless disregard for the rights of the reported person is present.

S.C. Code Reg. § 67-202A(5)&(10) - Words and Phrases, Defined - (5) Compliance Division : A division of the Commission responsible for investigation and, if necessary, requests prosecution of an employer who refuses or neglects to comply with the insurance provisions of this Chapter and the Act. The division is authorized to request and, if necessary, assess a fine for failure to file reports required under this Chapter and the Act.

(10) Judicial Department: A department of the Commission which assigns the informal conference, contested case, and Commission review docket and issues the hearing notice. The department reviews the Commission's files and assures compliance with the provisions of this Chapter and the Act by requesting and, if necessary, assessing a fine for failure to file reports required by this Chapter and the Act.

S.C. Code Reg. § 67-506D&E- Terminating Temporary Compensation after the First One Hundred Fifty Days after the Employer's Notice of the Injury. - D. After

the one hundred fifty day period, when the claimant is receiving temporary compensation and the authorized health care provider assigns an impairment rating and reports the claimant is unable to return to work at the same or other suitable job, the employer's representative must continue payment of temporary compensation until the Commission finds the employer's representative may terminate temporary compensation.

E. To request a hearing for permission to terminate temporary compensation, the employer's representative shall file a Form 21 with the Judicial Department.

(1) The employer's representative shall serve a copy of the Form 21 on the claimant according to R.67-211.

(2) The employer's representative shall certify temporary compensation is current or no hearing will be set.

S.C. Code Reg. § 67-801E- Settlement of the Claim, General - E. An Agreement and Final Release (clincher) relieves the employer and its representative from any further responsibility for payment of compensation or medical expenses, unless the Agreement and Final Release specifically provides otherwise. When the claimant signs the Agreement and Final Release and it is approved, the claimant does not have the right to ask for additional payments in the future even if the claimant's medical condition worsens, unless otherwise specifically provided in the document.

S.C. Code Reg. § 67-803C - Settlement by Agreement and Final Release - C. The Commission shall not approve an Agreement and Final Release that is not fairly made and in accordance with the Act. An approved Agreement and Final Release is binding. The employer's representative shall pay compensation according to its terms.

RULES OF LAW

Rule 501, Code of Judicial Conduct (CJC), Rule 501, SCACR - APPLICATION OF THE CODE OF JUDICIAL CONDUCT - A. Anyone, whether or not a lawyer, who is an officer of the unified judicial system and who performs judicial functions, including an officer such as a magistrate, master-in-equity or special referee, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

Rule 1A, CJC, Rule 501, SCACR - A Judge Shall Uphold the Integrity and Independence of the Judiciary - A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally

observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Rule 2A, CJC, Rule 501, SCACR - A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES - A. A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Rule 3B(2), CJC, Rule 501, SCACR - A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY - Adjudicative Responsibilities. - (2) A judge shall be faithful to the law* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

Rule 3D(2), CJC, Rule 501, SCACR - A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY – Disciplinary Duties - (2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct contained in Rule 407, SCACR, should take appropriate action. A judge having knowledge* that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.*

Rule 1.1, Rules of Professional Conduct (RPC), Rule 407, SCACR – COMPETENCE A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.2(d), RPC, Rule 407, SCACR - SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER- (d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Rule 1.3, RPC, Rule 407, SCACR – DILIGENCE - A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4(a)&(b), RPC, Rule 407, SCACR – COMMUNICATION – (a) A lawyer shall (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(g), is required by these Rules;
(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about

the status of the matter;(4) promptly comply with reasonable requests for information; and
(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law. (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 3.4(a)&(c), RPC, Rule 407, SCACR - FAIRNESS TO OPPOSING PARTY AND COUNSEL- A lawyer shall not: (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act; (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

Rule 4.1(a)&(b), RPC, Rule 407, SCACR - TRUTHFULNESS IN STATEMENTS TO OTHERS- In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Rule 8.4(a)-(e), RPC, Rule 407, SCACR – MISCONDUCT- It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (c) commit a criminal act involving moral turpitude; (d) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (e) engage in conduct that is prejudicial to the administration of justice;

Rule 12(b)(1)&(6), SCRCP - DEFENSES AND OBJECTIONS - WHEN AND HOW PRESENTED - BY PLEADING OR MOTION - MOTION FOR JUDGMENT ON PLEADINGS - How Presented - Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (6) failure to state facts sufficient to constitute a cause of action.

ARGUMENT

I

The Court Order Violated the Order of the Court of Appeals Dated April 24th, 2014

On April 24th, 2014 the Court of Appeals issued an Order in the matter of Alexander Guice v. US Foodservice, Inc., Appellate Case No.: 2014-002491 (hereafter "related matter"), a copy of which is incorporated and enclosed herein as Exhibit "B". In particular, the aforementioned Appellate Court Order states, ("This case is remanded to the circuit court which shall consider the merits of this appeal in conjunction with Appellant's appeal from the commission's final order.") (Exhibit "B"). The June 16th, 2014 hearing was convened without the Court considering the related matter. Furthermore, Appellant duly informed the Court of the Order of the Court of Appeals on June 27th, 2014, more than 21 days prior to the Court ratifying the Order in question. In fact, in correspondence received by the parties from the Honorable Brian M. Gibbons ("Judge Gibbons") on Saturday, June 28th, 2014, Judge Gibbons stated, ("Apparently everyone has seen the proposed order except for me. All I received was Mr. Guice's stuff. please send it again to me Ms. Hantske. Thank you") (Exhibit "C").

However, for reasons unknown, the Court ratified the proposed order prepared by Attorney Hantske on July 21st, 2014 in willful and deliberate violation of the Order of the Court of Appeals. Judge Gibbons did not submit and correspondence or instructions to the parties with respect to the Appellate Court Order prior to ratifying the Order in question. Appellant asserts the failure of Judge Gibbons to immediately set aside the June 16th, 2014 hearing and reschedule a hearing in the instant appeal to comply with the Order of the Court

of Appeals dated April 14th, 2014, with respect to considering the related matter "in conjunction" with the appeal of the commission's final order; (1) prejudiced the substantial rights afforded to the Appellant, in violation of *Rule 2A, CJC, Rule 501, SCACR*; (2) constituted "fraud upon the court"; and (3) reflects a lack of integrity and the ability to adjudicate the instant case fairly and impartially.

Based on the failure of the Court to comply with the Order of the Court of Appeals dated April 24th, 2014, Appellant moves the Court to issue an Order setting aside the July 30th, 2014 Order in this matter and grant a rehearing to correct a miscarriage of justice.

II

Fraud upon the Court committed by Judge Gibbons In the Instant Appeal

A. Failure of Judge Gibbons to adjudicate the unlawful discharge

Notwithstanding the deliberate failure of Judge Gibbons to comply with the aforementioned Order of the Court of Appeals, a review of the Order in question, and in particular, the *defacto* "Statement of the Case" proposed by Attorney Hantske and accepted by Judge Gibbons, His Honor continues to intentionally further perpetrate the unlawful discharge by the employer which occurred on November 2nd, 2005 – more than two (2) months prior to the commission approving the clincher – by intentionally disregarding Appellant's argument (Appeal Brief, p. 26), to include disregarding the submission of a true copy of the discharge notice, which is uncontested by the Respondents, and failing to perform the required "fair" and "impartial" *de novo* review of the record.

Instead, Judge Gibbons concealed the unlawful discharge by the Respondents by accepting the fraudulent statement of the case as presented by Attorney Hantske, which intentionally omits all actions which occurred in the case between October 27th, 2005, when the treating physician opined MMI, to January 5th, 2006, when the commission approved the clincher.

B. Failure of Judge Gibbons to adjudicate the unlawful termination of temporary total compensation payments

In the Appeal Brief, Appellant duly asserted that; (1) Appellant received temporary total compensation payments for approximately 213 days, including the first 150 days – without objection from Attorney Hantske; (2) Respondents unlawfully reduced compensation payments from $1,161.00 to $592.00 (Appeal Brief, p. 23); (3) Respondents terminated entitled compensation payments in violation of S.C. Code Ann. § 42-9-260 (F) and S.C. Code Reg. § 67-506(D); and (4) provided irrefutable evidence, namely, the Form 18 filed with the Commission – by the Respondents – in support of Appellant's argument that entitled compensation payments had been unlawfully terminated.

However, Judge Gibbons made no reference to Appellant's argument, instead stating that His Honor reviewed all submissions of the parties, and again concealing the unlawful termination of temporary total compensation payments by failing to state how many days Appellant received compensation payments and omitting all relevant factors related to temporary total compensation in the same manner Judge Gibbons concealed the unlawful discharge.

C. Failure of Judge Gibbons to Perform his Disciplinary Responsibilities

As contained in the Appeal Brief, Appellant alleged and provided evidence

to adequately prove negligent misrepresentation afforded to Appellant by Attorney Bacon (Appeal Brief, p.); however, a review of the Court Order in questions confirms Judge Gibbons made no reference to the extrinsic fraud Appellant continues to be subjected to by Attorney Bacon. The actions of Attorney Bacon with respect to: (1) concealing from the Appellant that the employer unlawfully terminated the same; (2) concealing from the Appellant that the employer's representative unlawfully reduced, suspended and terminated entitled temporary total compensation payments; (3) taking no action to protect Appellant's entitled and legal rights to both employment and compensation payments; and (4) continuing to willfully violated a duly served subpoena constitutes willful violations of (a) *Rule 1.1, RPC, Rule 407, SCACR* ; (b) *Rule 1.2(d), RPC, Rule 407, SCACR*; (c) Rule 1.3, RPC, Rule 407, SCACR; (d) *Rule 4.1(a)&(b), RPC, Rule 407, SCACR*; (e) *Rule 8.4(a)-(e), RPC, Rule 407, SCACR;* S.C. Code Ann. § 38-55-530; (f) Extrinsic Fraud; and (g) Fraud upon the Court.

Furthermore, Attorney Hantske continues to willfully submit false statements on behalf of Respondents with respect to using the clearly erroneous argument that Respondents lawfully terminated entitled temporary total compensation payments by of the clincher, when Attorney Hantske is both informed and aware that pursuant to the first 213 days Appellant received compensation payments that permission to suspend or terminate compensation required the filing of the required Form 21, certification that payments were current with the commission, the scheduling and convening of a hearing, and an Order from the commission granting permission to terminate compensation.

Appellant asserts Attorney Hantske's conduct in the instant case as counsel for the Respondents constitutes; (1) a violation of *Rule 1.2(d), RPC, Rule 407, SCACR; (*2) a violation of *Rule 3.4(a)&(c), RPC, Rule 407, SCACR* ; (3) a violation of *Rule 4.1(a)&(b), RPC, Rule 407, SCACR*; (4) *Rule 8.4(a)-(e), RPC, Rule 407, SCACR;* (5) a violation of S.C. Code Ann. § 42-9-260(F); (6) a violation of S.C. Code Reg. § 67-506(D); Insurance Fraud; (7) Extrinsic Fraud; and (8) Fraud upon the Court.

However, Judge Gibbons has failed to report any of the egregious conduct of either Attorney Hantske or Attorney Bacon to the appropriate authority and instead issued a clearly erroneous and fraudulent Order with intent to conceal, shield, and protect the unlawful and criminal acts of the same. The failure of Judge Gibbons to perform his required disciplinary duties not only stands to further prejudice Appellant, but constitutes a violation of Rule *3D(2), CJC, Rule 501, SCACR.*

The above referenced allegations with respect to the performance, or gross lack thereof, by Judge Gibbons, constitutes fraud upon the court, and as such, Appellant moves the Court for an Order granting this motion for rehearing.

III

Unlawful Granting of Respondents Motion to Dismiss By Judge Gibbons

Respondents filed a motion to dismiss seeking to dismiss Appellant's appeal pursuant to Rule 12(b)(1) (lack of jurisdiction over the subject matter and Rue 12(b)(6) (failure to state facts sufficient to constitute a cause of action). As Appellant duly asserted in Appellant's "Answer to Motion to Dismiss", it was

Attorney Hantske, on behalf of Respondents, who argued to the Court of Appeals that this appeal should be filed with the Court of Common Pleas (*See* Answer to Motion to Dismiss, p. 4-6). Additionally, this action is an appeal from a final order from the Commission, which certainly is appealable per Rule 201 SCACR. The assertion by Attorney Hantske that the Court lacked jurisdiction was legally insufficient.

Additionally, a review of the Appeal Brief confirms Appellant certainly submitted arguments and facts sufficient to constitute a cause of action. However, Judge Gibbons granted the motion to dismiss. A review of the Order confirms that in granting the motion to dismiss, Judge Gibbons provides no rationale or commentary in support granting the motion to dismiss. Judge Gibbons also failed to provide a rationale in support of overruling the arguments submitted by Appellant.

Per the scope of review standard as it directly relates to what actions a reviewing authority can take with respect to an appeal from the workers compensation commission, a reviewing court may affirm, reverse or modify a decision. Dismissal of the appeal is not an option. Bursey v. South Carolina Dep't of Health & Envtl. Control, 360 S.C. 135, 141, 600 S.E.2d 80, 84 (Ct. App. 2004). The dismissal of the appeal by Judge Gibbons constitutes "abuse of discretion" based on the fact the act of Judge Gibbons dismissing the instant appeal is controlled by an error of law. The act of erroneously dismissing the appeal prejudiced the substantial rights afforded to Appellant, and also constitutes "fraud upon the court"; and violation of *Rule 3B(2), CJC, Rule 501,*

SCACR by Judge Gibbons. Based on the clear arbitrary and capricious conduct by Judge Gibbons, the Order dated July 30th, 2014 in the instant appeal must be set aside and a new hearing granted.

IV

Violation of Appellant's Constitutional Right To be heard

As contained in the Order in question, Judge Gibbons alleges to have reviewed and considered the submissions of all parties; however, Judge Gibbons granted the Respondents motion to dismiss and fully affirmed final order of the commission without stating or providing a rationale in support overruling Appellants arguments on appeal clearly contained in the complaint or stating and providing a rationale in support of overruling the arguments contained in Appellant's Answer to Motion to Dismiss (See Appeal Brief and Answer to Motion to Dismiss, previously submitted).

Appellant asserts Judge Gibbons has intentionally violated the Appellant's protected constitutional right to be heard, a violation of S.C. Const. art. I, 22. Based on the deliberate and abuse of discretion by Judge Gibbons, with respect to failing to clearly state and provide rationales in support of overruling Appellant's arguments as contained in the Appeal Brief (Complaint) and the Answer to Motion to Dismiss, the Order dated July 30th, 2014 must be set aside and a new hearing granted.

V

Interpretation of S.C. Code Ann. § 42-1-610 & 620; S.C. Code Ann. § 42-9-260(F) and S.C. Code Reg. § 67- 506(D) in Contrast to

S.C. Code Reg. § 67-801

The cardinal rule of statutory interpretation is to determine the intent of the legislature. Miller v. Aiken, 364 S.C. 303, 307, 613 S.E.2d. 364, 366 (2005). The intent of the legislature should be ascertained primarily from the plain language of the statute. State v. Landis, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004). "The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose." Mun. Ass'n of South Carolina v. AT&T Communications of S. States, Inc., 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004). A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. Liberty Mut. Ins. Co. v. South Carolina Second Injury Fund, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005). The court will reject a statutory interpretation that would "lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention." Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000).

A *de novo* review of the record with respect to the instant appeal confirms that on October 27th, 2005 the treating physician, Dr. Alan Tamadon, opined MMI; assigned a 5% impairment rating to the whole person of the Appellant; assigned "permanent lifting restrictions"; and reported to the Respondents that Appellant could no longer perform the duties of a delivery driver (Exhibit "D" resubmitted). On October 27th, 2005 when Dr. Tamadon opined MMI and the like, Appellant had received temporary compensation payments for approximately 175 days,

including the first 150 days (Exhibit "E" resubmitted). The Respondents did not challenge the medical findings of the treating physician.

On November 2nd, 2005, without offering or affording suitable employment to accommodate Appellant's incapacity, the employer terminated Appellant on the grounds of "permanent lifting restrictions" and "no position available". Additionally, in section 2 of the discharge notice, the employer states "Termination of Employment – Released from Doctor with permanent lifting restrictions not comparable with job duties" (Exhibit "F" resubmitted). S.C. Code 42-9-260(F) and S.C. Code Reg. § 67-506(D) as stated above provides clear and expressed statutory procedural requirements, which must be complied with, as it relates to the duties of the employer's representative paying temporary total compensation payments, and the requirements which must be met to suspend or terminate compensation payments to an injured worker after the injured worker has received compensation payments for more than 150 days.

Appellant asserts the intent of the lawmakers in establishing 42-9-260(F) and 67-506(D) was to protect the injured worker's right to continued compensation payments and benefits and to ensure a fair and impartial hearing be convened by the commission, and only after a review of the record, and permission by the commission, by order (not agreement), would the employer's representative be permitted to suspend or terminate entitled compensation.

Additionally, a review of S.C. Code Ann. § 42-1-610 & 620 must be interpreted based on its clear language, which would certainly lead a reasonable mind to conclude that the intent of the lawmakers was to protect an injured

worker from being forced into entering into an unfair and illegal agreement to waive, resolve, or settle the injured workers' entitled right to continued employment and entitled compensation benefits by way of clincher. Furthermore, 42-1-610 and 620 have been in place since 1962 – more than FIFTY YEARS, unchanged, to again protect the rights of the injured worker.

The Respondents would have the Court believe, in the instant case, asserting S.C. Reg. § 67-801, that the sum of $20,000.00, of which Appellant received approximately $13,333.33, as 33% was paid to Attorney Bacon in attorney fees, by way of the clincher, would LEGALLY serve the TRILATTERAL purposes as; (1) Final Severance Pay for Appellant's entitled employment with the employer, when in 2004 Appellant earned an annual salary of around $60,372.00 (based on mutually agreed average weekly wage of $1,161.00 times 52 weeks in a year); (2) Final payment of entitled temporary total compensation payments (which as stated, is $1,161.00 per week); and (3) serve as a schedule award for the 5% impairment rating to the whole person of the Appellant. Appellant asserts the Court must reject the Respondents rationale and application with respect to the statutory interpretation of R. 67-801 by the Commission in the instant appeal as the interpretation "lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention." Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000).

Finally, the court must consider the intentional "checks and balances" mechanism placed within Act, by lawmakers, with respect to S.C. Code Reg. § 67-

202(5)&(10). In particular, the Claims and Judicial Departments of the Commission, respectively, has a regulatory function to inspect the commission's files and ensure compliance with the Act, to include the issuance of notices, fines, and if necessary, reporting unlawful actions by the employer, carrier, employer's representative, or claimant, to the Insurance Fraud Division of the Office of the Attorney General for prosecution.

Whether or not Attorney Bacon duly apprised the Appellant of the Appellant's legal right to continued employment and entitled temporary total compensation payments, the Commission, through both the Claims and Judicial Departments, had a regulatory duty and responsibility, upon reviewing the Form 18 filed by the RESPONDENTS, which confirmed the Appellant had received temporary compensation payments AFTER and INCLUDING the first 150 days, to issue the appropriate notices and fines, to the Respondents, and in particular, the employer's representative, with respect to enforcing compliance with 42-9-260(F)&(G) and R. 67-506(D)&(E) of the Act, but failed to do so. The breakdown of control within the Commission lies at the heart of the instant appeal.

It would be 'absurd' to assume that the Full Commission would act in a fair and impartial manner with respect to the instant appeal, given the Commission's own lack of control and egregious conduct in *de novo* review of the record. Appellant reminds the court that no hearing, conference, or informal conference was ever convened by the commission prior to approving the clincher on January 5th, 2006. The parties acknowledged that the commission relied upon the "representation of counsel for the Claimant", not the Claimant himself, to ensure

the Claimant was fully apprised of his rights under the Act (*See* Exhibit "G", p. 4 resubmitted).

It is more likely that the Commission would attempt to further perpetrate the fraud committed in the instant case, by attempting to conceal the breakdown of control within the Commission with respect to ensuring that the Respondents were in compliance with the law, by intentionally misapplying a regulation and fraudulently ignoring relevant facts and evidence, so the Respondents can prevail, and the commission and its former and current officers can be shielded from exposure to potential liability and/or prosecution.

As such, Appellant would move the Court to immediately set aside the July 30th, 2014 Order and Order the immediate setting aside of all decisions rendered in the instant case, and immediately enforcing compliance of S.C. Code 42-9-260(F)&(G) and S.C. Code Reg. § 67-506(D) by ordering Respondents to reinstate entitled employment and release illegally withheld temporary total compensation payments, to include the release of the twenty five percent penalty as a matter of law.

VI

DEMAND FOR INVESTIGATION

As of August 4th, 2014, the Appellant has been unlawfully deprived of entitled employment and entitled temporary total compensation payments for approximately 450.7 weeks, from December 4th, 2005 to August 4th, 2014. To date, Appellant has been unlawfully deprived of approximately $523,262.70 (450.7 weeks x $1,161.00 average weekly wage) in entitled worker's compensation

insurance benefits, which includes the 33.3% required payment of Appellant's average weekly wage by the employer. Further, the accessed penalty of twenty five percent (25%), per S.C. Code 42-9-260(G), which amounts to $130,815.68, brings the total amount owed to Appellant, to date, to approximately $654,078.38.

Given the large amount of benefit payments owed to Appellant in insurance compensation benefits and interests, by the Respondents, Appellant asserts the Court must consider the possibility that Judge Gibbon's intentional acts of abuse of discretionary authority, fraud upon the court, and failure to perform his required disciplinary duties, may be the result of subornation. Additionally, the Court must also consider that the extrinsic fraud, fraud upon the court, and intentional misrepresentation afforded to Appellant by Attorney Bacon may also be the result of subornation. Further, the Court must consider the failure of the Commission to perform the required regulatory functions as well as the clearly erroneous final order issued by the commission to be possibly due to subornation.

The Appellant is not an attorney; however, a reasonable person would certainly agree to pay small payments, for example, of $25,000.00, $10,000.00, $50,000.00, or provide special favors to individuals in positions of authority, in exchange for the issuance of decisions which would serve to "legally" prevent the payment of hundreds of thousands of dollars in withheld and entitled benefits to a litigant. Appellant respectfully demands that the Court refer this matter to the Insurance Fraud Division of the Office of the Attorney General, pursuant to S.C. Code Ann. § 42-9-440 so that a proper review and investigation into the

finances of; (1) Judge Gibbons; (2) Attorney Bacon; and (3) previous and current officers within the Commission can be investigated, to ensure the clear abusive conduct in the instant appeal was not effectuated by way of subornation, as well as taking the potential prosecutorial actions against the named individuals regarding the instant appeal, and Attorney Hantske, and the clear insurance fraud, which continues to be committed in this matter.

CONCLUSION

Based on the clear abuse of discretion, fraud upon the court, and the clear departure from the essential requirements of law by Judge Gibbons, in the interest of justice, Judge Gibbons should immediately recuse himself. If the termination of the Appellant's employment and entitled temporary total compensation payments were legally effectuated by way of the clincher and R. 67-801, the Court would not have intentionally omitted the factual events which occurred in instant case between October 27th, 2005 and January 5th, 2006 in the July 30th, 2014 Order, with respect to the discharge of Appellant's employment on November 2nd, 2005 and the unlawful termination of entitled temporary total compensation payments by the employer's representative on December 4th, 2005.

It is "absurd" for the Court to accept the Commission and Respondents application of R. 67-801 and the $20,000.00 clincher to serve as final payment of Appellant's entitled right to employment, a schedule award payment for the 5% impairment rating, and final payment for entitled temporary total compensation payments. The July 30th, 2014 Order is in direct violation of the April 24th, 2014 Order from the Court of Appeals. Attorney Hantske and the Respondents

continue to commit Insurance Fraud.

Based on the foregoing, Appellant moves the Court to grant this motion by immediately setting aside the July 30th, 2014 Order and granting a new hearing in the instant case, or in the alternative, immediately issuing on appropriate order setting aside all decisions in the instant case, to include ordering the Respondents to comply with R. 67-506(D) and reinstate Appellant's employment and release the unlawfully withheld temporary total compensation payments, as well as 25% interest penalty accessed, and referring this matter to the Insurance Fraud Division of the Office of the Attorney General for investigation.

I, Alexander Guice, do swear, under penalty of perjury, that the information contained herein is true and correct to the best of my knowledge and ability.

Respectfully submitted,



Alexander Guice
Post Office Box 13281
Tampa, FL 33681
(813) 562-0547
alguice@hotmail.com
Appellant, Pro Se

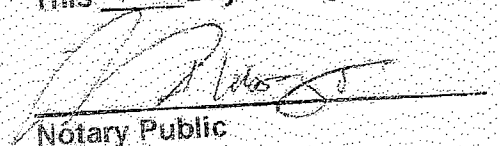


MIGUEL VELASQUEZ
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE141636
Expires 10/26/2015

August 4, 2014

Sworn to and Subscribed before me

This 4th Day of August, 2014



Notary Public

My commission expires 10/26/2015

Comm# EE141636

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON) Civil Action No. 2014-CP-32-00399
)

FILED
2014 AUG -5 P 1:00
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Alexander Guice,
Employee, Claimant,
Appellant,

Versus

US Foodservice, Inc., and Ace American Insurance Company, c/o Gallagher Bassett Services, Inc.,
Employer AND Carrier,
Respondents.

