

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2014-001788

RECEIVED

APR 07 2016

SC Court of Appeals

Clarence Winfrey, Employee, Claimant, Respondent,

v.

Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company c/o Liberty Mutual Group, Carrier, Appellants.

MEMORANDUM IN SUPPORT OF
MOTION FOR A RULE TO SHOW CAUSE
AND FOR CONTEMPT FOR FAILURE TO PROVIDE
MEDICAL CARE PURSUANT TO THE ORDER OF
THE COURT FILED MARCH 18, 2016
COMPELLING MEDICAL CARE PURSUANT
TO THE AWARD OF THE
SC WORKERS' COMPENSATION COMMISSION
UNDER SC CODE §42-17-60

The Movant and the Respondent in the above-referenced
action would respectfully show unto the Court:

1. That the Appellants who were the subject of the
Order issued on March 18, 2016 are the employer and the
insurance carrier before the SC Workers' Compensation
Commission.

2. That SC Code §42-5-10, et. seq. allows an

employer who is responsible for the provision of benefits under the Act to ensure that responsibility through a mutual insurance company. SC Code, §42-5-210 specifically provides for and makes the insurance company providing benefits pursuant to an insurance policy a party to the action and subject to the jurisdiction of the Commission in the workers' compensation claim. Under that section the insurance carrier is subrogated to all the rights and duties of the employer and is "liable" and shall assume the responsibility and liability of the employer for the payment of all compensation due under the Act. Thus the insurance carrier in this matter, that being American Fire and Casualty Insurance Company c/o Liberty Mutual Group, is liable for the payment of all compensation and benefits under the Award of the SC Workers' Compensation Commission.

3. That the assigned managing agent on the file to the knowledge of the Respondent is Ms. Elizabeth Wrinkle.

4. That as is set forth in the letter from Counsel for the Respondent, his Affidavit and the attached Exhibits, the Movant before the Court, the Respondent has been advised per that the Defendants, and specifically Liberty Mutual Insurance Company, the insurer, would not authorize the medical care as ordered pursuant to the Order of the Court. Said letter, Affidavit and Exhibits are

attached hereto and incorporated herein by reference.

5. That in addition thereto, the Court will note that in the email from Counsel for the Appellants that Counsel advised in that email dated March 23, 2016 that the insurance carrier would not comply with the Order until at least after a Decision was entered on the Motion for Rehearing, and that he did not anticipate a Decision being made on such alleged Motion until the following week. That email is dated March 23, 2016 at 4:02 o'clock p.m. and addressed to both the Scheduling Nurse at MUSC, Laura Waters, and to Respondents' Counsel.

6. That although issued on March 23, 2016, Respondent's Counsel would request that the Court take notice that a Petition for Rehearing was not filed with the Court until March 30th, some seven (7) days after the notice to MUSC that they would not authorize care.

7. That in reference to the Appellants' refusal to pay for the medical care as ordered by the Court, in Respondent's Counsel's letter to the Court requesting enforcement of the Order wherein the Court advised that a Motion would have to be filed, Counsel noted to the Court that Rule 240(i), SCACR, prohibits any such Motion being filed from the final Order of the "Court". Thus, such Motion not being allowed by the Rules, the Respondent would again note

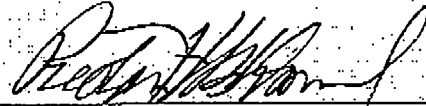
to the Court that such Motion should not result in a delay particularly where the very purpose of SC Code §42-17-60 which creates an exception to the normal staying of an Order process is to prevent delay in the provision of medical care.

8. That the Appellants having notified the Respondent that they will not comply with the Order of the Court pursuant to SC Code §14-8-130, the Court may enforce its Order under applicable law including SC Code §14-5-320 and issue a Rule to Show Cause for the Appellants to appear before the Court to show cause, if any they have, as to their failure to comply with an Order of the Court.

