

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

78915

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

William P. Keesley, Successor Circuit Court Judge

Case No. 2013-CP-32-01272

Case No. 2014-CP-32-00399

**RECEIVED**

MAR 10 2016

Appellate Case No. 2015-001821

**SC Court of Appeals**

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

WCC Case No. 0506205

Alexander Guice, Employee, Appellant,

v.

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

**MOTION TO STRIKE RESPONDENTS' INITIAL BRIEF  
AND LEAVE TO STAY**

Please take notice, that Alexander Guice, the self-represented Employee and Appellant in this matter presents this pleading in *propria persona*, wherein pleadings are to be considered without regard to technicalities. *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 (11<sup>th</sup> Cir 1990); also See *Hulsey v. Ownes*, 63 F3d 354 (5<sup>th</sup> Cir 1995).

Pursuant to Rule 269, SCACR, and other applicable laws, Appellant would allege unto that **US Foodservice, Inc.**, the Employer; **Ace American Insurance Company, c/o Gallagher Basset Services, Inc.**, the Insurance Carrier (collectively "Respondent" or "Respondents"); **Walter H. Barefoot, Esq., and Turner Graham Padget & Laney, LLC** ("Attorney Barefoot"), the Employer and Carrier's former Representative; **Erin L. Hantske, Esq., and McCangus Goude-lock & Courie, LLC** ("Attorney Hantske"), the Employer and Carrier's current Representative, and **Robert G. Bacon, Esq.** ("Attorney Bacon"), the Appellant's former Representative, has and/or continues to engage in **FRAUD, INTENTIONAL/NEGLIGENT MISREPRESENTATION, and CONSPIRACY.**

Upon review of the foregoing, Appellant moves this Court for an appropriate ORDER:

1. That Respondents' Initial Brief and Designation of Matter dated January 21, 2016 be STRICKEN from the Record;
2. That the July 17, 2015 Circuit Court Order on Appeal be REVERSED;
3. That Respondents' immediately REINSTATE Appellant's employment, effective November 02, 2005;
4. That Respondents' immediately release unlawfully withheld TTD Disability Benefits, at the mutually agreed upon average weekly wage of \$1,161.00 effective November 02, 2005;
5. That Respondents' immediately release the 25 percent interest penalty on the unlawfully withheld TTD disability benefits; and
6. That the allegations of Intentional/Negligent Misrepresentation and Fraud be reported and referred to the Insurance Fraud Division of the Office of the Attorney General for investigation.

#### ARGUMENT

1. **This Court has proper subject matter jurisdiction over the parties and the instant appeal to consider Appellant's Rule 269 motion to strike.**

Appellant contends jurisdiction is vested upon this Court to hear and consider Appellant's strike application in above-entitled action pursuant to Appellant's timely filing and service of a Notice of Appeal respective of the July 17, 2015 Order issued by the Honorable William P. Keesley, successor Circuit Judge, wherein said Notice of Appeal was filed by Appellant on or around August 16, 2015 in accordance with Rule 203, SCACR; S.C. Code Ann. § 1-23-380 (Supp. 2008); § 14-3-330(1) & (2)(c) (Supp. 2000) and/or other applicable laws (Notice of Appeal. July 17, 2015 Circuit Court Order on appeal. Previously filed); and Appellant's timely filing of this application prior to the expiration of the ten (10) days afforded to Appellant to file his Reply Brief subsequent service of this Court's March 03, 2016 Order denying Appellant's Motion for Summary Judgment and stay pending adjudication, wherein said Order was received by Appellant via regular mail on March 08, 2016. *Id.*

Furthermore, Rule 269, SCACR, **FRIVOLOUS APPEALS, PETITIONS, MOTIONS, OR RETURNS**, provides in part:

Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, **impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require...** (Emphasis added). *Id.*

Appellant contends the same shall establish that;

a) The Workers' Compensation Commission ("Commission") lacked subject matter jurisdiction over the parties and WCC Claim Number 0506205 at the time it approved the Settlement Agreement and Release in this matter on Jan. 05, 2006 because the Employer terminated the Appellant for cause (*i.e.*

“permanent lifting restrictions” and “no position available”) on November 02, 2005, wherein Appellant was ineligible and forfeited access to compensation benefits respective of the admitted work-related injury which occurred on May 05, 2005 and wherein the “employer-employee relationship” between the parties ceased to exist on Nov. 02, 2005 to date;

b) Attorney Bacon and Attorney Barefoot engaged in a conspiracy, intentional/negligent misrepresentation and insurance fraud, by facilitating and procuring an erroneous and fraudulent Settlement Agreement and Release between the parties on December 22, 2005 wherein Attorney Bacon and Attorney Barefoot were informed and aware that the Employer terminated the Appellant for cause on November 02, 2005;

c) The termination of Appellant’s employment by the Employer on Nov. 02, 2005 constituted a “Retaliatory Discharge” wherein immediate reinstatement of employment and subsequent compliance by Respondents of S.C. Code Reg. 67-506(D) and § 42-9-260(G) of the Workers’ Compensation Act (“Act”) effective November 02, 2005 to date is the appropriate course of action; and

d) Attorney Hantske engaged in intentional negligent misrepresentation and insurance fraud, by intentionally failing to disclose that treating physician Dr. Alan Tamadon assigned permanent lifting restrictions to the Appellant in the October 27, 2005 MMI Medical Report and that the Employer terminated Appellant’s employment for cause on November 02, 2005 in the Factual History section of the Respondents’ Initial Brief; and by advancing the validity and effect of the erroneous and fraudulent Settlement Agreement and Release although

Attorney Hantske is informed and aware that the Commission has always lacked subject matter jurisdiction over the parties and the workers' compensation claim.

**2. Stipulated facts mutually agreed upon by the parties.**

Appellant contends the mutually agreed upon facts stipulated between the parties are as follows:

- A) The Appellant was hired by the Employer, located in Lexington, SC for the position of Delivery (Route) Driver, on October 01, 2001;
- B) Appellant was involved in an admitted work-related accident while in the performance of Appellant's official duties on May 05, 2005;
- C) Appellant promptly notified the Employer of the work-related injury on May 05, 2005;
- D) The average weekly wage of the Appellant at the time of the admitted May 05, 2005 work-related injury was \$1,161.00;
- E) The Employer timely reported the May 05, 2005 work-related injury to the Commission, who assigned the claim Claim Number 0506205 (WCC Form 12, ROA; Exhibit "A", Motion for Summary Judgment, previously filed);
- F) Appellant attended all medical appointments and fully complied with the medical orders of the employer-selected treating physicians, and in particular, authorized treating physician Alan Tamadon, MD (Dr. Tamadon);
- G) On October 27, 2005 Dr. Tamadon opined that Appellant reached Maximum Medical Improvement (MMI), to include, (i) assigning a five percent (5%) impairment rating to the whole person of the Appellant; (ii) assigning "permanent lifting restrictions" due to the compensable injury sustained to Appellant's Back (No lifting greater than (>) 25 pounds occasionally" and "No lifting greater than (>) 10 pounds frequently or occasionally"); and (iii) reporting to Employer that Appellant could no longer perform the duties of a delivery driver (MMI Medical Report dated Oct. 27, 1995, ROA; Exhibit "C", Motion for Summary Judgment, previously filed);
- H) The parties did not challenge or contest the Oct. 27, 2005 medical findings and opinion of Dr. Tamadon;

- I) On October 27, 2005 the Appellant had received temporary compensation payments from the Employer's Representative for approximately **175** consecutive days, including the first 150 days, from May 06, 2005 to October 27, 2005 (WCC Form 18 dated 12/01/2005, ROA; Exhibit "**B**", Motion for Summary Judgment, previously filed);
  - J) On November 02, 2005 the Employer terminated the Appellant for cause, for "permanent lifting restrictions" and "no position available" (Employer Termination Notice dated Nov. 02, 2005, ROA; Exhibit "**Q**", Reply to Return to Motion for Summary Judgment, previously filed);
  - K) On December 22, 2005 the parties entered into a proposed Settlement Agreement and Release, wherein the Appellant agreed to except the sum of \$20,000.00 for the five percent (5%) impairment rating to the whole person of the Appellant respective to the admitted work-related injury which occurred on May 05, 2005; and
  - L) On January 05, 2006 the Commission approved the Settlement Agreement and Release. Settlement Agreement and Release WCC Claim No. 0506205, dated Jan. 05, 2006, ROA; Exhibit "**D**", Motion for Summary Judgment, previously filed.
- 3. The Commission lacked subject matter jurisdiction over the parties and the claim at the time it approved the Settlement Agreement and Release on Jan. 05, 2006 because the Employer terminated the Appellant for cause on Nov. 02, 2005.**

Appellant contends the Commission lacked subject matter jurisdiction over the parties and WCC Claim Number 0506205 at the time it approved the Settlement Agreement and Release in this matter on January 05, 2006 based on several relevant factors.

As an **initial** matter, lack of subject matter jurisdiction cannot be waived and an appellate court may raise the issue of subject matter jurisdiction *ex mero motu*. *Harden v. S.C. State Highway Dept.*, 266 S.C. 119, 221 S.E. (2d) 851 (1976). Parties cannot by consent confer jurisdiction upon a court. *Cox v. Lunsford*, 272 S.C. 527, 252 S.E. (2d) 918 (1979); *Petroleum Transportation Inc. v. Public Service Comm.*, 255 S.C. 419, 179 S.E. (2d) 326 (1971). This principle

also applies to the Workers' Compensation Commission. *Carter v. Associated Petroleum Carriers*, 235 S.C. 80, 110 S.E. (2d) 8 (1959) (Industrial Commission cannot acquire jurisdiction by estoppel, agreement, waiver, or conduct). *Id.*

Furthermore, Appellant this Court's previous holding as set forth in *McCreery v. Covenant Presbyterian Church, et al*, 299 S.C. 218, 383 S.E.2d 264 (1989) and well settled authorities from the Supreme Court of North Carolina are most persuasive as to whether an appellate court can consider the issue of subject matter jurisdiction after an agreement for compensation was executed and approved by the Commission. *Id.* In *McCreery* (1989), this Court opined,

**...Because of the special nature of subject matter jurisdiction we agree with the reasoning of the North Carolina Supreme Court that the issue of subject matter jurisdiction may be raised although an agreement for compensation was executed and approved by the Commission. We note that at the time the Commission issued its notice of award no evidentiary hearing had been held so we reject McCreery's argument that Covenant and Auto-Owners failed to appeal from the award and are therefore barred from asserting their position. Quite simply, the doctrine of res judicata does not apply to the award in question.** (Emphasis added). *Id.* at 223<sup>1,2</sup>.

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1 Appellant points out that because South Carolina adopted large portions of the North Carolina Workers' Compensation legislation, not only do our Courts rely on North Carolina precedent in Workers' Compensation cases, the opinions of the Supreme Court of North Carolina construing the Act are entitled to great weight. See *Hines v. Hendricks Canning Co.*, 263 S.C. 399, 405, 211 S.E.2d 220, 222-23 (1975); also see *Spoone v. Newsome Chevrolet-Buick*, 309 S.C. 432, 434, 424 S.E.2d 489, 490 (1992) ("Because South Carolina adopted large portions of the North Carolina Workers' Compensation legislation, we rely on North Carolina precedent in Workers' Compensation cases."); also see *Nelson v. Yellow Cab Co.*, 349 S.C. 589, 564 S.E.2d 110 (2002). *Id.*

2 The issues set forth in the instant appeal are inapposite to our Supreme Court's holding authority in *McCreery v. Covenant Presbyterian Church*, 303 S.C. 271 400 S.E.2d 130 (1991), because Appellant has raised the issue of fraud committed by the Appellant's former representative, Attorney Bacon, and the Employer's current and former Representatives Attorney Barefoot and Attorney Hantske; and in *McCreery*, the employer did not terminate "Employee" McCreery for cause prior to the parties entering into and Commission approval of the Settlement Agreement and Release . *Id.*

As such, this Court has proper jurisdictional authority to consider Appellant's proposition that the Commission lacked subject matter jurisdiction at the time it approved the Settlement Agreement and Release in this matter on **Jan. 05, 2006** because the Employer terminated Appellant for cause on **November 02, 2005**.