Certificate of Service

COPY

I HEREBY CERTIFY that I provided a true copy of a Civil Form Coversheet, a Motion for New Trial and supporting documents, by depositing a copy of the same in US Postal Service, via certified mail on August 4th, 2014 with sufficient first class and certified postage affixed on the party(s) listed below.

Alexander Guice
Post Office Box 13281
Tampa, Florida 33681
Phone: (813) 562-0547
Appellant, Pro Se

Signed this 4th Day of August, 2014

COPIES SENT TO

Erin L. Hantske, Esquire
Post Office Box 650007
Mt. Pleasant, SC 29465
Certified Receipt No.: 70100290000018085249

Clerk of Court
205 East Main Street
Lexington, SC 29072

The Honorable Brian M. Gibbons
140 Main Street
Post Office Drawer 580
Chester, South Carolina 29706
Certified No.: 70100290000018085236

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) 11th JUDICIAL CIRCUIT

FILED
2014 AUG -8 P 1:00
BETH A. GARRIGE
CLERK OF COURT
LEXINGTON S.C.

Alexander Guice)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
US Foodservice, Inc., and Ace American Insurance Company, c/o Gallagher Bassett Services, Inc)
Defendant.) Docket No. 2014-CP-32-00399

Plaintiff	*Defendant's Attorney:*
Alexander Guice, Bar No. Pro Se	Erin L. Hantske, Bar No. 76313
Address:	Address:
Post Office Box 13281	Post Office Box 650007
Tampa, Florida 33681	Mt. Pleasant, South Carolina 29465
Phone: (813) 562-0547 Fax ____	Phone: (843) 576-2946 Fax (843) 534-0605
E-mail: alguice@hotmail.com Other: ____	E-mail: erin.hantske@mgclaw.com Other: ____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: ____
Estimated Time Needed: ____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

[signature] 08/4/2014
Signature of ~~Attorney~~ for ☒ Plaintiff/☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ Prose 25 –
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court: or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: ____
- ☐ Other: ____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: ____

JUDGE CODE ____ Date: ____
Judge Signature: ____

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

Alexander Guice

P.O. Box 13281
Tampa, FL 33681
Phone: (813) 562-0547
Email: alguice@hotmail.com

FILED
2014 AUG -6 P 1:00
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON

August 4, 2014

The Honorable Beth A. Carrigg
Clerk of Court
11th Judicial Circuit
205 East Main Street
Lexington, South Carolina 29072

Re: Alexander Guice v. U.S. Food Service, Inc. and ACE American Insurance Company c/o Gallagher Bassett Services, Inc.
Appellate Case No.: 2014-CP-32-00399

Dear Ms. Carrigg:

Enclosed please find a $25.00 Money Order; an original and copy of a Motion and Order Information Form and Coversheet; a Motion for New Trial with supporting documents, and a certificate of service in regard to the above referenced matter. Please forward to the appropriate individual for filing and return the date-stamped copies to the undersigned in the prepaid enclosed self-addressed envelope.

By copy of this letter, I have provided Erin L. Hantske, Esq., the attorney of record for the Respondents', a copy of the same, via certified mail with enclosures. By copy of this letter and pursuant to Rule 59(g) SCRCP, I have provided The Honorable Brian M. Gibbons, a copy of the same via certified mail with enclosures.

For case study purposes only, I have provided the Injured Workers' Advocates a copy of the same, via regular mail with enclosures.

Should you have any questions or concerns, please do not hesitate to contact me. Thank you for your assistance in this matter.

Very truly yours,

Alexander Guice
Appellant, Pro Se

Enclosures: As stated

cc: Erin L. Hantske, Esq. (via cert. mail w/encl.)
The Honorable Brian M. Gibbons (via cert. mail w/encl.)
Clara Thomas Smith (via reg. mail w/encl.)

ATTACHMENT H

FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	Civil CASE NO: 2014-CP-32-00399
	)	
Alexander Guice, Employee, Claimant, Appellant,	)	COPY
Versus	)	ANSWER TO REPLY TO MOTION FOR NEW TRIAL
US Foodservice, Inc., and Ace American Insurance Company, c/o Gallagher Bassett Services, Inc., Employer AND Carrier, Respondents'.	)	

ALEXANDER GUICE, the pro se Appellant, Claimant, Employee and injured worker, proclaims that pleadings in this matter are being filed by Appellant in *propria persona*, wherein the pleadings are to be considered without regard to technicalities. Appellant was served with the 'Reply to Motion for New Trial' via electronic transmission from Erin L. Hantske, Esquire and McAngus Goudelock & Courie, LLC (hereafter "Attorney Hantske"), the counsel of record for US Foodservice, Inc. (hereafter "Employer" or "Respondents") and Ace American Insurance Company, c/o Gallagher Bassett Services, Inc. (hereafter "Carrier" or "Respondents") in the above style caption on August 19, 2014. Appellant presents this Answer to the Reply to Appellant's Motion for New Trial and would further state as follows;

STATEMENT OF THE CASE

A review of the "Reply to Appellant's Motion for New Trial" (hereafter

"Reply to Motion for New Trial") reflects a continuation by the Respondents, through Attorney Hantske, to intentionally ignore relevant facts, evidence, and statutory requirements and obligations with respect to the instant appeal. The Respondents provide no rationale to refute Appellant's assertion that the same was subjected to misrepresentation by Robert Glenn Bacon, Esquire and Harry Pavilack and Associates, P.A. and later The Bacon Law Firm, LLC (hereafter "Attorney Bacon") from May 2005 to December 2012. In fact, Attorney Hantske continues to intentionally omit Attorney Bacon's appearance and participation in the instant appeal, which is both egregious and unlawful in nature. The Respondents are aware that acknowledging the appearance and participation of Attorney Bacon in the instant appeal would then require the Respondents to acknowledge the undisputed misrepresentation Attorney Bacon afforded to the injured worker.

Respondents failed to refute Appellant's assertion that the employer terminated Appellant on November 2, 2005 although Appellant received a true copy of the discharge notice, for the first time, as Appellant was never served with a discharge notice from the employer at the time of the discharge, from Attorney Hantske on or around December 20, 2012 pursuant to a duly served Subpoena. Again, the Respondents have chosen to deliberately ignore this fact, as acknowledging the same would require the immediate reinstatement of Appellant's employment via *de novo* appellate review of the instant case based on the violation of S.C. Code Ann. § 41-1-80 by the Respondents.

Respondents failed to refute Appellant's assertion or failed to deny the

validity of the evidentiary submission of Form 18 (Periodic Report), previously filed with the Workers' Compensation Commission (hereafter "Commission") *by the Respondents*, which confirms on December 4th, 2005 when Respondents unlawfully terminated Appellant's entitled temporary total compensation payments, Appellant had in fact received temporary compensation payments for approximately *213 days*, including the *first 150 days*. Walter H. Barefoot, Esquire and Turner Padgett Graham & Laney, P.A. (hereafter "Attorney Barefoot"), Respondents' former representative, never filed a Form 21 requesting a stop payment hearing with the Commission, never certified that temporary compensation payments were current, the commission never convened a stop payment hearing, and no order was ever issued by the commission granting permission to terminate temporary total compensation payments. Respondents failed to refute Appellant's assertion that Attorney Hantske is in willful violation of S.C. Code Ann. § 42-9-260 (F) and corresponding S.C. Code Reg. § 67-506 (D) of the South Carolina Workers' Compensation Act (hereafter "Act").

Respondents failed to refute Appellant's assertion that the Settlement Agreement and Release or "clincher" entered into by the parties and approved by the commission on January 5, 2006 is unlawful based on the fact that pursuant to S.C. Code Ann. § 42-1-620 and S.C. Code Ann. § 42-9-260(F) and S.C. Code Ann. § 41-1-80 an injured worker cannot waive, resolve or settle his entitled right to compensation payments or entitled employment by way of agreement or clincher, which controls the Respondents assertion and application of S.C. Code Reg. § 67-801.

The failure of the Honorable Brian M. Gibbons (hereafter "Judge Gibbons") to immediately RECUSE himself subsequent the clear and convincing prejudicial and biased conduct as the presiding judicial officer conducting appellate review of the Appellate Panel of the Commission's Decision and Order dated July 17, 2013 is DISTURBING. Judge Gibbons was duly informed and aware of the April 24, 2014 Order of the Court of Appeals remanding the related case of Alexander Guice v. US Foodservice, Inc., et al, Case No. 2013-CP-32-01272 back to the Lexington County Court of Common Pleas to be considered and adjudicated in conjunction with this matter. Judge Gibbons was both informed and aware of the aforementioned Order from the Court of Appeals, by way of Appellant on or around June 27, 2014, more than 21 days prior to Judge Gibbons ratifying the July 21, 2014 Order in this matter currently on appeal for new trial. Appellant clearly expressed and served a copy of the aforementioned Court of Appeals Order upon Judge Gibbons, the Respondents, and the Clerk as contained and attached to the Appellant's "Comments and Exceptions to Proposed Order on Appeal" filed in the instant appeal on June 27, 2014.

In fact, upon service of the April 24, 2014 Order of the Court of Appeals upon the Clerk, the Public Index with respect to Case No. 2013-CP-32-01272 was updated on June 30, 2014 with the filing of the Order, and with the Clerk's description "Order from Court of Appeals Remanding Case" (Please see Exhibit "H" enclosed and incorporated herein). Prior to proceeding with the ratification of the clearly erroneous and problematic July 21, 2014 Order, Judge Gibbons failed to provide a response to, and rationale in opposition of, the exceptions duly

compliance to the Act by the Respondents is required and must be enforced. It is a fundamental provision of the Act that the Statute shall be liberally construed in favor of benefits to the injured worker. That principle and a line of cases that holds that this is the fundamental construction principle of Workers' Compensation is as follows:

> "Compensation Laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents; and such laws should be construed liberally in favor of the employees and their dependents, in furtherance of the beneficent purposes for which they were enacted and to avoid any incongruous or harsh results". *See* Cokeley v. Robert Lee, Inc., 197 S.C. 157, 14 S.E. 2d 889 (1941); Dennerly v. Ocmulgee Lumber Co., 206 S.C. 481, 34 S.E. 2d 792 (1945); Baldwin v. Pepsi-Cola Bottling Co., 234 S.C. 320, 108 S.E. 2d 409 (1959); Carver v. Bill Pridemore and Co., 278 S.C. 235, 294 S.E. 2d 419 (1982); Stokes v. First National Bank, 298 S.C. 13, 377 S.E. 2d 922 (S.C. App. 1988).

However, a review of the instant case, and in particular, the July 21, 2014 Order issued in this matter by Judge Gibbons, reflects the exact opposite has taken place. Both the Commission and this Court, by way of Judge Gibbons, have afforded a liberal construction of the Act towards the Respondents while applying strict unlawful compliance of S.C. Code Reg. § 67-801 and continued enforcement of a clearly unlawful and fraudulently procured clincher agreement adverse towards the self-represented injured worker. The July 21, 2014 Order clearly

presented by Appellant, which only served to further prejudice the substantial rights afforded to Appellant by Judge Gibbons.

Additionally, other actions of Judge Gibbons as presiding judicial officer in the instant appeal are equally disturbing. Judge Gibbons has failed to perform his required disciplinary duties and responsibilities with respect to the *fraud upon the court* and *extrinsic fraud* committed in the instant case by Attorney Hantske, Attorney Bacon, and Attorney Barefoot. The July 21, 2014 Order constitutes a rubber stamp of approval, by Judge Gibbons, of the EGREGIOUS, UNLAWFUL, and CRIMINAL ACTIONS of Attorney Bacon, Attorney Hantske, Attorney Barefoot, the employer and carrier. The problematic July 21, 2014 Order also serves to affirm the clearly erroneous and unlawful actions by the commission in this matter.

Judge Gibbons is both informed and aware that the February 22, 2013 *sua sponte* Order issued by Single Commissioner Susan S. Barden (hereafter "Commissioner Barden") was unlawful, as the same; (1) violated Appellant's constitutional right to be heard, pursuant to the duly filed and served WCC Form 50 on December 7, 2012; and (2) was unlawful, based on the fact Commissioner Barden issued the order while within the jurisdictional control of District 2 (ANDERSON), although the parties MUTUALLY AGREED that the proper jurisdictional district to hear Appellant's claim was District 7 (RICHLAND) based on the employer's proper address of 120 Longs Pond Road Lexington, SC 29072.

A judge shall uphold the integrity and independence of judiciary. To that end, it cannot be STRESSED enough TO THE COURT that absolute strict

reflects and confirms a total and deliberate disregard of the issues properly raised by Appellant, and a failure to enforce strict compliance to the Act with respect to the Respondents.

It is the Appellant's assertion that upon review of the aforementioned July 21, 2014 Order, it would appear that Judge Gibbons may be unaware of the meaning of the term *de novo*. The Latin term *de novo* is defined from The Free Legal Dictionary.com as ""anew," which means starting over, as in a trial de novo." As such, this Court MUST review this matter from the beginning, reviewing and considering ALL ACTIONS TAKEN IN THIS MATTER by the employer, carrier, employer's former and current representative, the treating physician, the injured worker, the injured worker's former representative, and finally, the commission, PRIOR TO RENDERING AN OPINION, which did not happen.

The statement of Judge Gibbons, in particular, "After reviewing all submissions of the parties including the Complaint, Motion to Dismiss, and Memorandum in Support of Defendants' Motion to Dismiss, and listening to the arguments of counsel, and considering the briefs and arguments of the Claimant" is remarkably ambiguous and must be considered as lip service only (See Motion for New Trial, Exhibit "A", p. 3 previously submitted).

The aforementioned Order dated July 21, 2014 failed to include the following relevant and required information, to include but not limited to; (A) the biographical background information of the Appellant, to include Appellant's age, marital status, number of dependents, work history, and education level; (B) the

date Appellant was hired by employer; (C) the employer's address; (D) whether or not the parties are bound by the South Carolina Workers' Compensation Act; (E) what the mutually agreed upon average weekly wage is; (F) the date Appellant notified the employer of the work-related injury; (G) the appearance, participation and duration of the representation afforded to Appellant by Attorney Bacon; (H) the appearance, participation and duration of the representation afforded to the Respondents by Attorney Barefoot; (I) the approximate number of days Appellant received temporary compensation payments prior to reaching Maximum Medical Improvement (MMI); (J) whether or not the parties mutually agreed with the medical opinion of the treating physician; (K) the date Appellant was discharged by the employer; (L) the grounds relied upon by the employer in support of discharging the Appellant; (M) the actions, if any, that were taken by Attorney Bacon on behalf of Appellant subsequent the discharge of employment by the employer; (N) acknowledging the reduction of Appellant's average weekly wage from $1,161.00 per week to $592.56 per week on November 6, 2005 by the Respondents; (O) the approximate number of consecutive days Appellant had received temporary compensation when the Respondents' representative stopped payments; (P) what actions, if any, that were taken by Attorney Bacon on behalf of Appellant when the Respondents suspended temporary total compensation payments to Appellant; (Q) whether or not the reduction/suspension/termination of temporary total compensation payments by Respondents on December 4, 2005 was in accordance with the Act; (R) whether or not the discharge of the Appellant's employment by employer was in

accordance with the Act or controlled by some other error of law; (S) whether or not the clincher agreement was fairly made and in accordance with the Act; (T) whether or not the commission performed all required legal functions prior to approving the clincher; (U) clearly stating the Issues on Appeal duly submitted by Appellant; (V) providing discussion, to include providing a rationale supported by statute, regulation, or case law in support of, or opposition to, every issue submitted by Appellant; and (W) providing a proper Conclusions of Law. (*See* Motion for New Trial, Exhibit "A" previously submitted)

Furthermore, this Court, in serving in the capacity of conducting and presiding over an Appellate Review of the instant case, and in particular, the Appellate Panel Decision and Order dated July 17, 2014 of the Full Commission, has the inherent power, and in the Appellant's opinion, an Adjudicative, Administrative and Disciplinary responsibility in the furtherance of the administration of justice, to "reopen" the clincher "agreement" in the instant appeal, which may have been "procured by fraud." *See* Raby Const., L.L.P. v. Orr, 358 S.C. 10, 18, 594 S.E.2d 478, 482 (2004) (citing Bryan v. Bryan, 220 S.C. 164, 66 S.E.2d 609 (1951)); see also Greenfield v. Greenfield, 245 S.C. 604, 141 S.E.2d 920 (1965) (holding "the inherent powers of a court, which are essential to its existence and protection and to the due administration of justice within the scope of the jurisdiction expressly conferred, do not depend upon express constitutional or legislative grant").

Upon *de novo* review, this Court must consider the fact that the Commission, in serving as the certifying authority to approve clincher

agreements, failed to perform the required legal act of reviewing and considering the medical reports of the Appellant prior to approving the clincher on January 5, 2006. In particular, and as enclosed and incorporated herein as Exhibit "I" (previously submitted as Exhibit "1", enclosed with the Complaint in the related case of 2013-CP-32-01272), on November 28, 2012 Appellant duly requested a full copy of the Commission's copy of WCC Case # 0506205 pursuant to a Freedom of Information Act (FOIA) request. On December 7, 2012 Gary M. Cannon, Executive Director of the Commission, satisfied the FOIA request, by providing Appellant a full and complete copy of the commission's copy of file WCC# 0506205, via electronic transmission, which contained approximately 35 pages. A review of the 35 pages contained in the file CONFIRMS that as of December 7, 2012 neither Appellant's former representative Attorney Bacon, nor Respondents' former representative Attorney Barefoot, ever submitted a copy of the Appellant's medical reports to the Commission. However, as clearly and expressly stated in the clincher statement, the Commission, and in particular, Single Commissioner David W. Huffstetler (hereafter "Commissioner Huffstetler") states, "WHEREAS, full and complete medical reports are on file with the South Carolina Workers' Compensation Commission and these are duly considered by it in approving this Settlement Agreement and Release" (See Exhibit "I", Settlement Agreement and Release, p. 4, enclosed herein, previously submitted) (Emphasis added).

Appellant asserts pertinent portions of the Appellant's medical reports were not submitted to the Commission for review and consideration until Appellant submitted the same as evidentiary documents in support of the

"Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments" duly filed and served with the Commission and Respondents by Appellant on March 4, 2013 more than SEVEN (7) YEARS AFTER THE FACT. Upon *de novo* review of the record, and based on the failure of the commission to perform the required legal act of reviewing and considering Appellant's medical reports prior to approving the clincher agreement, which was a clearly expressed Term and Condition of the same, the Court must deem the aforementioned clincher NULL and VOID.

The Respondents can only continue to prevail in the instant appeal if the presiding judicial officer continues to abuse his power, disregard the proper application of the Act, neglect to perform his required administrative, adjudicative and disciplinary duties upon *de novo* review of the instant appeal, continue to engage in willful extrinsic fraud and fraud upon the court, and continue to apply a *liberal* and unlawful construction of the Act with respect to the Respondents and apply a *strict* and unlawful construction of the Act with respect to the self-represented injured worker.

APPELLANT'S STATURTORY RIGHT TO REQUEST A NEW TRIAL

Appellant agrees with Respondents rationale and application of Wright-Kane, Federal Practice and Procedure, §2804 wherein a motion for new trial or rehearing should be based upon "manifest error of law or mistake of fact, and a judgment should not be set aside except for substantial reasons." In the instant appeal, Appellant has met the criteria for granting a new trial regarding the July 21, 2014 Order with respect to the Court's mistake of fact and error of law that

S.C. Reg. 67-801 in conjunction to the clincher agreement legally serves to allow the employer's representative to terminate temporary total compensation payments, without a hearing or Order from the Commission, which is controlled by S.C. Code § 42-9-260(F) and S.C. Reg. 67-506(D); the mistake of fact and error of law that Appellant, who is the injured worker, can legally waive his rights to compensation by way of clincher agreement which is clearly and expressly prohibited pursuant to S.C. Code § 42-1-620; the mistake of fact that the July 21, 2014 Order omitted relevant facts and factors required to be included in the same; and the mistake of fact and error of law that the July 21, 2014 violated the April 24, 2014 Order from the Court of Appeals by failing to consider the related matter of Case No. 2013-CP-32-01272 which is currently remanded and unresolved.

ARGUMENT

I.

The Court Order Violated the Order of the Court of Appeals Dated April 24th, 2014

In reply to Appellant's argument, Respondents state, "With regard to Appellant's allegations that the Court Order violated the Order of the Court of Appeals dated April 24, 2014...Respondent's specifically deny and object to Appellant's characterization of the integrity of this Court and the ruling issued in this matter and assert Appellant failed to substantiate and state grounds upon which a new trial should be granted" (Reply to Motion for New Trial, p. 5-6). In answering the Respondents reply to the above argument, Appellant asserts the Respondent's reply reflects a play on words, lip service, and is without merit.

Respondents "deny and object" the Appellant's argument; however, Respondents failed to provide a substantive argument or affirmative defense in support of the denial and objection. Respondents failed to provide a rationale as to the failure of Judge Gibbons to comply with the April 24, 2014 Order from the Court of Appeals, which; (1) Remanded the related matter of Case No. 2013-CP-32-01272 back to this Court; and (2) Ordered that the related matter be considered IN CONJUNCTION with this matter (See Motion for New Trial, Exhibit "B" previously submitted).

The decision of the Court of Appeals contained no ambiguity. The Clerk immediately complied with the April 24, 2014 Order by remanding the related case on June 30, 2014 (See Exhibit "I" enclosed herein). The June 16, 2014 hearing in the above style caption failed to consider and adjudicate the related matter pursuant to the Order of the Court of Appeals. Judge Gibbons was both informed and aware of the April 24, 2014 Order from the Court of Appeals, as of June 27, 2014 and had sufficient time to take the required actions of; (a) setting aside the June 16, 2014 hearing; (b) setting aside the proposed Order prepared by Attorney Hantske; and (c) instructing the parties that a new hearing would be scheduled to comply with the aforementioned April 24, 2014 Order from the Court of Appeals, which CONTROLS this Court, but failed to do so. Moreover, Judge Gibbons failed to provide any grounds or show good cause unto the parties, why Judge Gibbons failed to comply with the aforementioned Order.

Finally, the "Facts Supporting Circuit Court Order Dated July 21, 2014" as contained in the Respondents Reply to Motion for New Trial (See Reply to Motion

for New Trial, p. 2-5) is without merit, based on the fact that in the July 21, 2014 Order, Judge Gibbons; (d) failed to make any reference to the April 24, 2014 Order from the Court of the Appeals in the July 21, 2014 Order; and (e) failed to clearly state grounds (or facts) relied upon in support of not considering the related matter in conjunction with the instant appeal, as duly ordered to perform, by The Honorable John Cannon Few, Chief Justice of the Court of Appeals. The attempt by the Respondents, and in particular Attorney Hantske, to provide an explanation for the failure of Judge Gibbons to comply with the April 24, 2014 Order from the Court of Appeals, when Judge Gibbons failed to do himself, is both inappropriate and improper.

The related matter of Case No. 2013-CP-32-01272 is currently remanded and unresolved. Judge Gibbons failed to comply with the April 24, 2014 Order from the Court of Appeals. The July 21, 2014 Order is in willful noncompliance with the April 24, 2014 Order from the Court of Appeals. Judge Gibbons, as the presiding judicial officer, failed to provide a rationale or show good cause unto the parties, and in particular, the injured worker, as to why Judge Gibbons failed to comply with the aforementioned April 24, 2014 Order from the Court of Appeals. The substantial rights afforded to the self-represented injured worker has been prejudiced by Judge Gibbons and the July 21, 2014 Order, in violation of Cannon 2A, CJC, Rule 501, SCACR. Judge Gibbons actions constitutes "fraud upon the court", as the actions of Judge Gibbons in failing to comply with the April 24, 2014 order of the Court of Appeal has served to "...subvert the integrity of the court itself." *See* Chewning v. Ford Motor Company, 354 S.C. 72, 579 S.E.

2d 605 (2003). The failure of Judge Gibbons to comply with the April 24, 2014 Order from the Court of Appeals in issuing the July 21, 2014 Order is in of itself, meritorious grounds duly "stated and substantiated" to grant a new trial. These are the facts of this argument and the instant appeal, and they are undisputed. Based on the foregoing, the Court must deem the Respondents reply to Argument #1 unsubstantiated, and set aside the July 21, 2014 Order as a matter of law and the furtherance of the administration of justice.

II.

Fraud upon the Court committed by Judge Gibbons In the Instant Appeal

In reply to Appellant's argument, Respondents state, "With regard to Appellant's allegations...fraud upon the Court committed by Judge Gibbons in the instant appeal...Respondent's specifically deny and object to Appellant's characterization of the integrity of this Court and the ruling issued in this matter and assert Appellant failed to substantiate and state grounds upon which a new trial should be granted" (Reply to Motion for New Trial, p. 5-6). In answering the Respondents reply to the above argument, Appellant asserts the Respondent's reply reflects a play on words, lip service, and is without merit.

