

The Supreme Court of South Carolina

William G. Ketron, Jr., Employee, Respondent,

v.

Delta Woodside Industries, Inc., Self-Insured Employer
and S.C. Uninsured Employers' Fund, Defendants,

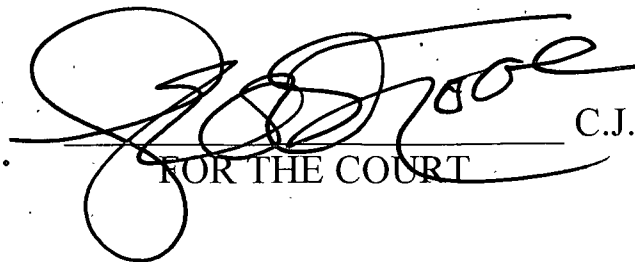
Of Whom S.C. Uninsured Employers' Fund is, Appellant.

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this appeal is hereby certified for review by the South Carolina Supreme Court.

Upon receipt of this order, the Court of Appeals is hereby directed to forward the case file, all records and briefs and any exhibits on file to this Court.

IT IS SO ORDERED.


C.J.
FOR THE COURT

Columbia, South Carolina

September 20, 2012

cc:

Kathryn Williams

Lisa C. Glover

Timothy Blair Killen

The Honorable Jenny Kitchings



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 02, 2012

Ms. Kathryn Williams
PO Box 10693
Greenville SC 29603

Mrs. Lisa C. Glover
100 Executive Center Dr, Ste 101
Columbia SC 29210

Mr. Timothy Blair Killen
100 Executive Center Dr
Ste 101
Columbia SC 29210-8408

Re: Ketron, William v. SC Uninsured (2)
Appellate Case No. 2010-150668

Dear Counsel:

This case will likely be considered during October, 2012. The Court will hold arguments on October 1, 2, 3, 4, 16, 17 and 18, 2012. If you have a scheduling conflict with any of these dates, please advise the Court of the specific nature of that conflict by July 17, 2012.

Very truly yours,

V. Claire Allen, Deputy

CLERK



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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August 23, 2012

Ms. Kathryn Williams
PO Box 10693
Greenville SC 29603

Mrs. Lisa C. Glover
100 Executive Center Dr, Ste 101
Columbia SC 29210

Mr. Timothy Blair Killen
100 Executive Center Dr
Ste 101
Columbia SC 29210-8408

Re: Ketron, William v. SC Uninsured (2)
Lower Court Case No. 2008CP2305220
Appellate Case No. 2010-150668

Dear Counsel:

Enclosed are a Roster of Cases to be Heard for October 2012 and an Acknowledgment Form. Please complete the form and return it to my attention.

Very truly yours,

V. Claire Allen /LT

Deputy Clerk



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
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September 18, 2012

Ms. Kathryn Williams
PO Box 10693
Greenville SC 29603

Mrs. Lisa C. Glover
100 Executive Center Dr, Ste 101
Columbia SC 29210

Mr. Timothy Blair Killen
100 Executive Center Dr
Ste 101
Columbia SC 29210-8408

Re: Ketron, William v. SC Uninsured (2)
Appellate Case No. 2010-150668

Dear Counsel:

Please be advised the Court of Appeals has asked the Supreme Court to certify this case under Rule 204(b), SCACR. You will be advised of the result of the request when the determination is made by the Supreme Court.

Very truly yours,

V. Claire Allen

DEPUTY CLERK

The South Carolina Second Injury Fund



WILLIAM E. GUNN
INTERIM DIRECTOR

100 EXECUTIVE CENTER DRIVE, SUITE 101
SANTEE BUILDING
COLUMBIA, S.C. 29210
www.scsif.sc.gov

(803) 798-2722
FAX: (803) 798-5290

October 12, 2011

VIA U.S. MAIL

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**RE: William G. Ketron, Employee v. Delta Woodside Industries, Inc.,
Employer, and S.C. Workers' Compensation Uninsured Employers'
Fund, Case No. 2008-CP-23-5220**

Dear Ms. Gee:

Enclosed please find one (1) unbound original and fifteen (15) bound copies of the Second Supplemental Record on Appeal and Proof of Service upon opposing counsel. By copy, I am providing a copy of the same to Kathryn Williams, Esquire, attorney for Claimant/Respondent.

Sincerely,

Timothy B. Killen

Enclosure

cc: Kathryn Williams, Esq. (via U.S. Mail)

RECEIVED
OCT 13 2011
SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
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November 10, 2011

Kathryn Williams, Esquire
P.O. Box 10693
Greenville, SC 29603

Re: Ketron, William v. SC Uninsured (2)
2010150668

Dear Ms. Williams:

We have received the Respondent's Final Brief in the above matter. However, the caption of the above matter should read exactly as follows:

William G. Ketron, Jr., Employee, Respondent,
v.

Delta Woodside Industries, Inc., Self-Insured
Employer and S.C. Uninsured Employers' Fund, Defendants,

Of Whom S.C. Uninsured Employers' Fund is the, Appellant.

Please arrange for a representative from your office to come to the Court of Appeals filing desk on the 1st floor of the Edgar A. Brown Building, 1205 Pendleton Street, Columbia, SC 29201, to place the appropriate labels on the cover of the original and all copies of the record to correct the caption. We request that you have all corrections completed within ten (10) days of the date of this letter and that you notify this office when someone will be arriving to make the corrections so the documents will be available without delay.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Lisa C. Glover, Esquire
Timothy B. Killen, Esquire

KATHRYN WILLIAMS, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 10693
GREENVILLE, SC 29603

KATHRYN WILLIAMS
DONALD E. KAMB, JR.
MELISSA S. MILLER
TOM J. ERVIN
OF COUNSEL

619 N. MAIN STREET
GREENVILLE, SC 29601
TELEPHONE (864) 235-6254
FAX (864) 233-6591

October 31, 2011

RECEIVED
NOV 03 2011
SC Court of Appeals

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: **William G. Ketron, Jr. v. Delta Woodside Indus., Inc., et al.**
WCC File Nos.: 0115236, 0115237
Circuit Court Case No.: 08-CP-23-5220
Court of Appeals Case Tracking No.: 2010150668

Dear Ms. Gee:

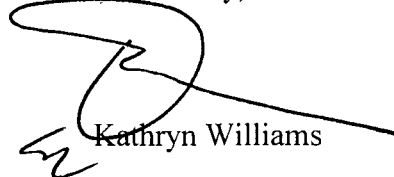
Enclosed herein please find the following items for filing in the above-referenced matter:

1. Final Brief of Respondent (1 unbound, 14 bound);
2. Certificate of Counsel re: Rule 211(b), SCACR;
3. Certificate of Counsel re: sensitive information;
4. Certificate of Service by Mail.

By copy of this letter, I am also serving defendants' attorney with copies of the same.

Kindest regards,

Yours truly,



Kathryn Williams

KW:d
Enclosures

cc: Timothy B. Killen, Esq.
Lisa C. Glover, Esq.
S.C. Uninsured Employers' Fund
100 Executive Center Dr., Suite 101
Santee Building
Columbia, SC 29210

The South Carolina Second Injury Fund



WILLIAM E. GUNN
INTERIM DIRECTOR

100 EXECUTIVE CENTER DRIVE, SUITE 101
SANTEE BUILDING
COLUMBIA, S.C. 29210
www.scsif.sc.gov

(803) 798-2722
FAX: (803) 798-5290

August 23, 2011

VIA HAND DELIVERY

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**RE: William G. Ketron, Employee v. Delta Woodside Industries, Inc.,
Employer, and S.C. Workers' Compensation Uninsured Employers'
Fund, Case No. 2008-CP-23-5220**

Dear Ms. Gee:

Enclosed for filing please find fifteen (15) bound copies of the Final Brief of Appellant S.C. Workers' Compensation Uninsured Employers' Fund, all of which are bound with a blue cover. Also, enclosed please find the original and one copy of the Proof of Service. Please file these documents and return a clocked-in copy to our courier.

I am providing a copy of the same to Kathryn Williams, Esquire, attorney for the Respondent. With kind regards, I am

Sincerely,

Timothy B. Killen

Enclosure

cc: Kathryn Williams, Esq. (via U.S. Mail)

RECEIVED

AUG 25 2011

SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
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September 14, 2011

Kathryn Williams, Esquire
P.O. Box 10693
Greenville, SC 29603

Re: Ketron, William v. SC Uninsured (2)
2010150668

Dear Ms. Williams:

The following Order has been endorsed on your Motion to Supplement Record on Appeal in the above entitled case on appeal.

"Granted.

John Cannon Few, C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

September 14, 2011."

Please be advised the Appellant must serve and file the Supplemental Record on Appeal no later than October 14, 2011.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Lisa C. Glover, Esquire
Timothy B. Killen, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Circuit Court Case No. 2008-CP-23-5220

William G. Ketron, Jr., Employee, ... Respondent,

vs.

Delta Woodside Indus., Inc., Self-insured Employer
and S.C. Uninsured Employers' Fund of whom
S.C. Uninsured Employers' Fund is Appellant.

**MOTION TO SUPPLEMENT
RECORD ON APPEAL**

Kathryn Williams
Kathryn Williams, P.A.
619 North Main St.
P.O. Box 10693
Greenville, SC 29603
(864) 235-6254

Attorney for Respondent

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AUG 30 2011
SC Court of Appeals

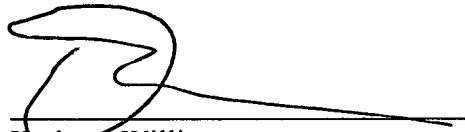
Appellant UEF filed its Designation of Matter to Be Included in the Record on Appeal on May 6, 2010. UEF's designation included the item "Fund's Petition and Notice of Appeal [to the circuit court], dated July 2, 2008." Respondent Ketron filed his initial brief on June 11, 2010 and referred therein on multiple occasions to this item designated "Fund's Petition and Notice of Appeal [to the circuit court], dated July 2, 2008." However, when the UEF filed the Record on Appeal on June 20, 2011 that and several other items were not included in the bound of of the Record on Appeal. Respondent Ketron brought this to UEF's attention, and after petitioning the Court, UEF prepared and filed a Supplemental Record on Appeal on August 5, 2011.

In preparing the Final Brief of Respondent, Ketron noted that while most of the items which were left out of the original Record on Appeal are included in the Supplemental Record on Appeal, the item designated "Fund's Petition and Notice of Appeal [to the circuit court], dated July 2, 2008" is not included. Since respondent Ketron refers to the item at several points in his Brief of Respondent, the item must necessarily be included in the Record on Appeal.

Respondent Ketron has attempted to contact the attorney for UEF concerning this matter but has not received a return call or e-mail.

WHEREFORE, respondent Ketron hereby moves the Court for an Order requiring appellant UEF to supplement the Record on Appeal to include the item "Fund's Petition and Notice of Appeal [to the circuit court], dated July 2, 2008." Respondent Ketron also prays for an Order staying the filing requirements for the Brief of Respondent until such time as the Record on Appeal is complete.

Respectfully submitted,



Kathryn Williams
Kathryn Williams, P.A.
P.O. Box 10693
Greenville, S.C. 29603
(864) 235-6254
Attorney for Respondent

Dated _____
Greenville, South Carolina

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
~~(Clerk)~~ (Deputy Clerk)

9/14/11 **FILED**

KATHRYN WILLIAMS, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 10693
GREENVILLE, SC 29603

KATHRYN WILLIAMS
DONALD E. KAMB, JR.
MELISSA S. MILLER
TOM J. ERVIN
OF COUNSEL

619 N. MAIN STREET
GREENVILLE, SC 29601
TELEPHONE (864) 235-6254
FAX (864) 233-6591

August 26, 2011

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: **William G. Ketron, Jr. v. Delta Woodside Indus., Inc., et al.**
WCC file nos.: 0115236, 0115237
Circuit Court case no.: 08-CP-23-5220
Court of Appeals case tracking no.: 2010150668

Dear Mr. Richstad:

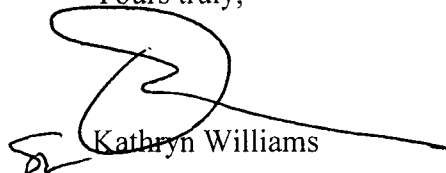
Enclosed herein please find the following items for filing in the above-referenced matter:

1. Motion to Supplement Record on Appeal (original and six copies);
2. Proof of Service by Mail; and
3. Filing fee (\$25.00).