Wherefore the Respondent would respectfully move for and request a Rule to Show Cause to be issued by the Court to counsel for the Appellants and the Managing Agent, for Liberty Mutual Insurance Company, Ms. Elizabeth Wrinkle, to appear before the Court and to show just cause, if any they have, as to why an Order finding Liberty Mutual and/or Ms. Elizabeth Wrinkle as the Managing Agent and/or such other person directing non-compliance with the Order of the Court should not be held in contempt and/or the Court should not issue such other and applicable civil and criminal remedies and penalties against the Appellant Liberty Mutual Insurance Company as the Court deems appropriate for

failure to comply with the Order of the Court. The Respondent would further move for costs and such further relief as the Court deems appropriate concerning these proceedings to require the Appellants to comply with the Order of the Court under all applicable State Law and specifically including a per day fine for each day of failure to comply with the Order.

Respectfully submitted,



Preston F. McDaniel, Esquire
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

Attorney for Respondent/Movant

April 6, 2016

McDANIEL LAW FIRM
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1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

March 24, 2016

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

RE: Clarence Winfrey, Employee, Respondent, v. Archway
Services, Inc., Employer, and American Fire &
Casualty Insurance Co., Carrier, Appellants.
Appellate Case No. 2014-001788

REQUEST FOR ENFORCEMENT OF THE COURT'S ORDER
ORDERING MEDICAL CARE FILED ON MARCH 18, 2016

Dear Ms. Kitchings:

Attached is my Affidavit confirming that we have just received notice from Mr. Brett Bayne representing Liberty Mutual advising MUSC that they are not authorizing the medical care ordered by the Court. It is my understanding that Mr. Bayne intends to file what he refers to as a "Motion for Rehearing" to the Decision of the Court based on my Motion for rehearing concerning my Motion. I am not sure what Mr. Bayne is referring to since SCACR, Rule 240(i) prohibits any such motion.

Regardless of whether or not there is a Motion for Rehearing to a Motion for Rehearing Order, since the very purpose of an Order under §42-17-50 is to prevent delay in the provision of medical care, I would request pursuant to SC Code §14-8-130 that the Court enforce the Order of the Court under applicable law including SC Code §14-5-320.

While I believe that this notice to the Court with my sworn Affidavit that it is my understanding that it is the intention of the Defendants not to comply with the Order of the Court is sufficient to request enforcement of the Order, if a formal Motion is required either to request enforcement or for the issuance of a Rule to Show Cause, please advise and I will be glad to file the same.

EXHIBIT

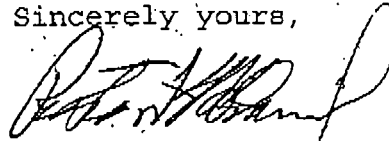
The Honorable Jenny Abbott Kitchings
March 24, 2016
Page 2 of 2

For enforcement purposes, I am sure that this action is being taken pursuant to the instructions given to Mr. Bayne by his clients and it is my understanding that the Managing Agent on this claim for Liberty Mutual is Ms. Elizabeth Wrinkle.

By copy of this letter, I am forwarding and serving a copy of my Affidavit and the letter on Mr. Bayne. Also for filing with the Court are a Proof of Service of this filing, and Proof of Service on Mr. Bayne, representing the Defendants.

If anything else is needed to request enforcement, please advise. As always, I appreciate all the courtesies and kindnesses shown to me by the Court.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Brett H. Bayne, Esquire

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MAR 29 2016

SC Court of Appeals

Clarence Winfrey, Employee, Claimant, Respondent,

v.

Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company c/o Liberty Mutual Group, Carrier, Appellants.

AFFIDAVIT OF PRESTON F. MCDANIEL

I, PRESTON F. MCDANIEL, having been duly and properly sworn
do depose and state:

1. That I am Counsel for the Respondent in the above-
referenced matter.

2. That following receipt of the Order of the Court
ordering the Appellants in the above-referenced matter to
provide medical care as ordered by the authorized treating
physicians pursuant to SC Code §42-17-60, I contacted Mr. Brett

Bayne, Esquire, Attorney for the Appellants, asking to be advised as to his clients' intention as to compliance with the Order. A copy of that letter sent via email is attached hereto and incorporated herein by reference to this Affidavit. As of the time of the issuance of this Affidavit, I have received no response from Counsel for the Appellants.