In particular, and as contained in the Motion for New Trial, Appellant submitted three (3) contentions within Argument # 2; (A) that Judge Gibbons failed to adjudicate the employer's unlawful discharge of the Appellant; (B) that Judge Gibbons failed to adjudicate the unlawful termination of Appellant's entitled temporary total compensation payments; and (C) that Judge Gibbons failed to perform his disciplinary duties with respect to the extrinsic fraud and

fraud upon the Court committed by Attorney Bacon, and the extrinsic fraud and fraud upon the Court committed by Attorney Hantske (See Motion for New Trial, p. 16-19).

With respect to Appellant's assertion that Judge Gibbons failed to adjudicate the employer's unlawful discharge of the Appellant, Judge Gibbons was duly provided, for review and consideration, a true copy of the discharge notice (See Motion for New Trial, Exhibit "F" previously submitted). Attorney Hantske, on behalf of Respondents, did not deny or object to the validity of the discharge notice. In fact, as stated by Appellant, and not denied by Respondents, Appellant was never served a copy of the discharge notice by the employer at the time Appellant was discharged on November 2, 2005. As it directly relates to discharge of the Appellant by the employer, wherein at the time of the discharge, Appellant had filed a claim for compensation under the Act, S.C. Code Ann. § 41-1-80 (1986) - *Prohibition against retaliation based upon employee's institution of, or participation in, proceedings under Workers' Compensation Law; civil actions,* states in its entirety,

> "No employer may discharge or demote any employee because the employee has instituted or caused to be instituted, in good faith, any proceeding under the South Carolina Workers' Compensation Law (Title 42 of the 1976 Code), or has testified or is about to testify in any such proceeding.
>
> Any employer who violates any provision of this section is liable in a civil action for lost wages suffered by an employee as a result of the violation, and an employee discharged or demoted in violation of this section is entitled to be reinstated to his former position. The burden of proof is upon the employee.

> Any employer shall have as an affirmative defense to this section the following: wilful or habitual tardiness or absence from work; being disorderly or intoxicated while at work; destruction of any of the employer's property; failure to meet established employer work standards; malingering; embezzlement or larceny of the employer's property; violating specific written company policy for which the action is a stated remedy of the violation.
>
> The failure of an employer to continue to employ, either in employment or at the employee's previous level of employment, an employee who receives compensation for total permanent disability, is in no manner to be considered a violation of this section.
>
> The statute of limitations for actions under this section is one year."

Upon review of the discharge notice, the Court must consider that the employers failed to rely upon the clearly stated affirmative defenses as contained in the above referenced statute, instead terminating the Appellant on the grounds of "permanent lifting restrictions" and "no position available" (Motion for New Trial, Exhibit "F" previously submitted). The "permanent lifting restrictions" were a direct result of the injuries sustained which arose out of the admitted work-related injury which occurred on May 5, 2005 (See Motion for New Trial, Exhibit "D" previously submitted). Therefore, the grounds relied upon by the employer to discharge the Appellant were in clear violation of the law.

Additionally, as it relates to the one year statute of limitations attached with the above referenced statute, the Court must waive this clause on several grounds, to include; (a) the Circuit Court's *de novo* appellate review of the instant appeal (*Grant v. Grant Textiles*, 372 S.C. 196, 200-201, 641 S.E.2d 869, 871 (2007)); (b) the Decision and Order of the Full Commission dated July 17, 2013 made no

reference to the unlawful discharge of the Appellant and is therefore "affected by an error of law" (Liberty Mut. Ins. Co. v. South Carolina Second Injury Fund, 363 S.C. 612, 611 S.E.2d 297 (Ct. App. 2005); Frame v. Resort Servs., Inc., 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004); Stephen v. Avins Constr. Co., 324 S.C. 334, 478 S.E.2d 74 (Ct. App. 1996)); and (c) the extrinsic fraud and fraud upon the Court committed by Appellant's former representative Attorney Bacon, which would allow this Court the ability to set aside the unlawful discharge pursuant to Rule 60(b) South Carolina Rules Of Civil Procedure (SCRCP) ("...This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.")

It is not uncommon, although certainly unethical and improper, for an attorney representing a party to attempt to ignore, bury, or disregard actions, conduct, or evidence which could serve to adversely affect their client(s). However, the presiding judicial officer, acting fairly and impartially, must not condone or allow such conduct, particularly when the unlawful act has been brought to the Court's attention. In the instant appeal, Judge Gibbons was duly informed and aware of the unlawful discharge by the employer; however the July 21, 2014 Order in question makes absolutely no reference to the unlawful discharge, and makes no reference to the discharge at all (Motion for New Trial, Exhibit "A"), previously submitted. The clear and convincing failure of Judge Gibbons to adjudicate the unlawful discharge has served to "..subvert the integrity of the court itself." See Chewning v. Ford Motor Company, 354 S.C. 72,

579 S.E.2d 605 (2003), which meets the criteria in support of Appellant's allegation that Judge Gibbons committed fraud upon the Court.

With respect to Appellant's assertion that Judge Gibbons failed to adjudicate the Respondents unlawful termination of entitled temporary total compensation payments, the Court was duly provided with the proper argument and the evidentiary affidavit, in particular, the WCC Form 18 (Periodic Report)-filed with the Commission by the Respondents – which confirmed the Appellant received temporary compensation for approximately 213 days, including the first 150 days (See Motion for New Trial, Exhibit "E" previously submitted). Judge Gibbons, pursuant to Cannon 3B(1), CJC, Rule 501 South Carolina Appellate Court Rules (SCACR) to "...hear and decide..." Appellant's aforementioned cause but failed to do so. Additionally, in failing to adjudicate Appellant's clearly stated cause with respect to the Respondents unlawful termination of temporary total compensation payments, Judge Gibbons failed to be "faithful to the law" in violation of Cannon 3B(2), CJC, Rule 501 SCACR. The Failure of Judge Gibbons to adjudicate the Appellant's stated argument as contained in the Complaint with respect to unlawful termination of temporary total compensation payments has served to "...subvert the integrity of the court itself." *Id.*, which meets the criteria in support of Appellant's assertion that Judge Gibbons committed fraud upon the Court.

With respect to Appellant's assertion that Judge Gibbons failed to perform his disciplinary duties, Appellant asserts the allegations regarding professional misconduct of Attorney Bacon, who represented the Appellant in the instant

appeal from May 2005 to December 2012 are undisputed. Judge Gibbons was duly informed and made aware of the conduct of Attorney Bacon, who; (1) has intentionally failed to comply with a duly served subpoena to provide the Appellant with the client copy of the Workers' Compensation Claim file, never filing a motion to quash the same or showing good cause for failing to comply with the subpoena; (2) failed to take any action, legal or otherwise, on behalf of Appellant when the Respondents unlawfully discharged the Appellant on November 2, 2005; (3) concealed from the Appellant that the discharge by the employer was unlawful; (4) concealed from the Commission that the employer unlawfully discharged the Appellant; (5) took no action on behalf of Appellant when Respondents unlawfully terminated temporary total compensation payments; and (6) colluded with Attorney Barefoot of the Respondents in allowing Appellant to be coerced, under duress and intentional deprivation of employment and entitled compensation and employment benefit payments, into entering into the unfairly made and unlawful clincher agreement.

In order to meet the two-pronged test establishing ineffective assistance of counsel, Appellant must prove 1) that counsel's representation fell below an objective standard of reasonableness; and 2) that, but for counsel's error, there is a reasonable probability the result would have been different. *See* Martinez v. State, 403 S.E. (2d) 113, 114 (1991); Butler v. State, 286 S.C. 441, 334 S.E. (2d) 813 (1985), cert. denied, 474 U.S. 1094, 106 S. Ct. 869, 88 L. Ed. (2d) 908 (1986). Appellant asserts arguments alleged against Attorney Bacon clearly met the two-pronged test which established ineffective assistance of counsel and intentional

misrepresentation. Judge Gibbons had a disciplinary duty, pursuant to Cannon 3D(2), CJC, Rule 501, SCACR to "...inform the appropriate authority" regarding Attorney Bacon's gross professional misconduct, but failed to do so, and proceeded to make no reference of Attorney Bacon's participation or appearance in the instant appeal as confirmed upon review of the July 21, 2014 Order.

With respect to Attorney Hantske, as the current employer's and carrier's representative, the continued failure to comply with S.C. Code Ann. § 42-9-260 (F) and corresponding S.C. Reg. 67-506(D) with respect to paying temporary total compensation payments, based upon the clearly erroneous application of S.C. Reg. 67-801 and the assertion of the clincher agreement constitutes fraud upon the court and insurance fraud. Furthermore, Attorney Hantske's deliberate ignorance to the unlawful discharge of Appellant's employment constitute violation(s) of Rule 8.4(a)-(e), RPC, Rule 407, SCACR. Judge Gibbons was duly informed and made aware of Attorney Hantske's misconduct; however, Judge Gibbons not only failed to report the misconduct of Attorney Hantske to the appropriate authority, Judge Gibbons allowed Attorney Hantske to prepare the proposed Order, which Judge Gibbons ratified on July 21, 2014 in willful violation of Cannon 3D(2), CJC, Rule 501, SCACR. The failure of Judge Gibbons to adjudicate the Appellant's allegation that Attorney Hantske is willful violation of S.C. Code Ann. § 42-9-260(F) and S.C. Reg. 67-506(D) of the Act and report Attorney Hantske's conduct to the appropriate authority has served to ""...subvert the integrity of the court itself." *Id.* The Respondents denial and objection to this argument is without merit.

Moreover, the Respondents assertion that Appellant "failed to substantiate and state grounds upon which a new trial should be granted" (Reply to Motion for New Trial, p. 6) is clearly erroneous, on the grounds that fraud upon the Court by Judge Gibbons, as meritoriously proven by Appellant, is in fact legally sufficient grounds to grant a new trial. Based on the foregoing, the Court must overrule the Respondents reply, objection and denial to Argument #2, and set aside the July 21, 2014 Order as a matter of law and the furtherance of the administration of justice.

III.

Unlawful Granting of Respondents Motion to Dismiss By Judge Gibbons

In reply to Appellant's argument, Respondents state, "With regard to Appellant's allegation the...unlawful granting of Respondent's Motion to Dismiss by Judge Gibbons, Respondent's specifically deny and object to Appellant's characterization of the integrity of this Court and the ruling issued in this matter and assert Appellant failed to substantiate and state grounds upon which a trial should be granted" (Reply to Motion for New Trial, p. 5-6). In answering the Respondents reply to the above argument, Appellant asserts the Respondent's reply reflects a play on words, lip service, and is without merit.

In particular, although Respondents deny this argument, which all arguments contained in the Motion for New Trial certainly must be construed as "causes" or "grounds" in support of the Motion for New Trial, Respondents failed to meet the burden of proof in substantiating the denial and/or the grounds asserted by Respondents. In particular, a review of the July 21, 2014 Order

confirms that Judge Gibbons failed provide the required rationale in support of overruling the grounds asserted by Appellant as contained in the "Appellant's Answer to Motion to Dismiss" duly filed by Appellant in the instant case on March 4, 2014. Moreover, Respondents failed to refute Appellant's argument that Judge Gibbons acted in excess of his authority in granting the dismissal, as the Standard of Review does not allow for the Court, serving in the capacity to review a decision from the Appellate Panel of the Commission to dismiss an appeal. *See* Bursey v. South Carolina Dep't of Health & Envtl. Control, 360 S.C. 135, 141, 600 S.E.2d 80, 84 (Ct. App. 2004).

Finally a review of the July 21, 2014 Order confirms that Judge Gibbons failed to provide the required the rationale in support of granting the Respondents motion to dismiss. The Order states that Respondents filed a motion to dismiss, to include stating the rules asserted by Respondents in support of the motion to dismiss, but failed effectuate a specific and detailed rationale, supported by appropriate citation of statute, regulation, rule, or case law in support of granting the denial (See Motion for New Trial, Exhibit "A", previously submitted). As such, the Respondent's reply to this argument in denying that the granting of the Respondents Motion to Dismiss by Judge Gibbons was unlawful must be overruled with respect to Argument # 3 as contained in the Motion for New Trial, and the Court must deem Argument # 3 sustained, granting a new a trial in the instant case, as a matter of law.

IV.

Violation of Appellant's Constitutional Right To be heard

In reply to Appellant's argument, Respondents state, "With regard to Appellant's allegation of a violation of Appellant's constitutional right to be heard, it should be noted Appellant failed to appear at his appeal and further failed to arrange counsel to appear on his behalf, despite being properly served and issued a Notice of Appeal received by Appellant in due time to make arrangements to attend and appear on his behalf at his appeal before Judge Gibbons" (Reply to Motion for New Trial, p. 6). In answering the Respondents reply to the above argument, Appellant asserts the Respondents failed to deny the averment. Pursuant to Rule 8(d) SCRCP, Appellant asserts Appellant's argument that the Court violated the Appellant's constitutional right to be heard is admitted by the parties.

Should the Court construe the reply by the Respondents as a denial, Appellant asserts that although Appellant did not appear at the June 16, 2014 hearing, the Respondents, and the Court is both informed and aware that Appellant resides in Tampa, FL as Appellant relocated in 2011 to receive financial assistance from Appellant's family. The Court is also aware that Appellant has been unemployed and unable to obtain gainful employment subsequent the unlawful termination of employment by the Respondents on November 2, 2005. Appellant asserts the Respondents reply failed to deny Appellant's clearly stated assertion that "Judge Gibbons granted the Respondents motion to dismiss and fully affirmed final order of the commission without stating or providing a rationale in support overruling Appellants arguments on appeal clearly contained in the complaint or stating and providing a rationale in support of overruling the

arguments contained in Appellant's Answer to Motion to Dismiss (See Motion for New Trial, p. 21 previously submitted).

Finally, Judge Gibbons failed to adjudicate the issued submitted by Appellant to the Court that were reduced to written form as contained in the Complaint and the 'Appellant's Answer to Motion to Dismiss'. Based on the fact Respondents failed to deny this argument, to include failing to deny, as required by law, that Appellant's constitutional right to be heard was denied by Judge Gibbons, argument # 4 as contained in the Motion for New Trial must be deemed sustained or admitted, and a new trial granted as a matter of law.

V.

Interpretation of S.C. Code Ann. § 42-1-610 & 620; S.C. Code Ann. § 42-9-260(F) and S.C. Code Reg. § 67- 506(D) in Contrast to S.C. Code Reg. § 67-801

In reply to this argument, Respondents state, "Finally, Defendants deny and object to any issue raised by Appellant in his Motion for New Trial not specifically addressed herein" (Reply to Motion for New Trial, p. 6). In answering the Respondents reply to the above argument, Appellant asserts the Respondents denial and objection to this argument failed to "...fairly meet the substance of the averments denied" as required, pursuant to Rule 8(b) SCRCP. Furthermore, the Respondents failed request a more definite statement if one was required. In addition to the case law stated in Argument #5 of Appellant's Motion for New Trial, Appellant would further assert that in Society of Professional Journalists v. Sexton, 283 S.C. 563, 324 S.E. 2d 313 (S.C. 1984), the Court noted "a regulation. ..must fall when it alters or adds to a statute." *Id.*

The case law previously contained in Argument #5 of the Motion for New trial, in conjunction with the statutes, summarily constitutes a death blow to the Respondents' rationale that either the clincher or R. 67-801 can legally serve to terminate temporary total compensation payments or entitled employment of the injured worker. Appellant asserts based on the failure of Respondents to meet the burden of proof in denying and objecting to argument # 5 as contained in the Motion for New Trial, the Court must overrule the Respondents denial and objection to the argument. Further, the Court must accept Appellant's argument that the Court misinterpreted S.C. Reg. 67-801 to allow Respondents to terminate entitled employment and temporary total compensation payments, as S.C. Reg. 67-801 is controlled by S.C. Code Ann. § 42-1-610; S.C. Code Ann. § 42-1-620; S.C. Code Ann. § 42-9-260(F) and corresponding S.C. Reg. 67-506(D). As such, Appellant moves the Court grant a new trial in the instant case as a matter of law.

VI.

DEMAND FOR INVESTIGATION

Appellant asserts the Respondents reply to this argument, as stated, "Finally, Defendants deny and object to any issue raised by Appellant in his Motion for New Trial not specifically addressed herein" (Reply to Motion for New Trial, p. 6), must be deemed unsubstantiated, as the denial and objection failed to "...fairly meet the substance of the averments denied" as required, pursuant to Rule 8(b) SCRCP. The arguments submitted and evidence relied upon by Appellant in support of demanding the investigation is both clear and convincing in nature.

What is particularly compelling is how Attorney Hantske has denied Appellant's demand for investigation, but failed to provide any arguments, supporting affidavits, or case law in support of the denial and objection. As such, the Court must overrule Respondents denial and objection and accept Appellant's assertion to Argument # 6 and report this matter to the Office of the Attorney General, South Carolina Law Enforcement Division, the Federal Bureau of Investigation or the appropriate law enforcement division for investigation as a matter of law.

Appellant's Commentary

Of course the Court is informed and aware of the clearly erroneous actions and egregious conduct of the Commission, the employer, the carrier, the former and current employer's representative and Appellant's former representative; but maybe in the interest of protecting the state, the plethora of professionals, corporations, and the amount of potential liability involved, the Court has chosen to SUSPEND integrity, justice, faithfulness to the law, due process, enforcement of and compliance to the Act in the instant case.

Of course the self-represented Appellant has been subjected to an intentional infliction of emotional distress, to include "incongruous" and "harsh results", as the same has been unlawfully unemployed and unlawfully denied and deprived of entitled access to medical, dental, and compensation benefits since 2005; but maybe there exist a clandestine edict known within the circles of workers compensation law and the legal community, within the state, which mandates and/or requires the Court to proceed in the manner with which it has

chosen to, as it directly relates to unrepresented litigants who are African American Males and who have no additional family to care for.

Of course the Commission, the Court, and Attorney Hantske are all informed and aware that a regulation is controlled by a statute with respect to the clearly erroneous and problematic opinion that Regulation 67-801 has the legal effect of allowing a clincher to serve as severance pay for entitled employment AND legally allows an employer's representative to terminate temporary total compensation payments to an injured worker, particularly when the injured worker has received temporary compensation for more than and including the first 150 days, which is legally controlled by SC Codes 41-1-80, 42-1-610, 42-1-620, 42-9-260(F) and Reg. 67-506(D); but maybe an investigative review of all clincher agreements approved by the commission would uncover a pattern of unlawful applications of R. 67-801 which has served to deprive hundreds, if not thousands of injured workers out of entitled employment and entitled temporary total compensation payments.

Of course Judge Gibbons, the presiding judicial officer of the instant appeal, who has been described as "*...an outstanding jurist who is eminently qualified to preside over our Courts and will be prepared to preside over this case and will do so fairly and impartially as he does with every case that appears before the Court*[1]", who certainly was both informed and aware, *inter alia*, that by issuing the aforementioned July 21, 2014 Order that said Order would be in willful violation of the April 24, 2014 Order from the Court of Appeals; that maybe Judge Gibbons believes that his actions and conduct, with respect to violating several

cannons of the Code of Judicial Conduct, violating the due process rights afforded to Appellant and the willful noncompliance to the Order from the Court of Appeals, are actions and conduct attached with impunity, and at best, said actions may only result in said order being set aside or vacated by the Court of Appeals on appeal, which still would further serve the purpose of potentially delaying Appellant's lawful access, for weeks or months, to entitled employment, medical and compensation benefits desperately needed.

Of course Attorney Hantske, as a skilled and knowledgeable attorney, is both informed and aware of her required duties as the employer's representative pursuant to SC Code 42-9-260(F) and SC Reg. 67-506(D); but maybe the large, powerful and influential law firm of McAngus Goudelock & Courie, LLC, Attorney Hantske's law firm, who has offices strategically located in both North and South Carolina, who holds and convenes professional seminars with both the professional and legal community regarding facets of workers compensation law, that in case where McAngus Goudelock & Courie, LLC are the representing law firm for the employer and carrier, and the opposing party is unrepresented, the rule of law does not apply in that particular case.

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[1] The description of Judge Gibbons' abilities as a jurist were provided to the parties in correspondence dated May 20, 2014 from the Honorable Thomas A. Russo (Judge Russo), enclosed herein as Exhibit "J". Judge Russo presided over the related matter of Case No. 2013-CP-32-01272 and issued the June 10, 2013 Order which was remanded and ordered to be reheard in conjunction with the instant appeal pursuant to the April 24, 2014 Order from the Court of Appeals.

FALSE STATEMENTS CONTAINED IN RESPONDENTS' REPLY TO MOTION FOR NEW TRIAL

Appellant asserts the "Facts Supporting Circuit Court Order Dated July 21, 2014" as contained in the Respondents Reply to Motion for New Trial contains false and misleading "facts" as well as intentionally omitted facts and factors (Reply to Motion for New Trial, p. 2-4). Respondents intentionally omitted relevant facts as it directly relates to the events which led to the Appellant entering into the clincher, in addition to facts and factors subsequent the approval of the clincher, which must be reviewed and considered *de novo*. In particular, Respondents omitted the fact Appellant was represented by Attorney Bacon from May 2005 to December 2012, who Appellant has duly alleged engaged in extrinsic fraud and fraud upon the court in the instant appeal. Respondents omitted the mutually agreed upon average weekly wage amount of $1,161.00.

Respondents omitted the fact that on October 27, 2005 when the treating physician opined maximum medical improvement, Appellant had received temporary compensation payments for approximately 175 days, including the first 150 days. Respondents omitted the fact that in addition to the treating physician opining a 5% impairment rating to the whole person of the Appellant, the treating physician also opined permanent lifting restrictions, and reported to the Respondents that Appellant could no longer perform the duties of a delivery driver. Respondents omitted the fact that Co-Respondent US Foodservice, Inc. discharged the Appellant on or around November 2, 2005 on the grounds of "permanent lifting restrictions" and "no position available".

Respondents omitted the fact that Respondents deliberately terminated

and deprived Appellant from receiving entitled temporary total compensation payments subsequent the discharge of Appellant's employment, and did not make further required compensation payments until AFTER Appellant entered into the clincher agreement on or around December 2005, when Appellant was homeless and in an extreme state of duress. Respondents omitted the fact that when Respondents terminated entitled temporary total compensation payments on December 4, 2005, Appellant had received temporary compensation for approximately 213 days. Respondents omitted the fact that Respondents never filed a Form 21 with the commission requesting a stop payment hearing pursuant to S.C. Code Ann. § 42-9-260(F) and S.C. Reg. 67-506(D).

Respondents omitted that the same never certified to the commission that temporary compensation payments were current. Respondents omitted the fact that no stop payment hearing was ever convened by the commission to consider suspension or termination of temporary total compensation payments. Respondents omitted the fact that the commission never reviewed the medical reports of the Appellant prior to approving the clincher agreement.

Respondents falsely state that a "statute of limitations" is attached to the clincher, when in fact no statute or regulation exists within the Act to support the assertion. Furthermore, Appellant asserts statute of limitations can be waived "if the employer misled or deceived a worker, whether intentionally or not" (See e.g. Case v. Hermitage Cotton Mills, 236 S.C. 285, 113 S.E.3d 794 (1960). Additionally, this argument was not preserved from the Appellate Panel's Decision and Order dated July 17, 2013 or the present Court Order on appeal dated July 21, 2014 and

therefore cannot be presented at this time. Furthermore, *de novo* review can serve to set aside any decision, order, or judgment are "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." Bursey v. South Carolina Dep't of Health & Envtl. Control, 360 S.C. 135, 141, 600 S.E.2d 80, 84 (Ct. App. 2004); S.C. Code Ann. § 1-23-380(5)(e) (2005). Finally, this Court has authority, inherent power and a duty in the administration of justice to "reopen agreements and judgments procured by fraud". See Raby Const., L.L.P. v. Orr, 358 S.C. 10, 18, 594 S.E.2d 478, 482 (2004) (citing Bryan v. Bryan, 220 S.C. 164, 66 S.E.2d 609 (1951)). As such, the statute of limitations argument by the Respondents must be rejected by the Court.

Respondents omit the fact that when Single Commissioner Susan Barden (Commissioner Barden) issued the February 22, 2013 Order, Commissioner Barden was within the jurisdictional control of District 2 (Anderson) although the parties MUTUALLY AGREED that the proper jurisdictional district to hear the Form 50 was District 7 (Richland) based on the Lexington, SC address of the employer. Based on the many relevant facts, factors, and events in the instant appeal intentionally omitted by the Respondents, the Court must reject the "Facts Supporting Circuit Court Order Dated July 21, 2014" as contained in the Respondents Reply to Motion for New Trial.