By copy of this letter, I am also serving appellant's attorney with a copy of the same.

Kindest regards,

Yours truly,


Kathryn Williams

KW:d
Enclosures

cc: Timothy B. Killen, Esq.
Lisa C. Glover, Esq.
S.C. Uninsured Employers' Fund
100 Executive Center Dr., Suite 101
Santee Building
Columbia, SC 29210

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AUG 30 2011
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Circuit Court Case No. 2008-CP-23-5220

William G. Ketron, Jr., Employee, ... Respondent,

vs.

Delta Woodside Indus., Inc., Self-insured Employer
and S.C. Uninsured Employers' Fund of whom
S.C. Uninsured Employers' Fund is Appellant.

PROOF OF SERVICE

I certify that I have served the **MOTION TO SUPPLEMENT RECORD ON APPEAL** on Appellant by depositing a copy in the U.S. Mail, postage prepaid, on 8/26/11, addressed to their attorneys of record, Timothy B. Killen and Lisa C. Glover of S.C. Uninsured Employers' Fund, 100 Executive Center Dr., Suite 101, Santee Building, Columbia, SC 29210.


Kathryn Williams, P.A.
P.O. Box 10693
Greenville, S.C. 29603
(864) 235-6254
Attorney for Respondent

RECEIVED
AUG 30 2011
SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 30, 2011

Lisa C. Glover, Esquire
Timothy B. Killen, Esquire
South Carolina Second Injury Fund
100 Executive Center Dr. #101
Columbia, SC 29210

Re: Ketron, William v. SC Uninsured (2)
2010150668

Dear Counsel:

We have received the Appellant's Final Brief in the above matter. However, in our letter dated June 15, 2010, you were reminded that the caption of the above matter should read exactly as follows:

William G. Ketron, Jr., Employee,

v.

Respondent,

Delta Woodside Industries, Inc., Self-Insured
Employer and S.C. Uninsured Employers' Fund,

Defendants,

Of Whom S.C. Uninsured Employers' Fund is the,

Appellant.

Please arrange for a representative from your office to come to the Court of Appeals filing desk on the 1st floor of the Edgar A. Brown Building, 1205 Pendleton Street, Columbia, SC 29201, to place the appropriate labels on the cover of the original and all copies of the record to correct the caption. We request that you have all corrections completed within ten (10) days of the date of this letter and that you notify this office when someone will be arriving to make the corrections so the documents will be available without delay.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Kathryn Williams, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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TELEPHONE (803) 734-1890
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www.sccourts.org

April 17, 2011

Lisa C. Glover, Esquire
Timothy B. Killen, Esquire
South Carolina Second Injury Fund
100 Executive Center Dr. #101
Columbia, SC 29210

Re: Ketron, William v. SC Uninsured (2)
2010150668

Dear Counsel:

We have received the Supplemental Record on Appeal in the above case. Within ten days of the date of this letter, please provide a Certificate of Counsel.

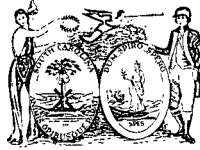
Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Kathryn Williams, Esquire

The South Carolina Second Injury Fund



WILLIAM E. GUNN
INTERIM DIRECTOR

100 EXECUTIVE CENTER DRIVE, SUITE 101
SANTEE BUILDING
COLUMBIA, S.C. 29210
www.scsif.sc.gov

(803) 798-2722
FAX: (803) 798-5290

August 5, 2011

VIA HAND DELIVERY

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**RE: William G. Ketron, Employee v. Delta Woodside Industries, Inc.,
Employer, and S.C. Workers' Compensation Uninsured Employers'
Fund, Case No. 2008-CP-23-5220**

Dear Ms. Gee:

Enclosed please find one (1) unbound original and fifteen (15) bound copies of the Supplemental Record on Appeal and Proof of Service upon opposing counsel. By copy, I am providing a copy of the same to Kathryn Williams, Esquire, attorney for Claimant/Respondent.

Sincerely,

Timothy B. Killen

Enclosure

cc: Kathryn Williams, Esq. (via U.S. Mail)

RECEIVED

AUG 08 2011

SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
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July 18, 2011

Lisa C. Glover, Esquire
Timothy B. Killen, Esquire
South Carolina Second Injury Fund
100 Executive Center Dr. #101
Columbia, SC 29210

Re: Ketron, William v. SC Uninsured (2)
2010150668

Dear Counsel:

The following Order has been endorsed on your Motion in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

July 18, 2011."

Please be advised the Supplemental Record on Appeal must be served and filed no later than August 8, 2011. All Final Briefs must be served and filed 20 days thereafter.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Kathryn Williams, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-5220

William G. Ketron, Jr., Employee Respondent,

v.

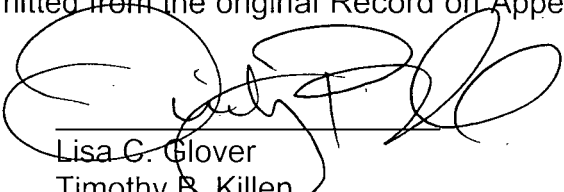
Delta Woodside Industries, Inc., Self-insured Employer and S.C. Workers'
Compensation Uninsured Employers Fund, ... Defendants,

of whom S.C. Workers' Compensation Uninsured Employers' Fund is Appellant.

MOTION

The South Carolina Workers' Compensation Uninsured Employers' Fund (Fund) appeals the Order of the South Carolina Workers' Compensation Uninsured Employers' Commission. The Fund hereby moves for an Order allowing it to file a Supplemental Record to include materials inadvertently omitted from the original Record on Appeal as previously filed by the Fund.

July 11, 2011


Lisa C. Glover

Timothy B. Killen

100 Executive Center Drive, Suite 101

Columbia, South Carolina 29210

Ph.: 803-798-2722

Fax: 803-798-5290

Attorneys for the SCWCUEF

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
(Clerk) (Deputy Clerk)

FILED
7/18/11
RECEIVED
JUL 13 2011
SC Court of Appeals

Other Counsel of Record:

Kathryn Williams, Esquire
KATHRYN WILLIAMS, P.A.
Post Office Box 10693
Greenville, South Carolina 29603
Ph.: 864-235-6254
Fax: 864-233-6591
Attorney for Respondent Claimant

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JUL 13 2011

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-5220

William G. Ketron, Jr., Employee Respondent,

v.

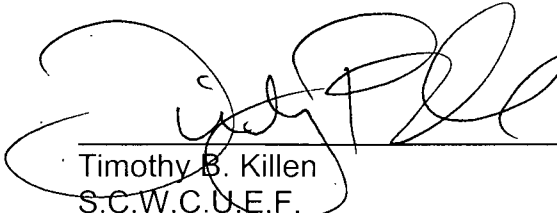
Delta Woodside Industries, Inc., Self-insured Employer and S.C. Workers'
Compensation Uninsured Employers Fund, ... Defendants,

of whom S.C. Workers' Compensation Uninsured Employers' Fund is Appellant.

PROOF OF SERVICE

I certify that on the 11th of July 2011, I have served the Motion for an Order allowing the Fund to file a Supplemental Record on Appeal on the parties to this appeal by depositing a copy of it in the United States Mail, postage prepaid, addressed to their respective attorneys as follows:

Kathryn Williams, Esquire
KATHRYN WILLIAMS, P.A.
Post Office Box 10693
Greenville, South Carolina 29603
Ph.: 864-235-6254
Fax: 864-233-6591
Attorney for Respondent Claimant



Timothy B. Killen
S.C.W.C.U.E.F.

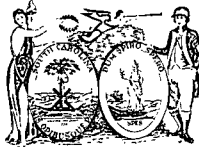
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Columbia, South Carolina 29210
Ph.: 803-798-2722
Fax: 803-798-5290

RECEIVED

JUL 13 2011

SC Court of Appeals

The South Carolina Second Injury Fund



WILLIAM E. GUNN
INTERIM DIRECTOR

100 EXECUTIVE CENTER DRIVE, SUITE 101
SANTEE BUILDING
COLUMBIA, S.C. 29210
www.scsif.sc.gov

(803) 798-2722
FAX: (803) 798-5290

July 11, 2011
VIA U.S. MAIL

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

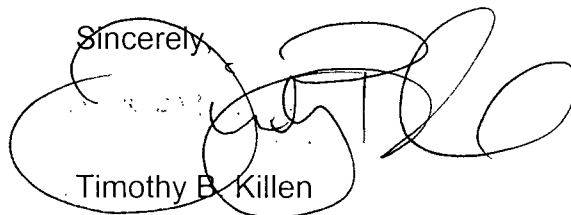
RE: William G. Ketron, Employee v. Delta Woodside Industries, Inc., et al.
WCC File Nos.: 0115236, 0115237
Case Tracking No.: 2010150668

Dear Ms. Gee:

Enclosed please find a Motion for an Order allowing the Fund to file a Supplemental Record on Appeal in the above-referenced case. It is my understanding the \$25.00 fee is waived since the Second Injury Fund is a South Carolina State Agency.

By copy we are serving the Fund's Motion on Kathryn Williams, Esquire.

Sincerely,



Timothy B. Killen

Enclosure

cc: Kathryn Williams, Esquire

RECEIVED
JUL 13 2011
SC Court of Appeals

KATHRYN WILLIAMS, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 10693
GREENVILLE, SC 29603

KATHRYN WILLIAMS
DONALD E. KAMB, JR.
MELISSA S. MILLER
TOM J. ERVIN
OF COUNSEL

619 N. MAIN STREET
GREENVILLE, SC 29601
TELEPHONE (864) 235-6254
FAX (864) 233-6591

July 8, 2011

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

JUL 11 2011

SC Court of Appeals

Re: **William G. Ketron, Jr. v. Delta Woodside Indus., Inc., et al.**
WCC File Nos.: 0115236, 0115237
Court of Appeals Case Tracking No.: 2010150668

Dear Ms. Gee:

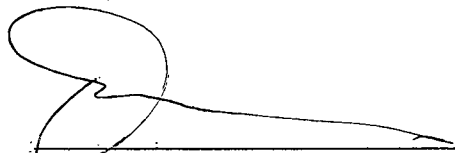
Please be advised that the parties have discovered some problems with the Record on Appeal as provided to the Court and an amended or supplemental Record needs to be prepared and submitted under Rule 212(b). This amended or supplemental Record will be prepared by the appellant-UEF. Please accept this letter as confirmation of respondent Ketron's consent for such amended or supplemental Record, as required by the rule.

According to my conversation with your office today, each party's final brief will now be due 20 days after service of the amended or supplemental Record.

Kindest regards,

Yours truly,

Kathryn Williams, P.A.



Donald E. Kamb, Jr.

dek

Enclosure

cc: Timothy B. Killen, Esq.

Lisa-C. Glover, Esq.



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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June 22, 2011

Lisa C. Glover, Esquire
Timothy B. Killen, Esquire
South Carolina Second Injury Fund
100 Executive Center Dr. #101
Columbia, SC 29210

Re: Ketron, William v. SC Uninsured (2)
2010150668

Dear Counsel:

We have received the Record on Appeal in the above case. However, according to Rule 267 of the South Carolina Appellate Court Rules, all counsel of record must be shown on the front cover of the record.