3. That in addition as attached hereto and incorporated herein by reference, I forwarded a letter and email to the Scheduling Clerk at MUSC, Ms. Laura Waters, forwarding a copy of the Court's Order. A copy of that email to Ms. Waters was forwarded to Mr. Brett Bayne and Mr. Howard Altman, the assigned Rehab Nurse, advising Ms. Waters to coordinate the scheduling of the dental examination and the surgery with Mr. Altman.

4. That while not receiving a response directly to my inquiry to Counsel for the Appellants as to the intention of his clients concerning the provision of this medical care as Ordered by the Court, I did receive a copy of an email sent to Ms. Waters at MUSC from Counsel for the Appellants advising that they would not comply with the Order of the Court and would not be authorizing the medical care pursuant to that Order, at least until after the Court had a chance to rule on a "Motion for Rehearing". A copy of that email is attached hereto and incorporated herein by reference to this Affidavit.

FURTHER THE AFFIANT SAYETH NOT.



PRESTON F. MCDANIEL
Affiant

March 24th, 2016

SWORN TO BEFORE ME this
24th day of March, 2016.

Heubaly Finke L.S.
Notary Public for South Carolina

My Commission Expires: 4-26-20

MCDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

*Devotedly representing injured workers
for over 30 years.*

Preston F. McDaniel

Telephone (803) 771-7311

Matthew Robertson

Facsimile (803) 732-8789

March 21, 2016

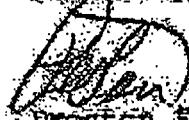
VIA EMAIL ONLY: brett.haynes@golaw.com
Brett H. Haynes, Esquire
McRigus Goudelock & Courie, LLC
Post Office Box 12519
Columbia, South Carolina 29211

RE: Clarence B. Winfrey, Jr. v. Archway Services, Inc.
WCC File No. 1305305

Dear Brett:

I am in receipt of the Order of the Court of Appeals ordering medical care. I am sending a copy of this to Howard Altman. Please let me know as soon as possible the intentions of your client to comply with the Order and let's get this medical care, dental appointment, and surgery set up as soon as possible. I look forward to working with you and to hearing from you.

Sincerely yours,



Preston F. McDaniel

PFM/kth

cc: Mr. Howard Altman



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Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

March 23, 2016

VIA EMAIL ONLY: watersl@musc.edu
Laura M. Waters, RN, PCCN
Nurse Coordinator, Research & Patient Care
South Carolina Heart Valve Center
Medical University of South Carolina
Charleston, SC 29425

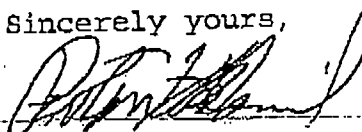
RE: Clarence B. Winfrey, Jr. v. Archway Services, Inc.
WCC File No. 1306305

Dear Ms. Waters:

I got your name off of one of the medical records and please find attached an Order issued by the SC Court of Appeals ordering that the surgery requested by Dr. Ikonomidis be provided. We were in the process of getting the dental examination set up which we would ask Mr. Altman now to set up as soon as possible and you should coordinate with Mr. Howard Altman, the assigned Rehab Nurse, concerning the scheduling of the surgery.

By copy of this letter, I am notifying Mr. Altman and Mr. Bayne of this communication.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosure

cc: Brett H. Bayne, Esquire (via email only)
Mr. Howard Altman (via Email only)



The South Carolina Court of Appeals

Clarence Winfrey, Employee, Claimant, Respondent,

v.

Archway Services Inc., Employer, and American Fire &
Casualty Insurance Company c/o Liberty Mutual Group,
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Appellate Case No. 2014-001788

ORDER

This appeal stems from injuries Respondent sustained when Respondent was shocked with 240-480 volts of electricity while working on a rotisserie oven. On March 7, 2016, Respondent filed a motion to compel medical care pursuant to the award of the South Carolina Workers' Compensation Commission under section 42-17-60 of the South Carolina Code (2015). Respondent argued that Appellants had refused to authorize medical treatment recommended by Respondent's surgeon at the Medical University of South Carolina (MUSC), including a dental examination and valve repair surgery. On March 7, 2016, this court issued an order agreeing that medical treatment awarded by the Commission is not stayed on appeal pursuant to section 42-16-60, but finding the question of whether the medical treatment sought by Respondent was "medical treatment for his heart condition" as set forth in the Appellate Panel's order was a question more appropriate for the Commission.