Appellant's Answer in Opposition to Respondents' Request for Attorney's Fees

Appellant objects to Respondents request for attorney's fees. Appellant asserts the instant appeal clearly establishes that Respondents have unlawfully terminated Appellant's entitled right to employment and entitled right to

temporary total compensation payments. As it directly relates to the facts and the rules of substantive law against the Respondents in the instant appeal, "Litigants should lose cases when the facts or the rules of substantive law are against them." (E. Warrant Moise, *Credibility and Character Evidence: History, Policy and Procedure* (2003)(citing James F. Dresher, *A Guide to S.C. Evidence* 93 (1967)). Finally, a *de novo* review confirms Appellant was subjected to "extrinsic fraud" and "fraud upon the court" by Attorney Bacon; the employers unlawfully terminated the Appellant; and the Respondents representative unlawfully terminated entitled temporary total compensation payments. All judgments, decisions and orders, to include the clincher agreement, must be set aside. The Court must reject the Respondents request for attorney fees.

Conclusion

Respondents failed to refute any of the assertions contained in Appellant's Motion for New Trial. Case No.: 2013-CP-32-01272 remains remanded and unresolved. A regulation cannot control a statute. S.C. Reg. 67-801 is controlled by S.C. Code Ann. § 42-1-610; 42-1-620; 42-9-260(F); 41-1-80; and S.C. Reg. 67-506(D). Appellant was subjected to intentional ineffective counsel, extrinsic fraud, and fraud upon the court by Attorney Bacon. Attorney Hantske continues to engage in fraud upon the court by intentionally omitting relevant facts and factors in the instant appeal. Attorney Hantske continues to be in willful violation of S.C. Code Ann. § 42-9-260(F) and S.C. Reg. 67-506(D).

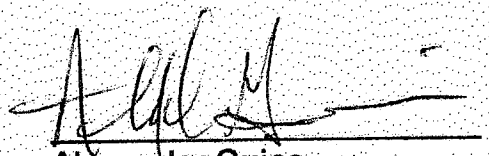
Judge Gibbons abused his discretion by failing to comply with the April 24, 2014 Order from the Court of Appeals by failing to consider and adjudicate the

related matter of Case No.: 2013-CP-32-01272 in conjunction with the instant case. The failure of Judge Gibbons to comply with the April 24, 2014 Order from the Court of Appeals prejudiced the substantial rights afforded to Appellant. The July 21, 2014 intentionally failed to include relevant facts and factors contained in the instant appeal. Judge Gibbons violated the constitutional rights afforded to Appellant by failing to address and adjudicate the issues contained in the Appellant's Complaint and Appellant's Answer to Respondents Motion to Dismiss. Respondents request for attorney fees is without merit.

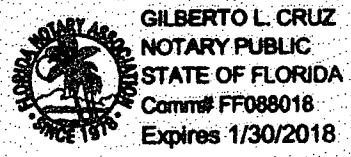
Based on the foregoing, Appellant moves the Court to deny the relief requested by Respondents and grant the relief and remedies requested by Appellant.

I, Alexander Guice, do swear, under penalty of perjury, that the information contained herein is true and correct to the best of my knowledge and ability.

Respectfully submitted,



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Tampa, FL 33681
(813) 562-0547
alguice@hotmail.com
Appellant, Pro Se



August 25, 2014

Sworn to and Subscribed before me

This 25 Day of August, 2014

Gilberto L. Cruz

Notary Public

My commission expires 1/30/2018

FILED

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**ELEVENTH JUDICIAL CIRCUIT**
COUNTY OF LEXINGTON	)	**Civil Action No.: 2014-CP-32-00399**
	)	

COPY

Alexander Guice, Employee, Claimant, Appellant,	)	
Versus	)	**Certificate of Service**
US Foodservice, Inc., and Ace American Insurance Company, c/o Gallagher Bassett Services, Inc., Employer AND Carrier, Respondents.	)	

I HEREBY CERTIFY that I provided a true copy of a cover letter, correspondence to the Honorable Brian M. Gibbons, an Answer to Reply to Motion for New Trial and supporting documents, by depositing a copy of the same in US Postal Service, via priority mail on August **26th**, 2014 with sufficient priority and tracking postage affixed on the party(s) listed below.

Alexander Guice
Post Office Box 13281
Tampa, Florida 33681
Phone: (813) 562-0547
Appellant, Pro Se

Signed this **26th** Day of August, 2014

COPIES SENT TO

Erin L. Hantske, Esquire
Post Office Box 650007
Mt. Pleasant, SC 29465

Clerk of Court
205 East Main Street
Lexington, SC 29072

The Honorable Brian M. Gibbons
140 Main Street
Post Office Drawer 580
Chester, South Carolina 29706

FILED

Alexander Guice

P.O. Box 13281
Tampa, FL 33681
Phone: (813) 562-0547
Email: alguice@hotmail.com

2014 AUG 28 PM 1:34
BETTA CARRIGG
CLERK OF COURT
LEXINGTON SC

August 25, 2014

The Honorable Beth A. Carrigg
Clerk of Court
11th Judicial Circuit
205 East Main Street
Lexington, South Carolina 29072

COPY

Re: Alexander Guice v. U.S. Food Service, Inc. and ACE American Insurance Company c/o Gallagher Bassett Services, Inc.
Appellate Case No.: 2014-CP-32-00399

Dear Ms. Carrigg:

Enclosed please find an original and copy of correspondence to the Honorable Brian M. Gibbons, an 'Answer to Reply to Motion for New Trial' with supporting documents, and a certificate of service in regard to the above referenced matter. Please forward to the appropriate individual for filing and return the date-stamped copies to the undersigned in the prepaid enclosed self-addressed envelope.

By copy of this letter, I have provided Erin L. Hantske, Esq., the attorney of record for the Respondents', a copy of the same, via priority mail with enclosures. By copy of this letter and pursuant to Rule 59(g) SCRCP, I have provided The Honorable Brian M. Gibbons, a copy of the same via certified mail with enclosures.

For case study purposes only, I have provided the Injured Workers' Advocates a copy of the same, via regular mail with enclosures.

Should you have any questions or concerns, please do not hesitate to contact me. Thank you for your assistance in this matter.

Very truly yours,

Alexander Guice
Appellant, Pro Se

Enclosures: As stated

cc: Erin L. Hantske, Esq. (via priority mail w/encl.)
The Honorable Brian M. Gibbons (via priority mail w/encl.)
Clara Thomas Smith (via reg. mail w/encl.)

ATTACHMENT I

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL DISTRICT
ALEXANDER GUICE, Claimant, v. US FOODSERVICE, INC., Employer, and ACE AMERICAN INSURANCE COMPANY C/O GALLAGHER BASSETT SERVICES, INC., Carrier, Defendants.	Civil Action No. 2014-CP-32-399 2013-CP-32-1272 **DEFENDANTS' MOTION TO ALTER/AMEND CIRCUIT COURT ORDER DATED SEPTEMBER 25, 2014**

TO: HONORABLE JUDGE BRIAN M. GIBBONS AND ALEXANDER GUICE:

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure and other applicable law, Defendants US Foodservice, Inc., and their Carrier ACE American Insurance Company, by and through their undersigned counsel, hereby file this Motion to alter/amend the Order Granting Appellant/Claimant's Motion for a New Trial and Order for Recusal dated September 25, 2014, filed with the Lexington County Clerk of Court on September 29, 2014, and received by Defendants on October 7, 2014. Defendants Motion is based on the following grounds:

1. The parties proceeded to a hearing before Judge Brian M. Gibbons on June 16, 2014, per the Claimant's appeal from the Full Commission of the Workers' Compensation Commission.
2. Following the hearing, Judge Gibbons ordered Defendants to prepare the Decision and Order.
3. Defendants prepared that Order and the same was approved on July 30, 2014.
4. The Claimant/Appellant filed a Motion for a New Trial on August 4, 2014, requesting a new trial or hearing and further requesting relief which was the basis of his appeal.
5. Following submission of briefs from both parties regarding this issue per Judge Gibbons' request, Judge Gibbons issued a subsequent Order dated September 25, 2014.
6. Specifically, on page No. 4 of the Order, the first finding states "the Appellant/Claimant's Motion for new trial or hearing is GRANTED as to all particulars set forth in his Motion and that my Order of July 30, 2014 be and hereby is VACATED."
7. Defendants respectfully request clarification of that particular Finding of Fact as we subsequently received correspondence from the Claimant asserting that this finding entitles the Claimant to the relief sought and not merely the new trial. Specifically, the Claimant asserts that all previous Decision and Orders, including but not limited to, the Settlement Agreement and Final Release dated January 5, 2006, the Order from Commissioner Susan Barden dated February 22, 2013, and the Decision and Order of the Appellate Panel dated July 17, 2013, are all set aside. Furthermore, he asserts that Judge Gibbons granted the relief he requested including "reinstate[ment

of] Appellant's employment and release [of] the unlawfully withheld temporary total compensation payments, as well as 25% interest penalty assessed."

WHEREFORE, Defendants respectfully request this Honorable Court to clarify the first finding of the Order granting Appellant/Claimant's Motion for a New Trial in Order for Recusal and submit an amended Order, if necessary; specifically, as to whether the Appellant/Claimant is entitled to the relief sought, setting aside of the previous Orders and the granting of the new trial or hearing.

Respectfully Submitted,

Erin L. Hantske
S.C. Bar No.: 76313
McANGUS GOUDELOCK & COURIE, LLC
Post Office Box 650007
735 Johnnie Dodds Blvd, Suite 200
Mt. Pleasant, South Carolina 29465
(843) 576-2900
Attorney for Respondents

October 16, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE CIRCUIT COURT FOR
THE ELEVENTH JUDICIAL DISTRICT

ALEXANDER GUICE,

Claimant,

v.

US FOODSERVICE, INC.,

Employer,

and

ACE AMERICAN INSURANCE COMPANY C/O GALLAGHER BASSETT SERVICES, INC.,

Carrier,

Defendants.

CIVIL ACTION NO. 2014-CP-32-00399
2013-cp-32-1272

CERTIFICATE OF SERVICE

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Alexander Guice (*via U.S. mail, e-mail & certified mail/rrr*)
Post Office Box 13281
Tampa, Florida 33681

Lexington County Clerk of Court
205 East Main Street, Suite 146
Lexington, South Carolina 29072

DOCUMENT: Defendants' Motion to Alter/Amend Circuit Court Order Dated September 25, 2014

DATE OF MAILING: October 16, 2014

Susan M. Moten

Susan M. Moten
Legal Assistant to Erin L. Hantske

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

ALEXANDER GUICE,)

Plaintiff(s))

vs.)

US FOODSERVICE, INC., EMPLOYER, and ACE AMERICAN INSURANCE COMPANY C/O GALLAGHER BASSETT SERVICES, INC., CARRIER,)

Defendant(s))

IN THE COURT OF COMMON PLEAS

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

C/A No: 2014-CP-32-399
2013-cp-32-1272

Plaintiff's Attorney:
Alexander Guide, *Pro Se* Claimant Bar No.
Address:
Post Office Box 13281
Tampa, Florida 33681
phone:
e-mail: alguice@hotmail.com
other:

Defendant's Attorney:
Erin L. Hantske Bar No. 76313
Address: McAngus, Goudelock & Courie, LLC
Post Office Box 650007
735 Johnnie Dodds Blvd., Suite 200 (29464)
Mt. Pleasant, South Carolina 29465
(843) 576-2900
Direct number: (843) 576-2946 Fax: (843) 534-0605
e-mail: erin.hantske@mgclaw.com com other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: DEFENDANTS' MOTION TO ALTER/AMEND CIRCUIT COURT ORDER DATED SEPTEMBER 25, 2014
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — October 16, 2014 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

mgc | INSURANCE DEFENSE

Reply To
ERIN L. HANTSKE
Direct Dial: (843) 576-2946
erin.hantske@mgclaw.com

October 16, 2014

Emily Hinson
Lexington County Clerk of Court
205 East Main Street, Suite 146
Lexington, South Carolina 29072

RE: Alexander Guice v. U.S. Food Service, Inc. and ACE American Insurance Company c/o Gallagher Bassett Services, Inc.
Date of Accident: May 5, 2005
WCC File No.: 0506205
Our File No.: 2098.12550
Claim No.: 004063-032175-wc-01
Civil Action No. 2014-CP-32-399 and 2013-cp-32-1272

Dear Ms. Hinson:

Enclosed please find the original and one (1) copy of Defendants' Motion to Alter/Amend Circuit Court Order Dated September 25, 2014 for filing in the above-referenced matter along with a check in the amount of $25.00 representing the filing fee. I have also enclosed a self-addressed, stamped envelope for the return of a filed copy of same.

Defendants are respectfully requesting clarification regarding the Order submitted from Judge Brian M. Gibbons dated September 25, 2014, filed September 29, 2014, and received by Defendants on October 7, 2014. Defendants believe that the court can clarify this without a Motion, but we are filing the attached Motion pursuant to the South Carolina Rule of Civil Procedure 59(e) within ten days from receipt of the Order to preserve this matter and ensure compliance with the same.

By copy of this letter to Alexander Guice, *Pro se* Claimant, we are serving a copy of same upon him by U.S. mail and certified mail/return receipt requested.

Very truly yours,

Erin L. Hantske

ELH/smm

cc: The Honorable Brian M. Gibbons, Lexington County Judicial Center (w/encl.)
Alexander Guice (w/encl.)(via U.S. mail, e-mail & Certified Mail/RRR)
Cheryl McLaughlin, US Foodservice, Inc. (w/encl.)(via e-mail)
Rexann Huneycutt, Gallagher Bassett Services, Inc. (w/encl.)(via e-mail)
Lisa Purvis, US Foodservice, Inc. (w/encl.)(via e-mail)

ATTACHMENT J

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	CASE NUMBERS: 2013-CP-32-01272
		2014-CP-32-00399

ALEXANDER GUICE,

Employee,

Appellant,

v.

US FOODSERVICE, INC.,

Employer,

and

ACE AMERICAN INSURANCE COMPANY, c/o GALLAGHER BASSETT SERVICES, INC.,

Carrier,

Respondents.

COPY

SUPPLEMENTAL ADMINISTRATIVE ORDER REGARDING RULE 63, SCRCP, AND DETERMINATION TO HOLD A *DE NOVO* HEARING ON THE PENDING RULE 59 MOTION OF THE EMPLOYER/CARRIER, AND SETTING THE DATE FOR HEARING THE RULE 59 MOTION AND ALL PENDING MOTIONS

WPC #1

On December 9, 2014, this court issued an administrative order regarding the procedures being followed on the employer's/carrier's pending motion to alter or amend an order issued by The Honorable Brian M. Gibbons.1 The court directs that a *de novo* hearing be held on the motion to dismiss that was originally considered by Judge Gibbons.

Judge Gibbons issued an order, which the appellant challenged. The judge then issued an order to vacate his previous order. The employer/carrier moved to alter or amend so as to have the order to vacate made more specific. However, Judge Gibbons recused himself, and he has indicated, because of the recusal, that he is unavailable to handle the pending

1 The administration of this case has been delayed while the court waited on the disposition of matters filed by the employer with the Supreme Court of South Carolina.

reconsideration motion. Having evaluated the issue under Rule 63, SCRCP, and the February 4, 2011 administrative order of the Chief Justice, the court finds that the procedural result would be the same, whether the court can certify familiarity with the record under Rule 63 or not, because one really does not need to go beyond the face of the order to vacate issued by Judge Gibbons. He vacates his previous order and directs a hearing to be held in conformity with the ruling of the South Carolina Court of Appeals. If the court were not able to certify sufficient familiarity with the record, the result would be the same: a *de novo* hearing.

If Judge Gibbons did not have the record from the Workers Compensation Commission before him at the time he heard the employer's/carrier's motion to dismiss, and if he only had one of the two files that have been generated in circuit court, he has dealt with any issue of not having necessary files by vacating his order dismissing the case. In addition, it appears that Judge Gibbons considered email correspondence and other objections raised by the appellant that may or may not have been filed. Since those submissions were provided in a non-traditional manner, it is not certain at this point whether the files include all the things that Judge Gibbons considered. Again, if there is an issue about the inability to certify familiarity with the record, the proper action would be a *de novo* hearing.

Judge Gibbons stated in his order to vacate that he had concluded that he had not ruled on all the issues that he deemed to be mandated by the Court of Appeals. The court is aware that the appellant is reading Judge Gibbon's order to vacate as a final order determining that he is entitled to all the relief that he has sought, including back wages and reinstatement to his former employment. In order to avoid prejudice to the parties, and to preserve the record for any review needed, the court directs that a *de novo* hearing be held on the original motion to dismiss filed by the employer/carrier.

The hearing on all pending motions, including but not limited to the *de novo* hearing on

the Rule 59 motion, will be held at the Westbrook/Lexington County Judicial Center on Friday, March 27, 2015, at 10:00 a.m., unless further instructions are given by the court. The court will not entertain submissions by email. Anything that a party wants to submit for any of the motions must be filed in advance of the hearing as provided by the South Carolina Rules of Civil Procedure, unless allowed to be entered into the record at the hearing. Further, the failure to appear may be deemed an abandonment of any claims made in any pending motions. If the motion to dismiss is not granted, the court will plan to schedule a hearing on the merits during the month of May 2015.

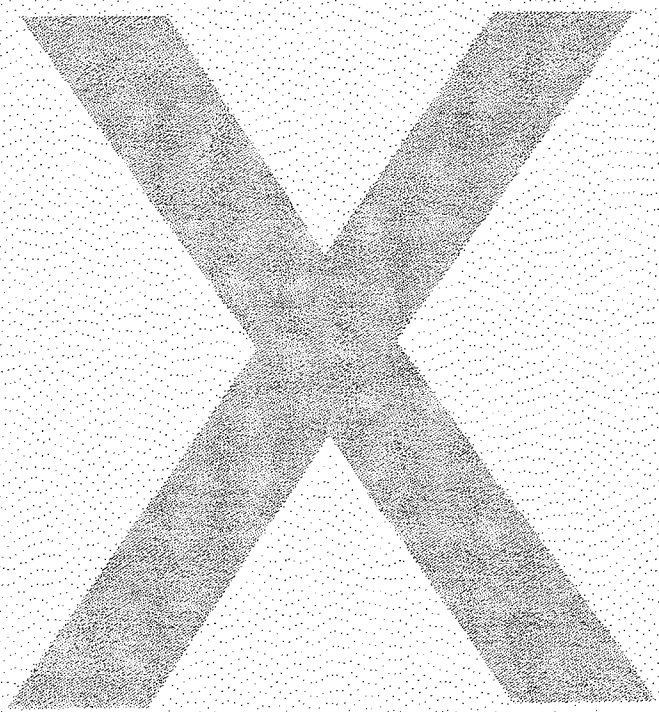
AND IT IS SO ORDERED.

COPY

William P. Keesley
Chief Judge for Administrative Purposes

March 3, 2015

#3



STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
OF THE ELEVENTH JUDICIAL CIRCUIT
CASE NUMBERS: 2013-CP-32-01272
2014-CP-32-00399

ALEXANDER GUICE,

Employee,

Appellant,

v.

US FOODSERVICE, INC.,

Employer,

and

ACE AMERICAN INSURANCE COMPANY, c/o GALLAGHER BASSETT SERVICES, INC.,

Carrier,

Respondents.

ADMINISTRATIVE ORDER
REGARDING RULE 63, SCRCP

There is a pending motion seeking to have the court reconsider and to alter or amend an order issued by The Honorable Brian M. Gibbons. This order deals with the procedure to be followed regarding that motion.1

Judge Gibbons recused himself from the case *sua sponte*. An earlier administrative order dealt with the need to determine from Judge Gibbons whether or not he felt that his recusal would allow him to entertain the motion. He has filed a notice, in writing, indicating that he will not be considering the motion.

The situation is now governed by Rule 63, SCRCP, and the Order of Chief Justice Toal dated February 4, 2011, dealing with the authority of the Chief Judges for Administrative Purposes. Rule 63 reads:

RULE 63
DISABILITY OF A JUDGE

If at any time after a trial or hearing has been commenced, but before the final order or judgment has been issued, the judge is unable to proceed, a successor judge shall be assigned. The successor judge may proceed upon certifying familiarity with the record and determining that the proceedings may be completed without prejudice to the parties. In a hearing or a trial without a jury, the successor judge shall, at the request of a party, recall any witness whose testimony is material and disputed and who is available to testify without undue burden. A successor judge may also provide for the recall of any witnesses.

The administrative order from Chief Justice Toal reads, in part:

IT IS FURTHER ORDERED that if a trial or hearing has been commenced and the judge is unable to proceed, the chief judge for administrative purposes shall assign the trial or hearing to a successor judge. If the chief administrative judge has a conflict and is thereby prevented from performing this duty, the matter shall be referred to the Chief Justice to assign a successor judge. The successor judge may proceed with the trial or hearing upon certifying familiarity with the record and determining that the proceedings may be completed without prejudice to the parties. . . .

In line with the Rule and order, the court has assigned this matter to itself (the undersigned judge). The court has issued administrative orders and directives to obtain the file from the South Carolina Workers Compensation Commission. That commission has advised the court's staff that the file is voluminous, that it is in electronic format, and that a DVD will be sent to the judge's office upon completion. When that is received, the court will issue further procedural directives in conformity with the provisions of Rule 63 and the Chief Justice's administrative order.

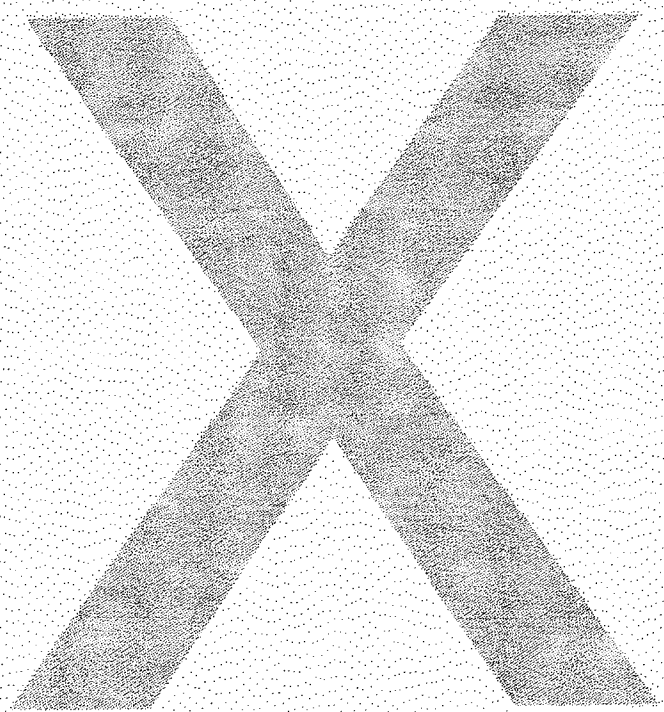
AND IT IS SO ORDERED.

COPY

William P. Keesley
Chief Judge for Administrative Purposes

December 9, 2014

1 The court is aware of the Appellant's position regarding his interpretation of the orders issued and the posture of the cases.



ORIGINAL

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON) CASE NUMBERS: 2013-CP-32-01272
2014-CP-32-00399

ALEXANDER GUICE,

Employee,

Appellant,

v.

US FOODSERVICE, INC.,

Employer,

and

ACE AMERICAN INSURANCE COMPANY, c/o GALLAGHER BASSETT SERVICES, INC.,

Carrier,

Respondents.

ADMINISTRATIVE ORDER

FILED

JPC #1

There are two files pending in this court. This matter is before me as Chief Judge for Administrative Purposes for Common Pleas in the Eleventh Judicial Circuit. After reviewing the files, the court issues this administrative order.

1) The two files seem to relate to the same subject. Since they contain common issues of law and fact, the cases will be consolidated under Rule 42(a), SCRCP, and the appellant and respondent are hereby notified that any objection to the consolidation must be filed immediately.

2) The extensive number of filings and issues raised justify classifying these cases as complex and assigning them to one judge. A separate order will be entered

assigning these cases to the undersigned judge.

3) This is an appeal from the Workers Compensation Commission. Under Rule 75, SCRCP, the files from the Commission are to be provided to the circuit court. Arrangements are to be made to obtain the Commission's file.

4) Under § 42-3-230, S.C. Code Ann., there is a provision for the destruction of the Commission's files after a period of time. While the court is unaware of any destruction, the Commission will be directed to preserve the files related to this case, until this appeal is ended.

5) There are allegations of irregularities in procedure by the Commission and its Executive Director. S.C. Code Ann. § 1-23-380(4) provides for a remand to the Commission, if there are matters outside the record. The appellant and respondent are to be prepared to brief this issue and the necessity of a remand, should the alleged procedural improprieties be outside the record. The court is aware of Mr. Guice's interpretation of the rulings from the South Carolina Court of Appeals and The Honorable Thomas A. Russo.

6) There is a dispute as to the interpretation to be given to orders issued by The Honorable Brian M. Gibbons. Both the appellant and the respondent have filed motions for reconsideration of the order(s). It is the undersigned judge's understanding that Judge Gibbons has recused

himself from this matter. If he is recused, he may take the position that he is precluded from further involvement in this case. Judge Gibbons will be contacted by the court in writing, with copies to the appellant and the respondent, to ask his position on whether or not he is able to entertain the motions for reconsideration, in light of his recusal. If he is not available to decide the pending motions, the court will invoke the procedures required under Rule 63, SCRCP, and the directives established in the order of the Chief Justice issued on February 4, 2011 (Order 2011-02-04-01)[See Footnote 1].