Within ten days of the date of this letter, please arrange for a representative from your office to come to the Court of Appeals filing desk on the 1st floor of the Calhoun Building to add Lisa C. Glover's name to the covers. **We request that you notify this office when someone will be arriving to make the corrections so the documents will be available without delay.**

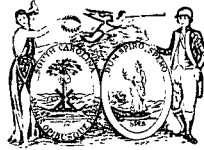
Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Kathryn Williams, Esquire

The South Carolina Second Injury Fund



WILLIAM E. GUNN
INTERIM DIRECTOR

100 EXECUTIVE CENTER DRIVE, SUITE 101
SANTEE BUILDING
COLUMBIA, S.C. 29210
www.scsif.sc.gov

June 20, 2011
VIA U.S. MAIL

(803) 798-2722
FAX: (803) 798-5290

RECEIVED

JUN 20 2011

SC Court of Appeals

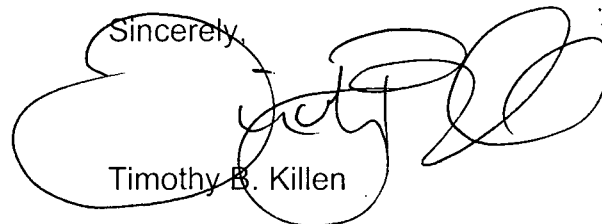
The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**RE: William G. Ketron, Employee v. Delta Woodside Industries, Inc.,
Employer, and S.C. Workers' Compensation Uninsured Employers'
Fund, Case No. 2008-CP-23-5220**

Dear Ms. Gee:

Enclosed please find one (1) unbound original and fifteen (15) bound copies of the Record on Appeal and Proof of Service upon opposing counsel. By copy, I am providing a copy of the same to Kathryn Williams, Esquire, attorney for Claimant/Respondent.

Sincerely,



Timothy B. Killen

Enclosure

cc: Kathryn Williams, Esq. (via U.S. Mail)



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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May 20, 2011

Lisa C. Glover, Esquire
Timothy B. Killen, Esquire
South Carolina Second Injury Fund
100 Executive Center Dr. #101
Columbia, SC 29210

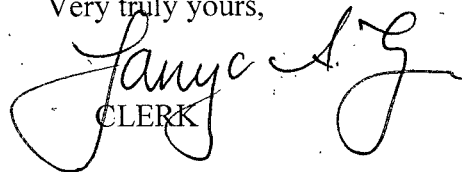
Kathryn Williams, Esquire
P.O. Box 10693
Greenville, SC 29603

Re: Ketron, William v. SC Uninsured (2)

Dear Counsel:

We have received correspondence indicating that Ketron's bankruptcy case has been closed. Accordingly, this appeal is no longer held in abeyance. The Appellant shall serve the Record on Appeal within thirty days of the date of this letter. Thereafter, the parties shall abide by the time periods set forth in Rules 210 and 211 of the South Carolina Appellate Court Rules for filing the Record on Appeal and serving and filing the Final Briefs.

Very truly yours,


CLERK

KATHRYN WILLIAMS, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 10693
GREENVILLE, SC 29603

KATHRYN WILLIAMS
DONALD E. KAMB, JR.
MELISSA S. MILLER
TOM J. ERVIN
OF COUNSEL

619 N. MAIN STREET
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April 26, 2011

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

MAY 04 2011

SC Court of Appeals

Re: **William G. Ketron, Jr. v. Delta Woodside Indus., Inc., et al.**
WCC File Nos.: 0115236, 0115237
Court of Appeals Case Tracking No.: 2010150668

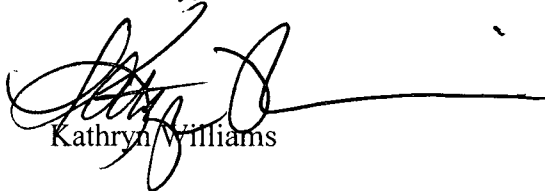
Dear Ms. Gee:

On January 19, 2011, the Court issued an Order in response to a Motion to Dismiss filed by appellant S.C. Uninsured Employers' Fund on August 19, 2010. That Order denied UEF's motion but stated that the underlying appeal would be held in abeyance "to allow Ketron to file the appropriate motion in the Bankruptcy Court to lift or modify the bankruptcy stay." UEF's motion was based, at least in part, on the assertion that Delta Woodside's bankruptcy proceedings were ongoing. However, as shown by the attached Order from the bankruptcy court, that proceeding was closed on November 18, 2009. As such, it does not appear that there is a stay from which Ketron can seek relief or modification.

Accordingly, the undersigned requests further direction from the Court concerning this matter and the due dates for the briefs and Record on Appeal.

Kindest regards,

Yours truly,



Kathryn Williams

KW:d

Enclosure

cc: Timothy B. Killen, Esq.
Lisa C. Glover, Esq.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: : Chapter 11
DELTA MILLS, INC., *et al.*¹ : Case No. 06-11144 (CSS)
Debtors. : (Jointly Administered)
: RE: D.I. 1015

RECEIVED

MAY 04 2011

SC Court of Appeals

**ORDER GRANTING MERGED DEBTORS' MOTION FOR ORDER: (1)
AUTHORIZING DESTRUCTION OF RECORDS AND ABANDONMENT OF
PROPERTY; AND (2) ENTERING FINAL DECREE CLOSING THESE CASES**

AND NOW this 18th day of November 2009, upon consideration of the Motion of the Merged Debtors in the above-captioned cases (the "Merged Debtors") for an Order: (1) authorizing the destruction of Records and abandonment of Property; and (2) entering a final decree closing these cases (the "Motion"),² and the Court having determined that service of the Motion upon the Notice Parties is adequate and sufficient under the circumstances, and good cause appearing, it is hereby

ORDERED that the Motion is GRANTED in full; and it is

FURTHER ORDERED that the Merged Debtors are authorized, but not required, to immediately destroy all of their Records; and it is

FURTHER ORDERED that the Merged Debtors are authorized to expend such funds as may be reasonably necessary to carry out such destruction in the manner that the Merged Debtors in their business judgment deem appropriate; and it is

¹ These jointly administered cases are those of the following debtors: Delta Mills, Inc., Delta Woodside Industries, Inc., and Delta Mills Marketing, Inc. The Merged Debtors were merged pursuant to the terms of the Debtors' liquidating plan of reorganization, as confirmed on October 10, 2007.

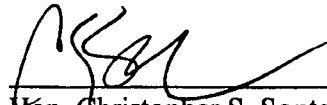
² Capitalized terms not defined in this Order shall have the meanings ascribed to such terms in the Motion.

FURTHER ORDERED that the Merged Debtors are authorized to abandon and relinquish, and shall be considered to have abandoned and relinquished, their rights to the Funds held in the Escrow Account; and it is

FURTHER ORDERED that the final decree in the Merged Debtors' bankruptcy cases is hereby entered and these bankruptcy cases are hereby closed without further order of this Court; and it is

FURTHER ORDERED that all orders previously entered in these bankruptcy cases are final orders and shall survive the closing of these bankruptcy cases.

BY THE COURT:



Hón. Christopher S. Sontchi
United States Bankruptcy Judge

KATHRYN WILLIAMS, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 10693
GREENVILLE, SC 29603

KATHRYN WILLIAMS
DONALD E. KAMB, JR.
MELISSA S. MILLER
TOM J. ERVIN
OF COUNSEL

619 N. MAIN STREET
GREENVILLE, SC 29601
TELEPHONE (864) 235-6254
FAX (864) 233-6591

March 25, 2011

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

MAR 29 2011

SC Court of Appeals

Re: **William G. Ketron, Jr. v. Delta Woodside Indus., Inc., et al.**
WCC File Nos.: 0115236, 0115237
Circuit Court Case No.: 08-CP-23-5220
Court of Appeals Case Tracking No.: 2010150668

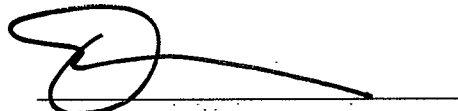
Dear Ms. Gee:

Please be advised that the bankruptcy stay issue is still pending in this matter. The undersigned will communicate any further information to the Court as soon as possible.

Kindest regards,

Yours truly,

Kathryn Williams, P.A.


Donald E. Kamb, Jr.

dek

cc: Timothy B. Killen, Esq.
Lisa C. Glover, Esq.
S.C. Uninsured Employers' Fund
100 Executive Center Dr., Suite 101
Santee Building
Columbia, SC 29210

KATHRYN WILLIAMS, P.A.

ATTORNEYS AT LAW
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KATHRYN WILLIAMS
DONALD E. KAMB, JR.
MELISSA S. MILLER

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OF COUNSEL

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FAX (864) 233-6591

March 2, 2011

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

MAR 07 2011

SC Court of Appeals

Re: **William G. Ketron, Jr. v. Delta Woodside Indus., Inc., et al.**
WCC File Nos.: 0115236, 0115237
Circuit Court Case No.: 08-CP-23-5220
Court of Appeals Case Tracking No.: 2010150668

Dear Ms. Gee:

Please accept this letter as a status report in the above matter. The undersigned is in the process of filing and drafting the necessary pleadings with the bankruptcy report as directed by this Court and hopes to have more specific information within 30 days.

Kindest regards,

Yours truly,

Kathryn Williams, P.A.



Donald E. Kamb, Jr.

dek

cc: Timothy B. Killen, Esq.
Lisa C. Glover, Esq.
S.C. Uninsured Employers' Fund
100 Executive Center Dr., Suite 101
Santee Building
Columbia, SC 29210

The South Carolina Court of Appeals

William G. Ketron, Jr., Employee, Respondent,

v.

Delta Woodside Industries, Inc., Self-
Insured Employer and S.C. Uninsured
Employers' Fund, Defendants,

Of Whom S.C. Uninsured Employers'
Fund is Appellant.

The Honorable Edward W. Miller
Greenville County
Trial Court Case No. 2008-CP-23-05220

ORDER

Appellant, the South Carolina Uninsured Employers' Fund (the Fund) has moved to dismiss this workers' compensation appeal, arguing this Court lacks subject matter jurisdiction because the Defendant, Delta Woodside Industries, Inc., petitioned the United States Bankruptcy Court for the District of Delaware for relief in 2006, and the bankruptcy proceedings are ongoing. The Fund contends that because the petition for relief has been filed, and because the Respondent, William G. Ketron, has not moved to modify or lift the stay, this action is stayed pursuant to 11 U.S.C. § 362. Appellant further requests this Court declare the underlying orders void for lack of subject matter jurisdiction.

Respondent, William G. Ketron, filed a return, acknowledging the filing of a bankruptcy action can deprive a court of subject matter jurisdiction, but the stay does not affect this appeal because it only deprives the court of jurisdiction "to take any action inconsistent with the stay."

See Ex parte Reichlyn, 310 S.C. 495, 499, 427 S.E.2d 661, 663-64 (1993). Ketron contends the underlying orders are not inconsistent with the stay because "Ketron, the Fund, and the [Workers' Compensation] Commission, as administrator of the surety bond, are the real stakeholders in this claim, rather than Delta Woodside."

After careful consideration of the parties' filings, we deny the Fund's motion to dismiss; however, because the bankruptcy estate could be affected by a decision on the merits of this appeal,¹ we hold this appeal in abeyance to allow Ketron to file the appropriate motion in the Bankruptcy Court to lift or modify the bankruptcy stay. Ketron shall provide this Court with a status report within thirty days, and every thirty days thereafter, until his motion is resolved.

AND IT IS SO ORDERED.

Thomas C. Y. J.

James E. J.

C. J. J. A.J.

Columbia, South Carolina

FILED

1/19/11

¹ See 11 U.S.C. § 362(a) (4) (providing the automatic stay applies to "any act to create, perfect, or enforce any lien against property of the estate"); S.C. Code Ann. § 42-7-200 (Supp. 2009) ("If the [F]und is required to incur costs or expenses or to pay benefits, the fund has a lien against the assets of the employer to the full extent of all costs, expenses, and benefits paid . . .") (emphasis added).

cc: Lisa C. Glover, Esquire
Timothy Blair Killen, Esquire
Kathryn Williams, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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January 19, 2011

Lisa C. Glover, Esquire
Timothy B. Killen, Esquire
South Carolina Second Injury Fund
100 Executive Center Dr. #101
Columbia, SC 29210

Re: Ketron, William v. SC Uninsured (2)
2010150668

Dear Counsel:

Enclosed is a copy of an Order of the Court regarding your Motion to Dismiss for Lack of Subject Matter Jurisdiction in the above case.