**I. Effect of Employer's Termination of Appellant for cause**

**Second**, a review of the record, and specifically, the Employer's Termination Notice dated November 02, 2005 confirms that the Employer terminated Appellant for cause, specifically, for "permanent lifting restrictions" and "no position available". Employer's Termination Notice, previously filed. Thus, pursuant to the Employer's decision to terminate Appellant for cause, the employer-employee relationship ceased to exist; the Appellant was no longer eligible or entitled to any workers' compensation benefits pursuant to the Act; the Employer's Representative, Attorney Barefoot, was not obligated to pay any compensation benefits to the Appellant; the parties were no longer bound by the Act; and the Commission was divested of subject matter jurisdiction over the parties and WCC Claim No. 0506205 as of November 02, 2005. *Id.*

"The existence of an employment relationship is a **jurisdictional issue** for purposes of **workers' compensation benefits** reviewable under the preponderance of the evidence standard of review". (Emphasis added). *Glass v. Dow Chem. Co.*, 325 S.C. 198, 201-02, 482 S.E.2d 49, 51 (1997); *Vines v. Champion Bldg. Prods.*, 315 S.C. 13, 16, 431 S.E.2d 585, 586 (1993); *Givens v. Steel Structures, Inc.*, 279 S.C. 12, 13, 301 S.E.2d 545, 546 (1983); *Cooper v. McDevitt & St. Co.*, 260 S.C. 463, 466, 196 S.E.2d 833, 834 (1973); *Chavis v.*

*Watkins*, 256 S.C. 30, 32, 180 S.E.2d 648, 649 (1971); *Hon. Jean Hoefler Toal et al.*, Appellate Practice in South Carolina 170 (2d ed.2002). *Id.*

In reviewing the undisputed Employer's Termination Notice dated November 02, 2005 which confirms that the Employer terminated the Appellant for cause, under the preponderance of the evidence standard, the Court must consider the Employer's Officers who validated the termination, to include;

- "DO" – **Durwood Owens**, Division President;
- "RAB" – **Rick A. Bennett** – Division Vice President of Operations;
- "**Kellen K. Pollard**" – Division Vice President of Human Resources; and
- "**Mike Sanders**" – Division Transportation Manager. Employer Termination Notice dated 11/02/2005, previously submitted.

Still further, Appellant contends the Court must conclude that the employment relationship between the parties ceased to exist on November 02, 2005 to date, and that the Commission lacked subject matter jurisdiction over the parties and the claim at the time it approved the aforementioned agreement on Jan. 05, 2006. *Hon. Jean Hoefler Toal, et al, supra. See Brown v. Brown*, 379 S.C. 271, 278, 665 S.E. 2d 174, 178 (Ct. App. 2008)("A preponderance of the evidence is evidence which convinces as to its truth"). *Id.*

Finally, if this Court determines that the Commission in fact had subject matter jurisdiction over the parties and the claim at the time it approved the aforementioned Settlement Agreement and Release on January 05, 2006 although the Employer terminated the Appellant for cause on November 02, 2005 and the Respondents' never established before the Commission that Appellant was able to return to employment without restrictions, the Court would be effectively legislating from the bench, in terms of expanding the jurisdictional

authority and control of the Commission to approve settlement agreements between parties when *inter alia* the employer-employee relationship previously ceased to exist for cause, in clear departure of well-settled authorities and the separation of powers between our legislative and judicial branches, respectively. *City of Pawtucket v. Sundlun*, 662 A.2d 40, 58 (R.I. 1995) (alteration and omission in original) (quoting *The Federalist No. 47*, at 303 (James Madison) (Clinton Rossiter ed. 1961)); *Hon. Jean Hoefler Toal et al, supra*; also see *Abbeville County*, 335 S.C. 69, 515 S.E.2d 541; also see *Wigfall v. Tideland Util., Inc.*, 354 S.C. 100, 110, 580 S.E.2d 100, 105 (2003); see also *Grayson v. Carter Rhoad Furniture*, 317 S.C. 306, 310, 454 S.E.2d 320, 322 (1995) (An employer seeking to terminate TTD benefits pursuant to Regulation 67-504 **must** provide clear proof of the employee's ability to return to work without restriction.). (Emphasis added). *Id.*

4. **Attorney Barefoot and Attorney Bacon engaged in a conspiracy to commit insurance fraud; fraud; and intentional/negligent misrepresentation, by facilitating and advising Appellant to enter into the Settlement Agreement and Release on December 22, 2005 and filing the proposed Settlement Agreement and Release with the Commission on December 30, 2005 although the Employer terminated the Appellant for cause and the Commission was divested of subject matter jurisdiction effective November 02, 2005.**

Appellant contends that Attorney Bacon, Appellant's former counsel of record from May 2005 to on or around December 2012, and Attorney Barefoot, the Respondent's former counsel or record from on or around May 2005 to on or around December 2012 engaged in a conspiracy to commit insurance fraud; fraud; and intentional/negligent misrepresentation, by facilitating and advising the parties to enter into the aforementioned agreement on Dec. 22, 2005 and filing

the proposed agreement with the Commission on Dec. 30, 2005 based on several relevant factors.

As an **initial** matter, "A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff." *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 324, 701 S.E.2d 39, 46 (Ct. App. 2010) (quoting *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006)); see also *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989) ("Civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage."). *Id.*

"In order to establish a conspiracy, evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." *Cowburn v. Leventis*, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005) (quoting *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 575, 511 S.E.2d 372, 383 (Ct. App. 1998)).

Moreover, to establish intentional and/or negligent misrepresentation in an action, a party must prove the following elements: "(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as a direct and

proximate result of his reliance upon the representation". *Sauner v. Pub. Serv. Auth. of South Carolina*, 354 S.C. at 407, 581 S.E.2d at 166 (2003); *Armstrong v. Collins*, Op. No. 4028 (S.C. Ct. App. filed Oct. 3, 2005) (Shearouse Adv. Sh. No. 38 at 41); *Brown v. Stewart*, 348 S.C. 33, 42, 557 S.E.2d 676, 680-81 (Ct. App. 2001); *DeBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 266-67, 536 S.E.2d 399, 405 (Ct. App. 2000). *Id.*

Furthermore, "Fraud is an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to her or to surrender a legal right." *Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 444 (Ct. App. 2003). "To prevail on a cause of action for fraud, a [p]laintiff must prove by clear, cogent and convincing evidence the following elements: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury." *Moseley v. All Things Possible, Inc.*, 388 S.C. 31, 35-36, 694 S.E.2d 43, 45 (Ct. App. 2010) (citing *Regions Bank*, 354 S.C. at 672, 582 S.E.2d at 444-45).

**Here**, a review of the record clearly establishes that Attorney Bacon and Attorney Barefoot engaged in a conspiracy, intentional/negligent misrepresentation, and fraud.

#### **I. Conspiracy between Attorney Barefoot and Attorney Bacon**

With respect to the elements to prove a conspiracy as set forth in *Vaught*,

(1) **Attorney Barefoot** and **Attorney Bacon** were the individuals involved in the enterprise to obtain an unlawful and fraudulent settlement agreement and release of Appellant's WCC Claim No. 0506205, through lawful means, as evidenced by the November 02, 2005 Employer Termination Notice (Employer Termination Notice, previously submitted), which confirms that Appellant was ineligible to receive and forfeited his right to receipt of workers' compensation benefits as of Nov. 02, 2005; and the Settlement Agreement and Release (Settlement Agreement and Release, previously provided), which confirms that subsequent the Employer's termination of employment for cause, the employer-employee relationship was severed and the parties fraudulently entered into settlement agreement and release which was erroneously approved by the Commission;

(2) **Attorney Barefoot** and **Attorney Bacon** facilitated and administrated the unlawful Settlement Agreement and Release for the purpose to injure the Appellant, by unlawfully depriving Appellant of the legal right to entitled future workers' compensation benefits; and

(3) The conspiracy caused Appellant special damages, wherein the Commission unlawfully approved the aforementioned agreement, wherein said Settlement Agreement and Release dated December 22, 2005 and approved by the Commission on Jan. 05, 2006 confirms the conspiracy, wherein **Attorney Bacon** received approximately \$6,666.66 (33.3%) of Appellant's total settlement amount of \$20,000.00 and wherein the Respondents', by way of **Attorney Barefoot**, obtained a fraudulent and unlawful release from future obligations to

Appellant by lawful means, and wherein Appellant has been deprived access to employment or compensation benefits for more than 10 years, and counting. *Id.*

**II. Intentional/Negligent Misrepresentation by Attorney Barefoot and Attorney Bacon**

As it relates to the elements set forth in *Sauner* to establish that Appellant was subjected to intentional/negligent misrepresentation by Attorney Bacon and Attorney Barefoot,

(1) **Attorney Barefoot and Attorney Bacon** *made a false representation* to the Appellant – Attorney Barefoot falsely represented that the Employer and Carrier were prepared to settle Appellant’s WCC Claim No. 0506205 although Attorney Barefoot was informed and aware that the Employer terminated Appellant for cause on Nov. 02, 2005 thereby divesting the Commission of subject matter jurisdiction over the parties and the claim; and Attorney Bacon falsely represented to the Appellant that not only was the Employer offering to settle Appellant’s WCC Claim, that if Appellant did not enter into the agreement Attorney Bacon did not know when Appellant could expect to receive another payment of any kind although Attorney Bacon was informed and aware that the Employer terminated Appellant for cause on Nov. 02, 2005 rendering Appellant’s claim for compensatory benefit payments forfeited;

(2) **Attorney Barefoot and Attorney Bacon** *had a pecuniary interest in making the statement* – Attorney Barefoot’s pecuniary interest was obtaining a fraudulent release of Appellant’s WCC Claim No. 0506205 on behalf of the employer and carrier; Attorney Bacon’s pecuniary interest was obtaining 33.3% of Appellant’s lump sum settlement amount of \$20,000.00;

(3) **Attorney Barefoot** and **Attorney Bacon** owed a duty of care to see that they communicated truthful information to the Appellant; Attorney Barefoot, as the former representative for the employer and carrier, had a fiduciary obligation<sup>3</sup> to have never advanced the offer to settle the Appellant's workers' compensation claim; to include informing the employer and carrier that Appellant's workers' compensation claim was not in posture for resolution pursuant to the Employer's Nov. 02, 2005 termination of Appellant's employment for cause; to include informing the employer and carrier that any such offers to resolve Appellant's workers' compensation claim subsequent the Nov. 02, 2005 termination would immediately render said termination a "retaliatory discharge"; Attorney Bacon, Appellant's former representative, had a client-lawyer and fiduciary obligation<sup>3,4</sup> to communicate and inform the Appellant that the offer to settle Appellant's workers' compensation claim was improper pursuant to the

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3 "A 'fiduciary relationship' is founded on trust and confidence reposed by one person in the integrity and fidelity of another." *Steele v. Victory Sav. Bank*, 295 S.C. 290, 293, 368 S.E.2d 91, 93 (Ct. App. 1988). It exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence. *Id.* see also *Landvest Assocs. v. Owens*, 276 S.C. 22, 274 S.E.2d 433 (1981); also see *O'Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992). Indeed, some relationships are deemed fiduciary as a matter of law. See *State v. Scott*, 330 S.C. 125, 497 S.E.2d 735 (Ct. App. 1998) (holding the employer-employee relationship is deemed fiduciary as a matter of law). *Id.*

Additionally, Rule 4.1, RPC, Rule 407, SCACR, provides in part: "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." (Emphasis added). *Id.*

4 Rule 1.4(b), RPC, Rule 407 SCACR, provides in part: "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." *Id.*

Employer's Nov. 02, 2005 termination of Appellant's employment for cause, to include advising and recommending to Appellant that Attorney Bacon immediately proceed with initiating a civil action in Circuit Court pursuant to § 41-1-80 to seek immediate reinstatement of Appellant's employment;

(4) **Attorney Barefoot** and **Attorney Bacon** *breached that duty by failing to exercise due care*; Attorney Barefoot breached that duty by failing to exercise due care in terms of offering to erroneously settle the Appellant's workers' compensation claim, to include releasing three (3) erroneous compensation payments to Appellant subsequent the Employer's termination of Appellant's employment for cause on November 02, 2005 (ROA; Exhibit "B", Motion for Summary Judgment) entering into the erroneous settlement agreement on behalf of the Employer and Carrier; and filing the erroneous proposed settlement agreement with the Commission on or around Dec. 30, 2005 (December 30, 2005 Correspondence to Commission, ROA; Exhibit "E", Motion for Summary Judgment, previously submitted); Attorney Bacon breached that duty by failing to exercise due care in terms of advising the Appellant to enter into the aforementioned fraudulent settlement agreement, to include Attorney Bacon validating the "Attorney's Certificate" included with the aforementioned settlement agreement (Attorney's Certificate, Settlement Agreement and Release, ROA; Exhibit "D", Motion for Summary Judgment, previously submitted);