7) A hearing was scheduled for November 10, 2014, before The Honorable Edgar W. Dickson. That hearing is hereby canceled, but not for the reasons advanced by Mr. Guice in the objections he has filed. The standard practice under Rule 40, SCRCP, is for the Clerk of Court's office to prepare rosters and schedule hearings on non-jury matters.

WPR #3

8) Mr. Guice forwarded a notice of cancellation of the November 10 hearing. He may move to cancel a hearing, but does not have the power to cancel a hearing on his own. The Clerk of Court is directed to make a copy of the notice

---

1 The order provides, in part: "IT IS FURTHER ORDERED that if a trial or hearing has been commenced and the judge is unable to proceed, the chief judge for administrative purposes shall assign the trial or hearing to a successor judge. . . . The successor judge may proceed with the trial or hearing upon certifying familiarity with the record and determining that the proceedings may be completed without prejudice to the parties. ....

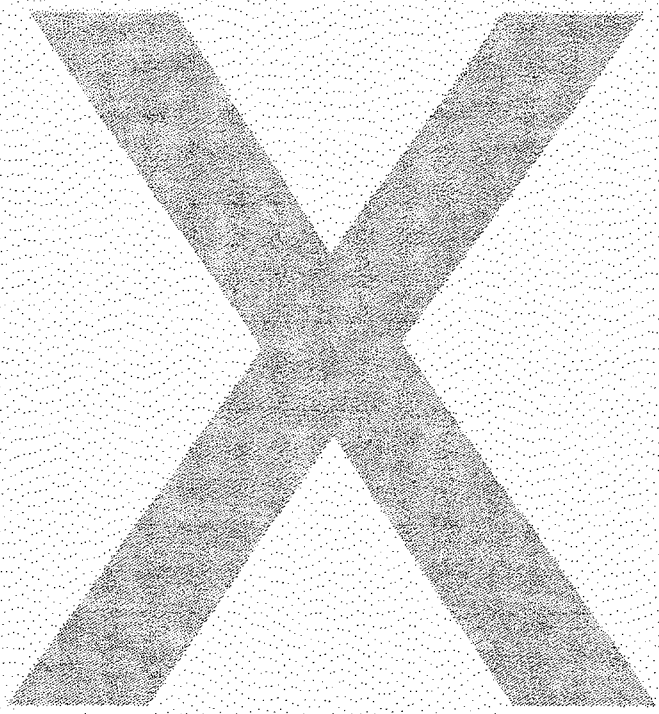
sent by Mr. Guice and put it in the files, but to return the original notice to him. The notice, on its face, is not executed by a judicial officer and has no force or effect.

9) Mr. Guice asserts that only the Chief Judge for Administrative Purposes can hear an appeal from the Workers Compensation Commission. In light of the designation of this case as complex and the assignment to a single judge, this issue is effectively moot for so long as the undersigned judge is designated as the Chief Judge for Administrative Purposes for Common Pleas. If Mr. Guice wishes to maintain the argument that only the Chief Judge for Administrative Purposes may hear this appeal, he must cite the authority he is relying upon. #4

AND IT IS SO ORDERED.

William P. Keesley
Chief Judge for Administrative Purposes, Eleventh Judicial Circuit, Common Pleas

October 23, 2014



ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
OF THE ELEVENTH JUDICIAL CIRCUIT
CASE NUMBERS: 2013-CP-32-01272
2014-CP-32-00399

ALEXANDER GUICE,

Employee,

Appellant,

v.

US FOODSERVICE, INC.,

Employer,

and

ACE AMERICAN INSURANCE COMPANY, c/o GALLAGHER BASSETT SERVICES, INC.,

Carrier,

Respondents.

ADMINISTRATIVE ORDER
TO CONTINUE THE HEARING
SCHEDULED FOR NOVEMBER 10

FILED

A hearing was scheduled for November 10, 2014. The hearing is continued.

AND IT IS SO ORDERED.

October 23, 2014

William P. Keesley
Chief Judge for Administrative Purposes

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3200399

Alexander Guice	US Foodservice Inc	ACE American Insurance Co
PLAINTIFF(S)		DEFENDANT(S)

Submitted by: | Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

10/24/2014

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on **24th of October 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **24th of October 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Alexander Guice P O Box 45062 Tampa, FL 33677

ATTORNEY(S) FOR THE PLAINTIFF(S)

Erin Leigh Hantske PO Box 650007 Mt. Pleasant, SC 29465

ATTORNEY(S) FOR THE DEFENDANT(S)

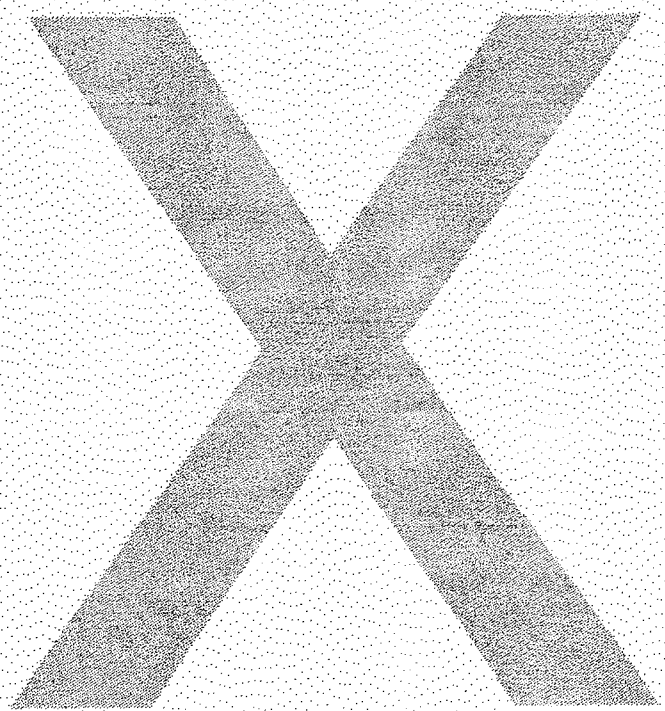
Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
OF THE ELEVENTH JUDICIAL CIRCUIT
CASE NUMBERS: 2013-CP-32-01272
2014-CP-32-00399

ALEXANDER GUICE,

Employee,

Appellant,

v.

US FOODSERVICE, INC.,

Employer,

and

ACE AMERICAN INSURANCE COMPANY, c/o GALLAGHER BASSETT SERVICES, INC.,

Carrier,

Respondents.

ADMINISTRATIVE ORDER TO OBTAIN FILE FROM THE SOUTH CAROLINA WORKERS COMPENSATION COMMISSION AND DIRECTING THAT THE FILES NOT BE DESTROYED UNTIL FINAL RESOLUTION OF THE APPEAL

FILED

This is an appeal from the Workers Compensation Commission. Under Rule 75, SCRCP, the files from the Commission are to be provided to the circuit court. Arrangements are to be made to transfer the file.

Under § 42-3-230, S.C. Code Ann., there is a provision for the destruction of the Commission's files after a period of time. While the court is unaware of any destruction, the Commission is directed to preserve the files related to this case, until this appeal is ended.

AND IT IS SO ORDERED.

October 23, 2014

William P. Keesley
Chief Judge for Administrative Purposes

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3200399

PLAINTIFF(S)	DEFENDANT(S)	
Alexander Guice	US Foodservice Inc	ACE American Insurance Co

Submitted by: | Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Other: _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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10/24/2014

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on **24th of October 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **24th of October 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Alexander Guice P O Box 45062 Tampa, FL 33677

ATTORNEY(S) FOR THE PLAINTIFF(S)

Erin Leigh Hantske PO Box 650007 Mt. Pleasant, SC 29465

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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ORIGINAL

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)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
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Employee,

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US FOODSERVICE, INC.,

Employer,

and

ACE AMERICAN INSURANCE COMPANY, c/o GALLAGHER BASSETT SERVICES, INC.,

Carrier,

Respondents.

ADMINISTRATIVE ORDER
DESIGNATING CASES AS
COMPLEX LITIGATION

FILED

The extensive number of filings and issues raised justify designating these cases as complex and assigning them to one judge.

THEREFORE, IT IS ORDERED that these cases are designated as complex.

IT IS FURTHER ORDERED that the undersigned judge will hear and handle all pre-trial motions and other matters pertaining to this case, and conduct the hearings and any post-trial proceedings in the Court of Common Pleas for Lexington County.

William P. Keesley
Chief Judge for Administrative Purposes

23rd day of October,

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3200399

Alexander Guice	US Foodservice Inc	ACE American Insurance Co
PLAINTIFF(S)		DEFENDANT(S)

Submitted by: | Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

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ATTORNEY(S) FOR THE DEFENDANT(S)

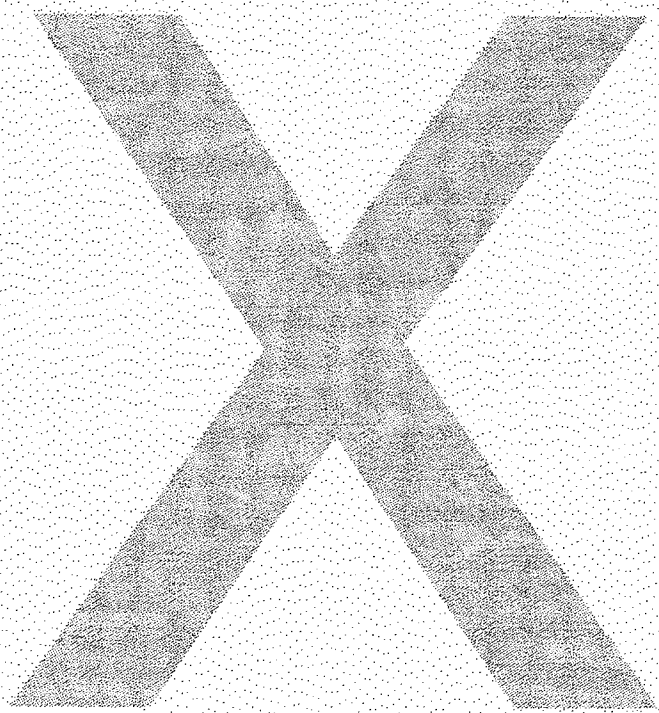
Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

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Employer,

and

ACE AMERICAN INSURANCE COMPANY, c/o GALLAGHER BASSETT SERVICES, INC.,

Carrier,

Respondents.

ADMINISTRATIVE ORDER
CONSOLIDATING THE FILES

FILED

The two files relate to the same subject. Since they contain common issues of law and fact, the cases will be consolidated under Rule 42(a), SCRCP, and the appellant and respondent are hereby notified that any objection to the consolidation must be filed immediately. The Clerk of Court shall combine the files into Case Number 2013-CP-32-01272.

AND IT IS SO ORDERED.

William P. Keesley
Chief Judge for Administrative Purposes

23rd day of October,

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3200399

Alexander Guice	US Foodservice Inc	ACE American Insurance Co
PLAINTIFF(S)		DEFENDANT(S)

Submitted by: | Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

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ATTACHMENT K

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Lexington	)	2014-GS-32-00399
	)	
	)	
ALEXANDER GUICE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
U.S. FOOD SERVICE, INC.,	)	
	)	
DEFENDANT,	)	

March 27, 2015
Columbia, South Carolina

BEFORE:

THE HONORABLE WILLIAM P. KEESLEY, JUDGE.

APPEARANCES:

ERIN HANTSKE, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

CONTENTS

> > > < < <

CERTIFICATE OF REPORTER 29

(No witnesses were called)

COURT'S EXHIBITS

NO	DESCRIPTION	ID	EV
1	CD	11	

THE COURT: All right. This is in the matter of Alexander Guice versus U.S. Food Service, Inc. and others. It's -- it's based on two case numbers: 2013-CP-32-0172 and 2014-CP-32-00399.

The matters were previously dealt with in an administrative order. The procedural posture of this case is one that's very complex. I'm not going to try to go through it, but what I have ordered is that the parties appear today to argue all pending motions.

Ms. Hantske is present on behalf of the respondents. Mr. Guice is not present. It was scheduled for ten o'clock. It's now seven minutes after ten.

THE BAILIFF: Your Honor, do you want the case called outside?

THE COURT: Yes, if you would call the name Alexander Guice three times.

THE BAILIFF: Alexander Guice?

THE COURT: Yes.

THE BAILIFF: I'll do it right now.

(Pause.)

THE BAILIFF: No answer, Your Honor.

THE COURT: All right. Let me put you under oath. Come up front. Raise your right hand, please.

HOMER CORLEY, after being duly sworn, testified as follows:

THE COURT: Your name is Homer Corley?

THE BAILIFF: Right.

THE COURT: You're a bailiff in Lexington County?

THE BAILIFF: The Lexington County courthouse, uh-huh.

THE COURT: And did you call the name of Alexander Guice three times outside the courtroom?

THE BAILIFF: I sure did.

THE COURT: Did he answer?

THE BAILIFF: No, sir.

THE COURT: Thank you.

THE BAILIFF: Yes, sir.

THE COURT: I serve as the Chief Judge for administrative purposes for the 11th Judicial Circuit Common Pleas.

This case was called to my attention because Judge Gibbons had heard matters related to the case previously and Judge Russo prior to that.

Judge Gibbons had issued an order vacating an order that he entered and recusing himself from the case, so the matter was called to my attention. It took me a great deal of time to go through the two files and to -- to get a handle on the procedural posture of the case. Mr. Guice is self-represented.

So I issued administrative orders -- I think there

were five of them -- to try to move the case along because Mr. Guice was insisting that he needed a prompt hearing, and we were trying to accommodate that.

One of the first things I did was to contact Judge Gibbons in writing which should be in the file asking him if he would consider a pending motion to alter or amend that was filed by the respondent.

He indicated that because of his recusal, he would not do so, and so I began the process of trying to decide whether I could certify familiarity with the file.

I assigned the case to myself because I thought one judge needed to be assigned to it since it takes so long to try to figure out what is in the file.

In that timeframe, Mr. Guice filed with the Supreme Court, and there was a question in my mind as to whether the matter was something that could go forward.

The Supreme Court eventually issued an order and dismissed -- I think he filed two different things, but he -- the last order dismissed his filing and put restrictions on his ability to file in the future with the Supreme Court.

Very promptly after that came down from the Supreme Court, I issued an administrative order, a supplemental administrative order, which was filed March 5th, 2015. It was dated March 3rd, 2015 which set this hearing.

Now, I think I probably have an error in the last full paragraph when I -- when I mentioned the Rule 59 motion.

The sentence reads, "The hearing on all pending motions, including but not limited to the de novo hearing on the Rule 59 motion will be held at the Westbrook/Lexington County Judicial Center on Friday March 27th, 2015 at ten a.m. unless further instructions are given by the Court."

The order probably was in error there with regard to the mentioning of the Rule 59 motion because the order had been vacated, so -- the order of Judge Gibbons had been vacated, so I'm assuming that Rule 59 motion is moot, and we would go back to the motion to dismiss. But in any event, it states all pending motions.

The order then provided that the Court will not entertain submissions by email. Part of the problem with certifying the record was that Mr. Guice was sending communications directly to the judge by email.

I could not tell if I had everything in the file that had been sent to Judge Gibbons. Mr. Guice has taken the position throughout the file that he is in Tampa, Florida, and he doesn't have the money to come up here.

He apparently thinks that he has the ability to set hearings and to cancel hearings. Be that as it may, he

has not appeared at any of the hearings that are listed in the file since his appeal to circuit court.

He took issue with me initially about email, and I'm a big fan about emails. I -- I don't know how circuit judges could function in South Carolina without using emails, but these e-mails are -- are so repetitive and they -- the filings are so redundant that it's just impossible to handle this case any other way than required.

The motions that are being pursued be filed under the Rules of Civil Procedure. So the order stated that anything that a party wants to submit for any of the motions must be filed in advance of the hearing as provided by the South Carolina Rules of Civil Procedure unless allowed to be entered into the record at the hearing.

Further, the failure to appear may be deemed an abandonment of any claims made in any pending motions. If the motion to dismiss is not granted, the Court will plan to schedule a hearing on the merits during the month of May 2015.

Now, in response to that, Mr. Guice has filed a document, and Ms. Hantske has filed a document. I just saw Mr. Guice's a moment ago, but I took the time to read through it, as I have everything. So bear with me just a

moment.

(Pause.)

The first thing that I would have to address, I would assume, is this motion -- and there may be more than one motion in the file at this point that I recuse myself. I'll be happy to hear anything in response, which is to say on this. Mr. Guise is not present. He has submitted things in writing.

Quite frankly, I'm dumbfounded because he simultaneously complains about the case not being administered and being administered. So I don't know how I could do my job any better than what I've done.

Honestly, I've given a tremendous amount of thought to this. His claims are completely unfounded, and not only are they unfounded against me, it appears that he has a pattern of doing this where he -- he will get a ruling he doesn't like for something that he doesn't agree with, and he will move for the removal of the judge.

The motion to remove me is denied. The next thing I guess I should consider procedurally is that he has sent a notice of cancellation of this hearing. Now, he did that previously, and I pointed out -- he did it on a previous hearing.

I pointed out to him in an order that was done -- and pointed out for everyone who reads the order -- that is

not his decision to make as to whether a hearing is canceled or not. He can request that a hearing be continued, but what he does is he sends a notice of cancellation of hearing. He does not have that authority.

He -- the only reason he gave in his motion that he filed earlier -- excuse me, his notice of cancellation of the hearing that he filed earlier was that I did not confer with him before setting the hearing, and he has something else to do, didn't say what.

In the document that I read just a moment ago that he recently filed, he stated that -- what he had stated previously that he is in Tampa, and he doesn't have the financial resources to come to South Carolina.

He has given no valid reason for the postponement of the hearing. In the most recent filing while he is also talking about canceling the hearing, he is also objecting to the fact that I have not had the hearing in a timely manner.

Again, I don't know how to address that except to say that I'm doing the best I can with the resources we have, and I have scheduled the hearing. He did not come, and he did not give me any valid reason for not coming aside from the one he said over and over again that he doesn't have the financial resources to come to South Carolina.

Well, it's probably an eight-hour drive, and the

filing fees that he's paid on these cases, he could have easily bought gas to come up here. So the motion -- if there is a motion to cancel the hearing is denied. To the extent it is a notice that he has canceled the hearing, he doesn't have that authority.

The next thing I need to do is when I reviewed the files, it appeared to me that the Workers' Comp. Commission had not transmitted the file to the circuit court when this appeal was filed.

I have obtained from the Workers' Comp. Commission and notified both parties all through the process of what was being done through orders that I needed a copy of the record.

What the Workers Comp. Commission has done is provide the record on a DVD or CD which I now need to make part of this record. So I can either mark it as a Court's Exhibit, or we can just file it.

Do you all have a preference?

Karen, do you? Do you have a preference?

COURT REPORTER: No.

THE COURT: Just mark it as a Court's Exhibit. We will mark the whole thing so it shows.

(WHEREUPON, Court's Exhibit No. 1 was marked for identification only.)

THE COURT: All right. Ms. Hantske, do you agree

with -- that any motion that you filed related to Judge Gibbons' order is now moot?

MS. HANTSKE: Yes, sir. If the order is vacated and we're going back to the original hearing, then yes, that is fine.

THE COURT: Do you wish to raise any issues about procedurally where we are or how we got here?

MS. HANTSKE: I mean, I can certainly try to give a very short Cliff's Notes version of the procedural posture if you wanted it on the record. I don't...

THE COURT: It's up to you.

MS. HANTSKE: I guess just for -- sorry.

THE COURT: That's all right. You're fine.

MS. HANTSKE: I'm used to Workers' Comp.

I believe kind of if we're withdrawing the Form 59, the alter or amend motion, it -- my understanding, the basis for the ruling today is on his prior appeal from the full commission to the circuit court. The full commission upheld the prior order.

I was asking the -- asking Judge Russo to affirm the full commission and file my motion to dismiss simultaneously which he did both. That was the previous one that was then appealed and continued. That was the one where he requested the new trial. That was granted. So I believe we're going back to that one if I'm not

mistaken.

THE COURT: Let me ask you because I do have a couple of questions, maybe a few. Judge Gibbons stated in his order, one of his orders, that when he vacated his prior order, part of the reason for doing so was his interpretation that the Court of Appeals wanted him to rule, wanted the circuit court to rule on every single matter that had been raised. I don't know where that came from. I've read the Court of Appeals' order.

MS. HANTSKE: Well, if I may, Your Honor.

THE COURT: Sure.

MS. HANTSKE: My understanding what happened -- basically, what happened was he kind of started two lines of appeals throughout this whole thing.

There was -- he filed a Form 50 requesting a hearing which Commissioner Barton ordered that that was dismissed, and then he filed a Form 30 appealing that to the full commission. In the meantime, he filed a motion for reinstatement of benefits, employment, et cetera and just sent that to the Workers' Comp. Commission.

Gary Cannon, the Executive Director of the commission, returned it to him saying they didn't have jurisdiction just for a motion for reinstatement of employment. Then he started appealing that.

He appealed that directly to the Court of Appeals,

skipped the circuit court. While that was going on, he also appealed Commissioner Barton's order to the full commission.

They then were ruling on the full commission, ruled on the full commission, upholding Commissioner Barton's order. Then he appealed that here to circuit court. Once he appealed that to circuit court, that was when this letter appeal was pending in the Court of Appeals.

They saw the appeal pending in circuit court, so they remanded it back and said, "This looks like the same issue. Let's decide it all at once." That's when we appeared before Judge Gibbons, and that was partly my fault. I'll take responsibility for that in not addressing the Court of Appeals issue in the order that Judge Gibbons requested to be written as a result of the June 2014 hearing.

THE COURT: All right. Okay. Now, he raised an issue on that second appeal that -- where he filed the action in the Workers' Comp. Commission -- or he sent that letter.

MS. HANTSKE: Yes, sir.

THE COURT: He raised the issue that the executive director has no authority to do what he did; that a commissioner would have to address that issue. Do you have any comment about that?

MS. HANTSKE: No, sir. I believe Gary Cannon just merely returned his motion and his filing fee saying that it was improper, and the way he went about filing it, they didn't have -- they couldn't rule on it because he improperly filed it. So all --

THE COURT: What should he have done, filled out a form or what?

MS. HANTSKE: Well, he was pending -- a motion for reinstatement of employment just doesn't exist in Workers' Comp.

THE COURT: Okay.

MS. HANTSKE: And so I mean, my understanding is that's why Gary Cannon returned it just saying this is not a legitimate motion in the arena of Workers' Comp.

So that's why he returned that, and then Mr. Guice started appealing this letter that Gary Cannon sent back to him returning his motion and his filing fee.

THE COURT: So your interpretation of the Court of Appeals' ruling is that as to that letter and the appeal from that that it was remanded to the circuit court for a determination on the validity of that appeal?

MS. HANTSKE: Yes, sir, because all of the issues --

THE COURT: So basically, the Court of Appeals appealed it back. He didn't file an appeal with us, so the Court of Appeals sent it to us?

MS. HANTSKE: Yes, sir. That's my understanding.

THE COURT: All right. Did you -- did I interrupt you? Did you have --

MS. HANTSKE: No, sir. I believe that was -- that was all.

THE COURT: All right. So one of the things he is raising in this filing that I just read today, his reply, is that there's supposed to be 30 days notice of a hearing on the appeal. Again, I -- I had not seen this before I walked in the courtroom this morning so --

MS. HANTSKE: I had not either.

THE COURT: Okay. Let me see if I can find it.

MS. HANTSKE: It's on page two, it looks like.

THE COURT: Is that a notice -- does that statute apply to the circuit court, or is that -- is he quoting a statute from Workers' Comp. law?

Well, that's an administrative -- oh, that's an administrative proceeding. I guess I should look up the statute before I start talking.

MS. HANTSKE: I was going to say, that -- that's not a --

THE COURT: Item one is usually Administrative Procedures Act.

MS. HANTSKE: Yes, sir, 23 is not a Workers' Comp. section.

THE COURT: Well, to be honest with you, the order that I issued stated that I would hear the motions, and so I assumed we were back to the motion to dismiss.

I didn't really realize -- or I had maybe overlooked when I was drafting this order in early March that Judge Gibbons had both issues in front of him.

MS. HANTSKE: Yes, sir, but I mean, it was a motion to dismiss, as well --

THE COURT: Right.

MS. HANTSKE: -- and that was part of my --

THE COURT: I had assumed we were hearing a motion to dismiss today and any other pending motions. I didn't know that we would be hearing the merits as far as if the motion -- that's why I put in there if the motion to dismiss is denied --

MS. HANTSKE: Right.

THE COURT: -- then we would have the ultimate hearing in circuit court on -- sometime in May.

