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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

APR 21 2016

SC Court of Appeals

W.C.C. File No.: 1312352

Timothy York, Employee, Appellant,

v.

Longlands Plantation a.k.a. Knollwood, Inc., Employer, and
Companion Property and Casualty Group, Carrier, Respondents.

MOTION FOR ORDER OF SUPERSEDEAS

Pursuant to Rules 240 and 241(c), SCACR, Respondents Longlands Plantation a.k.a. Knollwood, Inc. and Sussex Insurance Company (F/K/A Companion P&C) hereby move this Court to order a supersedeas of the decision of the Appellate Panel of the South Carolina Workers' Compensation Commission filed January 20, 2016 ("Commission Decision"), which is on appeal to this Court. The grounds for this Motion are that the Commission Decision ordered payment of death benefits to one of two parties claiming entitlement to such benefits, and the other party has appealed that decision to this Court. Because Commission awards typically are not stayed during an appeal, pursuant to S.C. Code Ann. § 42-17-60 and Rule 241(b)(7), Respondents have been placed in the untenable position of facing demands to pay the award as outlined in the Commission Decision or face fines and penalties while, at the same time, should this Court overturn

the Commission Decision, being required to pay those very same benefits again to the other party.

Although the general rule is that an appeal automatically stays the matters decided in an appealed award, Rule 241(a), SCACR, there are a number of exceptions to this rule. Pursuant to S.C. Code Ann. § 42-17-60 and Rule 241(b)(7), awards of the Workers' Compensation Commission are excepted and in most cases are not automatically stayed. However, SCACR, Rule 241(c) provides that “[i]n a case subject to an exception, any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal. The effect of the granting of a supersedeas is to suspend or stay the matters decided in the order, judgment, decree or decision on appeal ...” Rule 241(c)(1), SCACR.

In the present case, Decedent Timothy York died in a work-related accident that occurred on August 26, 2013. Respondents have never disputed the compensability of the accident or that they owe benefits as a result. The crux of this case is to whom Respondents must pay such benefits. Decedent's mother, Shirley York, claimed benefits under Section 42-9-140(B), while Yvonne Burns sought benefits as Decedent's common law wife and/or as a dependent under Sections 42-9-120 and 42-9-130. The Commission awarded all of the benefits to Shirley York which were to be paid to her and to her attorneys as fees and costs as a lump-sum. (Commission Decision p. 69). The benefits were awarded to Shirley York on the basis that she was Decedent's mother, and not because of a greater financial need. (Commission Decision pp. 69, 62-63 (finding as a matter of fact that, although Shirley York was partly dependent on Decedent, she also

received social security and assistance from another son and that, of the two, Yvonne Burns' financial dependency on Decedent was greater)).

While there is some dispute as to whether the directive in Section 42-17-60 that, while on appeal, "the employer is required to make weekly payments of compensation" applies in this case involving a deceased employee, Shirley York has demanded that Respondents begin at least weekly payments during the pendency of the appeal. (Att. A, Feb. 24, 2016 email from A. Mickle to B. Hylton). In the meantime, Yvonne Burns asserts that weekly benefits should not be paid immediately, as she believes she is entitled to those benefits and that payment of weekly benefits is not authorized in this case by Section 42-9-60. (Att. B, Memo of Yvonne Burns).

As a result, although the Commission determined that Respondents conducted a "reasonable, due, and diligent investigation to determine those persons entitled to benefits under the Workers' Compensation Act," and that they are therefore "discharged from each and every responsibility for payment to any other individuals other than those entitled to receive benefits," as ordered by the Commission, (Commission Decision pp. 70, 72), Respondents are in the untenable position of potentially being required to pay the party who prevailed below or face fines and penalties, (Att. A, Feb. 24, 2016 email from A. Mickle to B. Hylton), while at the same time remaining liable to the other party for those same benefits in the event the Commission Decision is overturned.