Very truly yours,

V. Claire Allen, Deputy
CLERK

Williams, Esquire

KATHRYN WILLIAMS, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 10693
GREENVILLE, SC 29603

KATHRYN WILLIAMS
DONALD E. KAMB, JR.
MELISSA S. MILLER
TOM J. ERVIN
OF COUNSEL

619 N. MAIN STREET
GREENVILLE, SC 29601
TELEPHONE (864) 235-6254
FAX (864) 233-6591

September 21, 2010

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

SEP 22 2010

Re: **William G. Ketron, Jr. v. Delta Woodside Indus., Inc., et al.**
WCC File Nos.: 0115236, 0115237
Circuit Court Case No.: 08-CP-23-5220
Court of Appeals Case Tracking No.: 2010150668

SC Court of Appeals

Dear Ms. Gee:

Please note that we have not yet received a copy of the Record on Appeal in this matter under Rule 210(a), SCACR. According to the Court's July 26, 2010 letter, this should have been due sometime in early August, prior to the date appellants filed their currently pending Motion to Dismiss.

Kindest regards,

Yours truly,

Kathryn Williams, P.A.


Donald E. Kamb, Jr.

dek

cc: Timothy B. Killen, Esq.
Lisa C. Glover, Esq.
S.C. Uninsured Employers' Fund
100 Executive Center Dr., Suite 101
Santee Building
Columbia, SC 29210

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-5220

RECEIVED

SEP 15 2010

SC Court of Appeals

William G. Ketron, Jr., Employee Respondent,

v.

Delta Woodside Industries, Inc., Self-insured Employer and S.C. Workers'
Compensation Uninsured Employers Fund, of whom S.C. Workers' Compensation
Uninsured Employers' Fund is Appellant.

APPELLANT'S REPLY TO
RESPONDENT'S RETURN TO MOTION TO DISMISS

The Appellant, S.C. Worker's Compensation Uninsured Employers' Fund ("the Fund"), has filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. Respondent filed a Return to Appellant's Motion to Dismiss on or about September 9, 2010.

In his Return, Respondent argues that the Appellant's Motion to Dismiss for Lack of Subject Matter Jurisdiction should be denied despite the invocation of an automatic stay due to the bankruptcy petition of Delta Woodside Industries, Inc., the Self-Insured Employer in this Workers' Compensation matter, which was filed prior to all proceedings below, and which has not been lifted or modified by the Bankruptcy Court.

I. THE FILING OF THE PETITION IN BANKRUPTCY COURT DEPRIVED THE COMMISSION OF SUBJECT MATTER JURISDICTION UNTIL THE STAY IS LIFTED OR MODIFIED.

In his Return, Respondent argues that the Fund's "argument is not really a question of subject matter jurisdiction but a challenge to the Commission's personal jurisdiction over defendant Delta Woodside" ¹ However, the Fund's argument is not based in the Commission's lack of personal jurisdiction over any defendant. The Fund's argument is based squarely in the Commission's and the Circuit Court's failure to establish subject matter jurisdiction over this claim after being deprived of the same following the entry of the automatic stay.

When Delta Mills, Inc., Delta Woodside Industries, Inc., and Delta Mills Marketing, Inc. (collectively "Delta Woodside") filed its bankruptcy on October 13, 2006, the automatic stay of 11 U.S.C. § 362, "spr[ang] into being immediately" Soares v. Brockton Credit Union (In re Soares), 107 F.3d 969, 975 (1st Cir. 1997). Upon the filing of the petition and the invocation of the automatic stay, "the trial judge lacked subject matter jurisdiction to enter judgment" Ex Parte Reichlyn, 310 S.C. 495, 499, 427 S.E. 2d 661, 663 - 64 (1993).

The Respondent argues, "the Workers' Compensation is the only entity with the power to hear and determine workers' compensation claims."² This is, of course, true. However, the Appellant's argument is not that the Bankruptcy Court has jurisdiction to hear workers' compensation matters; the Appellant's argument is simply that, like any other creditor, the Claimant's attorney must first seek to lift or modify the automatic stay in order to proceed with a workers' compensation claim against a possibly uninsured

¹ Respondent's Return to Appellant's Motion to Dismiss, p. 3.

² Respondent's Return to Appellant's Motion to Dismiss, p. 2.

employer and the Fund. Without lifting or modifying the automatic stay, the Commission remains without subject matter jurisdiction, pursuant to 11 U.S.C. § 362.

Upon lifting or modifying the stay by a Federal Court, the Claimant could then effectively proceed against the allegedly uninsured employer and the Fund. Following these procedures as set forth in the Bankruptcy Code allows for the orderly disposition of workers' compensation benefits from the bankrupt estate and provides for protection of all Claimants, as well as other creditors, who seek adjudication of their claims.

Also, by following the procedures as set forth in and mandated by the United States Code, employers required to provide adequate coverage under Title 42 of the South Carolina Code shall not escape their statutorily-mandated obligations to employees by the filing of a bankruptcy petition. For instance, if this case is allowed to proceed in light of its current procedural history, alleged illegal uninsured employers who file bankruptcy will face no absolutely no liability in workers' compensation matters, despite the General Assembly's clear mandate that they be liable and uphold their end of the no-fault bargain³, *and will face no liability regardless of the value of the assets in the bankrupt estate.*

In Delta Woodside's case, numerous workers' compensation cases have continued to be administered where Claimant's timely filed Proofs of Claims with the Bankruptcy Court. Because these claims against the bankrupt estate have been administered under the watchful eye of the Bankruptcy Court, Delta Woodside has

³ See S.C. Code Ann. § 42-7-200(C) ("When the fund is notified of a claim, the fund may place a lien on the assets of the employer by way of lis pendens or otherwise so as to protect the fund from payments of costs and benefits. If the fund is required to incur costs or expenses or to pay benefits, the fund has a lien against the assets of the employer to the full extent of all costs, expenses, and benefits paid"), (D) ("The fund has all rights of attachment set forth in Section 15-9-10 and has the right to proceed otherwise in the collection of its lien in the same manner as the Department of Revenue is allowed to enforce a collection of taxes generally pursuant to Section 12-19-10, et seq."), and (E) ("Nothing in this section precludes the South Carolina Workers' Compensation Uninsured Employers' Fund from entering into an agreement for the reimbursement of expenses, costs, or benefits paid by the fund.").

assumed all financial liability therein. In this case, to the contrary, Delta Woodside has made no payments or provided no benefits to the Claimant pursuant to the underlying Orders because the Claimant failed to file a Proof of Claim and chose to proceed without lifting or modifying the automatic stay.⁴ Considering the foregoing, it's Appellant's position that, pursuant to Ex Parte Reichlyn⁵ and 11 U.S.C. § 362, the Commission and the Circuit lacked subject matter jurisdiction to hear the underlying matter. Accordingly, the Orders entered by the Commission and the Circuit court are void ab initio.⁶

II. THE ORDERS ENTERED AGAINST DELTA WOODSIDE ARE JUDGMENTS AGAINST THE EMPLOYER AND, THEREFORE, VOID.

In his Return, the Respondent argues that "this claim is in reality a claim against Delta Woodside's surety bond and the UEF, to the extent that surety bond is insufficient to cover the claim" ⁷ As an extension of that logic, Respondent argues that Delta Woodside is not actually a "real stakeholder[]" in this proceeding.⁸

As the Respondent, in order to qualify as a self-insurer, Delta Woodside posted a Seven Hundred and Fifty Thousand and no/100 Dollars (\$750,000.00) surety bond with the Commission. According to the Single Commissioner, Delta Woodside "defaulted on its responsibilities to pay its self-insured workers' compensation liabilities" "[d]ue to bankruptcy."⁹ According to the Respondent's Return and the underlying Orders, "the

⁴ Respondent's Return to Appellant's Motion to Dismiss, p. 4 ("Ketrion is litigating his rights following Delta Woodside's default and in Delta Woodside's subsequent absence from the claim as the payor"); Additionally, the Fund would submit that Delta Woodside has made no payment in accordance with the underlying Orders precisely because those Orders are void ab initio, as they were entered by a Commission and a Court without subject matter jurisdiction.

⁵ 310 S.C. 495, 427 S.E. 2d 661 (1993).

⁶ Turner v. Malone, 24 S.C. 398 (1886); see also Webster v. Clanton, 259 S.C. 387, 391, 192 S.E.2d 214, 216 (1972).

⁷ Respondent's Return to Appellant's Motion to Dismiss, p. 7.

⁸ Respondent's Return to Appellant's Motion to Dismiss, p. 4.

⁹ Order of Single Commissioner, October 25, 2007, p. 17.

Commission found that the surety deposit provided by Delta Woodside “is insufficient to meet all of [it’s] workers’ compensation claim liabilities’ because Delta Woodside ‘under-reserved their open claims and failed to comply with a July 19, 2006[,] request from the Self-Insurance Division for a surety increase.’”¹⁰

The error in this argument is that this workers’ compensation proceeding is a cause of action against Delta Woodside for the full extent of benefits owed to the Claimant. Unlike Ohio and California (the states giving rise to the cases cited as authority for Respondent’s position), outside of the requirement that a surety bond be posted, the State of South Carolina does not have a statutory mechanism in place to deal with a self-insured employer who files bankruptcy or becomes insolvent, and there is no guaranty fund for South Carolina self-insured employers.

In this case, the full weight of the Order rests on the shoulders of the alleged uninsured Employer. To evidence this, the Single Commissioner found as a fact: “If defendant Delta Woodside is unable to meet all of its obligation to claimant as provided in this Order, defendant Uninsured Employers’ Fund shall pay the claim pursuant to this Order.”¹¹ Further, the Single Commissioner concluded as a point of law that: “If defendant Delta Woodside does not or cannot meet its obligations to claimant under the Act and defendant Uninsured Employers’ Fund is not made to pay the obligation to claimant as provided in the Act, claimant will become a public charge”¹² Most importantly, the Order of the Single Commissioner commands: “It is ordered that defendant Delta Woodside shall provide the following,”¹³ and then the benefits due to the Claimant are spelled out. Following that, the Single Commissioner wrote: “However,

¹⁰ Respondent’s Return to Appellant’s Motion to Dismiss, p. 4.

¹¹ Order of Single Commissioner, October 25, 2007, p. 19 (emphasis added).

¹² Order of Single Commissioner, October 25, 2007, p. 22 (emphasis added).

¹³ Order of Single Commissioner, October 25, 2007, p. 23 (emphasis in original).

if defendant Delta Woodside is unable to provide the above awarded benefits, defendant Uninsured Employers' Fund shall pay the claim pursuant to this Order."¹⁴ Despite Respondent's assertions, the case against Delta Woodside is, in fact, against Delta Woodside: Delta Woodside is a named defendant; Delta Woodside was ordered to make all payments to the Claimant; the Fund's liability springs forth only if Delta Woodside fails to make all payments to the Claimant; once a single payment is made by the Fund, a statutory lien springs to life in favor of the Fund and against any and all of Delta Woodside's assets, including its bankruptcy estate.