MS. HANTSKE: And, Your Honor, with all due respect, I think a motion to dismiss is really the only valid thing before this Court. I mean --

THE COURT: That's what I --

MS. HANTSKE: It is -- it's my position it has been since he reopened this in November 2012. He signed a Clincher settlement agreement that was approved by the

Workers' Comp. Commission in January of 2006.

He was represented at the time. He was advised of all of his rights, and as stated in this settlement agreement, it says, "You are relinquishing every right you have as regards to this claim, and it is dismissed forever."

THE COURT: Okay. Well, before I hear that, let me -- now, he filed a motion for sanctions in October of -- October 22, 2014. Do you know what that's about?

MS. HANTSKE: Was that the one that was against this court or against me?

THE COURT: Here, I found it.

MS. HANTSKE: I apologize. There's so many.

THE COURT: Well, I mean, that's -- that's the whole issue. Everybody -- we're all trying so hard to get this case handled and properly handled, and there's so many filings and there's so much repetition. There are readings of rules and case law that just don't apply.

MS. HANTSKE: I agree with you, sir.

THE COURT: It's -- it's so difficult to deal with this, but I'm doing my very best as I told you earlier.

I know that I had sent him something because I said it was being vacated. I had resisted answering his emails by email. I said from the very beginning that that was problematic, and we needed to do these things more

formally.

He sent something about being evicted from his home, and that concerned me. I was in the hospital having a procedure done. He then moved to have me excuse -- recuse -- have me removed from the case because I was incapacitated and did not notify anybody.

Well, I was in the hospital two days in a procedure during my vacation week, so the extent -- so I responded back to him and said, "I'm not disabled. I scheduled this around my vacation. I haven't missed a single day of work."

So to the extent that there's a motion out there for me to be recused based on my disability, that's also denied while I'm thinking about it. There is no merit to it, no grounds for it. It's denied.

This motion for sanctions -- by the way, on many of these things, he states, "Motion for sanctions, no oral argument requested."

He also takes issue with the fact when I set up the hearing if he didn't ask for oral argument, I don't know where he gets the idea that he decides whether we have argument or got. That's the Court's decision. I think this motion for sanctions is against you.

MS. HANTSKE: Yes, sir. I -- that one just came to my head. That was one where -- in reply to my motion to

alter and amend.

THE COURT: He -- this one is basically asserting that y'all have not paid him all of his money, and that he is entitled to sanctions requiring you to pay the money and a monetary fine in the amount of $6,698.97 be imposed upon you on a daily basis.

MS. HANTSKE: Yes, sir.

THE COURT: He is not here to argue that and there --

MS. HANTSKE: That was his calculation of the back pay of weekly benefits since he signed his agreement and resigned his job in November of 2005. That was his calculation of the total award, and then divided out by I guess some daily figure that he came up with.

THE COURT: He also filed on October 24th -- or excuse me, that was the date of my order. He also filed an objection, a motion and objection, to the administrative orders that I issued. He filed that in November of 2014. I've read through all those.

He takes issue -- he repeatedly uses the word sua sponte. He takes issue with the actions of the court. That's part of the things that he raised to the Supreme Court in the interim file.

I -- I do not believe that there is anything inappropriate. You addressed that Ms. Hantske in some of your -- your filings, as well.

There seems to be a fundamental misunderstanding about the proper role of a judge who is assigned the responsibility of being the administrative judge, the chief judge for administrative purposes, in a circuit.

All of those things that were done: Putting the two files together; setting up the procedure that would be filed was all done after reviewing those two files trying to piece together procedural posture of the case and trying to get it in a position of moving forward.

Now, Mr. Guice has this understanding that somehow Judge Gibbons' order was a determination on the merits that he should have his job back with all of this money. There is no basis for that in this record that I reviewed.

There is one phrase in the order that is very broad, but Judge Gibbons' order has now been vacated. So Mr. Guice simultaneously moved -- well, not simultaneously but at -- in the same general time sequence, he moved to recuse Judge Gibbons, I believe.

MS. HANTSKE: Yes, sir.

THE COURT: But insists that his order is the one that's binding because it's in his favor. There is no basis for a determination that what Judge Gibbons did was what Mr. Guice interpreted in that regard.

MS. HANTSKE: Yes.

THE COURT: The order has been vacated now. The

objection to the administrative orders that were entered, all of those were -- in my mind were set up to move the case along.

They were proper administrative functions, and the assignment of the case to me was for the reasons I stated earlier so that one judge would have file, these two files, and would be familiar with it and wouldn't have to try to spend all of the hours that it took me to go through this.

He raised -- I think, in one issue he made racial references. I didn't even know what race the man was.

MS. HANTSKE: He hasn't shown up for anything. Nobody has seen him.

THE COURT: Well, had he not put that in there, I would have no clue. I could not envision -- well, let me just say there is no racial component to anything that was in my rulings.

If anything, I bent over backwards to accommodate Mr. Guice. So the motion that he filed to object to the administrative order is also denied.

His motion for judgment on the pleadings, I suppose I ought to let you comment on that. I mean, it has a -- on its face certain issues. Do you remember that one?

MS. HANTSKE: Yes, sir, and I mean, it was my understanding that that was basically he just wanted

everything in the record ruled upon without us appearing for a hearing and...

THE COURT: Well, he has got all of these comments, and there are so many motions I may be confused with some of them off the top of my head. I don't want to do that. I want to make sure I don't confuse anything before the written order is entered on this hearing today.

There are parts of his argument where he seems to think that he has filed pleadings, and that -- that he is entitled to judgment just based on those pleadings because there was a failure to respond to certain things.

MS. HANTSKE: And I believe he thought that anything I didn't respond to specifically was just -- I was admitting everything.

THE COURT: Right. That part of his argument, that's what I think you have to address, and I shouldn't say.

MS. HANTSKE: Yes, sir. I mean, obviously, after he started alleging that anything I did not respond to was thereby admitted, I started denying everything in full, but I certainly have never admitted to any of the accusations he has presented.

I mean, I certainly -- you know, it was my position that if Your Honor wanted to rule on all of the pleadings and all the submissions without a hearing, I was fine with that, but I certainly deny any of the allegations he set

forth in those motions.

THE COURT: Well, what pleadings would he have? I mean --

MS. HANTSKE: I guess any of the motions or submissions he -- he may have -- he may have given to y'all.

THE COURT: Because this -- these -- these are appeals, both of them, right?

MS. HANTSKE: Yes, sir.

THE COURT: So it's not like he filed a summons and complaint, and he's entitled to a default, or he's entitled to judgment as a matter of law --

MS. HANTSKE: Right.

THE COURT: -- on the complaint. I -- there could be no genuine issue, I guess, in an appeal situation, but typically in an appeal, you base it on the record entirely, and you have your arguments and you go from there.

So the motion for judgment on the pleadings is denied. I think, again, that's part of the fundamental misunderstanding that's going on.

The motion for relief of the administrative orders that were issued in March of this year, again, those are denied. There is no basis for any of these assertions. They're -- they're unfounded.

He filed a motion to stay the proceedings. That is also denied. There is no basis to stay any proceeding, and the motion to disqualify he filed March 9th, 2015. Again, there is no evidence, and there is no basis, upon which to disqualify me from this case.

All right. Now, those are the general ones that we knew were pending. He is not here, and I told him in the order, if you don't show up to argue your motions, they can be deemed abandoned. He has not shown up. So unless you want to address anything else, I'm going to hear your motion to dismiss.

MS. HANTSKE: I don't have anything else then, sir.

THE COURT: All right. Go ahead.

MS. HANTSKE: Your Honor, as we made it very clear in the record, this is a very convoluted case, but I think the crux of the entire argument in this case is that the claimant was represented by counsel towards the end of 2005, signed a settlement and agreement release that was filed with the Workers' Comp. Commission and stamped approved on January 5th, 2006 which released US Foods and their carrier from any and all claims as related to his accident of May 5th, 2005.

The Workers' Comp. Commission has denied all motions and ruled in favor of the carrier and employer. The full Commission has done the same.

We would ask that this court dismiss this case with prejudice and also award attorney's fees and costs related to this claim given the redundant and completely unfounded filings that the claimant has -- or that the appellant has continued to file.

THE COURT: All right. I've been -- I've been very impressed with your filings that you sent. You kept them moderate. You haven't reacted inappropriately in any way.

MS. HANTSKE: Thank you, sir.

THE COURT: Well, a lot of times it's hard for -- what I'm -- what I believe I'm going to have to do is I'm going to ask you to draft an order.

MS. HANTSKE: Yes, sir.

THE COURT: Now, I want you to send it to me in electronic format that addresses everything. Send it to me in a Word document so I can change it if I need to.

MS. HANTSKE: Okay.

THE COURT: The things you put in your brief, those kinds of arguments, that's what I'm looking for, but I want some procedural items covered as best you can.

MS. HANTSKE: Yes, sir.

THE COURT: So the order is not 100 pages long, but I mean, be as thorough as you can and as concise as you can.

MS. HANTSKE: I have got a very good -- about six- to seven-page summary of all of that, so I think we will be

able to keep it pretty concise.

THE COURT: Address the issue about the Court of Appeals remand, and send that to me ruling in favor of dismissal of the case.

MS. HANTSKE: All right. And address the --

THE COURT: And the attorney's fees -- I don't know if you have anything to submit today. If you want to submit affidavits.

MS. HANTSKE: Yes, sir. I will certainly do that.

THE COURT: You'll have to send those to him to give him at least ten days to respond after he gets them, but go ahead and send that stuff to me.

MS. HANTSKE: So is that -- and I apologize, Your Honor. Is that granting the attorney's fees, or is that just me submitting the affidavit, and then you'll rule on that later?

THE COURT: Well, at this point, I'm inclined to grant the attorney's fees. Of course, until I issue a written order --

MS. HANTSKE: Okay.

THE COURT: -- it's not a ruling anyway.

MS. HANTSKE: Yes, sir.

THE COURT: But I intend to grant your request for attorney's fees. I think it's -- all one has to do is to read the Supreme Court's recent opinion on this matter

to -- to know how frustrating this whole ordeal must have been for the respondent.

Now, I will say it is also apparent -- while I've been impressed with your file that Mr. Guice is spending an enormous amount of time reading law and reading the rules. He seems to be an intelligent man. He just --

MS. HANTSKE: Yes, sir.

THE COURT: He just reads things into documents and rules and cases that are just -- in my opinion, much of it is out of context. It's either inapplicable, or it's just out of context.

So I'm trying my best to be as fair as I can, and I want you to draft me an order that is as neutral as it can -- sounding as it can be, and I'll read through it. I'm sure I'll make changes. I make changes on almost every proposed order.

MS. HANTSKE: Yes, sir.

THE COURT: I appreciate very much your coming up here. You can document the times he has not come to previous hearings and didn't come today, if you can recall those things I dealt with administratively at the beginning.

MS. HANTSKE: Yes, sir. I took notes on those.

THE COURT: Okay. I appreciate it very much.

The ruling of the Court is that the action is

dismissed. Both cases are dismissed, and I'll await your -- your proposed order.

MS. HANTSKE: Do you want an affidavit of fees going back just for this proceeding?

THE COURT: Whatever you think you're entitled to and whatever --

MS. HANTSKE: Yes, sir.

THE COURT: -- and give me authority for whatever you feel you're entitled to.

MS. HANTSKE: Yes, sir. I will do so.

THE COURT: There has to be something where you have requested it, and -- so I guess it would be founded on whatever you requested, whatever you may have moved for. If there's an issue, you can write me. I'll try to respond to it.

MS. HANTSKE: Okay. Thank you so much, Your Honor.

THE COURT: Thank you very much.

(Whereupon, the proceedings were concluded.)

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

I, Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Lexington County, South Carolina, on the 27th day of March, 2015.

June 3, 2015

s/Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

ATTACHMENT L

ORIGINAL

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)

ALEXANDER GUICE,) Civil Action No. 2013-CP-32-01272
) Civil Action No. 2014-CP-32-00399
Claimant,)
)
v.) **ORDER**
)
US FOODSERVICE, INC.,)
)
Employer,)
)
and)
)
ACE AMERICAN INSURANCE)
COMPANY C/O GALLAGHER)
BASSETT SERVICES, INC.,)
)
Carrier,)
)
Respondents.)

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BILL VEARS
CLERK OF COURT
LEXINGTON, SC

These two cases were consolidated and came for hearing on various issues detailed below. The court finds in favor of the Respondents and dismisses these cases.

The foundational claims of Mr. Guice (the Appellant) relate to his assertion that he is entitled to be relieved from a full and final settlement agreement that resolved his original workers' compensation claim in its entirety. The Appellant is self-represented. He did not appear for the hearing.

This matter has a convoluted and detailed procedural history, which is further complicated by the existence of two separate files that overlap to a large degree. The length of this order is an effort to make sure that any issues that have been raised are ruled upon and to provide context and clarify the basis for rulings, particularly as they relate to the Appellant's claims of misconduct against this court that are in pending motions.

Mr. Guice was injured on May 5, 2005, and filed a workers' compensation claim. The Respondents provided medical treatment and temporary compensation payments. The parties entered into a comprehensive Settlement Agreement and Release ("settlement") "in full and final satisfaction of all claims whatsoever as a result of the alleged accident." 1 Appellant signed this settlement, which was approved by the Commission pursuant to S.C. Code Ann. §42-9-390, and the Commission's order was filed on January 5, 2006. At the time, Appellant was represented by counsel. The Commission's approval of the settlement was not timely appealed.

Nearly seven years later, the Appellant sought to reopen his claim by filing submissions without the assistance of counsel. On December 7, 2012, Appellant filed a Form 50, Request for Hearing, and then an Amended Form 50 dated January 5, 2013, alleging entitlement to additional medical examination and treatment, temporary total disability benefits, and permanent disability as a result of his May 5, 2005 work-related accident. He also attacked the validity of the settlement and raised issues of unlawful termination of employment, unlawful reduction of his

1 Under the settlement, dated December 22, 2005, Respondents paid Twenty Thousand and No/100 ($20,000.00) Dollars and, in return, Appellant released the Employer and its workers' compensation insurance carrier from "any and all claims, demands, actions, or causes of action under the South Carolina Workers' Compensation Act, on account of any and all injuries, disability, disfigurement, specific loss, death, operations, medical, hospital or like expenses, continuances, recurrences, aggravations, changes of condition, ailments, illnesses, and diseases or other damages, consequences or results, past, present or future, in any way connected with, or arising from the alleged injury sustained by Claimant on or about May 5, 2005 ...." The settlement was "full, final and complete regardless of whether the Claimant is able to keep any employment whatsoever, or is able to earn any wages at any time in the future ...."

average weekly wage calculation, unlawful termination of temporary total compensation payments, inadequate legal representation, and he sought penalties.

A workers' compensation hearing was scheduled for March 28, 2013, based upon Appellant's submission to the Commission. However, on February 22, 2013, Commissioner Susan S. Barden issued an Order holding that, as Appellant had "settled on a full and final basis on or about January 6, 2006, [Appellant's] hearing request is hereby denied." Commissioner Barden canceled the hearing date and dismissed "any and all motions filed pertaining to WCC No. 0506205," which was the Commission's file number for this matter. Appellant then began pursuing two separate avenues to have his claim heard.

First, on February 28, 2013, he filed a Form 30, Request for Commission Review, of Commissioner Barden's February 22, 2013 Order. In his notice of appeal to the Full Commission, he alleged seven different points of appeal, including: (1) "Did Commissioner Susan S. Barden have proper jurisdictional authority to make any judgments regarding WCC No. 0506205"; (2) "Was Commissioner Barden's Order invalid due to no regulatory or statutory grounds stated to support canceling the hearing"; (3) "Did the Order signed by Commissioner Barden on 02/22/2013 violate Rule 5(b)(3) SCRCP"; (4) "Did the Order signed by Commissioner Barden on 02/22/2013, with respect to canceling the hearing, violate Rule 7(b)(1) SCRCP"; (5) "Did Commissioner Barden's Order dated 02/22/2013 violate the Appellant's right to a hearing"; (6) "Was the Appellant subjected to a conspiracy involving Commissioner Barden, Virginia L. Crocker, Judicial Director, and Erin L. Hantske, Esquire, the representative for the Respondent"; (7) "Is Commissioner Barden's conduct subject to be reported to the SC Ethics Commission IAW Rule 501(3)(D)(1) SCRCP with respect to the Order dated 02/22/2013."

Second, on March 4, 2013, before any action had been taken by the Commission on

Appellant's Form 30 appeal, Appellant mailed a Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments ("Motion for Reinstatement") to the Commission. It lists many of the same issues he raised in his Form 50, including but not limited to the following: 1) unlawful termination of his employment; 2) unlawful reduction in his average weekly wage/compensation rate; 3) unlawful termination of temporary total compensation payments; 4) challenges to the settlement; 5) complaints about his former legal counsel; and, 6) a request for penalties. Respondents opposed Appellant's motion for reinstatement.

On March 18, 2013, Appellant mailed a proposed Order granting his motion for reinstatement to the Commission. On March 27, 2013, Mr. Gary Cannon, Executive Director of the Commission, wrote to the Appellant, returning Appellant's motion for reinstatement, along with the filing fee. The letter stated that Mr. Cannon was "returning the Motion and the filing fee because the Commission does not have subject matter jurisdiction for the issues set forth in the Motion." It is this March 27, 2013 letter from Mr. Cannon that Appellant appealed to the circuit court and ultimately the Court of Appeals. The Court of Appeals remanded that case as discussed herein. The first circuit court complaint was filed in April 2013 (Case Number 2013-CP-32-01272).

On May 3, 2013, the Respondents filed a motion to dismiss the appeal pending before the circuit court. That motion is now before this court and is decided, *de novo*, as discussed below.

On May 8, 2013, the Appellant filed a motion seeking entry of default. He is not entitled to default, this being an appeal.2 Mr. Guice then sent letters objecting to the court's roster.

A hearing was held before The Honorable Thomas A. Russo on June 3, 2013. Although Appellant was notified of the hearing, he failed to attend or arrange to have counsel present.

Judge Russo decided to proceed with the hearing, and he granted Respondents' motion to dismiss based on lack of jurisdiction because the Appellant had failed to exhaust all of his administrative remedies. Judge Russo also ordered that, "Upon exhaustion of all administrative remedies, the above-referenced Claimant may have an appeal to the circuit court once that agency has reached a final decision." Judge Russo issued that order on June 13, 2013.

On July 1, 2013, the Appellant filed a motion to reconsider or to alter or amend. Judge Russo held a hearing on September 3, 2013, which the Appellant did not attend. Judge Russo denied the motion in a Form 4 order entered on September 6, 2013.

Appellant timely appealed Judge Russo's order to the South Carolina Court of Appeals by way of Notice of Appeal dated November 13, 2013. Respondents filed a motion to dismiss the appeal before the South Carolina Court of Appeals dated February 28, 2014. The Respondents asserted that the Appellant's appeal should be dismissed because he failed to exhaust his administrative remedies before filing his appeal to the circuit court and because neither the March 27, 2013 letter from Mr. Cannon, nor the circuit court order, was a final order for purposes of appeal. When Appellant initiated his appeal to the Court of Appeals concerning the March 27, 2013 letter from Mr. Cannon, he had already filed a Form 30 appeal of Commissioner Barden's dismissal of his claims to the Full Commission. That process was not final. In fact, it was pending at the time he appealed Director Cannon's March 27, 2013 letter.

Commissioner Barden's February 22, 2013 order considered and dismissed the issues Appellant raised in his Form 50s, all of which centered on the same issues raised in his motion for reinstatement. At the time the Appellant filed his appeal to the Court of Appeals, the Commission was in the process of considering his Form 30 appeal from Commissioner Barden's February 22, 2013 order.

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2 Mr. Guice sometimes places a summons on documents which are inappropriate to be accompanied by a summons.

On July 17, 2013, the Full Commission entered a final order and Appellant appealed the July 17, 2013 order to the South Carolina Court of Appeals, which was not the correct forum at that point. Since Appellant's injury occurred prior to July 1, 2007, he should have filed this appeal with the Court of Common Pleas. Accordingly, the Court of Appeals *transferred* Appellant's appeal to the circuit court (see Rule 204(a) SCACR) by way of an order dated December 6, 2013. Based upon this previous transfer from the Court of Appeals to the circuit court, the Court of Appeals granted Respondents' motion to dismiss because the Appellant had another appeal pending under the same workers' compensation file number. Accordingly, the case was remanded to the circuit court with the notation to "consider the merits of this appeal in conjunction with Appellant's appeal from the Commission's final Order."

At that point, Mr. Guice had the pending 2013 action in Common Pleas, but he decided to file another action in circuit court on January 31, 2014. He filed several documents, and the new file was given Case Number 2014-CP-32-00399. He filed a document dated December 23, 2013, which is captioned as a Notice of Appeal. He filed a document dated December 26, 2013, which is captioned as an Amended Notice of Appeal. A document dated January 2, 2014, is captioned as a Notice of Demand, which is addressed to Respondent's counsel. He filed a Summons, which is attached to a Brief, with numerous attachments. The Summons and Brief are dated January 26, 2014.

These documents constituting the beginnings of the new file are difficult to put into a normal procedural framework. It appears that the Respondents moved to dismiss under Rule 12(b)(1) and 12(b)(6), SCRCP, stating that if the filing is deemed to be a Complaint, the court lacks jurisdiction. It also raises the fact that no Complaint was attached to the Summons and that any statute of limitations for a complaint would have expired. The motion to dismiss seeks

attorney's fees and costs. The dismissal request was filed with the Clerk of Court on March 11, 2014. The Respondents also seemed to wrestle with how to construe the initial filings in the 2014 case because they filed an Answer on March 11, 2014.

Apparently, Mr. Guice received a copy of the motion to dismiss before it was filed as evidenced by the fact that he filed separate responsive documents five days before the motion to dismiss and the Answer were filed. On March 6, 2014, the Appellant filed documents captioned as a Reply and as an Answer. In any event, the court determines that the Summons filed to begin the 2014 case was not appropriate. The action was not accompanied by a Complaint. It is dismissed for the reasons discussed below.

Since motions and appeals were pending in the Court of Common Pleas, the staff of the Clerk of Court for Lexington County properly and routinely docketed matters for a hearing. Mr. Guice raised strenuous objections. Any objections raised by Mr. Guice to the methodology by which these cases were docketed are misguided and based on incorrect assumptions about how cases are called for hearings and trials. A notice of hearing was dated March 13, 2014, scheduling the hearings for April 3, 3014.

On March 19, 2014, the Appellant filed a motion to disqualify, seeking to remove Judge Russo from the case. Mr. Guice's motion is twenty pages long. It asserts that Judge Russo is not fair and impartial regarding his case, and demands that the April 3 hearing have a different judge assigned. The file reflects that Mr. Guice had complained to South Carolina Court Administration about the Lexington County Clerk of Court's office, and a copy of the response from Court Administration, which includes references to Judge Russo, was filed with the Clerk on March 20, 2014.

Judge Russo issued a Form 4 order dated and filed April 3, 2014, in which he continued the hearing. No reason was specified. The motion to disqualify was decided in a written order filed on April 4, which denied the motion. It appears that the pending matters were then set, in the normal course, to be heard at a succeeding non-jury term over which The Honorable Brian M. Gibbons was scheduled to preside. That notice was generated on May 5, 2014.

By letter dated May 12, 2014, the Appellant transmitted a document entitled Notice to the Court. He used that format later with Judge Gibbons, though it has no basis in practice and does not follow permissible actions under the Rules of Civil Procedure. It is directed to "The Honorable Thomas A. Russo, apparent former presiding judicial officer." It "DEMANDS" that a written explanation be placed into the official record of why Judge Russo is no longer the presiding officer and "DEMANDS" that Judge Gibbons enter a written certification that he is familiar with the file and can complete the hearing without prejudice. This court is not clear whether Mr. Guice is confused by the fact that the judicial assignments for circuit court in this state system are unlike the methodology of the federal system and some other states. In any event, having considered his repeated objections to the assignment of judges and docketing of hearings, this court concludes that he is fundamentally mistaken in his assumptions and apparent beliefs that improprieties have taken place regarding the administrative handling of his files.

Judge Russo wrote Mr. Guice a letter dated May 20, 2014, attempting to explain the procedure. He addressed the issues raised in the Appellant's correspondence and Notice regarding the subject of Judge Russo's alleged bias and the handling of these files.

On June 6, 2014, the Appellant filed a written brief addressing the issues concerning his appeal. It discusses the claims of alleged flaws in the decision of the Full Commission rendered July 17. 2013. It argues unlawful termination of employment, improper cessation of temporary

total benefits, raises challenges to the settlement and clincher, attacks the conduct of Appellant's counsel in the original workers' compensation action, challenges the sufficiency of the order of the Commission, and argues against the motion to dismiss. In short, the Appellant addressed the issues that seem to be asserted in both circuit court files.