Therefore, Respondents request that this Court issue an order imposing supersedeas of the Commission Decision while this matter is pending on appeal. Respondents are willing to pay, during the pendency of this appeal, the requested weekly

payments into an escrow account approved by the Court should the Court deem that necessary or advisable.

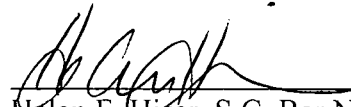
CONCLUSION

Respondents request that this Court grant their Motion and issue an order imposing supersedeas of the matters decided in the Commission Decision.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC

April 18, 2016



Helen F. Hiser, S.C. Bar No.: 76124
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(843) 576-2900

J. Brandon Hylton, S.C. Bar No.: 70295
P.O. Box 7489
Florence, SC 29502
(843) 519-1800

*Attorneys for Respondents Longlands Plantation
a.k.a. Knollwood, Inc. and Companion Property
and Casualty Group*

Attachment A

Helen Hiser

From: Brandon Hylton
Sent: Wednesday, February 24, 2016 2:23 PM
To: 'Ann Mickle'
Subject: RE: York Order

I filed a motion with the commission re payment of the award. I am awaiting their order.

From: Ann Mickle [mailto:amickle@mickleandbass.com]
Sent: Wednesday, February 24, 2016 1:39 PM
To: Brandon Hylton
Cc: Betsy Paulk; Ann Mickle
Subject: York Order

Brandon:

Is the carrier going to start making weekly payments? Last time this came up, I understood that Billy was going to contest it. Since then, there has been no activity regarding weekly payments. If that's the case, I need to file my Motion for Penalties because the checks should have started a while back?

Ann Mickle

Ann McCrowey Mickle
Former S. C. Workers' Compensation Commissioner



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930 Oakland Avenue
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Attachment B

BEFORE THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

TIMOTHY YORK,)	WCC FILE NO. 1312352
)	
EMPLOYEE/CLAIMANT,)	
)	
KNOLLWOOD, INC.,)	MEMORANDUM OF YVONNE
)	BURNS AS TO THE MOTION OF
EMPLOYER,)	THE INSURANCE CARRIER
)	COMMISSION TO DIRECT
COMPANION PROPERTY AND)	PAYMENT OF THE AWARD
CASUALTY GROUP,)	
)	
INSURANCE CARRIER,)	
)	
DEFENDANTS.)	
)	

TO: COMMISSIONER MELODY L. JAMES, SC WORKERS' COMPENSATION COMMISSION, ANN McCROWEY MICKLE, ESQUIRE AND JAMES R. DAVIDSON, IV, ESQUIRE, MICKLE & BASS, LLC, ATTORNEY FOR THE CLAIMANT, AND J. BRANDON HYLTON, ESQUIRE, ATTORNEY FOR THE EMPLOYER/CARRIER:


Yvonne Burns, the girlfriend/common law spouse of the deceased, Timothy York, submits her memorandum as to the Motion to Direct Payment of Award of the insurance carrier/defendant pending before the Commission. The Motion of J. Brandon Hylton, Esquire, accurately states the issues before the Commission which need to be determined. Yvonne Burns requests that the Commission issue an order withholding the payment of weekly benefits to Shirley York during the pendency of the appeal through the Court of Appeals.

Section 42-17-60 provides that an award of compensation and medical benefits to an injured employee continue during an appeal, and this appeal concerns the payment of death benefits. Burns' appeal does not concern compensation to an injured employee or for medical treatment as provided for by §42-17-60. Burns' appeal relates to payment of

death benefits, and the party who would be receiving the weekly death benefit payments pending the appeal is the mother of the deceased who, based upon the evidence and testimony, received very limited support from her son.

The language of §42-17-60 is plain and should not be construed or extended to cover death benefits, as this interpretation exceeds the stated purpose of the statute. Section 42-17-60 simply does not apply where there is a death benefit request to make payment to the claimant during an appeal. The pending appeal concerns real issues of fact and law that Burns argues are likely to be decided in her favor. It is inequitable to pay weekly death benefits to the deceased's mother while the appeal is pending.