A. In re Mansfield Tire and Rubber Co., 660 F.2d 1008 (6th Cir. 1981).

As Respondent noted in his Return, in In re Mansfield Tire and Rubber Co., 660 F.2d 1108 (6th Cir. 1981), the Federal Court of Appeals for the Sixth Circuit

held that the Bankruptcy Court had no jurisdiction to pass upon the validity of workers' claims for injury since exclusive jurisdiction was vested in the Industrial Commission and Ohio courts and that the administration of workers' compensation claims by the State of Ohio was a valid exercise of police regulatory powers of a governmental unit ¹⁵

The case at bar is distinguishable from In re Mansfield. In In re Mansfield, the Court found that, "Paying the [workers' compensation] claims out of either the Insurance Fund or the posted surety bonds does not result in the enforcement of a money judgment against the debtor or its estate."¹⁶ This is because the Employer could not "claim any interest, legal or equitable, in those surety bonds."¹⁷

In re Mansfield gives some authority to the proposition that workers' compensation proceedings may not be automatically stayed where the benefits are to

¹⁴ Order of Single Commissioner, October 25, 2007, p. 23.

¹⁵ Respondent's Return to Appellant's Motion to Dismiss, p. 4.

¹⁶ 660 F.2d 1108, 1115 (6th Cir. 1981).

¹⁷ Id.

be paid from an insurance fund or from security bonds that were not part of the employer's bankruptcy estate.

In the case at bar, there is no insurance fund such as the one in Ohio, where employers "make payments directly to the State Insurance Fund in the amount of premium fixed by the Industrial Commission." Obviously, we do have insurance carriers, but no carrier is involved herein. If there were a carrier involved, the Fund would not be a party.

In this case, the payment of benefits to the Claimant is not limited to the amount of a surety bond. To the contrary, the Single Commissioner made particular findings that Delta Woodside's bond was insufficient to pay the claim.¹⁸ This is the very reason this Agency is a party. The balance of benefits to be paid to the Respondent must, then, be paid from the bankruptcy estate.

Requiring the Appellant to make payment if the Employer fails to do so does not mean that the Employer is without obligation to make that payment. Requiring the Appellant to make such a payment simply encumbers the bankruptcy estate in a different manner.¹⁹ However, the Bankruptcy Code also enjoins the creation of any liens against the bankruptcy estate.²⁰

Thus, if the Claimant fails to file a Proof of Claim in the bankruptcy case, and if the Fund is required to pay, the Employer faces no consequences of failing to do that which it is legally required to do – and that is to provide adequate coverage for its

¹⁸ Order of Single Commissioner, October 25, 2007, Finding of Fact 37, p. 17, Finding of Fact 38, pp. 17 – 18, Finding of Fact 42, p. 18.

¹⁹ See S.C. Code Ann. § 42-7-200(C) ("If the fund is required to incur costs or expenses or to pay benefits, the fund has a lien against the assets of the employer to the full extent of all costs, expenses, and benefits paid . . .").

²⁰ 11 U.S.C.A. § 362(a)(4) (" . . . a petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of . . . any act to create, perfect, or enforce any lien against property of the estate . . .").

employees under the South Carolina Workers' Compensation Act. If the Claimant files a Proof of Claim, the Employer's assets are put towards his claim and the Fund would pay that which exceeds the uppermost limit of the bankruptcy estate.

B. In re McLean v. Department of Industrial Relations, 74 B.R. 820 (Bkrtcy.W.D.N.C. 1987).

According to Respondent's Return, in In re McLean v. Department of Industrial Relations, 74 B.R. 820 (Bkrtcy.W.D.N.C. 1987), "the Court determined that the action against the surety bond was not subject to the stay" ²¹ In re McLean emanates from a California workers' compensation case. In that case, the employer posted a surety bond that was written by Protective Insurance Company. As a part of the surety bond, Protective made "an absolute and unconditional undertaking . . . to pay to the Department [of Industrial Relations] an amount up to the stated penal sum of the bond in the event of [employer's] insolvency or bankruptcy." ²² As the Court noted, "There is no provision in the bond for payment of any portion of the proceeds of the bond to [employer] under any circumstances." ²³ Additionally, the California Code specifically divests employers of any interest, legal or otherwise, in such surety bonds.

When the Department of Industrial Relations sought to pay claims with the surety bond after the employer filed a bankruptcy petition, the employer sought protection from the Bankruptcy Court, claiming the surety bond was part of the bankruptcy estate. The Bankruptcy Court held that "a bond posted by a surety to secure the obligations of the debtor does not constitute property of the estate, and that a bankruptcy court lacks jurisdiction to enjoin proceedings to collect on the bond." ²⁴

²¹ Respondent's Return to Appellant's Motion to Dismiss, p. 7.

²² In re McLean v. Department of Industrial Relations, 74 B.R. 820, 821 (Bkrtcy.W.D.N.C. 1987).

²³ Id.

²⁴ In Re McLean v. Department of Industrial Relations, 74 B.R. 820, 828 (Bkrtcy.W.D.N.C. 1987).

In re McLean involved only whether or not the insurance company who had underwritten the surety bond should make payment of that bond to ensure Claimants were paid. In this case, however, Delta Woodside actually instructed the Workers' Compensation Commission to utilize the full amount of its surety bond to pay claims, and "the Commission's Self-Insurance Division drew down on the company's surety deposit of \$750,000.00 to pay the open claims."²⁵ No party has alleged otherwise. For that reason, In re McLean is distinguishable from the case at bar, as the case at bar attempts to stretch its fingers into the bankruptcy estate.

The very fact that the Fund is a party is indicative of the fact that Delta Woodside is a "real stakeholder."

III. THE CLAIMANT'S WORKERS' COMPENSATION CASE AGAINST DELTA WOODSIDE IS NOT AN EXCEPTION TO THE AUTOMATIC STAY UNDER 11 U.S.C.A. § 362(b)(4).

As noted by the Respondent, certain actions are exempt from the automatic stay of 11 U.S.C.A. § 362(a) including those under those under § 362(b)(4), said actions being "the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power."

It's the Appellant's position that § 362(b)(4) is inapplicable to the case herein for a number of reasons. The first of those reasons is that, unlike the claims in In re McLean and In re Mansfield, the case herein does not involve a governmental entity (the California Department of Industrial Relations in In re McLean and Ohio Industrial Commission In re Mansfield) seeking access to a surety bond to make payments to Claimants. Delta Woodside instructed the Commission to make such payments. There is no governmental entity seeking to enforce its police or regulatory powers.

²⁵ Order of Single Commissioner, October 25, 2007, Finding of Fact 37, p. 17.

The Commission has not sought access to any funds withheld by Delta Woodside. This case involves a Claimant seeking benefits from an employer who has filed for protection under the United States Bankruptcy Code. While the Bankruptcy Code does not prohibit the Claimant from making a claim, for the protection of all parties, including other claimants, other creditors, and other possible creditors (such as the Fund), it does require him to follow the orderly procedures outlined in the Code.

The second reason it's the Appellant's position that § 362(b)(4) is inapplicable is because there exists an exception to the exception in § 362(b)(4). That section, by its own terms, limits the exception to the automatic stay to the "enforcement of a judgment other than a money judgment."²⁶

Even though governmental police power actions may continue against a debtor, any money judgment that might be obtained in such action may not be enforced against the debtor without relief from the automatic stay.²⁷

As the Court explained in In re New York Trap Rock Corp.:

This is so because the enforcement of money judgments is excluded from the exception expressed in 11 U.S.C. [§ 362(b)(4)]. Moreover, 11 U.S.C. § 362(a)(6) specifically stays any act to collect a prepetition claim against the debtor. Thus, such law suits [sic] simply result in liquidating the claim and eliminate the need to establish or estimate such claim in the bankruptcy court.²⁸

Clearly, the payment of total disability compensation and lifetime medical expenses is a money judgment.

Therefore, both because the Claimant's workers' compensation case seeking monetary benefits is not an exercise of the State's police power, and because the

²⁶ State of New York v. Mirant, New York, Inc., 300 B.R. 174, 178 (S.D.N.Y. 2003); see also City of New York v. Exxon Corp., 932 F.2d 1020, 1023 – 1024 (2d Cir. 1991).

²⁷ State of New York v. N. Storonske Cooperage Co., Inc., 174 B.R. 366, 373 (N.D.N.Y. 1994) (citing In re New York Trap Rock Corp., 153 B.R. 642, 645 (Bankr. S.D.N.Y. 1993)).

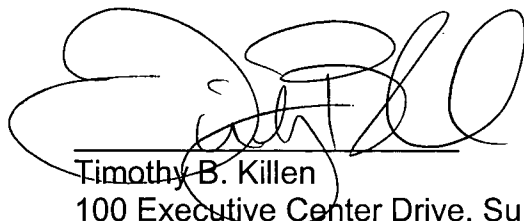
²⁸ 153 B.R. 642, 645 (Bankr. S.D.N.Y. 1993).

Claimant is seeking (and has obtained) a money judgment against Delta Woodside, 11 U.S.C.A. § 362(b)(4) is inapplicable herein, and the automatic stay of § 362(a) deprived the Commission and the Circuit Court of subject matter jurisdiction to hear this matter.

CONCLUSION

Accordingly, this Court should grant the Fund's Motion to Dismiss for Lack of Subject Matter Jurisdiction.

September 13, 2010



Timothy B. Killen
100 Executive Center Drive, Suite 101
Columbia, South Carolina 29210
Ph.: 803-798-2722
Fax: 803-798-5290
Attorney for the S.C.W.C.U.E.F.

Other Counsel of Record:

Kathryn Williams
Kathryn Williams, P.A.
Post Office Box 10693
Greenville, South Carolina 29603

Delta Woodside Industries, Inc.
710 Woods Drive
Fountain Inn, South Carolina 29644

Delta Woodside Industries, Inc.
265 Franklin St., 16th Floor
Boston, Massachusetts 02110

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Circuit Court Case No. 2008-CP-23-5220

RECEIVED
SEP 15 2010
SC Court of Appeals

William G. Ketron, Jr., Employee Respondent,

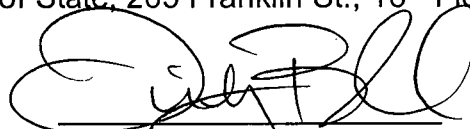
v.

Delta Woodside Industries, Inc., Self-insured Employer
and S.C. Workers' Compensation Uninsured Employers Fund,
of whom S.C. Workers' Compensation
Uninsured Employers' Fund is Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Reply to Respondent's Return to Fund's Motion to Dismiss for Lack of Subject Matter Jurisdiction on William G. Ketron, Jr., Employee/Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on September 13, 2010, addressed to his attorney of record, Kathryn Williams, Kathryn Williams, P.A., Post Office Box 10693, Greenville, South Carolina 29603, and on Delta Woodside Industries, Inc., by depositing a copy of it in the United States Mail, postage prepaid, on September 13, 2010, addressed to its last known address of 710 Woods Drive, Fountain Inn, South Carolina 29644, and at the address for service as it appears with the South Carolina Secretary of State, 265 Franklin St., 16th Floor, Boston, Massachusetts 02110.

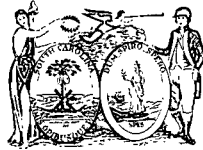
September 13, 2010



Timothy B. Killen
S.C.W.C.U.E.F.

100 Executive Center Drive, Suite 101
Columbia, South Carolina 29210
Ph.: 803-798-2722
Fax: 803-798-5290

The South Carolina Second Injury Fund



WILLIAM E. GUNN
INTERIM DIRECTOR

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SANTEE BUILDING
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FAX: (803) 798-5290

September 13, 2010
VIA U.S. MAIL

RECEIVED

SEP 15 2010

SC Court of Appeals

The Honorable Tanya Gee
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**RE: William G. Ketron, Employee v. Delta Woodside Industries,
Inc., Employer, and S.C. Workers' Compensation Uninsured
Employers' Fund
WCC File Nos.: 0115236 & 0115237
Circuit Court Case No. 2008-CP-23-5220
Court of Appeals Case Tracking No.: 2010150668**

Dear Ms. Gee:

Enclosed please find the original and six (6) copies of Appellant's Reply to Respondent's Return to Fund's Motion to Dismiss for Lack of Subject Matter Jurisdiction in the above-referenced case, along with an Affidavit of Service for the same.