(5) Appellant *justifiably relied on the representation* of **Attorney Bacon** and **Attorney Barefoot** that WCC Claim No. 0506205 was in posture for settlement and in compliance with the Act, based on the fact that Appellant

retained the legal representation of Attorney Bacon<sup>3, 4</sup> and had the right to rely on the legal advice of Attorney Bacon as being truthful and in the best interest of Appellant, as this is common knowledge to all laypersons (*Mali v. Odom*, 295 S.C. 78, 80-81, 367 S.E.2d 166, 168 (Ct. App. 1988) (“A plaintiff ... must ordinarily establish by expert testimony the standard of care, unless the subject matter is of common knowledge to laypersons.”)); and the fact that due to the fiduciary obligation of the employee-employer relationship, Appellant had a right for Attorney Barefoot to fully disclose that due to the Employer’s termination of Appellant’s employment on Nov. 02, 2005 that the Appellant was ineligible for and forfeited his right to compensation benefits payments<sup>3</sup>; and

(6) the Appellant *suffered a pecuniary loss as a direct and proximate result of his reliance upon the representation*, wherein upon the erroneous approval by the Commission of the fraudulent settlement agreement and release on Jan. 05, 2006 has deprived the Appellant of entitled access to workers’ compensation benefit payments, at the mutually agreed upon average weekly wage (AWW) of \$1,161.00 from November 02, 2005 to date, wherein from November 02, 2005 to March 09, 2016 reflects approximately **538 weeks of entitled TTD benefit compensation payments, multiplied by \$1,161.00 (AWW), for a total amount of \$624,618.00 in unpaid and loss pecuniary TTD Benefit compensation payments**, plus the mandatory 25% interest penalty on the unlawfully withheld TTD benefits per § 42-9-260(G) ( $\$624,618.00 \times .25 = \$156,154.50$ ) for a combined total of pecuniary loss at **\$780,772.50**<sup>5, 6</sup>. *Sauner, supra*.

### **III. Fraud committed by Attorney Barefoot and Attorney Bacon**

With respect to the elements set forth in *Regions Bank* to establish that Attorney Barefoot and Attorney Bacon engaged in fraud in the instant appeal;

(1) *a representation* – **Attorney Barefoot** representing that Respondents' were offering to settle WCC Claim No. 0506205 for \$20,000.00; and **Attorney Bacon**, representing and advising the Appellant to enter into an agreement with the Employer and Carrier to resolve WCC Claim No. 0506205;

(2) *its falsity* – WCC Claim No. 0506205 has never been in posture for resolution due to the Employer's termination of Appellant's employment for cause, namely, "permanent lifting restrictions" and "no position available" on November 02, 2005 wherein Appellant was ineligible and forfeited his right to any workers' compensation benefits, and the Employer terminated the employer-employee relationship divesting the Commission of any subject matter jurisdiction over the parties respective to WCC No. 0506205 (*Glass supra*);

(3) *its materiality* – The inability of the parties to legally resolve Appellant's WCC Claim No. 0506205 pursuant to the Employer's termination of Appellant for cause on November 02, 2005 was substantive and relevant information which should have been accurately communicated to the Appellant by **Attorney Barefoot and Attorney Bacon** (*Steele supra*);

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5 A review of Appellant's Redacted Social Security Statement dated September 21, 2015 confirms that Appellant has been unemployed since the Employer terminated the Appellant for cause on November 02, 2005. Redacted Social Security Statement dated 09/21/2015 enclosed and incorporated herein as Exhibit "R".

6 "All relevant evidence is admissible". Rule 402, SCRE; *State v. Langley*, 334 S.C. 643, 515 S.E.2d 98 (1999). Evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. Rule 401, SCRE; *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991).

(4) *either knowledge of its falsity or a reckless disregard of its truth or falsity* – **Attorney Barefoot** and **Attorney Bacon** were informed and aware that the representation(s) to settle WCC Claim No. 0506205 via settlement agreement before the Commission were false due to their knowledge that the Employer had terminated Appellant for cause on November 02, 2005 which divested the Commission of any jurisdiction to consider approving a settlement agreement with respect to WCC Claim No. 0506205 and thus Attorney Bacon and Attorney Barefoot were reckless to the disregard of the truth in falsely representing that Appellant's WCC claim was in posture for settlement;

(5) *intent that the representation be acted upon* – **Attorney Barefoot** demonstrated the intent that the false representation that Appellant's WCC Claim No. 0506205 was in posture for settlement be acted upon, *inter alia*, by; (i) validating the proposed fraudulent Settlement Agreement and Release; and (ii) forwarding the proposed fraudulent Settlement Agreement and Release to the Commission for approval; **Attorney Bacon** demonstrated the intent that the false representation that Appellant's WCC Claim No. 0506205 was in posture for settlement be acted upon by validating the "Attorneys Certificate" which was filed with the Commission in conjunction with the proposed fraudulent Settlement Agreement and Release;

(6) *the hearer's ignorance of its falsity* – Appellant was ignorant of the fact that pursuant to the Employer's termination of Appellant's employment on November 02, 2005 that Appellant was deemed ineligible and in fact had forfeited his right to access of any workers' compensation benefits based on

Appellant's limited education; extreme duress, wherein Appellant was homeless and living in Appellant's personally owned vehicle at the time Attorney Bacon advised the Appellant of the same; and the fact the Appellant was not in receipt of any payment of any kind subsequent Employer's termination on Nov. 2, 2005;

(7) *the hearer's reliance on its truth* – Appellant relied upon and believed that **Attorney Barefoot** was truthful, as it was Attorney Barefoot's fiduciary obligation to be truthful, when he represented that WCC Claim No. 0506205 was in posture to be settled<sup>3</sup>; Appellant relied upon and believed **Attorney Bacon** was truthful in representing and advising the Appellant, as it was his fiduciary obligation, to enter into the Settlement Agreement and Release;

(8) *the hearer's right to rely thereon* – Appellant had a right to rely on all statements made by **Attorney Barefoot** respective to the instant claim because as an attorney, Attorney Barefoot is prohibited from making a false statement of a material fact to third parties, which would include Attorney Bacon and the Appellant, as well as the alleged fiduciary relationship that supposedly existed between the parties (Rule 4.1, RPC, Rule 407, SCACR); and Appellant had a right to rely on all statements and advisement from **Attorney Bacon** pursuant to the attorney-client relationship and fiduciary obligation Attorney Bacon had with the Appellant (Rule 1.4(b), RPC, Rule 407 SCACR); and

(9) *the hearer's consequent and proximate injury* – Appellant entered into the aforementioned fraudulent agreement based on the false statements and intentional/negligent misrepresentation of **Attorney Barefoot** and **Attorney Bacon**, and upon the erroneous approval of the same by the Commission, the

Appellant parted with his legal right to entitled compensation benefits wherein Appellant has been deprived of an estimated **\$780,772.50** in entitled TTD Disability compensation payments, and remains unemployed, now for more than TEN YEARS (and counting), wherein the Respondents', through Attorney Hantske, continues to deny the Appellant access to entitled employment or compensatory benefits, instead continuing to rely on the clearly erroneous and fraudulent settlement agreement. *Regions Bank supra. Id.*

Still further, in approving the aforementioned agreement on January 05, 2006 without subject matter jurisdiction, and without being informed or aware, by either Attorney Barefoot or Attorney Bacon, that the Employer had previously terminated the Appellant's employment for cause on November 02, 2005, the Commission became an unknowing actor in a conspiracy to commit insurance fraud<sup>7</sup>, which Appellant would allege was perpetrated by the Employer's former Representative **Attorney Barefoot**, and the Appellant's former Representative,

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7 However, this Court should take notice that in the July 17, 2013 Appellant Panel Decision and Order (**which was drafted by Attorney Hantske and adopted near-verbatim by the Appellate Panel**), the Full Commission's stated "Findings of Facts" omitted and made no reference to the material fact of the Employer's November 02, 2005 termination of Appellant's employment for cause, which misled the trier of fact, and the record, that the aforementioned Settlement Agreement and Release approved by the Commission on January 05, 2006 was proper, when in fact, the Commission lacked subject matter jurisdiction over the parties or the claim. See Heater of Seabrook, Inc. v. Pub. Serv. Comm'n of S.C., 332 S.C. 20, 26, 503 S.E.2d 739, 742 (1998)(It is well settled that "[t]he findings of fact of an administrative body must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings"); Also see In re Luhr Bros., 157 F.3d 333, 338 (5th Cir. 1998) ("[I]n cases such as the instant one, where the district court's Findings of Fact and Conclusions of Law are near-verbatim recitals of the prevailing party's proposed findings and conclusions, with minimal revision, we should approach such findings with 'caution.'"). *Id.* Employer's Termination Notice dated 11/02/2005, previously submitted. Appellate Panel Decision and Order, WCC # 0506205 dated July 17, 2013, ROA; enclosed herein as Exhibit "S".

**Attorney Bacon.** Employer's Termination Notice, dated Nov. 02, 2005, previously filed. Settlement Agreement and Release, previously filed.

Moreover, the Court must consider that no hearing was ever convened before the Commission prior to the Commission approving the aforementioned agreement in this matter. Therefore, the Commission was neither informed nor aware that the Employer terminated the Appellant for cause on November 02, 2005 which divested the Commission of subject matter jurisdiction over the parties or the claim. *Glass supra.* See S.C. Const. art. I, § 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 . . . ."); also see § 42-9-260(F); also see *Halks v. Rust Engineering Co.*, 208 S.C. 39, 36 S.E.2d 852 (1946)(Compensation claims pending before the Workers' Compensation Commission cannot be dismissed without Hearing). *Id.*

Finally, in applying a liberal construction of the Act in favor of coverage for Appellant (*Hutson v. S.C. State Ports Auth.*, 399 S.C. 381, 387, 732 S.E.2d 500, 503 (2012)), the Court must consider the carefully executed scheme to defraud the Appellant, utilized by Attorney Barefoot and Attorney Bacon to obtain the fraudulent release for WCC Claim No. 0506205, wherein;

**(1) Employer terminates injured Appellant for cause on 11/02/2005 after treating physician Dr. Tamadon issues the 10/27/2005 Medical Report wherein Dr. Tamadon, opined MMI; assigned a five percent impairment rating; assigned permanent lifting restrictions; reported to employer Appellant could no longer perform the duties of a delivery driver; and after Appellant had received TTD payments for longer than and including the first 150 days;**

**(2) Appellant is subjected to incongruous and harsh circumstances due to termination of employment and no receipt of compensation benefits;**

(3) Abuse of the injured Appellant's novice understanding of the law, limited education and financial circumstances by Attorney Barefoot and Attorney Bacon;

(4) Attorney Barefoot and Attorney Bacon engage in a conspiracy to commit insurance fraud, by making false representations to the Appellant that the aforementioned workers' compensation claim is in posture to be settled by way of agreement when the employment relationship has ceased to exist pursuant to the Employer's prior termination of Appellant for cause on November 02, 2005;

(5) The parties enter into the proposed fraudulent agreement on December 22, 2005;

(6) Attorney Barefoot and Attorney Bacon intentionally fail to disclose to the Commission that the Employer previously terminated the Appellant for cause prior to the parties' entrance into the proposed agreement<sup>8</sup>;

(7) Attorney Barefoot and Attorney Bacon rely on an isolated and Commission-promulgated regulation, specifically (and apparently), **Regulation 67- 801 of the Act** (See South Carolina Coastal Council v. South Carolina State Ethics Comm'n, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991)(Carolina State Ethics Comm'n, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991)(holding the court should not consider the particular clause being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law)), **to secure erroneous approval of the fraudulent settlement agreement and release without an evidentiary hearing convened before the Commission**; and

(8) Attorney Hantske, on behalf of Respondents', continues to **perpetrate the fraudulent scheme and commit insurance fraud**, now for more than three (3) years, by intentionally advancing the validity and effect of the erroneous and fraudulent settlement agreement and release. *Regions Bank, supra. Id.* Respondents' Initial Brief, previously filed.

Indeed, upon review of the foregoing, it would not be unreasonable and in fact, it would be appropriate, for this Court to conclude that the Settlement Agreement and Release approved by the Commission in this matter on January

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<sup>8</sup> Non-disclosure is **fraudulent** when there is a duty to speak. *Manning v. Dial*, 271 S.C. 79, 83, 245 S.E.2d 120, 122 (1978); also see *Jacobson v. Yaschik*, 249 S.C. 577, 585, 155 S.E.2d 601, 605 (1967).