The hearing in circuit court was rescheduled for June 16, 2014. Although Appellant was notified of the hearing, he failed to attend or arrange to have counsel present, though he submitted a lengthy memorandum. Judge Gibbons presided over the hearing. The order issued by Judge Gibbons lists only one case number in the caption, 2014-CP-32-00399. However, the body of the order included the issues raised in both files. The order begins by stating that the issue before the court was the Appellant's Amended Notice of Appeal dated December 23, 2013. Later, Judge Gibbons' order states that he is entertaining the Respondents' motion to dismiss. It seems clear that Judge Gibbons heard the Appellant's Amended Notice of Appeal dated December 23, 2013, and Respondents' motion to dismiss dated February 24, 2014. After reviewing all submissions presented by the parties and considering briefs and arguments of counsel and Appellant, Judge Gibbons granted Respondents' motion to dismiss and affirmed the decision of the Appellate Panel of the South Carolina Workers' Compensation Commission dated July 17, 2013. Judge Gibbons was more than accommodating to the Appellant, apparently considering issues raised in written communication and, perhaps, in emails.

When counsel for the Respondents submitted a proposed order, Mr. Guice filed his memorandum of comments and exceptions. Judge Gibbons' issued his order on July 21, 2014.

Appellant then filed a motion for new trial dated August 4, 2014, alleging that the circuit court's July 21, 2014 order failed to consider the Court of Appeals remand order and demanded that Judge Gibbons' order be set aside for a new trial. Appellant's motion for new trial also

lodged accusations of impropriety against Judge Gibbons. The accusations against the judge and attorney include abuses of discretion, fraud upon the Court, and dishonesty.

As for the merits of the motion for new trial, the gist of the Appellant's assertion is that Judge Gibbons' July 21, 2014 order should be set aside because it did not take into consideration Appellant's prior motion for reinstatement of employment and release of temporary total compensation benefits. This was asserted to be at issue because of the letter from Mr. Cannon denying any additional motions based upon Commissioner Barden's February 22, 2013 order. Again, because of the overlapping claims, it should be noted that Appellant's motion for reinstatement of employment and release of temporary total compensation payments requested relief based upon essentially the same positions. Those included the alleged invalidity of the original 2005 settlement, the Appellant's attempt to reinstate Appellant's employment effective November 2, 2005, immediate release of unlawfully withheld temporary total compensation payments of $1,154.00 per week effective November 2, 2005, immediate payment of a twenty-five percent penalty for unlawfully withheld temporary total compensation payments, and other relief and actions the Commission deemed just and proper.

WPA #10

The Respondents filed their Reply to the motion for new trial on August 20, 2014.

Having now reviewed the matter *de novo*, it is apparent that the relief sought in the motion for reinstatement of employment and release of temporary total compensation payments concerned the same 2005 settlement and is the identical relief sought in the current appeal. Judge Gibbons' Order dated July 21, 2014, noted that the Appellant instituted his appeal with the Court of Common Pleas requesting, among other things, to set aside the decision and order dated July 17, 2013, by the Appellate Panel of the South Carolina Workers' Compensation Commission, which fully affirmed Commissioner Barden's February 22, 2013 decision and

order; set aside the decision and order from Commissioner Barden dated February 22, 2013; and, reinstate his employment and temporary compensation. The issues set for determination and the facts in controversy at the time Judge Gibbons considered them, and now at the *de novo* hearing stage, appear to be identical in all material respects to the issues set for determination and the facts in controversy contained in Appellant's pleadings filed with the Court of Appeals. What the Court of Appeals had done was to note that Appellant had a pending appeal with the circuit court based upon the transfer order of December 6, 2013, and remanded the case to the circuit court for consideration. Both circuit court files are seeking the same relief.

On August 25, 2014, Mr. Guice filed a document captioned as a Verified Notice to the Court. It cites ethical canons of the Code of Judicial Conduct. It "DEMANDS" that Judge Gibbons certify that he is not operating under any disability that would impair his ability to decide the issues fairly and impartially. It "DEMANDS" that Judge Gibbons provide a written rationale as to why he did not respond to the exceptions and comments that the Appellant filed regarding the proposed order that had been submitted by Respondents' counsel. It "DEMANDS" explanation about why certain alleged facts were not included in the court's ruling. It "DEMANDS" a written explanation as to why the court failed to address the remand notice from the Court of Appeals in Case Number 2013-CP-32-01272. Both sides provided written arguments related to the Appellant's motion for new trial.

The Respondents' brief points out that the procedural history of this case is clouded by the voluminous, repetitive submissions of the Appellant and the duplicitous nature of filings. The Respondents stated that in order to evaluate the Court of Appeals' order of April 24, 2014, "it is necessary to consider the entire procedural background of this matter." This court agrees.

Judge Gibbons considered the motion of the Appellant (the motion for new trial), and he considered the Appellant's assertion that there was a failure to properly consider the remand. Judge Gibbons issued an Order dated September 25, 2014, granting Appellant's motion for new trial. He made reference to the fact that the case has a convoluted procedural history. He noted that the Appellant did not appear for the hearing, but sent numerous documents to the court before and after the hearing, some by email. He did not recall having reviewed two files in the case. The September 25 order contains the following language:

> Since my written Order of July 30, 2014 does not appear to set forth the Court's decision in detail and since it does not specifically address matters contained in 2013-CP-32-1272 as instructed by the SC Court of Appeals, the Court agrees with Appellant/Claimant that he should be granted a new trial or hearing in Circuit Court. This Court of course could have reopened this matter for further consideration, but declines to do so as explained more fully below.
>
> . . .
>
> Further, for this court to continue to be the presiding judge, after receiving numerous pages of meritless and spurious allegations of unethical, incompetent, and impartial behavior from the Appellant/Claimant would put the Court in a precarious ethical posture.

WPA #12

The order clearly states that the allegations raised post-hearing against Judge Gibbons were determined to be "baseless and meritless." It also clearly states that the judge recused himself on his own (*sua sponte*) from further involvement in these cases. Specifically, Judge Gibbons stated in the September 25 order that "while categorically denying any unethical behavior in how this matter was heard and decided" and "mindful of the disdain of allowing disgruntled litigants to seek recusal for adverse rulings, the integrity of the Court simply must be upheld in this matter."

These parties had different interpretations of the September 25 order. Specifically, there is a dispute about the portion of the Order that states, "[t]he Appellant/Claimant's motion for new trial or hearing is GRANTED as to all particulars set forth in his motion . . .." The order unequivocally states, "[t]his matter be reassigned in the discretion of the Chief Administrative Judge of the Eleventh Judicial Circuit for a *de novo* hearing on all matters instructed by the SC Court of Appeals in both pending Case Numbers 13-CP-32-1272 and 14-CP-32-399."

At that point, the Appellant seized upon the language of Judge Gibbons' order, including the language about granting relief "as to all particulars set forth in his motion." The Appellant became convinced that he had prevailed on all of his substantive claims. This interpretation is without support. Judge Gibbons did not have the ultimate merits of the case before him when he issued that order. The full sentence reads, "1. The Appellant/Claimant's motion for new trial or hearing is GRANTED as to all particulars set forth in his motion and that my Order of July 30, 2014 be and hereby is VACATED." The motion pending before Judge Gibbons was the motion for a new trial (essentially, a Rule 59 motion). It would make no sense for a judge to order a new trial or hearing, if the judge intended to grant all the substantive relief requested by the Appellant.

WPH #13

The Respondents moved to alter or amend by motion filed on October 17, 2014. Since Judge Gibbons had declared himself to be recused, and since his order directed that the Chief Judge for Administrative Purposes provide instructions for a *de novo* hearing to be conducted, the files were provided to the undersigned judge to administer in the role of Chief Judge. Immediately upon receiving the files, the undersigned judge began a process of trying to gain familiarity with the files and to issue directives.

On October 22, 2014, the Appellant filed a motion for sanctions, and Reply to the Respondents' Motion to Alter or Amend. This was based on the Appellant's erroneous interpretation of Judge Gibbons' order of September 25. Since the Appellant believes that Judge Gibbons ruled that the Appellant is entitled to all the money he has claimed, he made a demand upon Respondents' counsel to pay that money. The motion for sanctions is without merit, since Judge Gibbons did not rule that the Appellant is entitled to the sums claimed.

A series of administrative orders followed, beginning on October 23, 2014. The self-represented Appellant, who lives in another state, was repeatedly asserting issues through email and letters, which are not proper filings. It took a long period to review these files, and it became apparent that the best use of judicial resources and the most promising way of having the cases proceed expeditiously would be to have them assigned to one judge. The court issued administrative orders doing the following things.

WPM #14

1) The cases were designated as complex litigation and assigned to one judge, the undersigned judge, to avoid having different judges duplicating the effort to follow the difficult procedural history.
2) Because of that decision, a hearing that had been routinely scheduled for November 10, 2014 before a visiting judge was continued.
3) The two cases were consolidated under Rule 42(a), SCRCP, because they seemed to be seeking essentially the same relief.
4) It did not appear that the Clerk of Court's file included the file of the Workers' Compensation Commission. So, an order was issued directing that the Commission files be maintained by the Commission and obtained by the Court of Common Pleas.

The order to maintain the files was entered in an abundance of caution due to the age of the underlying workers' compensation case.

In addition, as noted in Judge Gibbons' last order, it was obvious that the files were more confusing than necessary because of the use of email communications to attempt to raise issues that should be raised by properly filed motions and briefs. So, instructions were issued, including the requirement that any attempt to file a motion had to be raised through a proper filing with the court and that the use of emails was to be curtailed and limited to proper purposes.

Since Judge Gibbons had an outstanding motion to reconsider, but he had recused himself from the case, the parties were advised in an administrative order that Judge Gibbons would be contacted, in writing, to see if he would handle that motion. If he determined not to handle the reconsideration motion, the court advised the parties that it would have to consider Judge Gibbons to be unavailable and commence the process of determining if the court could declare itself sufficiently familiar with the record to make a ruling (citing Rule 63, SCRCP, and the order of Chief Justice Toal (Order 2011-02-04-01) dated February 4, 2011 that established the procedures to follow in such instances).

On November 3, 2014, the Appellant filed a motion, forty-four pages in length, plus attachments, objecting to the court's issuance of these administrative orders. His assertions fall into several categories, none of which have merit. Only one of the points seems to have any foundation in fact, and it relates to a drafting issue.

The drafting in one of the administrative orders could have been more precise. In Paragraph 6 of the October 23, 2014 administrative order, that was filed very late in the afternoon of that day, the court stated, in part:

> There is a dispute as to the interpretation to be given to orders issued by The Honorable Brian M. Gibbons. Both the appellant and the respondent have

> filed motions for reconsideration of the order(s). It is the undersigned judge's understanding that Judge Gibbons has recused himself from this matter. If he is recused, he may take the position that he is precluded from further involvement in this case. . . .

The Appellant challenges two things. He challenges the use of the term "reconsideration." In common parlance in the South Carolina legal community, a motion to alter or amend is called a reconsideration motion, and the Respondents' October 17, 2014 motion to alter or amend Judge Gibbons' order of September 25 was an outstanding motion for reconsideration.

The more significant assertion relates to Mr. Guice's reading as to the statement that both parties had filed reconsideration motions to Judge Gibbons' orders. The wording in that one sentence in the administrative order uses the *plural* - "orders." Judge Gibbons had entered two orders. He entered the first order granting the Respondents' motion to dismiss. In response, the Appellant styled his motion as one for a new trial, but he cited Rule 59, which is a motion to alter or amend. In common parlance, Mr. Guice had filed a reconsideration motion. So, it was a correct statement that both parties had filed reconsideration motions to Judge Gibbons' orders. While the Administrative Order could have been stated with more precision to state exactly what was pending as opposed to what had already been decided, there is nothing in the way it was drafted that is prejudicial to anyone and it does not have any negative impact upon the cases, despite the Appellant's contrived argument that it somehow does. Even if one accepts that the statement is incorrect, it is preposterous to read into those words some sinister intent, incompetence, or abuse of discretion.

More to the point of any motion to set aside the administrative orders, Mr. Guice believes that he had received a ruling in his favor and that the administrative orders were not only

unnecessary, but were an intentional attempt to deny his recovery and to cause him injury. For the reasons stated above and below, the court finds that Mr. Guice is mistaken in his interpretation. He did not receive a ruling in his favor on the merits of his claims. Assertions that administrative orders were entered to cause further delay are unfounded.

The Appellant claims some sort of conspiracy to protect various officials. He accuses the Clerk of Court of improper actions. He accuses the undersigned judge, the Clerk of Court, and the Respondents' attorney of committing fraud. He accuses the undersigned judge of abusing his discretion in issuing the administrative orders and in other actions. He asserts that it was illegal and unethical for the undersigned judge to write a letter to Judge Gibbons asking if Judge Gibbons would be deciding the Respondents' motion to alter or amend. He accuses the undersigned judge of racial bias.

None of these very serious accusations are supported by one scintilla of evidence, nor are they supported by any reasonable reading of an applicable rule or law. Mr. Guice has demonstrated no basis for overturning the administrative orders, and any motion he may have to seek to accomplish the withdrawal of those orders is denied.

The Clerk of Court's staff normally prepares dockets based on the documents that are filed. The Appellant reads impropriety in the actions of the Clerk of Court and the judges regarding how these hearings were scheduled, but no showing of impropriety has been made. He has also complained about information on the Internet website done by the Clerk of Court's staff in conjunction with Court Administration. That website makes it clear that the information is not official.3 He puts unwarranted emphasis upon those entries, and he has been given reasonable

3 The disclaimer that must be accepted to access the information reads, in part: Portions of such information may be incorrect or not current. Any person or entity who relies on any information obtained from this web site does so at his or her own risk. In addition, nothing contained within this web site is an official record of the County or the elected officials responsible therefore. All official records of the County and the offices of countywide elected

explanations about why things are done as they are – he recites some of the explanations in his Motion In Objection to Administrative Order. His complaints are unfounded and do not affect his substantive or procedural rights, as he claims.

When Judge Gibbons responded stating that he would not entertain the Respondents' motion to alter or amend due to the judge's recusal, he did so in a letter filed on November 6, 2014. That answer introduced the process under Rule 63.

However, around that time, the Appellant was submitting various documents to the Supreme Court of South Carolina concerning these cases. Among other things, he filed for something that he denominated as a writ of mandamus to require the undersigned judge to take certain actions. Part of his argument was that Judge Gibbons decided all of Appellant's substantive requests for relief. The difficulty this created administratively is that there was a pending motion before the Supreme Court seeking a determination that there was nothing for the circuit court to do – that Judge Gibbons' order had already decided everything. That does not appear to be a request for mandamus as much as a request for a stay, and the uncertainty caused further delay.4 The Appellant also apparently had a motion for rehearing filed with the South Carolina Court of Appeals.

WRC #18

On December 8, 2014, the Appellant filed a motion for judgment on the pleadings. That motion is denied and is addressed on page 23 of this order.

On December 9, 2014, the undersigned judge entered an administrative order related to Rule 63, SCRCP, in response to Judge Gibbons' decision to decline to rule on the Respondents' motion to alter or amend. That administrative order was filed on December 11,

officials are on file in their respective offices and may be reviewed by the public at those offices.

4 The order eventually issued by the Supreme Court demonstrates that the difficulty in dealing with these filings was not limited to the Court of Common Pleas.

2014. It referenced the procedure required under Rule 63 and the order of Chief Justice Toal, and it stated that the undersigned judge would have to determine whether sufficient familiarity with the file could be obtained to decide the Respondents' motion.5

On December 11, 2014, a copy of the Workers Compensation Commission file was received in the judge's office in digital format. On that day, the undersigned judge wrote a letter to the Appellant concerning the status of the cases. It reads:

> This is in response to your letter of November 25, 2014, and the communication that I received today which included copies of your request that the Supreme Court of South Carolina issue a Writ of Mandamus to require me to take certain actions. Earlier this week, I prepared, signed, and mailed to the Lexington County Clerk of Court for filing an administrative order regarding the status of your cases. I am attaching a copy of it, in case you have not received it. If the Supreme Court believes that other directives are appropriate, I will do my best to follow them. In my view, these cases are being properly administered. The sheer volume of the filings has required huge amounts of time.
>
> Any motions that you have properly filed will be scheduled for hearings as necessary and decided, once the court can get over the initial hurdle of obtaining the information required under Rule 63. There is a particular order in which things have to be addressed. Your interpretation of the status of your cases and the law and procedures will be taken into account.
>
> Today, I received the DVD from the Workers Compensation Commission. My law clerk has opened the disc and advises me that there are over 100 documents on it. The attached order explains what procedure the court deems to be appropriate at this time.

WRK #19

On January 16, 2015, a letter from the South Carolina Court of Appeals was filed with the Clerk of Court for Lexington County. When the Supreme Court issued its directive that it

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5 It stated, "The court has issued administrative orders and directives to obtain the file from the South Carolina Workers Compensation Commission. That commission has advised the court's staff that the file is voluminous, that it is in electronic format, and that a DVD will be sent to the judge's office upon completion. When that is received, the court will issue further procedural directives in conformity with the provisions of Rule 63 and the Chief Justice's administrative order.

was not going to proceed with the request for mandamus, it appeared at that point that there were no appellate stays in effect to further delay the cases going forward.

So, a supplemental administrative order was issued on March 3, 2015, in which the procedural posture of this claim was outlined, as the parties had been advised in December. The court had evaluated the situation and determined that it should not decide the Respondents' pending motion to alter or amend Judge Gibbons' order. This administrative order gave notice to the parties about the process to be used in handling this matter and deciding this appeal, including notice of a *de novo* hearing to be held on March 27, 2015 at 10:00 a.m. The order made it clear that all pending motions would be heard. The undersigned noted Appellant's belief that the circuit court order of September 25, 2014 granted Appellant all of the relief he sought including back wages and reinstatement of his former employment. Finally, it was noted in the Administrative Order that failure to appear may be deemed an abandonment of any claims made in any pending motions. The parties submitted additional briefs and filings for consideration. At its core, Appellant is seeking to reverse a full and final settlement agreement resolving his original workers' compensation claim in its entirety.

WPC #20

On March 9, 2015, the Appellant filed several documents. He filed his memorandum in response to the March 3 order and Motion for Relief from the Administrative Orders. He also filed a document in which he purported to cancel the hearing that had been ordered. A motion to stay was filed, and a motion to disqualify the undersigned judge. The motion for stay asserted that the case should not be heard until a decision was made on the Motion for Relief from Administrative Orders, which the court also considered as a request not to proceed until the Motion to Disqualify was decided. As is routine with the Appellant, he stated that his motions are made without a request for oral argument.

THE HEARING ON MARCH 27, 2015

The hearing was not continued or canceled. On March 27, 2015 at 10:00 a.m., the Appellant was not present. After waiting to make sure that the Appellant was not simply late, the bailiff was instructed to conduct a search of the Judicial Center and to call out Mr. Guice's name. The Appellant was not located.

At the outset of oral arguments, the court considered Appellant's motion to have the undersigned recused from hearing this matter. After reviewing the written submissions of the Appellant, the undersigned finds those accusations and claims are completely unfounded. Not only are they unfounded against the undersigned, but it appears he has a pattern of filing motions for recusal against judges or impugning the integrity of judges who make a ruling adverse to him. The motion to remove the undersigned as presiding judge in this matter is denied.

WPB #21

Appellant's motion to stay the proceeding and Appellant's motion to disqualify filed March 9, 2015 are denied as the motion is unsupported, not based on any valid claim, and not pursued. There is no reason to stay these proceedings or disqualify the undersigned.

The file reflects that the Appellant requested to have the undersigned recused after learning the undersigned had been in the hospital briefly in January 2015 for a surgical procedure. To the extent that the Appellant has any pending motion to recuse the undersigned due to disability, the motion is denied as there is simply no merit to such assertion. The procedure was done during a week when the undersigned judge was scheduled for vacation, and it only required an overnight stay in the hospital.

The next issue addressed at oral arguments was the Appellant's notice of cancelation of this hearing.6 The Appellant had been advised previously that he does not have the authority to cancel a hearing. He may request a continuance of a scheduled hearing, but cannot unilaterally cancel the same. In his notice of cancellation, Appellant accuses the undersigned of not conferring with Appellant prior to setting this hearing and notes he has something else to do. Appellant also indicates he lives in Tampa, Florida and does not have the financial resources to come to South Carolina. The Appellant has provided no valid reason for the postponement of the hearing, and to the extent any of the filings submitted by Appellant can be construed as a motion for postponement or continuance, they are denied.

As addressed above, to the extent that there is a continuing objection to the administrative orders issued or continuing motions for relief from the administrative orders, those objections and motions are denied. The administrative orders issued in this matter were designed to consolidate a claim with a complex procedural history before a single judge and get this matter to a point where the issues could be heard and ruled upon. The administrative orders were proper administrative functions and any objection to the same is denied.

Concerning Judge Gibbons' order which Appellant asserts in his written submissions granted him reinstatement of his job and back due benefits, the Appellant misunderstands that order and is reading it in a way that is contrary to Judge Gibbons' ultimate ruling. It ruled that there be a *de novo* hearing. Judge Gibbons' last order was not a final determination of the merits and there is no reasonable basis to conclude that it granted the Appellant all of the relief he

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6 This was not the first time that Mr. Guice issued his own notice of cancelation of a hearing. In one instance, Mr. Guice forwarded a notice of cancellation of the November 10 hearing. An order was issued canceling the hearing, but advising the Appellant as follows: "He may move to cancel a hearing, but does not have the power to cancel a hearing on his own. The Clerk of Court is directed to make a copy of the notice sent by Mr. Guice and put it in the files, but to return the original notice to him. The notice, on its face, is not executed by a judicial officer and has no force or effect."

sought in this matter. Had it been Judge Gibbons' intent to grant final and complete relief, he would not have provided for rescheduling of the motion or vacate his order completely.

Judge Gibbons' order was vacated at the Appellant's request. The Respondents agree that any motion concerning Judge Gibbons' order is moot as that order was subsequently vacated.

With regard to Appellant's motion(s) for judgment on the pleadings, it (they) is (are) denied. This matter comes before this Court on appeal from the South Carolina Worker's Compensation Commission. There are no pleadings with which to grant a judgment in favor of Appellant. Appellant asserts Respondents' failure to specifically respond and deny allegations contained in the numerous submissions constitutes an admission of those allegations and he is therefore entitled to the relief sought. That is a misunderstanding of procedure, and the Respondents have made no such admissions. Appellant is not entitled to a judgment as a matter of law, default judgment, or judgment on the pleadings. The improper use of summonses has already been noted, and attaching a summons to something other than a complaint does not have the consequences that the Appellant believes that it should have. Matters that are within the exclusive jurisdiction of the Workers' Compensation Commission have to be raised and ruled on there.

WRL #23

Having worked through the procedural issues, the question before the court is the Respondents' motion(s) for dismissal of both cases. As discussed above, the Appellant's appeal of Judge Russo's order on November 13, 2013 was at a time when neither the Commission nor the circuit court had entered a final, appealable order. Appellant initiated his appeal to the Court of Appeals concerning Director Cannon's letter after the Appellant had already filed a Form 30 appeal of Commissioner Barden's dismissal to the Full Commission. So, the administrative action was pending at the time he appealed the letter from Mr. Cannon.

Commissioner Barden's February 22, 2013 order considered and dismissed the issues Appellant raised in his Form 50s, all of which centered on the same issues raised in his motion for reinstatement. Judge Russo noted that an appeal in circuit court could be pursued, once Appellant exhausted his administrative remedies. Yet, the Appellant filed his appeal to the South Carolina Court of Appeals while the Commission was in the process of considering his Form 30 appeal from Commissioner Barden's February 22, 2013 order.

The Full Commission entered a final order on July 17, 2013, and Appellant appealed the July 17, 2013 order to the Court of Appeals, which was the wrong court. That was transferred by the Court of Appeals to the Court of Common Pleas. Since the Appellant had another appeal pending under the same workers' compensation file number, there was also a remand, with a notation to "consider the merits of this appeal in conjunction with Appellant's appeal from the Commission's final Order." Those matters are now in circuit court.

WBC #24

This court believes that it has complied with the Court of Appeals order remanding this matter to the circuit court. At issue before the Court of Appeals was a letter written by the executive director of the South Carolina Workers Compensation Commission on March 27, 2013, returning the Appellant's motion for reinstatement of employment. That letter stated that the motion for reinstatement was being returned as the Commission does not have subject matter jurisdiction for the issues set forth in the motion.

This court had concerns about issues regarding the authority of the executive director to take the action that he did, in the manner that he did, and at the time that he did. The court had questions about the proper procedure to be followed concerning those issues in a Common Pleas proceeding. The court intended to discuss those at the March 27 hearing. Appellant failed to appear to address the court's concerns. Any arguments not raised are abandoned.

Addressing this issue, however, it now appears that all the executive director did was to notify the Appellant that the motion for reinstatement was being returned, with the filing fee. His previously filed claim included a demand for reinstatement of his employment. When the court questioned the only party present at the hearing about the authority of the executive director to make that decision, it was stated that the Appellant's attempted filing was for something the Commission cannot do and that all the director did was return the papers and filing fee. It was asserted that the Commission could not grant the relief that was being requested in the returned documents. So, counsel knew of no authority of the Commission to entertain the proposed filing. More importantly, the merits have been now been addressed by the Commission for the overlapping relief that was being sought.