By copy I am serving the same on Kathryn Williams, Esquire, attorney for the Respondent, and Delta Woodside Industries, Inc., Respondent. If you have any questions or concerns, please don't hesitate to contact me.

Sincerely,

Timothy B. Killen

Enclosure

cc: Kathryn Williams, Esquire
Delta Woodside Industries, Inc

KATHRYN WILLIAMS, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 10693
GREENVILLE, SC 29603

KATHRYN WILLIAMS
DONALD E. KAMB, JR.
MELISSA S. MILLER
TOM J. ERVIN
OF COUNSEL

619 N. MAIN STREET
GREENVILLE, SC 29601
TELEPHONE (864) 235-6254
FAX (864) 233-6591

September 8, 2010

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
SEP 10 2010
SC Court of Appeals

Re: **William G. Ketron, Jr. v. Delta Woodside Indus., Inc., et al.**
WCC File Nos.: 0115236, 0115237
Circuit Court Case No.: 08-CP-23-5220
Court of Appeals Case Tracking No.: 2010150668

Dear Ms. Gee:

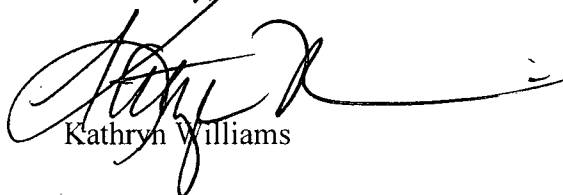
Enclosed herein please find the following items for filing in the above-referenced matter:

1. Respondent's Return to Appellant's Motion to Dismiss (original and six copies);
2. Proof of Service by Mail.

By copy of this letter, I am also serving Appellants' attorneys with a copy of the same.

Kindest regards,

Yours truly,


Kathryn Williams

KW:d
Enclosures

cc: Timothy B. Killen, Esq.
Lisa C. Glover, Esq.
S.C. Uninsured Employers' Fund
100 Executive Center Dr., Suite 101
Santee Building
Columbia, SC 29210

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Circuit Court Case No. 2008-CP-23-5220

RECEIVED

SEP 10 2010

SC Court of Appeals

William G. Ketron, Jr., Employee, ... Respondent,

vs.

Delta Woodside Indus., Inc., Self-insured Employer
and S.C. Uninsured Employers' Fund of whom
S.C. Uninsured Employers' Fund is Appellant.

**RESPONDENT'S RETURN TO
APPELLANT'S MOTION TO DISMISS**

Kathryn Williams
Kathryn Williams, P.A.
619 North Main St.
P.O. Box 10693
Greenville, SC 29603
(864) 235-6254

Attorney for Respondent

Appellant's motion seeks dismissal arguing that the Workers' Compensation Commission, and subsequently the Circuit Court, lacked subject matter jurisdiction of this matter since employer Delta Woodside, which is not a party to this appeal, had filed a petition for relief under the United States Bankruptcy Code and such petition invokes an automatic stay under 11 U.S.C. § 362. Respondent opposes said motion and urges this Court to deny said motion for the following reasons:

"Subject matter jurisdiction is 'the power to hear and determine cases of the general class to which the proceedings in question belong.'" Dove v. Gold Kist, Inc., 314 S.C. 235, 238, 442 S.E.2d 598, 600 (1994)(citing Bank of Babylon v. Quirk, 472 A.2d 21, 22 (Conn. 1984)). Unquestionably, pursuant to the South Carolina Workers' Compensation Act, the Workers' Compensation Commission is the only entity with the power to hear and determine workers' compensation claims. See e.g. S.C. Code Ann. § 42-3-180 (2001)("All questions arising under this Title, if not settled by agreement of the parties interested therein with the approval of the Commission, shall be determined by the Commission, except as otherwise provided in this Title.") As this claim arises under the South Carolina Workers' Compensation Act as a result of two injuries by accident suffered by Ketron, the Workers' Compensation Commission had subject matter jurisdiction over the claim and properly exercised such jurisdiction. (See Decision and Order of the Commissioner, dated November 27, 2002; see also Decision and Order of the Commissioner, dated December 14, 2007) Similarly, through § 42-17-60, the circuit court for Greenville County gained subject matter jurisdiction over the claim pursuant to UEF's appeal to that Court. See S.C. Code Ann. § 42-17-60 (2001)("either party to the dispute ... may appeal from the decision of the commission to the court of common pleas")

Appellant UEF's argument is not really a question of subject matter jurisdiction but a challenge to the Commission's personal jurisdiction over defendant Delta Woodside in this specific case. **A party can waive any complaints it may have regarding personal jurisdiction by appearing to defend a case and failing to object to such personal jurisdiction.** State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct.App.2003). Of course, both Delta Woodside and UEF appeared before the Commission in this matter, and neither made any objection to the Commission's jurisdiction over Delta Woodside or raised any issue concerning a possible stay. (See Decision and Order of the Commissioner, dated December 14, 2007; see also Single Commissioner Hearing Transcript, dated September 2, 2007)

While our Supreme Court has held that the filing of a bankruptcy action giving rise to the stay provided in 11 U.S.C.A. § 362 can deprive a court of subject matter jurisdiction, the Supreme Court also recognized that **there are exceptions.** Ex parte Reichlyn, 310 S.C. 495, 427 S.E.2d 661 (1993). Furthermore, the Supreme Court recognized that **the stay only deprives the court of jurisdiction "to take any action inconsistent with the stay."** Id., 427 S.E.2d at 663-664.

Here, the Workers' Compensation Commission found that Delta Woodside had "defaulted on its responsibilities to pay its self-insured workers' compensation liabilities on February 27, 2007" causing the "Commission's Self-Insurance Division [to draw] down on the company's surety deposit of \$750,000.00 to pay the open claims." (See Decision and Order of the Commissioner, dated December 14, 2007, p. 17, Finding of Fact #37) Furthermore, the Commission found that the surety deposit provided by Delta Woodside "is insufficient to meet all of [it's] workers' compensation claim liabilities" because Delta Woodside "under-reserved their open claims and failed to comply with a July 19, 2006 request from the Self-Insurance

Division for a surety increase.” Therefore, the Commission determined that Delta Woodside “was operating without insurance or as an unqualified self-insurer within the meaning of the Act” giving rise to liability in UEF to pay benefits to Ketron under S.C. Code Ann. §42-7-200 (2001). (See Decision and Order of the Commissioner, dated December 14, 2007, p. 17, Finding of Fact #39; see also Findings of Fact #38, 40-42 & Rulings of Law #15-19)

Accordingly, the Commission’s award to Ketron is the payment of benefits from Delta Woodside’s surety bond, which was then administered by the Commission under § 42-5-20 and the Commission’s rules, and by UEF under §42-7-200. **Ketron, the UEF, and the Commission, as administrator of the surety bond, are the real stakeholders in this claim, rather than Delta Woodside. Ketron is litigating his rights following Delta Woodsides’s default and in Delta Woodside’s subsequent absence from the claim as the payor, and the Commission is simply administering the claim following Delta Woodside’s default.** For that reason, the Commission’s action was not inconsistent with any bankruptcy stay concerning Delta Woodside, and Ex parte Reichlyn has no application in this matter.

Furthermore, the circumstances of this claim clearly fall within the statutory exceptions to the bankruptcy stay. In In re Mansfield Tire & Rubber Co., 660 F.2d 1108 (6th Cir. 1981), the Federal Court of Appeals for the Sixth Circuit held that the Bankruptcy Court had no jurisdiction to pass upon the validity of workers' claims for injury since exclusive jurisdiction was vested in Industrial Commission and Ohio courts and that the administration of workers' compensation claims by the State of Ohio was a valid exercise of police regulatory power of a governmental unit such that those activities thus fell within the exceptions to the automatic stay provision found in § 362 of Bankruptcy Code. Those exceptions are as follows:

- (b) The filing of a petition under section 301, 302, or 303 of this title (11 USCS s 301, 302, or 303) does not operate as a stay
 - (4) under section (b)(1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;
 - (5) under subsection (a)(2) of this section, of the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

11 U.S.C.A. §§ 362(b)(4), (5).

As in the present case, the Ohio Industrial Commission, which has jurisdiction over workers' compensation claims in Ohio, was attempting to administrate and pay workers' compensation claims against a bankrupt self-insured employer out of the forfeited surety bond and the state's self-insurance fund. The Commission argued that its administration of the claims fell into the above exceptions to the stay, but the Bankruptcy Court disagreed and thereby prevented the Commission from processing claims by Mansfield's employees. On appeal, the Sixth Circuit determined that the Commission's activities in processing claims by Mansfield's employees against the forfeited surety bond and the state's self-insurance fund are an extension of the police powers of the state and that

The automatic stay prevents the exercise by the Industrial Commission of its lawful powers and operates to hinder, delay and deprive Mansfield's injured workers of the benefits to which they are lawfully entitled and it affects their safety.

The exercise by the Commission of its lawful powers on the other hand **gives it no preference over the creditors of the debtor and injures them in no respect, as it does not interfere with the property of the debtor's estate. The insurance fund, not the debtor's estate, pays the claims for which the employer has**

paid the premium. Therefore, as to claims arising out of the former self-insured status of Mansfield, which it abandoned, the claimants can collect from the Commission which can then resort to the surety bonds pledged as security. These bonds are the property of the Commission and are not assets of the debtor's estate. As an appellate court, in diversity cases, we exercise appellate jurisdiction, but we do not hear appeals in worker's compensation claims except in appeals from district courts in Tennessee, where jurisdiction is expressly provided by Tennessee legislation. **No such jurisdiction has been provided for Bankruptcy Courts and we are not aware that any Bankruptcy Court in all the long years of existence of the old Bankruptcy Act of 1898 attempted to exercise jurisdiction over the administration of workers' compensation laws.** The purpose of Chapter Eleven proceedings is to give the debtor a breathing spell so that it can adjust and compromise its debts. It is submitted that Congress, in enacting Chapter Eleven, never intended that the proceedings be used to disrupt the orderly administration of the worker's compensation laws by the state.

In re Mansfield Tire & Rubber Co., 660 F.2d 1108, 1113 (6th Cir. 1981)(emphasis added).

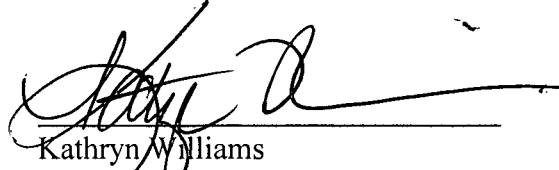
Accordingly, the Court held that the Bankruptcy Court has no jurisdiction over the workers' compensation matters and that the administration of the claims against the surety bond and the self-insurance fund fell into the exceptions to the bankruptcy stay. The Court stated that its decision allowed the Commission to proceed with the administration of the claims brought by the employees of Mansfield but that any subsequent claim the agency may have against the estate of the debtor for amounts paid is an ancillary matter for the Bankruptcy Court to deal with later after the Commission makes such a claim in that Court. Id., at 1114-1115.

Similarly, in In re McLean Trucking Co., 74 B.R. 820 (Bankr. W.D.N.C. 1987), the Bankruptcy Court for the Western District of North Carolina, in a motion by the debtor trucking company to enjoin the California Department of Industrial Relations from collecting on the surety bond posted by the self-insured company to pay workers' compensation claims brought

by its employees, held that **the surety bond was not a property of the debtor's estate subject to such enjoinder by the Bankruptcy Court.** In so holding, the Court noted that there was no showing that the Department's proceeding against the bond would jeopardize the debtor's efforts in shutting down operations, that the bond "runs only in favor of the Department and for the benefit of the Self-Insurers Fund" and "[n]o other party can claim the proceeds of the bond," and that the bondholder's "liability to the Department and the Self-Insurers Fund as a surety is independent of any liability of the Debtor itself." In re McLean Trucking Co., 74 B.R. 820, 826, 829 (Bankr. W.D.N.C. 1987). Accordingly, the Court determined that **the action against the surety bond was not subject to the stay** found in 11 U.S.C.A. § 361(a)(1).