05, 2006 is invalid because, 1) the Commission lacked subjected matter jurisdiction over the parties and the claim; and 2) the aforementioned agreement was obtained and procured by way of conspiracy, intentional/negligent misrepresentation, and fraud, through the actions and conduct of Attorney Barefoot and Attorney Bacon.

5. **Attorney Hantske engaged in negligent misrepresentation and fraud (3 counts), by, (1) failing to disclose in the Initial Brief that Appellant was assigned permanent lifting restrictions by treating physician Alan Tamadon, MD on October 27, 2005; (2) failing to disclose in the Initial Brief that the Employer terminated the Appellant's employment for cause on November 02, 2005 prior to the parties entering into the Settlement Agreement and Release; and (3) by advancing the validity and effect of the fraudulent and patently erroneous Settlement and Agreement and Release.**

Appellant contends Attorney Hantske engaged in negligent misrepresentation and fraud, by intentionally failing to disclose in their Initial Brief that Appellant's permanent lifting restrictions was assigned to the Appellant by the Employer-selected treating physician, Dr. Alan Tamadon, in the October 27, 2005 MMI Medical Report; that the Employer terminated the Appellant for cause on November 02, 2005 and prior to the parties entering into and subsequent approval of the aforementioned agreement by the Commission on January 05, 2006; and by advancing the validity and effect of the aforementioned fraudulent and erroneous agreement in their Initial Brief, based on several factors.

First, a review of the record, and specifically, page "1" of the "Statement of the Case" as contained in the Initial Brief filed and served in this matter by Attorney Hantske states;

**"Appellant reached Maximum Medical Improvement on October 27, 2005 and was assigned a 5% medical impairment rating to the whole**

**person by his treating physician. Thereafter, Appellant and Respondents entered into a Settlement Agreement and Release, “in full and final satisfaction of all claims whatsoever as a result of the alleged accident”**” (Emphasis added). Respondents’ Initial Brief, pg. 1, previously filed.

However, a review of the record, and specifically, the October 27, 2005 MMI Medical Report, as prepared and verified by treating physician Dr. Tamadon, confirms that Dr. Tamadon also assigned “permanent lifting restrictions” in addition to the 5% impairment rating to the Appellant, and specifically, “No lifting greater than (>) 25 pounds occasionally” and “No lifting greater than (>) 10 pounds frequently or occasionally”. October 27, 2005 MMI Medical Report, ROA; Exhibit “C”, Motion for Sum. Judgment, previously filed.

Furthermore, the aforementioned statement as advanced by Attorney Hantske in their Initial Brief failed to disclose that on November 02, 2005 the Respondent-Employer terminated Appellant’s employment for cause, specifically, on grounds of “Permanent lifting restrictions” and “no position available”. Employer Termination Notice, dated Nov. 02, 2005. ROA; Exhibit “Q”, Reply to Return to Motion for Summary Judgment, previously filed.

Still further, because Attorney Hantske intentionally failed to disclose in their Initial Brief that treating physician Dr. Tamadon opined and assigned the permanent lifting restrictions to Appellant in the October 27, 2005 MMI Medical Report and that the Employer terminated the Appellant’s employment for cause on Nov. 02, 2005, Attorney Hantske then proceeded to misrepresent, in their Initial Brief, the validity and effect of the aforementioned Settlement Agreement and Release entered into by the parties on December 22, 2005 and approved by

the Commission in this matter on January 05, 2006. Respondents' Initial Brief, previously filed. Settlement Agreement and Release, ROA; Exhibit "D", Motion for Summary Judgment, previously filed. MMI Medical Report dated October 27, 2005, ROA; Exhibit "C", Motion for Summary Judgment, previously filed. Employer Termination Notice, dated Nov. 02, 2005, ROA; Exhibit "Q", Reply to Return to Motion for Summary Judgment, previously filed.

**I. Negligent misrepresentation by Attorney Hantske**

As it relates to the elements set forth in *Sauner* to establish that Appellant was subjected to negligent misrepresentation by Attorney Hantske,

(1) **Attorney Hantske** *made a false representation* to the Appellant – Attorney Hantske falsely represented that (i) The October 27, 2005 MMI Medical Report authored by treating physician Dr. Tamadon only opined a 5% impairment rating to the whole person; (ii) failed to disclose that after the issuance of the October 27, 2005 MMI Medical Report the Employer terminated the Appellant for cause on November 02, 2005; and (iii) Advancing the proposition that the aforementioned Settlement Agreement and Release entered into by the parties and approved by the Commission in this matter on January 05, 2006 is valid although pursuant to the Employer's Nov. 2 termination, WCC Claim No. 0506205 remains in a posture of FOREFIETURE and the Commission has always lacked subject matter jurisdiction over the parties or the claim since Nov. 02, 2005 (Respondents' Initial Brief, previously filed);

(2) Attorney Hantske *had a pecuniary interest in making the statement* – **Attorney Hantske's** pecuniary interest was obtaining an opinion from this Court

affirming the July 17, 2015 Circuit Court Order on appeal, and by extension, affirming the agreement entered into by parties and approved by the Commission on January 05, 2006 to deprive Appellant of more than an estimated amount of \$780,772.50 in unlawfully withheld and entitled TTD disability insurance benefit payments; and for the Court to affirm the Circuit Court's award of approximately **\$32,933.13** in attorney's fees (July 17, 2015 Circuit Court Order on appeal) to be paid by the unemployed and injured Appellant;

(3) Attorney Hantske *owed a duty of care to see that she communicated truthful information to the Appellant*; **Attorney Hantske**, as the current representative for the employer and carrier, and the author of their Initial Brief filed and served in this matter, had a fiduciary obligation<sup>3, 8</sup> to have been truthful in the statements advanced in their Initial Brief in terms of fully disclosing that in the October 27, 2005 MMI Medical Report that treating physician Dr. Tamadon assigned the permanent lifting restrictions to the Appellant in addition to the 5% impairment rating; that the Respondent-Employer terminated the Appellant for cause on November 02, 2005; and that pursuant to the Respondent-Employer's termination of Appellant's employment for cause on Nov. 02, 2005, which effectively rendered the employer-employee relationship nonexistent, that the aforementioned agreement entered into by the parties and approved by the Commission on January 05, 2006 was invalid (*Hon. Jean Hoefler Toal, et al, supra*; Oct. 27, 2005 MMI Medical Report; Employer Termination Notice dated Nov. 02, 2005);

(4) Attorney Hantske *breached that duty by failing to exercise due care*;

**Attorney Hantske** breached that duty by failing to exercise due care in terms of failing to disclose that in the October 27, 2005 MMI Medical Report that treating physician Dr. Tamadon assigned the permanent lifting restrictions to the Appellant in addition to 5% impairment rating; that the Respondent-Employer terminated the Appellant for cause on November 02, 2005; and that pursuant to the Respondent-Employer's termination of Appellant's employment for cause on Nov. 02, 2005, which effectively rendered the employer-employee relationship nonexistent, that the aforementioned agreement entered into by the parties and approved by the Commission on January 05, 2006 was invalid (*Hon. Jean Hoefer Toal, et al, supra*; Oct. 27, 2005 MMI Medical Report; Employer Termination Notice dated Nov. 02, 2005);

(5) Appellant *justifiably relied on the representation of Attorney Hantske*, while Appellant has not relied upon the representation(s) of **Attorney Hantske**, the Court must consider that Appellant is a non-attorney and a self-represented litigant in this matter, wherein the intentional false representation(s) as advanced by Attorney Hantske must be deemed as a deliberate attempt to impugn the integrity of the instant appeal; to abuse, oppress and gain an unfair advantage of the Appellant's self-represented status; as well as an affront upon the administration of justice if the Appellant would have justifiably relied upon the false representation(s) of Attorney Hantske<sup>3, 8, 9</sup>; and

(6) the Appellant *suffered a pecuniary loss as a direct and proximate result of his reliance upon the representation*; because of the false representation(s) advanced by Attorney Hantske, Appellant continues to be deprived from

reinstatement of Appellant's employment effective November 02, 2005 as well as access to unlawfully withheld TTD workers' compensation insurance benefit payments, at the estimated amount of \$780,772.50 which continues to accrue. *Sauner, supra.*

## II. Fraud committed by Attorney Hantske

With respect to the elements set forth in *Regions Bank* to establish that Attorney Hantske engaged in fraud in the instant appeal;

(1) *a representation* – **Attorney Hantske** representing in the Initial Brief, (i) that treating physician Dr. Tamadon only opined a 5% impairment rating to the whole person of Appellant in the October 27, 2005 MMI Medical Report; (ii) that after the Appellant reached MMI on October 27, 2005 that employer did not terminate Appellant for cause on November 02, 2005; (iii) advancing the argument that said settlement agreement and release is valid, enforceable, and binding upon the parties although the Commission lacks subject matter jurisdiction over the parties or the claim pursuant to the Employer's Nov. 2, 2005 termination of Appellant's employment for cause (Respondents' Initial Brief, pg. 1, previously filed);

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9 Appellant contends the false statements as advanced by Attorney Hantske reflects clear violation(s) of the Lawyer's Oath, as set forth in Rule 402(k), SCACR, which provides in part: "I do solemnly swear (or affirm) that:... To **opposing parties** and their counsel, I pledge **fairness, integrity,** and civility, not only in court, but also in **all written and oral communications...** I **will not pursue or maintain any suit or proceeding which appears to me to be unjust nor maintain any defenses except those I believe to be honestly debatable under the law of the land...** I will maintain the **dignity of the legal system** and **advance no fact prejudicial to the honor or reputation of a party...** I will **assist the defenseless or oppressed by ensuring that justice is available to all citizens and will not delay any person's cause for profit or malice...**" (Emphasis added). *Id.*

(2) *its falsity* – (i) The October 27, 2005 MMI Medical Report authored by treating physician Dr. Tamadon confirms that Dr. Tamadon also assigned “permanent lifting restrictions” to the Appellant and reported to the Employer that Appellant could no longer perform the duties of a delivery driver; (ii) On November 02, 2005 the Employer terminated Appellant’s employment for cause, specifically, for ‘permanent lifting restrictions’ and ‘no position available’, thus terminating the employment relationship between the parties; (iii) Appellant’s WCC Claim No. 0506205 has never been in posture for resolution via settlement agreement due to the Employer’s termination of Appellant’s employment for cause, namely, “permanent lifting restrictions” and “no position available” on November 02, 2005 wherein Appellant was ineligible and forfeited his right to any workers’ compensation benefits and the Employer terminated the employer-employee relationship divesting the Commission of any subject matter jurisdiction over the parties or the claim respective to WCC No. 0506205 (*Glass supra; Hon. Jean Hoefler Toal, et al, supra; October 27, 2005 MMI Medical Report; November 02, 2005 Termination Notice; Settlement Agreement and Release*);

(3) *its materiality* – The intentional failure of **Attorney Hantske** to disclose in their Initial Brief treating physician Dr. Tamadon’s unchallenged medical findings in terms of Dr. Tamadon’s assigning of permanent lifting restrictions to Appellant in the October 27, 2005 Medical Report and the Employer’s subsequent Nov. 02, 2005 termination of Appellant’s employment were essential facts which are of a substantive and relevant nature to the trier of fact which should have been accurately communicated to the Appellant and this Court by

Attorney Hantske (*Steele supra*);

(4) *either knowledge of its falsity or a reckless disregard of its truth or falsity* – **Attorney Hantske** was informed and aware she was making false statements in their Initial Brief and of the truth that (i) Dr. Tamadon assigned the permanent lifting restrictions upon Appellant **because** Attorney Hantske is in possession of the October 27, 2005 Medical Report and disclosed from the same that Dr. Tamadon assigned a 5% impairment rating to the whole person of the Appellant; (ii) the Employer terminated Appellant for cause on November 02, 2005 **because** it was **Attorney Hantske** who perfected initial service of the November 02, 2005 Employer Termination Notice upon Appellant subsequent Appellant's Dec. 07, 2012 Form 27 Subpoena for full copy of Appellant's employment file with service of the same perfected upon Appellant on or around December 21, 2012; and (iii) that pursuant to the Employer's termination of Appellant for cause on November 02, 2005, that effective November 02, 2005 to date, WCC Claim No. 0506205 remains in a posture of FORFEITURE, thus divesting the Commission of any subject matter jurisdiction over the parties or the claim **because** as a practicing attorney in the field of workers' compensation law, **Attorney Hantske** is presumed to be an expert and therefore is informed and aware of the **effect** of the Employer's Nov. 2, 2005 termination of Appellant's for cause respective of Appellant's WCC Claim No. 0506205;