In conclusion, Yvonne Burns requests that the Commission issue an order withholding the payment of weekly benefits to Shirley York during the pendency of the appeal through the Court of Appeals.


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Kingtree, SC
March 1, 2016



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ATTORNEYS AT LAW

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W. E. Jenkinson, III
Ernest J. Jarrett*
Jennifer R. Kellahan**

J. Thomas Thompson

*Certified Family Court Mediator
**Certified Circuit Court Mediator

March 1, 2016

VIA EMAIL ONLY

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Judicial Department
PO Box 1715
Columbia, SC 29202-1715

Re: Timothy York (deceased) v. Knollwood, Inc. and Companion Property &
Casualty
Date of Accident: August 26, 2013
WCC File No.: 1312352

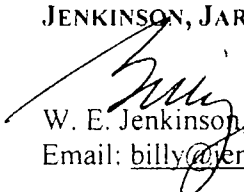
Dear Ms. Bracy:

Please find enclosed herewith our memorandum in support of our position with respect to the Motion for the Commission to Direct Payment of Award of the insurance carrier defendant which will be heard by Commissioner Melody James on Friday, March 4, 2016. By copy of this letter, via email only, to all of the parties listed below, I am serving them with a copy of the same.

With kindest regards, I am

Very truly yours,

JENKINSON, JARRETT & KELLAHAN, P.A.


W. E. Jenkinson, III
Email: billy@jenkinsonlaw.com

WEJ/lls

Enclosure(s): as stated

Cc: **Yvonne Burns**

J. Brandon Hylton, Esquire
Brandon.hylton@mgclaw.com

Ann M. Mickle, Esquire
amickle@mickleandbass.com

James R. Davidson, IV, Esquire
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1312352

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Timothy York, Employee, Appellant,

v.

Longlands Plantation a.k.a. Knollwood, Inc., Employer, and
Companion Property and Casualty Group, Carrier, Respondents.

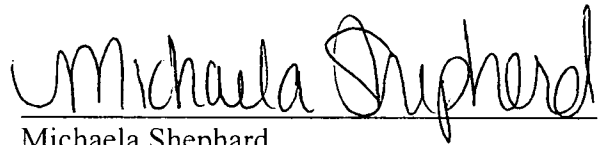
PROOF OF SERVICE

I certify that on the 18th day of April 2016, I served the Respondents Longlands Plantation a.k.a. Knollwood, Inc. and Companion Property and Casualty Group's **Motion for Order of Supersedeas** on counsel of record by depositing a copy of it in the United States Mail, postage prepaid, addressed as follows:

Ann McCrowey Mickle, Esq.
James Richard Davidson, IV, Esq.
MICKLE & BASS, LLC
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Michaela Shephard

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*Attorneys for Respondents Longlands
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Reply To

HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

April 18, 2016

RECEIVED

APR 21 2016

SC Court of Appeals

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Timothy York (Deceased) vs. Knollwood, Inc. and Sussex Insurance
Company (f/k/a Companion P&C)
Date of Accident: August 26, 2013
WCC File No.: 1312352
Our File No.: 2072.14045
Appellate Tracking No.: 2016-000258

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents Longlands Plantation a.k.a. Knollwood, Inc. and Companion Property and Casualty Group's Motion for Order of Supersedeas, and the original and one copy of the Proof of Service in the above-referenced matter. I understand that revisions to the current caption are under consideration by the Court but have not been finalized. Accordingly, because the correct caption has not been determined, I have used the caption on the Notice of Appeal for purposes of this filing.

Please file the originals and return a clocked-in copy in the self-addressed, stamped envelope. Also enclosed is our firm's check in the amount of \$25 for filing the motion. If you have any questions, please contact me.

Yours truly,

McAngus Goudelock & Courie, LLC



Helen F. Hiser

Enclosures

cc: William E. Jenkinson, III, Esquire
John Thomas Thompson, Esquire
Ann McCrowey Mickle, Esquire
James Richard Davison, IV, Esquire
Blake Hewitt, Esquire

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