Respondents' motion to dismiss the claims in both cases filed in Common Pleas is granted. Appellant's claims are barred because he signed a full and final settlement agreement and release resolving his workers' compensation claim, which was approved by the South Carolina Workers' Compensation Commission on May 5, 2005. When the Appellant sought to reopen his workers compensation claim in November of 2012 and contest that settlement agreement and release, he also sought reinstatement of his employment and additional compensation benefits for his original work accident and injury. The South Carolina Workers' Compensation Commission, both the single Commissioner and the Appellant Panel, have denied all of Appellant's motions and ruled in favor of Respondents based on this claim having been resolved in its entirety in 2005. The claims all appear to be final resolutions of the matters that were raised and attempted to be raised to the Commission. The file supports the Respondents' contention that the Appellant may not now seek to reopen the workers compensation claim for additional benefits of any kind and that these cases should be dismissed.

To the extent Appellant has additional motions, objections, or issues not addressed herein, Appellant was not present at the hearing, after having been cautioned that the failure to appear may be deemed as an abandonment of those issues. Any motions, objections, or requests for sanctions not addressed herein were deemed abandoned and are denied.

The Respondents' request for attorney fees and costs associated with defending this matter throughout the lengthy and redundant appeal process is granted. Respondents have been forced to respond to multiple duplicative and redundant filings submitted by Appellant over approximately three years since Appellant sought to reopen his original settlement. Respondents requested an order for sanctions, fees, and penalties. They seek sanctions for defending this matter by way of a Reply to Appellant's "Motion For Entry of Clerk's Default" dated May 10, 2013. Since that request, Respondents have appeared for oral arguments on no less than four occasions and have done extensive work to defend against these claims. Appellant has failed to appear for any argument on his behalf. He has been provided with a detailed affidavit in support of the fees and costs requests.

WPH #26

The Appellant filed documents after the submission of the proposed order. The last one basically asked that the court go ahead and sign the proposed order so that the Appellant can proceed to seek relief in other courts. The proposed order has been modified by the court.

Substantial sanctions are appropriate based on clear and convincing evidence that, from the outset, the relief sought by the Appellant was unsupported by law or procedure. It is also established by clear and convincing evidence that the defense was made needlessly difficult because the Appellant insisted on taking unfounded positions, did not accept reasonable explanations, caused redundant filings in various forums, and liberally made unwarranted defamatory accusations.

The court finds that Respondents' request for attorneys' fees and costs in the amount of $32,933.13 is reasonable, and it is awarded. In awarding attorney's fees, this court has considered the following six factors: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 759 (1997). The *Jackson* factors support an award of fees requested by Defendant.

1. Difficulty of case

This case was complex and difficult, primarily due to the repetitive, atypical, and detailed filings and assertions raised by the Appellant. The case required having to be knowledgeable about workers' compensation, circuit court, and appellate court issues and procedures.

Whc #27

2. Time expended

Counsel for Defendant has devoted an extremely significant amount of time over a course of years. It is detailed in the second affidavit submitted. Much of the additional time was occasioned by the filings of the Appellant in multiple courts, frequently based on Appellant's misunderstanding of the proper procedures.

3. Professional Standing

The attorneys enjoy good professional standing. The documents submitted by primary counsel have been very well written and have greatly assisted the court. Counsel has demonstrated high standards of professionalism and civility in the face of what appear to be completely unwarranted attacks upon her integrity.

4. Contingency of compensation

This factor is not pertinent to the Court's decision.

5. Beneficial Results

There is no question that Respondents' counsel obtained beneficial results. To obtain these results required tenacity and diligence, at the highest level of professional effort.

6. Customary Legal Fees

The hourly rates are reasonable and rather standard for fees charged in such cases.

In summary, the factors in *Jackson v. Speed* support the award of attorneys' fees to Respondents.

THEREFORE, IT IS ORDERED:

1) That the Respondents' motion to dismiss is granted and the appeals are denied and dismissed.

2) That sanctions are imposed and the Appellant must pay to the Respondents' the sum of $32,933.13. This award of attorneys' fees and costs is a money decree which should be enrolled as a separate judgment and draw interest under S.C. Code Ann. § 34-31-20(B).

#28

AND IT IS SO ORDERED.

William P. Keesley
William P. Keesley
Judge, 11th Judicial Circuit

July 17, 2015

FILED
2015 JUL 17 A 9:16
IN THE COURT OF COMMON PLEAS
THE 11TH JUDICIAL CIRCUIT
LEXINGTON COUNTY, SC

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

FILED

JUDGMENT IN A CIVIL CASE

ORIGINAL

CASE NO. 2014-CP-32-00399
2013 CP-32-01272

2015 JUL 17 PM 3:16

CLERK OF COURT
LEXINGTON SC

ALEXANDER GUICE

PLAINTIFF(S)

US FOOD SERVICE, INC. AND ACE AMERICAN INSURANCE COMPANY C/O GALLAGHER BASSETT SERVICES, INC.

DEFENDANT(S)

Submitted by: Judge	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

WMC #1

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
US FOOD SERVICE, INC. AND ACE AMERICAN INSURANCE COMPANY C/O GALLAGHER BASSETT SERVICES, INC.	ALEXANDER GUICE	$32,933.13
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

William P. Keesley
Circuit Court Judge

2050
Judge Code

7/17/2015
Date

For Clerk of Court Office Use Only

This judgment was entered on the 17 day of July, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 17 day of July, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

Alexander Guice

ATTORNEY(S) FOR THE PLAINTIFF(S)

Erin Hartske

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth Carriggan
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

#2

ATTACHMENT M

APPELLATE PANEL

DECISION AND ORDER

OF THE

S. C. WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 0506205

ALEXANDER GUICE — **EMPLOYEE, CLAIMANT/APPELLANT,**

vs.

U.S. FOOD SERVICE, INC., — **EMPLOYER,**

AND

GALLAGHER BASSETT SERVICES, INC., — **CARRIER, DEFENDANTS/RESPONDENTS.**

Appellate Panel Review held in Columbia, South Carolina, on May 21, 2013, per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed 7-17, 2013

APPEARANCES: This matter was decided without oral arguments pursuant to Reg. 67-701

Claimant/Appellant pro se

Defendants/Respondents represented by Erin L. Hantske, Esquire, Charleston, South Carolina

STATEMENT OF THE CASE

The Appellant alleges sustaining injury to his low back, right knee, and neck by accident arising out of and in the course and scope of his employment with Respondents on or about May 5, 2005, when he was allegedly involved in a motor vehicle accident. At the time of his alleged accident, Appellant had an average weekly wage of $1,154.00, and a corresponding compensation rate of $592.56 (maximum compensation rate for injuries sustained in 2005). Appellant was treated by Dr. Allen Tamadon, who opined that Appellant reached maximum medical improvement on October 27, 2005, and assigned a 5% medical impairment rating to the whole person.

Subsequent to Appellant's release at maximum medical improvement, the parties entered into a Settlement Agreement and Release resolving Appellant's South Carolina Workers' Compensation File No. 0506205 on a full and final clincher basis for a lump sum payment of $20,000.00. This Settlement Agreement was approved by the South Carolina Workers' Compensation Commission on January 5, 2006. Thereafter, the file was closed with the South Carolina Workers' Compensation Commission pursuant to a filed Form 19.

Appellant then filed a Form 50/Hearing Request dated December 7, 2012 and an Amended Form 50/Hearing Request on January 5, 2013, under the same Workers' Compensation Commission file number, 0506205, alleging a date of accident of May 5, 2005, and injury to the back, neck and right knee. Appellant requested additional medical examination and treatment for the alleged injuries, temporary total disability benefits from November 2, 2006 through the present and permanent partial disability benefits. Respondents timely filed a Form 51 denying any entitlement to additional medical care or treatment, temporary total disability benefits, or permanent disability benefits based upon the parties' previous Settlement Agreement to clincher

the claim approved by the South Carolina Workers' Compensation Commission on January 5, 2006. A hearing was scheduled for March 28, 2013 in Summerville, South Carolina before Commission Susan S. Barden. Prior to the scheduled hearing, Appellant submitted two motions: one requesting a telephonic hearing, and the other requesting a change of jurisdiction. On February 22, 2013, Commissioner Barden issued the following Order:

> **Claimant settled his claim (WCC No. 0506205) through a Full and Final Settlement Agreement which was approved by the South Carolina Workers' Compensation Commission on January 5, 2006. A Form 19 was submitted by Defendants as well.**
>
> **In January 2013, Claimant filed a Form 50 relating to the claim (WCC No. 0506205) which he previously settled.**
>
> **As this case was settled on a Full and Final basis on or about January 6, 2006, Claimant's hearing request is hereby denied, and the hearing set for March 28, 2013 in Summerville, South Carolina is cancelled. Further, any and all motions filed pertaining to WCC No. 0506205 are hereby dismissed as well.**
>
> **AND IT IS SO ORDERED.**

Within the statutory period, the pro se Claimant filed an Application for Review in the case setting forth his reasons, copies of which were furnished to all interested parties. Appellant requested this matter be heard without oral arguments. All proferred testimony has been taken. Such, together with all documentary evidence, has been delivered to the individual members of the Appellate Panel and has since been under study and consideration. By appeal, Claimant submitted the following:

1. "Did Commissioner Susan S. Barden have proper jurisdictional authority to make any judgments regarding WCC No. 0506205?"
2. "Was Commissioner Barden's Order invalid due to no regulatory or statutory grounds stated to support canceling the hearing?"
3. "Did the Order signed by Commissioner Barden on 02/22/13 violate Rule 5(b)(3) SCRCP?"

4. "Did the Order signed by Commissioner Barden on 02/22/13, with respect to cancelling the hearing, violate Rule 7(b)(1) SCRCP?"

5. "Did Commissioner Barden's Order dated 02/22/13 violate the Appellant's Right to a Hearing?"

6. "Was the Appellant subjected to a conspiracy involving Commissioner Barden, Virginia L. Crocker, Judicial Director, and Erin L. Hantske, Esquire, the Representative for the Respondent?"

7. "Is Commissioner Barden's conduct subject to be reported to the South Carolina Ethics Commission IAW Rule 501(3)(D)(1) SCACR with respect to the Order dated 02/22/13?"

In an Appellant Review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50 (1995), review the Award, weigh the evidence as presented, and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Single Commissioner.

After careful review in the instance case, the Commission, by unanimous vote, has determined that the Single Commissioner's Order was correct in its entirety. Accordingly, the Appellate Panel has issued a **FULL AFFIRMATION** of the Single Commissioner's Order.

FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties pursuant to the Administrative Procedures Act and the Commission file relative to this claim, we, the Appellate Panel, issue the following Order:

1. Claimant settled his claim (WCC No. 0506205) through a Full and Final Settlement Agreement which was approved by the South Carolina Workers' Compensation Commission on January 5, 2006. A Form 19 was submitted by Defendants as well.

2. In January 2013, Claimant filed a Form 50 relating to the claim (WCC No. 0506205) which he previously settled.

3. As this case was settled on a Full and Final basis on or about January 6, 2006, Claimant's hearing request is hereby denied, and the hearing set for March 28, 2013 in Summerville, South Carolina was appropriately cancelled. Further, any and all motions filed pertaining to WCC No. 0506205 are hereby dismissed as well.

CONCLUSIONS OF LAW

Under the South Carolina Workers' Compensation Act and other applicable law, it is the determination and conclusion of the Appellate Panel that:

1. Pursuant to S.C. Reg. 67-801, Claimant settled his claim (WCC No. 0506205) through a Full and Final Settlement Agreement which was approved by the South Carolina Workers' Compensation Commission on January 5, 2006.
2. Pursuant to S.C. Code Reg. 67-801(E), the Employer and the Insurance Carrier are relieved from any further responsibility for payment of compensation or medical expenses, and by signing the Full and Final Settlement Agreement which was approved by the South Carolina Workers' Compensation Commission, the Claimant does not have the right to ask for additional payments in the future. As such, the hearing request and motions of the Claimant were appropriately denied.

ORDER

IT IS THEREFORE ORDERED that the Order of the Single Commissioner is hereby **FULLY AFFIRMED** and the above Findings of Fact and Conclusions of Law are the decision of the Workers' Compensation Commission.

AND IT IS SO ORDERED.

Commissioner Andrea C. Roche

Commissioner Melody James

Commissioner Avery Wilkerson, Chair

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 17 day of July, 2013.

By Valerie St Peter

Administrative Assistant to the Commissioner

Alexander Guice (Reg & Cert)

Erin L. Hartsko

ATTACHMENT N

Alexander Guice

P.O. Box 13281
Tampa, FL 33681
Email: alguice@hotmail.com
Phone: (813) 562-0547

October 8, 2014

VIA Regular Mail & Priority Mail

Erin L. Hantske, Esquire
McAngus, Goudelock & Courie, LLC
Post Office Box 650007
Mt. Pleasant, South Carolina 29465

RE: Alexander Guice v. U.S. Food Service, Inc., and ACE American Insurance Company c/o Gallagher Bassett Services, Inc.
Date of Accident: May 5, 2005
WCC File No.: 0506205
Claim No.: 004063-032175-wc-01
Circuit Court Case No.: 2013-CP-32-1272 & 2014-CP-32-00399

NOTICE OF DEMAND

Dear Ms. Hantske:

Please find enclosed a true copy of the "Order Granting Appellant/Claimant's Motion for New Trial and Order for Recusal" from the Circuit Court dated September 25th, 2014 in regard to the above referenced worker's compensation claim.

Please be advised, as the Representative for US Foodservice, Inc., (Employer) and ACE American Insurance Company, c/o Gallagher Bassett services, Inc. (Carrier) in the above referenced claim, that the undersigned employee and claimant demands that your office immediately comply with the aforementioned Order and immediately reinstate the undersigned's employment and immediately release the unlawfully withheld temporary total compensation payments, to include the 25% interest penalty assessed on the withheld compensation payments.

In particular, and as you know, in the aforementioned Order, the Court opined, "*The Appellant/Claimant's motion for new trial or hearing is GRANTED as to all particulars set forth in his motion...* " (emphasis added). As clearly stated in the undersigned's Motion for New Trial, the same sought the clearly expressed and stated relief and/or remedies, in particular, seeking the Court to "...immediately issuing on appropriate order setting aside all decisions in the instant case, to include ordering the Respondents to comply with R. 67-506(D) and reinstate Appellant's employment and release the unlawfully withheld temporary total compensation payments, as well as 25% interest penalty accessed...".

As further stated in the motion for new trial, and accepted by the Court, the average weekly wage of the undersigned is approximately **$1,161.00** per week. As of August 4th, 2014,

the total amount owed to the undersigned, to include the 25% interest penalty, is **$654,078.38**. Additionally, from August 5th, 2014 to October 7th, 2014 reflects an additional nine (9) weeks of temporary total compensation payments, which amounts to $10,449.00. With the addition of the 25% interest penalty ($2,612.25), the additional amount reflects a total of $13,061.25 for a total amount payable to the undersigned, of **$667,139.63**. Please make all checks payable to:

Alexander Guice
3717 W. Wyoming Ave. Apt. 11
Tampa, Florida 33611

Pursuant to S.C. Code Ann. § 42-9-240 (1962), your office has approximately seven (7) days, from service of this Notice, to comply with the judgment of the Circuit Court and disburse the withheld temporary total compensation payments, to include the 25% interest penalty on the withheld compensation.

Finally, in accordance with S.C. Code Ann. § 42-9-220 (1962), the undersigned request that future compensation payments be paid weekly.

Your prompt attention to this matter appreciated.

Very truly yours,

Alexander Guice
Claimant, Pro Se

/ag

Enclosure(s): Circuit Court Order dated 9/25/2014

Cc: FILE

ATTACHMENT O

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT Civil CASE NO: 2014-CP-32-00399/ 2013-CP-32-01272
Alexander Guice, Employee, Claimant, Appellant, Versus US Foodservice, Inc., and Ace American Insurance Company, c/o Gallagher Bassett Services, Inc., Employer AND Carrier, Respondents'.	)	MOTION FOR SANCTIONS (No Oral Arguments Requested)

COPY

FILED
2014 OCT 22 P 4:45
BETTIA A. GARRETT
CLERK OF COURT
LEXINGTON, SC

YOU WILL PLEASE TAKE NOTICE that ALEXANDER GUICE (Hereafter "Claimant" or "Employee" or "Injured Worker" or "Appellant"), the Appellant in the above styled caption, PROCLAIMS the pleadings in this matter are being filed by Appellant in *propia persona*, wherein pleadings are to be considered without regard to technicalities. In *propria*, pleadings are not held to the same high standards of perfection and expertise as practicing lawyers. See Haines v. Kerner, 92 Sct 594, also See Power 914 F2d 1459 (11th Cir 1990), also See Hulsey v. Ownes, 63 F3d 354 (5th Cir 1995). *Pursuant to Rule 7(b) of the South Carolina Rules of Civil Procedure* (SCRCP), Appellant presents this "Motion for Sanctions". Appellant's motion for sanctions is based on the following grounds:

1. On September 25, 2014 the Court issued an "Order Granting Appellant/Claimant's Motion for New Trial and Order for Recusal".

2. Appellant and Respondents were duly served a copy of the aforementioned

Order via E-Mail by the Clerk on October 7, 2014.

3. On October 8, 2014 Appellant duly served a "Notice of Demand" upon Erin L. Hantske, Esq. and McAngus Goudelock & Courie, LLC ("Attorney Hantske"), the counsel of record for the Respondents, demanding the same to comply with the aforementioned 09/25/2014 Order of the Court. A copy of the Notice of Demand duly served upon Attorney Hantske by the Appellant is enclosed and incorporated herein as Attachment "A".

4. Appellant asserts the September 25, 2014 Order of the Court which ordered the Respondents to immediately reinstate Appellant's employment and release the unlawfully withheld temporary total compensation payments, wherein as of August 4th, 2014, the amount of withheld compensation was approximately $654,078.38 (See Motion for New Trial, p. 27 previously submitted).

5. S.C. Code Ann. § 42-9-240 (1972) - Date on which compensation payable under award shall become due, states in pertinent part,

> The first installment of compensation payable under the terms of an award by the Commission or under the terms of a judgment of a court upon an appeal from such an award shall become due seven days from the date of such an award or from the date of such a judgment of the court, on which date all compensation then due shall be paid, including interest from the original date of the award at the maximum legal rate. Thereafter compensation shall be paid in installments weekly, except when the Commission determines

that payment in installments shall be made monthly or in some other manner.

6. Appellant asserts Attorney Hantske, as the counsel for the Respondents, has a statutory obligation, pursuant to S.C. Code Ann. § 42-9-260(F) and corresponding S.C. Reg. 67-506(D) of the Workers Compensation Act ("Act") to pay entitled compensation to Appellant pursuant to the 09/25/2014 Order of the Court, but has failed to do so, and the seven (7) days afforded to Attorney Hantske to pay entitled compensation pursuant S.C. Code Ann. § 42-9-240 expired on October 14, 2014.

7. Appellant asserts as of October 19th, 2014 the same has been deprived of approximately 461.6 weeks of entitled temporary total compensation payments (December 4, 2005 to October 19, 2014), at the mutually agreed upon average weekly wage of $1,161.00, for a total amount of compensation payable of $535,917.60 (461.6 weeks x 1,161.00 Average weekly wage) which includes the 33.3% compensation payable by the employer.

8. Appellant asserts the 25% interest penalty on the withheld compensation as of October 19th, 2014 reflects approximately $133,979.40 ($535,917.60 x .25), for a total amount payable to Appellant, by Attorney Hantske, at $669,897.00 ($535,917.60 + $133,979.40).

9. Appellant asserts a daily monetary fine in the amount of $6,698.97 imposed upon Attorney Hantske, by the Court, for failing to comply with the 09/25/2014 Order, if approved, would be both just and reasonable, based on the fact that the requested daily fine reflects approximately 1% of the total amount in

compensation payable to Appellant, and the amount requested should serve to motivate Attorney Hantske to immediately comply with the Order of the Court.

10. Appellant request that the daily fine requested be imposed and accessed upon Attorney Hantske on the effective date of 10/14/2014 as it directly relates to when compensation payments were due, pursuant to Respondents acknowledgment of receipt of the 09/25/2014 Order on 10/07/2014 in accordance with S.C. Code Ann. § 42-9-240.

11. Appellant moves the Court to allow the requested daily monetary fine to remain in place until such time as Attorney Hantske has complied with the aforementioned Order of the Court and provided proof of compliance of the Order with the Court.

CONCLUSION

Based on the foregoing, Appellant moves the Court to grant this motion for sanctions, by imposing a daily fine upon Attorney Hantske for failing to comply with the 09/25/2014 Order, effective 10/14/2014, at the requested amount of $6,698.97, payable of the Clerk of Court, and that the requested daily monetary fine remain in effect until such time as Attorney Hantske has complied with the 09/25/2014 Court Order and provided proof of compliance of the same upon the Court.

I, Alexander Guice, do swear, under penalty of perjury, that the information contained herein is true and correct to the best of my knowledge and ability.

Respectfully submitted,

Alexander Guice
Post Office Box 13281
Tampa, FL 33681
(813) 562-0547
alguice@hotmail.com
Appellant, Pro Se

October 19, 2014

Sworn to and Subscribed before me

This 19th Day of October, 2014

Notary Public
My commission expires 01/30/2018

GILBERTO L. CRUZ
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF088018
Expires 1/30/2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)
)
ALEXANDER GUICE)
Plaintiff,)
vs.)
)
US FOODSERVICE, INC., et al)
Defendant.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

COPY

CERTIFICATE OF SERVICE

Case No.: 2014-CP-32-00399
2013-CP-32-01272

FILED
2014 OCT 22 AM 9:45
CLERK OF COURT
LEXINGTON COUNTY, SC

I certify that on this date, I served a copy of a cover letter; SCCA 233; Motion For Sanctions; a proposed Order on Motion for Sanctions in this action, dated 10/19/2014, on Erin L. Hantske, Esq. the Counsel of Record for Defendants by

☐ Delivering it to him/her personally;

☒ Mailing it to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Post Office Box 650007 Mt. Pleasant, SC 29465

☐ Delivering it by commercial delivery service in accordance with Rule 4(d)(9), SCRCP, addressed as follows: ; or,

☒ Other: E-Mail @ erin.hantske@mgclaw.com

10/20/2014
Date

Signature

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-32-00399
2013-CP-32-01272

COPY

ALEXANDER GUICE
Plaintiff,
vs.
US FOODSERVICE, INC. et al
Defendant.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

FILED
2014 OCT 23 PM 2:45
CLERK OF COURT
LEXINGTON COUNTY, SC

Plaintiff's ~~Attorney~~:	Defendant's Attorney:
Alexander Guice, Pro Se, Bar No. N/A	Erin L. Hantske, Bar No. 76313
Address:	Address:
P.O. Box 13281 Tampa, FL 33681	P.O. Box 650007 Mt. Pleasant, SC 29465
Phone: (813) 562-0547Fax _____	Phone: (843) 576-2900 Fax_____
E-mail: alguice@hotmail.comOther: _____	E-mail: erin.hantske@mgclaw.comOther: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Sanctions
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ 10/19/2014
Signature of ~~Attorney~~ for ☒ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: r

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other: _____	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

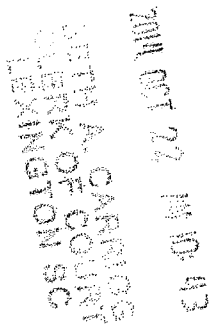
Alexander Guice

COPY

P.O. Box 13281
Tampa, FL 33681
Phone: (813) 562-0547
Email: alguice@hotmail.com

October 19, 2014

The Honorable Beth A. Carrigg
Clerk of Court
Lexington County
205 East Main Street
Lexington, South Carolina 29072



Re: Alexander Guice v. US Foodservice, Inc., et al
Case No.: 2013-CP-32-1272 / 2014-CP-32-399

Dear Ms. Carrigg:

Please find enclosed an original and a true copy of a SCCA 233; a 'Motion for Sanctions; a proposed Order on Motion for Sanctions and a certificate of service in regard to the above style caption. Please return a stamped copy and receipt to the undersigned in the prepaid self-addressed envelope enclosed for your convenience.

Please forward the proposed Order to the presiding judicial officer for review and consideration, and if the same meets His Honor's approval, please return conformed and executed copies of the same to the parties in the additional prepaid self-addressed envelopes enclosed for your convenience. By copy of this letter, I have provided the Respondents' counsel of record, Erin L. Hantske, a copy of the same, via priority mail and E-Mail with enclosures. Should you have any questions or concerns, please do not hesitate to contact me. Thank you for your assistance in this matter.

Very truly yours,

Alexander Guice
Appellant, Pro Se

/ag

Enclosures: As stated

Cc: Erin L. Hantske, Esq. (via priority mail & E-Mail w/encl.)
The Honorable Brian M. Gibbons (via E-Mail w/encl.)
The Honorable William P. Keesley (via E-Mail w/encl.)