(5) *intent that the representation be acted upon* – **Attorney Hantske** demonstrated the intent that the aforementioned false representation(s) be acted upon, in their Initial Brief, by moving this Court to affirm the July 17, 2015 Circuit

Court Order on appeal (Respondents' Initial Brief, pg. 38);

(6) *the hearer's ignorance of its falsity* – Appellant was previously ignorant of the effect that **Attorney Hantske's** intentional false statements had on the instant appeal and the trier of fact as well as Attorney Hantske's fiduciary and legal obligation to be truthful in all written and oral statements advanced to the Appellant or the Court<sup>3, 8, 9</sup>;

(7) *the hearer's reliance on its truth* – Appellant has not relied upon the false statement(s) advanced by **Attorney Hantske** in their Initial Brief; however, the Court must consider that the Appellant previously relied on the truthfulness of statements made to the Appellant by **Attorney Barefoot**, the Respondents' former counsel of record, and the false statements advanced by **Attorney Bacon**, Appellant's former representative, and thus the intentional false statements advanced **Attorney Hantske** reflects and should be construed as a continued perpetration of the same fraudulent act(s) previously relied upon as truthful by Appellant;

(8) *the hearer's right to rely thereon* – Appellant had a right to rely on all statements made by **Attorney Hantske** respective to the instant claim because as an attorney, Attorney Hantske is expressly prohibited from making a false statement of a material fact to third parties, which would include the Appellant and this Court, as well as the alleged fiduciary relationship that supposedly existed between the parties<sup>3, 8, 9</sup>; and

(9) *the hearer's consequent and proximate injury* – because of the false representation(s) advanced by **Attorney Hantske**, Appellant continues to be

parted from his legal rights; to include deprived from reinstatement of Appellant's employment effective November 02, 2005 as well as access to unlawfully withheld TTD workers' compensation insurance benefit payments, at the estimated amount of \$780,772.50 which continues to accrue. *Regions Bank supra. Id.*

Simply put, Attorney Hantske is informed and aware that if she disclosed in their Initial Brief that in the October 27, 2005 MMI Medical Report treating physician Dr. Tamadon assigned and opined the permanent lifting restrictions to Appellant, and that the Respondent-Employer terminated the Appellant on November 02, 2005 for cause, namely "permanent lifting restrictions" and "no position available" prior to the parties entrance in the Settlement Agreement and Release on December 22, 2005 and subsequent approval of said agreement by the Commission on January 05, 2006, that *prima facie* Attorney Hantske would have no rationale grounds or legal standing to defend Respondents' termination of Appellant's employment on November 02, 2005; the validity of the approved Settlement Agreement and Release by the Commission on January 05, 2006; or Attorney Hantske's continued unlawful withholding of entitled TTD workers' compensation insurance benefit payments from Appellant from November 02, 2005 to date as the Respondents' Representative of record.

Finally, this Court must consider the carefully executed scheme to defraud the Appellant, as executed in this matter by Attorney Hantske in their Initial Brief, wherein;

- a) **Attorney Hantske knowingly and willfully falsely represent that treating physician Dr. Tamadon only assigned a 5% impairment**

**rating to the whole person of the Appellant in the Oct. 27, 2005 MMI Medical Report;**

- b) Attorney Hantske knowingly and willfully fail to disclose that the Employer terminated the Appellant for cause on November 02, 2005, and specifically, for the same “permanent lifting restrictions” as opined and assigned by treating physician Dr. Tamadon; and**
- c) Attorney Hantske knowingly and willfully advances the validity and finality of the patently erroneous and fraudulent Settlement Agreement and Release approved by the Commission on January 05, 2006. Respondents’ Initial Brief, pg. 1. October 27, 2005 MMI Medical Report. Employer’s Termination Notice dated November 02, 2005. Settlement Agreement and Release.**

**6. The Respondent-Employer’s grounds for terminating Appellant’s employment on November 02, 2005 constitutes a retaliatory discharge.**

Appellant contends that based on Appellant’s well pled proposition that WCC Claim No. 0506205 remains in the posture of forfeiture as of Nov. 02, 2005 to date (See Argument No. “3” above), that the fundamental issue before this Court is whether the grounds relied upon by the Employer when it terminated the Appellant for cause on November 02, 2005, and specifically, for ‘permanent lifting restrictions’ and ‘no position available’ was proper, or whether the termination of employment constitute a retaliatory discharge. To that end, Appellant contends that the Employer’s Nov. 2 termination of Appellant constitutes a retaliatory discharge as set forth in § 41-1-80, based on several relevant factors.

As an initial matter, contrary to the Respondents’ stated position that Appellant failed to raise the issue of wrongful termination (retaliatory discharge) before the Circuit Court (Resp. Initial Brief, p. 33-34), Appellant contends a review of the record, and specifically, Appellant’s Rule 59(a) Motion for New Trial

dated August 04, 2014 and Appellant's Answer to Reply to Motion for New Trial dated August 25, 2014 confirms that Appellant properly raised the issue of the Employer's termination of Appellant on November 02, 2005. Appellant's Motion for New Trial, p. 23, ROA; Exhibit "G", Motion for Summary Judgment, previously filed. Answer to Reply to Motion for New Trial, p. 2-3; 16-18; 31-32, ROA; Exhibit "H", Motion for Summary Judgment, previously filed.

**Second**, even if the Appellant did not raise the issue of wrongful termination (retaliatory discharge) before the Circuit Court, which Appellant certainly did, this Court has an inherent authority to consider the issue of retaliatory discharge in the first instance, in the furtherance of the administration of justice which does not depend upon express constitutional or legislative grant. See 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**"). (Emphasis added). *Id.*

**Third**, Appellant contends *prima facie* that the three elements required to establish a "retaliatory discharge" as set forth in *Crosby v. Prysmian Communications*, Opinion No. 4876 (Ct. App. 2012) ("In order to recover for retaliatory discharge under section 41-1-80, a plaintiff must establish three elements: "1) institution of workers' compensation proceedings, 2) discharge or demotion, and 3) a causal connection between the first two elements." Hinton v. Designer Ensembles, Inc., 343 S.C. 236, 242, 540 S.E.2d 94, 97 (2000) (citing

Hines v. United Parcel Serv., Inc., 736 F. Supp. 675, 677 (D.S.C. 1990)) were clearly met in order for Appellant to recover for retaliatory discharge upon a review of the record, wherein; (1) workers' compensation proceedings were instituted in this matter respective of the admitted May 05, 2005 work-related tractor-trailer accident, which was designated by the Commission as WCC Claim No. 0506205; (2) On November 02, 2005 the Employer terminated the Appellant's employment for "permanent lifting restrictions" and "no position available"; and (3) the causal connection between the first two elements, wherein the "permanent lifting restrictions" utilized by the Employer to terminate Appellant were the direct result of the compensable injury sustained to Appellant's Back in the admitted May 05, 2005 work-related accident; it was the Employer-selected treating physician Dr. Tamadon, in the October 27, 2005 MMI Medical Report, who assigned the permanent lifting restrictions; and pursuant to Reg. 67-506(D) of the Act, the Employer was prohibited from terminating Appellant's employment if the Employer could not provide suitable employment to accommodate the Appellant's medical restrictions; wherein the Employer's Representative had a fiduciary obligation to continue payment of TTD compensatory benefit payments to Appellant until the Commission granted permission to terminate TTD payments, wherein the Employer would continue to be obligated to provide employment to the Appellant. *Id.* S.C. Code Reg. 67-506(D)(2005). WCC Form 12, ROA; Exhibit "A", Motion for Summary Judgment, previously filed. October 27, 2005 Medical Report. Employer Termination Notice, dated November 02, 2005.

**Fourth**, the Court must consider that the one-year statute of limitations to raise the issue of the retaliatory discharge as set forth in § 41-1-80 should be waived based on the Employer's misleading and deceptive actions respective of the Nov. 02, 2005 termination, wherein;

- a. **The Employer intentionally failed to provide Appellant with a copy of the Employer Termination Notice at the time Employer terminated Appellant for cause on Nov. 02, 2005;**
- b. **Appellant-Employee was not initially served and provided with a copy of the Employer's Termination Notice dated November 02, 2005 until on or around December 21, 2012 from Attorney Hantske, more than seven years *post facto*;**
- c. **The Employer, via Division Vice President Kellen K. Pollard, issued correspondence dated March 09, 2006 wherein the Employer falsely stated that Appellant "left the company in November 2005 because he could not longer perform the duties of a delivery driver" when in fact, the Employer terminated the Appellant on November 02, 2005; and**
- d. **Attorney Hantske, on behalf the Respondent-Employer, made an intentional false statement of material fact to the Circuit Court, and specifically, to Successor Circuit Court Judge Hon. William P. Keesley (an additional count of negligent misrepresentation and fraud), at the March 27, 2015 appellate hearing in this matter, when Attorney Hantske stated,**

**"That was his [Appellant] calculation of back pay of weekly benefits since he [Appellant] signed his agreement and resigned his job in November of 2005." (Emphasis added).**

See *Case v. Hermitage Cotton Mills*, 236 S.C. 285, 113 S.E.3d 794 (1960)

(holding that the one year statute of limitations to bring a § 41-1-80 action regarding retaliatory discharge may be waived if the employer misled or deceived the employee in support of the discharge whether intentionally or not). Employer Termination Notice dated November 02, 2005. Employer Correspondence dated March 09, 2006, ROA; enclosed herein as Exhibit "T". Transcript from March 27,

2015 Appellate Hearing, p. 19, L. 9, ROA; Exhibit "K", Motion for Summary Judgement, previously filed.

**Fifth**, the Court must consider that the admitted May 05, 2005 work-related accident was not the Appellant's first compensable injury sustained to Appellant's Back while employed with the Respondent-Employer. Specifically, on **May 27, 2004** while Appellant was performing his duties on the premises of the Employer, the ceiling of Employer Trailer Number 812 collapsed, striking the Appellant on his Back. Appellant immediately notified the Employer, and specifically, Transportation Supervisor Carl J. Peavey, of the incident, who directed the Appellant to provide a written statement of the incident. Written Statement of Incident, dated May 27, 2004. Employer 'Associate Injury/Illness Report Form, dated 05/28/2004. Both documents enclosed herein as Exhibit "U".

On the morning of May 28, 2004, Appellant was experiencing pain in Appellant's Back respective of the May 27, 2004 incident, and upon notifying the Employer, the Employer instructed Appellant to proceed to the Employer-selected treating physician, namely, Dr. Jonathan L. Dieter ("Dr. Dieter"), for a workers' compensation medical appointment, wherein Dr. Dieter diagnosed Appellant "Acute Muscle Strain"; placed Appellant on 'Sedentary Work' restrictions (lifting 10lbs. maximum and occasionally lifting and/or carrying, such articles as paper ledgers or small tools), effective from 05/28/2004 to 06/02/2004; and prescribed Appellant the medications of Loritab, Ibuprophen, and Flexiril. Medical Report dated 05/28/2004, enclosed herein as Exhibit "U".

After Appellant returned back to full duty on or around 06/02/2004,

Appellant continued to experience Back pain, and returned for a second medical appointment respective of the 05/27/2004 work-related injury to treating physician Dr. Dieter on 06/07/2004, wherein Dr. Dieter placed Appellant on “Light Work” restrictions (lifting 20lbs. maximum with frequent lifting and/or carrying of objects weighing up to 10lbs.), effective from 06/07/2004 to 06/10/2004; and prescribed Appellant the medications of Viox. Medical Report dated 06/07/2004, enclosed herein as Exhibit “U”.

Moreover, the Court should consider the disregard demonstrated to the Appellant by the Employer’s Representative, who did not reimburse Appellant’s entitled travel pay to Dr. Dieter’s office for worker’s compensation medical appointments respective of the 05/27/2004 compensable injury to Appellant’s Back on 05/28/2004 and 06/07/2004, respectively, until on or around **07/25/2005** and **08/05/2005**, respectively. Compensation payment Receipts from reimbursements of travel pay, dated 07/25/2005 and 08/05/2005, enclosed herein as Exhibit “U”<sup>6, 10, 11</sup>.

**Sixth**, the Court must patently reject any and all arguments and authorities relied upon by Respondents’ regarding the issue of the retaliatory discharge as contained within Respondents’ Initial Brief, on grounds that the

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<sup>10</sup> It is axiomatic that there exists a well-established exception to the parol evidence rule which allows extrinsic evidence by the party attacking an instrument on the ground of fraud. *Bradley v. Hullander*, 272 S.C. 6, 249 S.E.2d 486 (1978); *Allen-Parker Co. v. Lollis*, 257 S.C. 266, 185 S.E.2d 739 (1971).