As in In re Mansfield and In re McLean, this claim is in reality a claim against Delta Woodside's surety bond and the UEF, to the extent that surety bond is insufficient to cover the claim, and the Commission's decision in this matter is not inconsistent with the stay. Because it is not a claim against the assets of Delta Woodside subject to the bankruptcy action, and because Delta Woodside has no interest in the surety bond, this claim is not subject to the bankruptcy stay and is an exception to the stay. Any subsequent claim UEF may have against Delta Woodside is a matter for it to take up with the Bankruptcy Court at a later time. The Commission properly exercised its jurisdiction in this matter, and UEF's motion to dismiss should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kathryn Williams', is written over a horizontal line.

Kathryn Williams
Kathryn Williams, P.A.
P.O. Box 10693
Greenville, S.C. 29603
(864) 235-6254
Attorney for Respondent

Dated 9/9/10
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Circuit Court Case No. 2008-CP-23-5220

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SC Court of Appeals

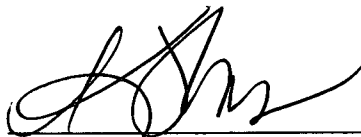
William G. Ketron, Jr., Employee, ... Respondent,

vs.

Delta Woodside Indus., Inc., Self-insured Employer
and S.C. Uninsured Employers' Fund of whom
S.C. Uninsured Employers' Fund is Appellant.

PROOF OF SERVICE

I certify that I have served the **RESPONDENT'S RETURN TO APPELLANT'S MOTION TO DISMISS** on Appellant by depositing a copy in the U.S. Mail, postage prepaid, on 9/9/10, addressed to their attorneys of record, Timothy B. Killen and Lisa C. Glover of S.C. Uninsured Employers' Fund, 100 Executive Center Dr., Suite 101, Santee Building, Columbia, SC 29210.



Kathryn Williams, P.A.
P.O. Box 10693
Greenville, S.C. 29603
(864) 235-6254
Attorney for Respondent



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 9, 2010

Kathryn Williams, Esquire
P.O. Box 10693
Greenville, SC 29603

Re: Ketron, William v. SC Uninsured (2)
2010150668

Dear Ms. Williams:

The following Order has been endorsed on your Motion for Extension of Time in which to file respondent's Return to appellants' Motion to Dismiss in the above entitled case on appeal.

"Granted.

John Cannon Few, C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

September 09, 2010."

Please be advised respondent's Return to appellants' Motion to Dismiss should be served and filed on or before September 13, 2010.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/dw

cc: Lisa C. Glover, Esquire
Timothy Blair Killen, Esquire

KATHRYN WILLIAMS, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 10693
GREENVILLE, SC 29603

KATHRYN WILLIAMS
DONALD E. KAMB, JR.
MELISSA S. MILLER
TOM J. ERVIN
OF COUNSEL

619 N. MAIN STREET
GREENVILLE, SC 29601
TELEPHONE (864) 235-6254
FAX (864) 233-6591

August 26, 2010

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
24154
AUG 27 2010
2500
SC Court of Appeals

Re: **William G. Ketron, Jr. v. Delta Woodside Indus., Inc., et al.**
WCC File Nos.: 0115236, 0115237
Circuit Court Case No.: 08-CP-23-5220
Court of Appeals Case Tracking No.: 2010150668

Dear Ms. Gee:

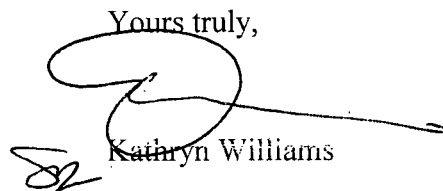
Please allow this letter to serve as a Motion for Extension of Time in which to file respondent's Return to appellants' Motion to Dismiss in the above matter. This is respondent's first request for an extension on this matter, and respondent certifies that this request for an extension of time is warranted and is not interposed to delay the case.

The Return is currently due on August 30, 2010. According to my calculations, with a 10-day extension of time, the Return will now be due on September 9, 2010. Please confirm this date for me.

Enclosed is my check in the amount of \$25.00 for filing this motion.

Kindest regards,

Yours truly,


Kathryn Williams

KW:d
Enclosure

cc: Timothy B. Killen, Esq.
Lisa C. Glover, Esq.
S.C. W.C. Uninsured Employers' Fund
100 Executive Center Dr., Suite 101
Santee Building
Columbia, SC 29210

GRANTED
JOHN CANNON FEW, C.J.,
FOR THE COURT

By: V. Claire Allen
(Clerk) (Deputy Clerk)

9/1/10

FILED

Enter 9/9/10

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

AUG 23 2010

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-5220

William G. Ketron, Jr., Employee Respondent,

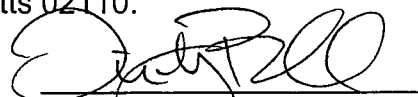
v.

Delta Woodside Industries, Inc., Self-insured Employer and S.C. Workers'
Compensation Uninsured Employers Fund, of whom S.C. Workers' Compensation
Uninsured Employers' Fund is Appellant.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss for Lack of Subject Matter Jurisdiction on William G. Ketron, Jr., Employee/Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on August 19, 2010, addressed to his attorney of record, Kathryn Williams, Kathryn Williams, P.A., Post Office Box 10693, Greenville, South Carolina 29603, and on Delta Woodside Industries, Inc., by depositing a copy of it in the United States Mail, postage prepaid, on August 19, 2010, addressed to its last known address of 710 Woods Drive, Fountain Inn, South Carolina 29644, and at the address for service as it appears with the South Carolina Secretary of State, 265 Franklin St., 16th Floor, Boston, Massachusetts 02110.

August 19, 2010



Timothy B. Killen

S.C.W.C.U.E.F.

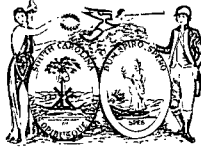
100 Executive Center Drive, Suite 101

Columbia, South Carolina 29210

Ph.: 803-798-2722

Fax: 803-798-5290

The South Carolina Second Injury Fund



WILLIAM E. GUNN
INTERIM DIRECTOR

100 EXECUTIVE CENTER DRIVE, SUITE 101
SANTEE BUILDING
COLUMBIA, S.C. 29210
www.scsif.sc.gov

(803) 798-2722
FAX: (803) 798-5290

August 19, 2010
VIA U.S. MAIL

RECEIVED

AUG 23 2010

SC Court of Appeals

The Honorable Tanya Gee
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**RE: William G. Ketron, Employee v. Delta Woodside Industries,
Inc., Employer, and S.C. Workers' Compensation Uninsured
Employers' Fund, Case No. 2008-CP-23-5220**

Dear Ms. Gee:

Enclosed please find the original and six (6) copies of a Motion to Dismiss for Lack of Subject Matter Jurisdiction. It is my understanding the \$25.00 fee is waived since the Second Injury Fund is a South Carolina State Agency.

By copy I am serving the Fund's Motion on Kathryn Williams, Esquire and on Delta Woodside Industries, Inc.

Sincerely,

Timothy B. Killen

Enclosure

cc: Kathryn Williams, Esq.
Delta Woodside Industries, Inc.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-5220

RECEIVED

AUG 23 2010

SC Court of Appeals

William G. Ketron, Jr., Employee Respondent,

v.

Delta Woodside Industries, Inc., Self-insured Employer and S.C. Workers'
Compensation Uninsured Employers Fund, of whom S.C. Workers' Compensation
Uninsured Employers' Fund is Appellant.

**APPELLANT'S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION**

The Appellant, S.C. Worker's Compensation Uninsured Employers' Fund ("the Fund"), hereby moves this Court for an Order dismissing the Claimant's pending Workers' Compensation claim insofar as it springs forth from the Claimant's Amended Form 50, filed July 19, 2007, and to declare as void the subsequent Orders entered in this matter (the Order of the Single Commissioner, dated December 14, 2007, the Order of the Full Commission, dated June 4, 2008, and the Order of the Circuit Court, dated October 12, 2009).

The basis for this Motion is as follows:

1. The South Carolina Workers' Compensation Commission and the Circuit Court, below, lacked subject matter jurisdiction to hear the case at bar. This Motion is appropriately before this Court because, "[l]ack of subject matter jurisdiction can be

raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court." Ex Parte Reichlyn, 310 S.C. 495, 427 S.E. 2d 661 (1993); Eaddy v. Eaddy, 283 S.C. 582, 324 S.E.2d 70 (1984); Bunkum v. Manor Properties, 321 S.C. 95, 467 S.E.2d.

2. According to the South Carolina Supreme Court, "[l]ack of subject matter jurisdiction may not be waived and should be taken notice of by this Court." Ex Parte Reichlyn, 310 S.C. 495, 499, 427 S.E. 2d 661, 664 (1993)

3. The South Carolina Workers' Compensation Commission and the Circuit Court lacked subject matter jurisdiction to hear this matter and enter the below Orders because the Defendant/Employer and Self-Insurer, Delta Woodside Industries, Inc., filed a petition for relief under the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court") prior to the hearings below. Because the petition for relief had been filed, and because the Bankruptcy Court had not issued any modification or lift of the stay relative to the Claimant herein, the case at bar was stayed pursuant to 11 U.S.C. §362, to wit:

4. On October 13, 2006, Delta Mills, Inc., Delta Woodside Industries, Inc., and Delta Mills Marketing, Inc. (collectively "Delta Woodside"), in a consolidated action, filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code in the Bankruptcy Court.

5. Delta Woodside's filing of the petition for relief in Bankruptcy Court invoked an automatic stay of the underlying proceeding, pursuant to 11 U.S.C. §362. Such a

stay springs into being immediately upon the filing of a bankruptcy petition: "[b]ecause the automatic stay is exactly what the name implies – 'automatic' – it operates without the necessity for judicial intervention." Sunshine Dev., Inc. v. FDIC, 33 F.3d 106, 113 (1st Cir. 1994). It remains in force until a federal court either disposes of the case, see 11 U.S.C. § 362(c)(2), or lifts the stay, see id. §

362(d) - (f). This respite enables debtors to resolve their debts in a more orderly fashion, see In re Siciliano, 13 F.3d 748, 750 (3d Cir. 1994), and at the same time safeguards their creditors by preventing "different creditors from bringing different proceedings in different courts, thereby setting in motion a free-for-all in which opposing interests maneuver to capture the lion's share of the debtor's assets." Sunshine Dev., 33 F.3d at 114; see generally 3 Collier on Bankruptcy ¶ 362.03 (15th rev. ed. 1996).

Soares v. Brockton Credit Union (In re Soares), 107 F.3d 969, 975 (1st Cir. 1997).

6. No party, including the Claimant, has sought relief or modification from the automatic stay.

7. On July 19, 2007, during the pendency of the automatic stay, the Claimant filed an Amended Form 50 with the South Carolina Workers' Compensation Commission, requesting a hearing.¹

8. A hearing was held on September 21, 2007. At the hearing, the Fund objected to jurisdiction and moved to be dismissed from the action, contending that it was not a proper party. The Commissioner denied the Fund's motion. The Single Commissioner issued an Order dated December 14, 2007, in which he ordered Delta Woodside to pay all benefits to the Claimant. "However," the Hearing Commissioner wrote, "if defendant Delta Woodside is unable to provide the above awarded benefits, defendant Uninsured Employers' Fund shall pay the Claim pursuant to this Order." At the time of this Order, the automatic stay issued by the Bankruptcy Court was still in effect.

9. A hearing was held before the Full Commission on April 29, 2008. The Full Commission affirmed the Order of the Single Commissioner on June 4, 2008. At the

¹ The Employer's filing of Chapter 11 appears to have precipitated the Claimant's filing of the 2007 Form 50, as the Claimant's attorney noted in bold type on her transmittal letter of July 19, 2007, that she "would appreciate it if [the Judicial Director] would set this matter for an emergency hearing because the defendants have filed for bankruptcy."

time of the Full Commission Order, the automatic stay issued by the Bankruptcy Court was still in effect.