Respondent has now filed a petition for rehearing, explaining that Respondent's "condition is extremely delicate," Respondent's surgeon at MUSC sought to schedule valve repair surgery within seven days of January 5, 2016, and any delay could result in "an absolutely devastating situation for [Respondent], up to and including his death."

After careful review of this matter, Respondent's motion is granted. We reject Appellants' position that depositions are necessary at this time to establish whether the recommended treatment is causally related to Respondent's heart condition given that Respondent's surgeon recommended valve repair surgery within seven days of January 5, 2016. We note that nothing prevents Appellants from raising the issue after Respondent receives the recommended treatment.

Paul W. Thomas

J.

John D. Beatty

J.

James E. Sak

J.

Columbia, South Carolina

cc:

Brett Harris Bayne, Esquire
George D. Gallagher, Esquire
Preston F. McDaniel, Esquire

FILED

March 18, 2016 Sak

Kim Hinkle

From: Brett Bayne <brett.bayne@mgclaw.com>
Sent: Wednesday, March 23, 2016 4:02 PM
To: Kim Hinkle; watersl@musc.edu
Cc: Altman, Howard
Subject: RE: URGENT - Clarence Winfrey

Laura,

You are certainly free to schedule this at your convenience. However, this care **has not been authorized** by the carrier at this time until the Court has had a chance to rule on our Motion for Rehearing. I do not expect that decision until next week at the earliest.

Thank you,

Brett

From: Kim Hinkle [mailto:kim@pfmcdlaw.com]
Sent: Wednesday, March 23, 2016 3:56 PM
To: watersl@musc.edu
Cc: Brett Bayne; Altman, Howard
Subject: URGENT - Clarence Winfrey
Importance: High

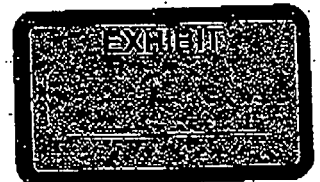
The attached is being sent to you at the request of Preston F. McDaniel.

Kimberley T. Hinkle, Senior Paralegal
to Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201
T: 803-771-7211
F: 803-252-0709

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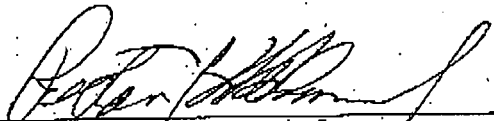
Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company c/o Liberty Mutual Group, Carrier, Appellants.

PROOF OF SERVICE

I certify that I have served the LETTER TO HONORABLE JENNY ABBOTT KITCHINGS DATED MARCH 24, 2016 REQUESTING ENFORCEMENT OF ORDER OF THE COURT ORDERING MEDICAL CARE FILED MARCH 18, 2016 and AFFIDAVIT OF PRESTON F. MCDANIEL by depositing a copy of it in the United States Mail, postage prepaid, on March 24, 2016 addressed to:

Brett H. Bayne, Esquire
McAngus, Goudelock & Courie
Post Office Box 12519
Columbia, SC 29211

Dated: March 24, 2016


Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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RULE TO SHOW CAUSE

TO: MR. BRETT BAYNE, COUNSEL FOR THE APPELLANTS, AND ELIZABETH
WRINKLE, AS MANAGING AGENT FOR LIBERTY MUTUAL INSURANCE
COMPANY:

After due and proper consideration of the Motion requesting
a Rule to Show Cause and such other relief as the Court deems
appropriate, and after the time to respond as designated by the
Court, you are hereby ordered to appear before the Court on
_____, 2016 at _____ o'clock ____ m. to show
just cause or excuse, if any you have, for the failure of the
Appellant Liberty Mutual Insurance Company to comply with the
Order issued on March 16, 2016 by this Court with Judge Thomas,
Judge Lockemy and Judge Geathers sitting as the Court ordering

the provision of medical care pursuant to SC Code §42-17-60; and
to answer as to why the Court should not grant such other
and further relief as the Court deems appropriate for failure to
comply with the March 16, 2016 Order of the Court.

AND IT IS SO ORDERED.

JUDGE
SC Court of Appeals

This Rule to Show Cause issued this _____ day of April, 2016.