<sup>11</sup> Appellant direct the Court’s attention to the fact that all evidentiary documents advanced respective of the work-related compensable injury sustained to Appellant’s Back on 05/27/2004 (excluding the compensatory payment receipts) were provided to Appellant by Attorney Hantske on or around December 21, 2012 reflective of the Form 27 Subpoena served by Appellant requesting a full copy of Appellant’s employment file.

arguments were not preserved in their Rule 59(e) Motion to Alter or Amend the September 25, 2014 Circuit Court Order. *Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1998) (an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review); *Bennett v. Rector*, 389 S.C. 274, 284, 697 S.E.2d 715, 720 (Ct. App. 2010) ("When a party receives an order that grants certain relief not previously contemplated or presented to the trial court, the aggrieved party must move, pursuant to Rule 59(e), SCRCP, to alter or amend the judgment in order to preserve the issue for appeal."); *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) ("There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) **raised by the appellant**, (3) raised in a timely manner, and (4) **raised to the trial court with sufficient specificity.**") (Emphasis added). *Id.* at 301-02, 641 S.E.2d at 907.

Furthermore, at the point the Respondents' duly filed and served their Rule 59(e) Motion to Alter or Amend the Sept. 25, 2014 Circuit Court Order, as a matter of fact and law, the Respondents' became the in-fact "**Counter-Appellant**", and pursuant to the Appellant's timely responsive pleading in opposition to the aforementioned Rule 59(e) Motion and Appellant's defense of the Sept. 25, 2014 Circuit Court Order, Appellant became the in-fact "**Counter-Respondent**" in the instant appeal. *S.C. Dep't of Transp., supra.*

Still further, a review of the Respondents'/Counter-Appellants' Rule 59(e) Motion to alter or amend the Sept. 25, 2014 Circuit Court Order, *inter alia*,

indicates that; (1) the specific issue regarding the wrongful termination/retaliatory discharge of Appellant's employment was properly raised in Rule 59(a) Motion for New Trial ("Furthermore he asserts that Judge Gibbons granted the relief he requested including reinstate[ment of] Appellant's employment..."); (2) no specific issues were raised and/or preserved for either the successor circuit court or this Court's review; and (3) their "clarification request" was not supported by any authority. Respondents' Rule 59(e) Motion to Alter or Amend September 25, 2014 Circuit Court Order, dated October 16, 2014, ROA; Exhibit "I", Motion for Summary Judgment, previously filed. *Wilder Corp., supra*; *S.C. Dep't of Transp., supra*.

**Seventh**, Respondents' failed to provide a theory for this Court to consider in terms of how Appellant incurred the permanent lifting restrictions if Appellant did not occur the same as the proximate result of the compensable injury sustained to Appellant's Back in the admitted work-related tractor-trailer accident which occurred on May 05, 2005. Respondents' Initial Brief.

**Eighth**, the Court must consider that while the Respondents' counsel should be considered an expert in the field of law, Attorney Hantske is not a physician, and therefore, the Court must consider Respondents' argument that "a lifting restriction does not constitute an "injury" as contemplated by the Act... A lifting restriction that is the result of an injury simply is not an injury in and of itself" (Respondents' Initial Brief, p. 21) meritless, on the basis that pursuant to the Respondents' failure to challenge the medical findings and conclusions of treating physician Dr. Tamadon's October 27, 2005 MMI Medical Report, by

referring Appellant to a second opinion medical examination, that Appellant's 'permanent lifting restrictions' must be deemed "compensable" to Appellant's Back by accident arising out of and in the course of employment respective to the admitted work-related accident which occurred on May 05, 2005. S.C. Code Ann. § 42-1-160. October 27, 2005 MMI Medical Report.

**Finally**, based on the well-pled arguments establishing the misleading and deceptive conduct of the Employer; the conspiracy, negligent misrepresentation and fraud committed by the Respondents' former counsel of record Attorney Barefoot; and the negligent misrepresentation and fraud committed by the Respondents' current counsel of record Attorney Hantske, as advanced and evidenced above, Respondents' appear before this Court in "bad faith" and with "unclean hands", wherein Respondents' are precluded from prevailing in the instant appeal. *Emery v. Smith*, 361 S.C. 207, 220, 603 S.E.2d 598, 605 (Ct. App. 2004)("He who comes into equity **must** come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that **closes the door of the court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief.**"). (Emph. added). *Id.*

**7. The Court should stay the pendency of the instant appeal until the Court has rendered a judgment on Appellant's Rule 269 Motion to Strike application.**

The Court should stay the pendency of the instant appeal in accordance with Rule 240, SCACR, or other applicable laws, until the Court has rendered a judgment on this Rule 269 strike motion based on several important factors. *Id.*

Specifically, if Respondents' decline to respond and deny or dispute the allegations contained herein, then it would be appropriate for this Court to grant this application, without objection from the Respondents', to include granting the relief sought by Appellant without objection, which would render the need to continue further in the instant appeal a moot point.

Furthermore, if Attorney Hantske responds to this application and denies the allegations contained herein, then it would be appropriate for the Court to adjudicate this application to strike based on the merits, wherein if the Court agrees with the Appellant, then the Appellant would prevail in the instant appeal, rendering the requirement for the the instant appeal to proceed as a moot point. Rule 220, SCACR.

Finally, if Attorney Hantske withdraws the Respondents' Initial Brief, wherein the Respondents' would be prohibited from filing an amended Initial Brief based on the fact the Respondents' were informed and aware that a stay was properly requested at the time Appellant filed and served his Motion for Summary Judgment on or around January 04, 2016; the fact that when Respondents' filed and served their Initial Brief on or around January 21, 2016 the Court had not issued a judgment on the same; wherein Respondents' waived the remaining computation of time to file and serve their Initial Brief, then in accordance with Rule 208(a)(4), SCACR, this Court could take such actions as it deems proper, to include dispensing with further briefing and Reversing the July 17, 2015 Circuit Court Order on appeal based on the points presented by Appellant, rather than searching the record for reasons to affirm. *Id. Turner v. Santee Cement Carriers,*

*Inc.*, 277 S.C. 91, 96, 282 S.E.2d 858, 860 (S.C. 1981); *Robinson v. Hassiotis*, 364 S.C. 92, 93 n.2, 610 S.E.2d 858, 859 n.2 (Ct. App. 2005); *Wierszewski v. Tokarick*, 308 S.C. 441, 444 n.2, 418 S.E.2d 557, 559 n.2 (Ct. App. 1992).

**8. The Court should consider expediting the processing and adjudicating of this Rule 269 strike application.**

Appellant contends the Court should consider expediting the processing and adjudication of this Rule 269 strike application, on grounds that Appellant remains terminated for cause by the Employer since November 02, 2005 to date (Employer Termination Notice dated 11/02/2005); the Appellant's WCC Claim No. 0506205 properly remains in the posture of FORFIETURE from November 02, 2005 to date pursuant to the Respondent-Employer's decision to terminate the Appellant for cause, thus severing the employer-employee relationship which must exist for proper application of receipt of workers' compensation benefits pursuant to the Act (*Hon. Jean Hofer Toal, et al, supra; Glass, supra*); and the Appellant has not been employed since the Employer terminated Appellant for cause on November 02, 2005 to date, wherein Appellant continues to endure incongruous and harsh circumstances. *Id.* S.S.A. Income Statement, Exhibit "R".

**9. The Court should report and refer the allegations of intentional/negligent misrepresentation and fraud to the Insurance Fraud Division of the Office of the Attorney General.**

Appellant contends the Court should report and refer the allegations of intentional/negligent misrepresentation and fraud as contained herein to the Insurance Fraud Division of the Office of the Attorney General based on several relevant factors.

**First**, Appellant, Alexander Guice, the undersigned self-represented injured worker, alleges to be the continuing victim of Insurance Fraud, as defined in Title 38, Chapter 55, Article 5, of the Code of Laws of South Carolina, as annotated, wherein the undersigned was;

(1) Subjected to a retaliatory discharge by the Employer, on November 02, 2005, which terminated the existence of the employer-employee relationship and placed Appellant's WCC Claim No. 0506205 in the posture of FORFIETURE;

(2) Attorney Barefoot, on behalf of the Employer and Carrier, and Attorney Bacon, on behalf of the Appellant, intentionally and negligently misrepresented to Appellant that Appellant's WCC Claim No. 0506205 was in posture for resolution by way of Settlement Agreement and Release when it was actually forfeited pursuant to Employer's termination of Appellant for cause;

(3) Attorney Barefoot entered into a proposed fraudulent agreement to secure a release from further liability from and on behalf of the Employer and Carrier on December 22, 2005;

(4) Attorney Barefoot submitted the fraudulent proposed Settlement Agreement and Release to the Commission intentionally failing to disclose to the Commission that the Employer terminated the Appellant for cause on Nov. 02, 2005;

(5) The Commission erroneously approved the fraudulent Settlement Agreement and Release respective of WCC Claim No. 0506205 on Jan. 05, 2006; and

(6) Attorney Hantske, on behalf of the Employer and Carrier, engaged in

intentional negligent misrepresentation and fraud, by continuing to deprive Appellant of entitled access to employment and workers' compensation benefits by advancing the validity and binding effect of the patently fraudulent Settlement Agreement and Release. *Hon. Jean Hoefler Toal, et al, supra*. Employer's Termination Notice. Settlement Agreement and Release. Resp. Initial Brief.

**Second**, section 42-9-440 (1994) - **Suspected false statements or misrepresentations to be reported to Insurance Fraud Division of Office of Attorney General** – provides in pertinent part:

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. (Emphasis added). *Id.*

See *Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 105, 439 S.E.2d 283, 285 (Ct. App. 1993) ("To be actionable, the representation must relate to a present or pre-existing fact and be false when made.").

**Third**, pursuant to Canon 3(D)(2), CJC, Rule 501, SCACR ("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.") (Emphasis added), this Court has a Disciplinary Responsibility to report the alleged violation(s) of the Rules of Professional Conduct regarding Attorney Barefoot,

Attorney Bacon, and Attorney Hantske, to the appropriate authorities, which would include Appellant's allegation(s) of intentional/negligent misrepresentation and fraud to the Insurance Fraud Division of the Office of the Attorney General, among other authorities. *Id.*

**Finally**, this Court should consider and deem all evidentiary documents of record, to include, but not limited to; (1) the Employer's Termination Notice dated November 02, 2005; (2) the Settlement Agreement and Release entered into by the parties on December 22, 2005 and approved by the Commission on January 05, 2006; (3) the Appellate Panel Decision and Order dated July 17, 2013; (4) the Transcript from the Appellate Hearing convened in this matter on March 27, 2015; and (5) the Respondents' Initial Brief dated January 21, 2016 as

**INSTRUMENTS OF FRAUD.**

### CONCLUSION

In closing, the arguments and authorities relied upon in the Respondents' entire Initial Brief, from page 2 to page 38, is predicated upon the intentional negligent misrepresentation and fraud committed by Attorney Hantske on page 1 of the same. The professional conduct in this matter as demonstrated by Attorney Hantske; Attorney Barefoot; and Attorney Bacon, all of whom are Officers of the Court – and members of the South Carolina Bar – is deeply disturbing and troubling.

The Court must consider in aggregate that so long as **Attorney Bacon** is allowed to continue practicing workers' compensation law on behalf of and in the alleged interest of injured workers' and their families, without pause, and so long

as **Attorney Barefoot** and **Attorney Hantske** are allowed to continue practicing workers' compensation law on behalf of employers and their insurance carriers, without pause, the patently fraudulent scheme(s) and perverted application of the Workers' Compensation Act, as illustrated above, **shall remain unlawful viable options and intentional erroneous procedural methods** utilized by the identified Officers of the Court with intent to unlawfully prey upon and deprive **vulnerable injured workers' and their families** out of protected compensatory benefits while securing fraudulent releases from further liability of valid injured workers' compensation claims on behalf of employers and insurance carriers.

**Wherefore**, based on the foregoing, Appellant moves this Court by way of application of Rule 269, SCACR, and/or other holding authorities, or by way of this Court's proper inherent and/or *sua sponte* authority, *ex mero motu*, to take SWIFT and AGGRESSIVE ACTIONS, in the form of the issuance of an appropriate ORDER;

1. **That Respondents' Initial Brief and Designation of Matter be STRICKEN from the Record;**
2. **That the July 17, 2015 Circuit Court Order on Appeal be REVERSED;**
3. **That Respondents' immediately REINSTATE Appellant's employment, effective November 02, 2005;**
4. **That Respondents' immediately release unlawfully withheld TTD Disability Benefit Payments, at the mutually agreed upon average weekly wage of \$1,161.00 effective November 02, 2005 to date;**
5. **That Respondents' immediately release the 25 percent interest penalty on the unlawfully withheld TTD disability benefits; and**
6. **That the allegations of Intentional/Negligent Misrepresentation and Insurance Fraud be reported and referred to the Insurance**

Fraud Division of the Office of the Attorney General for investigation.

VERIFICATION

I, **Alexander Guice**, the named and undersigned self-represented appellant in this matter, do hereby swear, under penalty of perjury, that I prepared, read and reviewed the information contained herein and believe it to be true and correct to the best of my knowledge and ability.

Respectfully submitted,

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

Sworn to before me this  
8 day of March, 2016

*Gilberto L Cruz*  
Notary Public of Florida  
My commission expires 1/30/18

March 8, 2016



GILBERTO L. CRUZ  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# FF088018  
Expires 1/30/2018

**RECEIVED**

MAR 10 2016

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

William P. Keesley, Successor Circuit Court Judge

Case No. 2013-CP-32-01272

Case No. 2014-CP-32-00399

Appellate Case No. 2015-001821

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION  
WCC Case No. 0506205

RECEIVED

MAR 10 2016

SC Court of Appeals

Alexander Guice, Employee, Appellant,

v.

US Food Service, Inc., Employer, and  
Ace American Insurance Company c/o  
Gallagher Bassett Services, Inc., Respondents.

**PROOF OF SERVICE**

I hereby certify that the Respondents, through Counsel, were provided a true copy of a cover letter to the Clerk; a 'Motion to Strike Respondents' Initial Brief and Designation of Matter and Leave to Stay' with supporting attachments and a proof of service, by depositing the same in the US Postal Service, via Priority Mail, and addressed to: **Erin L. Hantske, Esq., P.O. Box 650007 Mt. Pleasant, SC 29465** on this 8<sup>th</sup> day of March, 2016.



Alexander Guice  
P.O. Box 13281  
Tampa, FL 33681  
(813) 562-0547  
Appellant, Pro Se

March 08, 2016

Alexander Guice

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

March 08, 2016

Via Priority Mail

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: Alexander Guice v. US Foodservice, Inc., et al  
Appellate Case No. 2015-001821

RECEIVED

MAR 10 2016

SC Court of Appeals

Dear Ms. Kitchings:


Please find enclosed an original and seven (7) copies of a 'Motion to Strike Respondents' Initial Brief and Designation of Matter and Leave to Stay' with supporting attachments and a proof of service in regards to the above-entitled action. Please also find enclosed a certified money order in the amount of \$25.00 for the filing fee. Please forward to the appropriate personnel for processing, and please return clocked copies of the same to the undersigned in the pre-paid self-addressed envelope enclosed for your convenience.

**Please be advised that as the on-going victim of Insurance Fraud, the undersigned has provided a copy of the same to the Insurance Fraud Division, Office of the Attorney General, requesting that an investigation be initiated into this matter.**

By copy of this correspondence, Erin L. Hantske, Esq., the Respondents' Counsel of record, has been provided a copy of the same via priority mail with enclosures.

Should you have any questions, 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, Esquire  
Heather S. Weiss, Director

# EXHIBIT "R"



Your payment would be about  
**a month**  
at full retirement age

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70716 1 AT 0.413



ALEXANDER GUICE  
3717 W WYOMING AVE APT 11  
TAMPA FL 33611-4259

September 21, 2015

## Your Social Security Statement

This *Social Security Statement* tells you about **how much you or your family would receive** in disability, survivor or retirement benefits.

It also includes our record of your lifetime earnings. Check out your earnings history, and **let us know right away if you find an error.** This is important because we base your benefits on our record of your lifetime earnings.

Social Security benefits are not **intended to be your only source of income when you retire.** On average, Social Security will replace about 40 percent of your annual preretirement earnings. You will need other savings, investments, pensions or retirement accounts to make sure you have enough money to live comfortably when you retire.

To view your *Statement* online anytime, create a **my Social Security account** at [socialsecurity.gov/myaccount](http://socialsecurity.gov/myaccount).

Carolyn W. Colvin  
Acting Commissioner

To view your *Social Security Statement* online anytime create a **my Social Security** account today!



**my Social Security**  
[socialsecurity.gov/myaccount](http://socialsecurity.gov/myaccount)

Follow the Social Security Administration at these social media sites.



# Your Earnings Record

Years You Worked	Your Taxed Social Security Earnings	Your Taxed Medicare Earnings
1987	\$	\$
1988		
1989		
1990		
1991		
1992		
1993		
1994		
1995		
1996		
1997		
1998		
1999		
2000		
2001	44,386	44,386
2002	49,055	49,055
2003	53,137	53,137
2004	55,959	55,959
2005	38,173	38,173
2006	0	0
2007	0	0
2008	0	0
2009	0	0
2010	0	0
2011	0	0
2012	0	0
2013	0	0
2014	Not Yet Recorded	

You and your family may be eligible for valuable benefits.

When you die, your family may be eligible to receive survivors benefits.

Social Security may help you if you become disabled - even at a young age.

A young person who has worked and paid Social Security taxes in as few as two years can be eligible for disability benefits.

Social Security credits you earn move with you from job to job throughout your career.

## Total Social Security and Medicare taxes paid over your working career through the last year reported on the chart above:

Estimated taxes paid for Social Security:

You paid:

Your employers paid:

Estimated taxes paid for Medicare:

You paid:

Your employers paid:

**Note:** Currently, you and your employer each pay a 6.2 percent Social Security tax on up to \$118,500 of your earnings and a 1.45\* percent Medicare tax on all your earnings. If you are self-employed, you pay the combined employee and employer amount, which is a 12.4 percent Social Security tax on up to \$118,500 of your net earnings and a 2.9\* percent Medicare tax on your entire net earnings.

\*If you have earned income of more than \$200,000 (\$250,000 for married couples filing jointly), you must pay 0.9 percent more in Medicare taxes.

## Help Us Keep Your Earnings Record Accurate

You, your employer and Social Security share responsibility for the accuracy of your earnings record. Since you began working, we recorded your reported earnings under your name and Social Security number. We have updated your record each time your employer (or you, if you're self-employed) reported your earnings.

Remember, it's your earnings, not the amount of taxes you paid or the number of credits you've earned, that determine your benefit amount. When we figure that amount, we base it on your average earnings over your lifetime. If our records are wrong, you may not receive all the benefits to which you're entitled.

**Review this chart carefully** using your own records to make sure our information is correct and that we've recorded each year you worked. You're the only person who can look at the earnings chart and know whether it is complete and correct.

Some or all of your earnings from **last year** may not be shown on your *Statement*. It could be that we still were

processing last year's earnings reports when your *Statement* was prepared. Your complete earnings for last year will be shown on next year's *Statement*. **Note:** If you worked for more than one employer during any year, or if you had both earnings and self-employment income, we combined your earnings for the year.

**There's a limit on the amount of earnings on which you pay Social Security taxes each year.** The limit increases yearly. Earnings above the limit will not appear on your earnings chart as Social Security earnings. (For Medicare taxes, the maximum earnings amount began rising in 1991. Since 1994, all of your earnings are taxed for Medicare.)

**Call us right away at 1-800-772-1218** (7 a.m. - 7 p.m. your local time, TTY 1-800-325-0778) if any earnings for years **before last year** are shown incorrectly. Please have your W-2 or tax return for those years available. (If you live outside the U.S., follow the directions at the bottom of page 4.)

01

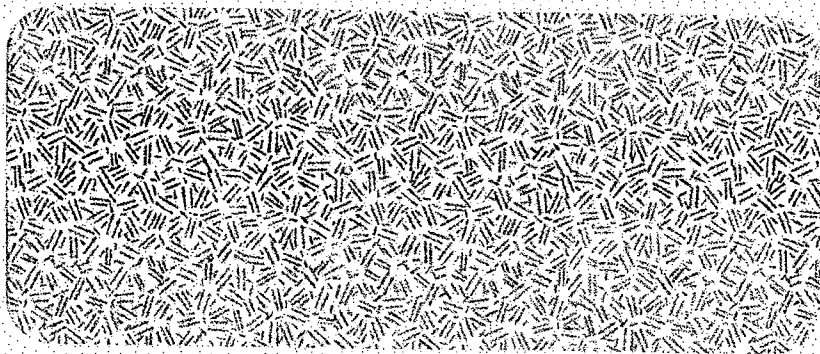
**S**

**SOCIAL SECURITY ADMINISTRATION**  
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WILKES BARRE PA 18767-7004

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# EXHIBIT "S"

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

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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 proffered 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) SCRC?"

4. "Did the Order signed by Commissioner Barden on 02/22/13, with respect to cancelling the hearing, violate Rule 7(b)(1) SCRC?"
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:

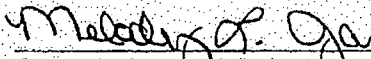
1. Pursuant to S.C. Reg. 67-801, Claimant settled his claim (WCC No. 0506205) through a Full and Final Settlement Agreement which was approved by the South Carolina Workers' Compensation Commission on January 5, 2006.
2. Pursuant to S.C. Code Reg. 67-801(E), the Employer and the Insurance Carrier are 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.

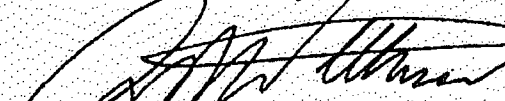
### ORDER

**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

*b JR -*

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served this order in the above entitled action upon 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. Deller

Administrative Assistant to the Commissioner

*Alexander Guice (Reg. Cert)*  
*Erin L. Hartske*

# EXHIBIT "T"



March 9, 2006

To Whom It May Concern:

Alexander Guice was employed by US Foodservice from October 1, 2001 to November 2, 2005. During that time Mr. Guice reported to work as scheduled and always responded to any company direction in a professional manner.

As mandated by law as a CDL driver he fell under DOT guideline for drug and alcohol testing. Mr. Guice left the company in 2005 because he could not longer perform the duties of a delivery driver.

If you have questions please call me.

A handwritten signature in black ink that reads 'K. K. Pollard'.

K. K. Pollard  
VP Human Resources

P.O. Box 869 (29071)  
120 Longs Pond Road  
Lexington, SC 29072  
803.951.4200

# EXHIBIT “U”

5-27-04 STATEMENT

WHILE I WAS replacing the DIVIDERS  
BACK in place on TRL 812, The top ceiling  
from the rear of the trailer came down,  
hitting me in my upper back. I told my  
immediate supervisor Carl Peavy, who then,  
while I was present, informed Mike SANDERS.  
A screw that was holding the ceiling up was  
recovered by me from the ground, and I turned  
it in to Carl Peavy. I informed Carl Peavy  
and Mike SANDERS that At the present time,  
I felt I did not need to go to the doctor  
or be checked. End of statement.

Alexander Guice

Alexander Guice



**ASSOCIATE INJURY/ILLNESS REPORT FORM**

**MAC 1st Report Fax #: 1-800-498-7768**

**U.S. Foodservice Safety Fax #: 1-864-213-8258 or E-mail to [safety@usfood.com](mailto:safety@usfood.com)**

**All reports must be sent to MAC and Corp. Risk Management within 24 hours of the incident.**

<b>Company Name:</b>	<u>US FOODSERVICE</u>	<b>Location Code:</b>	<u>09-45</u>
<b>State employed:</b>	<u>SOUTH CAROLINA</u>	<b>Date of Accident:</b>	<u>5/27/04</u>
<b>Case number from OSHA Log:</b> _____			

**Employer Information:**

<b>Business Address:</b>	<u>US FOODSERVICE - COLUMBIA DIVISION - 120 LONG POND ROAD</u> <u>LEXINGTON S.C. 29072</u>
<b>Business Phone Number &amp; Extension:</b>	<u>803-845-8825</u>
<b>Nature of Business:</b>	<u>FOODSERVICE DIST.</u>

**Confirmation Redirect:** (Please send claim confirmation to Facility Contact:)

<b>Name:</b>	<u>PETE GARCIA - SAFETY CO-ORDINATOR</u>	
<b>Phone:</b>	<u>803-845-8825 EXT. 223</u>	<b>E-mail Addr:</b> _____
<b>Comments:</b> _____		

**Employee Information:**

<b>Name:</b>	<u>Alexander Guice</u>	<b>Social Security #:</b>	_____
<b>Address:</b>	<u>2996 Gaston Dr.</u>		
<b>City, State and Zip:</b>	<u>Loris S.C. 29569</u>		
<b>Residence Phone:</b>	<u>843-756-6479</u>	<b>Business Phone &amp; Ext.:</b>	<u>843-347-4691</u>
<b>Date of Birth:</b>	_____	<b>Sex:</b>	<u>Male</u>
		<b>Marital Status:</b>	<u>Married</u>
<b>Occupation or Job:</b>	<u>Foodservice --Delivery driver</u>	<b>Shift:</b>	<u>Day</u>
<small>(Enter regular job title, not the specific activity he was performing at the time of injury)</small>			
<b>Regular Department:</b>	<u>Transportation</u>		
<b>Supervisor:</b>	<u>Carl Peavy</u>	<b>Date of Hire:</b>	<u>10/1/01</u>
<b>Reg. Wkly Wage:</b>	<u>\$1,146</u>	<b>Is Employee - Hourly:</b>	<u>X</u>
		<b>Salaried:</b>	_____
<b>Days work time lost?</b>	<u>No</u>	<b>OSHA Recordable?</b>	<u>Yes</u>
<b>First Day Worked:</b>	<u>5/27/04</u>	<b>Days Away from Work:</b>	<u>None</u>
<b>Date Ret. to Work:</b>	<u>6/1/04</u>	<b>Time Associate began work day:</b>	<u>5.00 AM</u> am/pm
<b>Restricted Duty?</b>	<u>Yes</u>	<b>Total Restricted Days:</b>	<u>2-days</u>

**Accident Information:**  
 Was this an Injury?  Yes  Illness?  Type of Illness: \_\_\_\_\_  
 Time of event: 2:45 PM am/pm Date Reported: 5/27/04  
 Name of supervisor/manager accident reported to: Carl Peavy  
 Where did the event occur? e.g. loading dock north end Inside of trailer  
 Was accident at Employer's Premises?  No  If no, give location name: Calabash West  
 City, State and Zip Code: 2177 Roberts Ave. Lumberton N.C. 28359  
 Was this questionable?  No  Is this a Fatality?  No  Date of Fatality: \_\_\_\_\_  
 Activity just before incident occurred: Employee was replacing center dividers in the trailer  
 Describe the activity, as well as the tools, equipment or material the employee was using \_\_\_\_\_  
 Description of accident: Employee was replacing center divider sections in the trailer when a rear section of the  
 Describe fully the events which resulted in the accident  
 Ceiling section apparently came loose and fell striking him on the back  
 What caused the accident to occur: A support screw that was holding up the ceiling section had apparently  
 Name any objects or substances involved and tell how they were involved  
 Came loose-  
 What was the direct cause of injury: The ceiling support screws had come out allowing the ceiling to fall  
 Machine, tool, object or substance - Example - crane hoist, power saw, concrete floor, stairs, acid, chlorine, etc.  
 What were the secondary causes: As the center dividers were put back in this motion must have finished jarring  
 Give details on factors that contributed to the accident  
 Loose the ceiling section that had loose or defective support screws- Screws had backed out and fell to the floor  
 Describe injury or illness: Employee complains of soreness in his back and small of his neck  
 Tell body part affected & how affected. Indicate right or left if appropriate. Ex - strained back, chemical burn on left hand, etc.  
 Was employee removed via ambulance?  No

**Physician/Hospital Information:**  
 Name of Physician or Facility where treatment provided: Coastal Family Medicine  
 Address: 8014 Myrtle Trace Drive City: Conway State: S.C. Zip: 29526  
 Was employee treated in emergency room?  No   
 Was employee hospitalized overnight as an in-patient?  No

**Prevention/Corrective Action:**  
 What corrective actions have been taken to prevent a future occurrence? Raise awareness levels to all  
 Drivers of checking over these areas- Let the truck shop know of this type of problems to have them repaired- A VCR was  
 Written up to have the problem repaired- The piece of equipment was deadlined until this item could be repaired  
 Reviewed JSA Sec: \_\_\_\_\_ Date CA Compl.: \_\_\_\_\_ By: \_\_\_\_\_

**Witness/Employee Information:**  
 Name: None Business Phone & Ext.: \_\_\_\_\_  
 Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Witness / employee suggestion for prevention: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**General Loss Information:**  
 Name & Title of person reporting accident: Mike Sanders-Transportation Manger  
 General Remarks: \_\_\_\_\_  
 Approvals/Date: \_\_\_\_\_ Manager: *[Signature]* 5/28/04 Central Safety Committee: \_\_\_\_\_



Mike Sanders

05/28/2004 12:21 PM

To: John VanSteenbergh/5D/USFOOD/US/Ahold, Rick  
Bennett/5D/USFOOD/US/Ahold, Juan Nunez/5D/USFOOD/US/Ahold,  
Pete Garcia/5D/USFOOD/US/Ahold, Sean  
OBrien/5D/USFOOD/US/Ahold  
cc: Alonzo Sarvis/5D/USFOOD/US/Ahold, Carl  
Peavy/5D/USFOOD/US/Ahold

Subject:

Sean,

Recently we have had two ceiling panels this week come loose from the ceilings in two of the trailers. One of which ( tri 812 ) was the result of a Worker Comp injury. The Driver ( Alex Guice ) had finished for the day and was in the process of replacing a center panel that had been removed to allow more access to the rear of the trailer during the unloading process. At the end of the day as he put back in the center section the lowered ceiling panel came down on him. Apparently the mounting screws had worked loose during the day and allowed this last smaller section to come down. The Doctor said his muscle strain was probably from trying to get out of the way instead of the actual weight of the ceiling panel. The driver will probably be back to work monday if everything goes good. We had this trailer deadlined in Lexington until repairs can be made. The mounting screws were self tapping screws that were laying loose on the floor. Our plan is to use this in our next weekly safety meeting and will ask drivers to pay extra attention to these mountings and to write up on VCR's if they need repairing. You may want to pass on this info to the shop to pay extra attention to these on PM's. There seems to have been a few of these lately, maybe there is another way to secure these going forward.

Thanks,  
Mike Sanders  
Transportation Manager  
Conway Region

**PHYSICIAN'S RETURN TO WORK RECOMMENDATIONS FORM**

*USFJSA*

Patient Name (First) Alexander (Middle) \_\_\_\_\_ (Last) Guice Date of Injury/Illness: 5/27/04

**TO BE COMPLETED BY ATTENDING PHYSICIAN**

Diagnosis/Condition: small muscle strain

Location: Lowback, Thorax, Flexion

Initial Side Effects: \_\_\_\_\_  
 I examined and treated this patient on 5/28/04 and based on the above description of the patient's current medical problem:

- Recommended his/her return to regular duty on 5/31/04 Date
- He/She may return to work on 5/29 Date capable of performing the degree of work checked below.
- Unable to work with anticipated time off work \_\_\_\_\_

**CHECK ONLY AS RELATED TO ABOVE CONDITIONS**

Work Category	Work Description	In an 8 hour work day patient may work a combined total of:			
<b>MEDIUM HEAVY WORK</b>	Lifting 65 lbs. maximum with frequent lifting and/or carrying of objects weighing up to 40 lbs.	A. Stand/Walk			
		None	4-6 Hours		
		<u>1-4 Hours</u>	6-8 Hours		
<b>MEDIUM WORK</b>	Lifting 50 lbs. maximum with frequent lifting and/or carrying of objects weighing up to 25 lbs.	B. Sit			
		<u>1-3 Hours</u>	3-5 Hours	5-8 Hours	
<b>LIGHT MEDIUM WORK</b>	Lifting 30 lbs. maximum with frequent lifting and/or carrying of objects weighing up to 20 lbs.	C. Drive			
		1-3 Hours	3-5 Hours	5-8 Hours	
<b>LIGHT WORK</b>	Lifting 20 lbs. maximum with frequent lifting and/or carrying of objects weighing up to 10 lbs.	Patient is able to:			
		1-33%	34-36%	37-100%	
		Occasionally	Frequently	Constantly	
<input checked="" type="checkbox"/> <b>SEDENTARY WORK</b>	Lifting 10 lbs. maximum and occasionally lifting and/or carrying such articles as paper ledgers or small tools.	A. Bend	<input checked="" type="checkbox"/>		
		B. Squat	<input checked="" type="checkbox"/>		
		C. Climb	<input checked="" type="checkbox"/>		
		D. Twist	<input checked="" type="checkbox"/>		
		E. Reach	<input checked="" type="checkbox"/>		
		F. Push/Pull	<input checked="" type="checkbox"/>		
		G. Fine Manip.		<input checked="" type="checkbox"/>	
		H. Handling	<input checked="" type="checkbox"/>		

If restricted, these restrictions are in effect until 5/31/04  
 Is it probable the employee will return to their pre-injury occupation?  Yes  No If no, please explain: \_\_\_\_\_

This patient will be reevaluated on as needed Date

Physician's Signature: [Signature] Date: 5/28/04

JONATHAN L DIETER M.D.  
3014 MYRTLE TRACE DR  
CONWAY, SC 29526

Tel. 843 / 347

Name: Alexander Bruce Age

Address:

BELOW MUST APPEAR GREEN Date 6-1-04

R

REF #

Return to full  
duty 6-2-04

001 597 FPOS

Label

Refill \_\_\_\_\_ times PHN NR

*Jonathan L Dieter*  
M.D.

Dispensed With

843-347-7224

**PHYSICIAN'S RETURN TO WORK RECOMMENDATIONS FORM**

*USF*  
 UNITED STATES FEDERAL JUDICIAL SERVICE

Patient Name (First) Alexander (Middle) \_\_\_\_\_ (Last) Guice Date of Injury/Illness: 5/27/04

**TO BE COMPLETED BY ATTENDING PHYSICIAN**

Diagnosis/Condition: acute muscle strain - (C) rhomboid  
 Treatment: Vioxx 50s daily for 4 days - 25s as needed thereafter  
 Adverse Side Effects: NONE OF EMPLOYMENT CONSEQUENCE  
 I examined and treated this patient on 6/07/04 and based on the above description of the patient's current medical problem:

Recommended his/her return to regular duty on 6/10/04 Date  
 He/She may return to work on 6/08/04 capable of performing the degree of work checked below.  
 Unable to work with anticipated time off work \_\_\_\_\_

**CHECK ONLY AS RELATED TO ABOVE CONDITIONS**

Work Category	None	1-4 Hours	3-5 Hours	5-8 Hours
<b>MEDIUM HEAVY WORK</b> Lifting 65 lbs. maximum with frequent lifting and/or carrying of objects weighing up to 40 lbs.				
<b>MEDIUM WORK</b> Lifting 50 lbs. maximum with frequent lifting and/or carrying of objects weighing up to 25 lbs.				
<b>LIGHT MEDIUM WORK</b> Lifting 30 lbs. maximum with frequent lifting and/or carrying of objects weighing up to 20 lbs.				
<input checked="" type="checkbox"/> <b>LIGHT WORK</b> Lifting 20 lbs. maximum with frequent lifting and/or carrying of objects weighing up to 10 lbs.				
<b>SEDENTARY WORK</b> Lifting 10 lbs. maximum and occasionally lifting and/or carrying such articles as paper ledgers or small tools.				

Activity	1-33% Occasionally	34-36% Frequently	37-100% Constantly
A. Stand/Walk			
B. Sit			
C. Drive			
A. Bend			
B. Squat			
C. Climb			
D. Twist			
E. Reach			
F. Push/Pull			
G. Fine Manip.			
H. Handling			

If restricted, these restrictions are in effect until 6/10/04  
 Is it probable the employee will return to their pre-injury occupation? Yes  No  If no, please explain:  
 This patient will be reevaluated on as needed Date

Physician's Signature: [Signature] Date: 6/07/04

00278-00278

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

US

GUICE, ALEXANDER  
2996 GASTON DRIVE  
LORIS, SC 29569

Check No. 0000598346  
Check Date 07/26/2005  
Check Amount \$52.92  
Reference No. 104/0000009782

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CLAIM #	LOSS DATE	CLAIMANT	LOCATION	REMARKS	AMOUNT
0000009782	05/27/04	GUICE, ALEXANDER	5D	FROM 05/28/04 TO 09/07/04	52.92

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

00718-00718

US

GUICE, ALEXANDER  
2996 GASTON DRIVE  
LORIS, SC 29569

Check No. 0000605868  
Check Date 08/05/2005  
Check Amount \$55.08  
Reference No. 104/0000009782

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CLAIM #	LOSS DATE	CLAIMANT	LOCATION	REMARKS	AMOUNT
0000009782	05/27/04	GUICE, ALEXANDER	5D	FROM 05/28/04 TO 06/07/04	55.08

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