10. The Circuit Court heard argument and on October 12, 2009, entered an order affirming the Commission's ruling. Like the previous Orders, this Order was issued during the pendency of the automatic stay.

11. As discussed above, the filing of the Amended Form 50 and the entry of each of the underlying Orders in this case was made while the automatic stay was in effect. Because these matters were taken outside the purview of the Bankruptcy Court and orders were entered contrary to federal law, such process and Orders are void ab initio.

11 U.S.C. § 362 provides:

(a) except as provided in subsection (b) of this section, a petition filed under section 310, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of –

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title

12. Pursuant to the South Carolina Supreme Court, unless relief from or modification of the stay has been granted by the Bankruptcy Court,

[t]he obtaining of a judgment after the filing of a petition will, in most circumstances, be stayed as a continuation of action stayed under paragraph § 362(a)(1). 2 Collier On Bankruptcy § 362.04 (15th ed. 1992). See also Bailey v. Campbell, 829 P.2d 667, 673 (Okla. 1991) (judicial proceedings undertaken in violation of an automatic stay are ineffective); Great Southwest Fire Ins. Co. v. Triple "I" Ins. Services, Inc., 151 Ariz. 283, 727 P.2d 336 (1986) (judgment entered in violation of the stay is void). The automatic stay imposed by section 362 deprived the trial judge in Reichlyn's action against COCC of subject matter jurisdiction to take any action inconsistent with the stay. See Chapliski v. Churchill Coal Corp., 349 Pa.Super. 285, 503 A.2d 1 (1985) (order entered after debtor files bankruptcy petition is a legal nullity even though based on pre-petition settlement); In re Carmer v. Grover, 7 B.R. 133 (Bankr.D.Colo. 1980) (automatic stay deprives court of jurisdiction to enter judgment in pre-petition

action). As such, the trial judge lacked subject matter jurisdiction to enter judgment against COCC.

Ex Parte Reichlyn, 310 S.C. 495, 499, 427 S.E. 2d 661, 663 - 64 (1993).

13. Pursuant to long-standing law, a judgment or order entered without jurisdiction is void ab initio. See Turner v. Malone, 24 S.C. 398 (1886); see also Webster v. Clanton, 259 S.C. 387, 391, 192 S.E.2d 214, 216 (1972) (explaining that an order issued without jurisdiction is void and a void order has no legal effect).

WHEREFORE, the Fund respectfully requests this Court to dismiss the claim for lack of subject matter jurisdiction and declare the underlying Orders void because they were entered by a Commission and a Circuit Court lacking subject matter jurisdiction.

August 19, 2010



Lisa C. Glover

Timothy B. Killen

100 Executive Center Drive, Suite 101

Columbia, South Carolina 29210

Ph.: 803-798-2722

Fax: 803-798-5290

Attorneys for the S.C.W.C.U.E.F.

Other Counsel of Record:

Kathryn Williams, Esquire

Kathryn Williams, P.A.

Post Office Box 10693

Greenville, South Carolina 29603



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 26, 2010

Kathryn Williams, Esquire
P.O. Box 10693
Greenville, SC 29603

Re: Ketron, William v. SC Uninsured (2)

Dear Ms. Williams:

The following Order has been endorsed on your Motion to Strike in the above entitled case on appeal.

"Granted.

s/ Jasper M. Cureton, A.J.

July 26, 2010 ."

Please be advised Appellant has ten (10) days from the date of this order to strike portions of the designation of matter to be included on the Record on Appeal.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/dw

cc: Lisa C. Glover, Esquire
Timothy Blair Killen, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUL 20 2010

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Circuit Court Case No. 2008-CP-23-5220

William G. Ketron, Jr., Employee, ... Respondent,

vs.

Delta Woodside Indus., Inc., Self-insured Employer
and S.C. Uninsured Employers' Fund of whom
S.C. Uninsured Employers' Fund is Appellant.

**RESPONDENT'S REPLY CONCERNING
THE MOTION TO STRIKE**

Kathryn Williams
Kathryn Williams, P.A.
619 North Main St.
P.O. Box 10693
Greenville, SC 29603
(864) 235-6254

Attorney for Respondent

Appellant's Return to the Motion to Strike bases its arguments primarily on Rule 12(f), SCRCF. However, Respondent Ketron, who filed the instant motion, does not base the Motion to Strike on Rule 12(f) SCRCF, as Rule 12(f), SCRCF has no application to the presentation of the Record on Appeal to the appellate courts. Respondent Ketron rather relies on Rule 209(b) and 210(c), SCACR. Those rules specifically state that the Record "shall not . . . include matter which was not presented to the lower court or tribunal." Rule 210(c), SCACR.

The "lower court or tribunal" in this case is the Hearing Commissioner of the Workers' Compensation Commission. Therefore, the only exhibits or records which can properly be included in the record on appeal are those records or exhibits which were presented to the Commissioner at the original hearing, unless other documents or exhibits were admitted by the Full Commission subsequent to a properly filed motion under S.C. Code Reg. 67-707 (2001).

Appellant did not submit the documents in question to the Hearing Commissioner. The issue of bankruptcy was not even mentioned by appellant's attorney before the Hearing Commissioner. Significantly, appellant did not appeal the bankruptcy issue to the Full Commission Panel. Appellant also did not make a motion before the Full Commission Panel to admit additional evidence into the record pursuant to rule 67-707 but simply attached the documents in question to their appellant's brief. A review of the Appellate Panel's Order does not reveal any indication that the Panel considered the bankruptcy issue before them or accepted appellant's bankruptcy-related documents into the record.

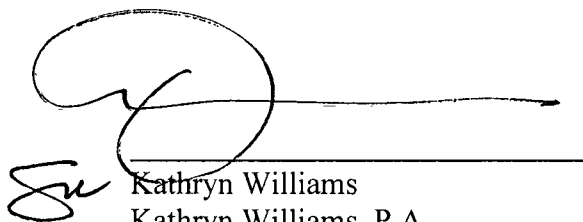
Furthermore, appellant did not appeal the bankruptcy issue to the circuit court and did not move the court to consider those documents as a part of their appeal but again simply attached the documents to their appeal brief. The circuit court judge specifically determined that the

information in question was not a part of the record and was not before him. Of note, appellant did not appeal to this Court challenging the circuit court's ruling that the bankruptcy documents were not a part of the record and that bankruptcy issue was not before him.

The General Assembly specifically created a procedure in the Workers' Compensation Act and the Administrative Procedures Act for the submission of documents into the record as evidence. Appellant failed to take advantage of that opportunity and should not be allowed to circumvent this system by unilaterally placing additional documents into the record by simply attaching those documents to their appellant's brief.

Pursuant to Rule 209(b) and 210(c), SCACR, respondent Ketron again prays for an Order striking portions of appellant UEF's Designation of Matter to Be Included in the Record on Appeal, specifically the attachments to UEF's brief to the circuit court referenced in designation #12 and all of designation #16.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Kathryn Williams', is written over a horizontal line. The signature is stylized with a large loop at the beginning.

Kathryn Williams
Kathryn Williams, P.A.
P.O. Box 10693
Greenville, S.C. 29603
(864) 235-6254
Attorney for Respondent

Dated 7/19/2010
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Circuit Court Case No. 2008-CP-23-5220

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SC Court of Appeals

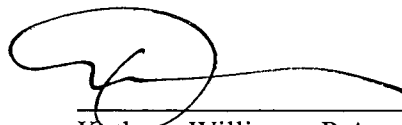
William G. Ketron, Jr., Employee, ... Respondent,

vs.

Delta Woodside Indus., Inc., Self-insured Employer
and S.C. Uninsured Employers' Fund of whom
S.C. Uninsured Employers' Fund is Appellant.

PROOF OF SERVICE

I certify that I have served the **RESPONDENT'S REPLY CONCERNING THE MOTION TO STRIKE** on Appellant by depositing a copy in the U.S. Mail, postage prepaid, on 7/15/10, addressed to their attorneys of record, Timothy B. Killen and Lisa C. Glover of S.C. Uninsured Employers' Fund, 100 Executive Center Dr., Suite 101, Santee Building, Columbia, SC 29210.



Kathryn Williams, P.A.
P.O. Box 10693
Greenville, S.C. 29603
(864) 235-6254
Attorney for Respondent

KATHRYN WILLIAMS, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 10693
GREENVILLE, SC 29603

KATHRYN WILLIAMS
DONALD E. KAMB, JR.
MELISSA S. MILLER
TOM J. ERVIN
OF COUNSEL

619 N. MAIN STREET
GREENVILLE, SC 29601
TELEPHONE (864) 235-6254
FAX (864) 233-6591

July 19, 2010

RECEIVED
JUL 20 2010
SC Court of Appeals

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: **William G. Ketron, Jr. v. Delta Woodside Indus., Inc., et al.**
WCC File Nos.: 0115236, 0115237
Circuit Court Case No.: 08-CP-23-5220

Dear Ms. Gee:

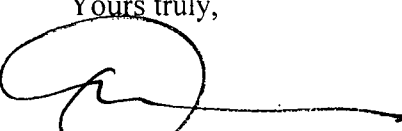
Enclosed herein please find the following items for filing in the above-referenced matter:

1. Respondent's Reply concerning the Motion to Strike (original and six copies);
2. Proof of Service by Mail.

By copy of this letter, I am also serving Appellants' attorney with a copy of the same.

Kindest regards,

Yours truly,


Kathryn Williams

KW:d
Enclosures

cc: Timothy B. Killen, Esq.
Lisa C. Glover, Esq.
S.C. Uninsured Employers' Fund
100 Executive Center Dr., Suite 101
Santee Building
Columbia, SC 29210

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JUL 13 2010

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Circuit Court Case No. 2008-CP-23-5220

William G. Ketron, Jr., Employee Respondent,

v.

Delta Woodside Industries, Inc., Self-insured
Employer and S.C. Workers' Compensation
Uninsured Employers Fund, ...Defendants,

Of whom S.C. Workers' Compensation
Uninsured Employers' Fund is Appellant.

APPELLANT'S RETURN TO RESPONDENT'S
MOTION TO STRIKE

Lisa C. Glover, Esquire
Timothy B. Killen, Esquire
100 Executive Center Drive, Suite 101
Columbia, South Carolina 29210
Ph.: 803-798-2722
Fax: 803-798-5290
Attorneys for the S.C.W.C.U.E.F.

Appellant opposes Respondent's Motion to Strike documents of the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court") from the Record on Appeal. Petitioner bases its opposition to the Motion on the grounds to follow.

STANDARD OF REVIEW

Courts should not grant a motion to strike merely because it is doubtful that plaintiff will prevail. McCormick v. England, 328 S.C. 627, 633, 494 S.E.2d 433, 434 (Ct. App. 1997). Whether matter is stricken pursuant to Rule 12(f) is within the discretion of the trial judge. Brown v. Coastal States Life Ins. Co., 264 S.C. 190, 194, 213 S.E.2d 726, 728 (1975).

ARGUMENT

I. Rule 12(f) mandates denial of Respondent's Motion to Strike.

Respondent requests that the court strike the Bankruptcy Court Notice¹, Amendment², and Order³ from the Record on Appeal. However, Respondent does not allege that the LAC Report is "redundant, immaterial, impertinent or scandalous," which is the requisite standard pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure. SCRPC 12(f). Petitioner concedes that the Bankruptcy Court documents were not included as exhibits in its Administrative Procedures Act submissions to South Carolina Worker's Compensation Commission, though the Chapter 11 bankruptcy filing

¹ Notice of Special Bar Date for Additional Workers' Compensation Claimants dated March 12, 2007 (a copy of which is made a part hereof and attached hereto as Exhibit A).

² Amendment to Debtor's Third Omnibus Objection (Substantive) to Certain Claims Pursuant to 11 U.S.C. §§ 502 and 546, Rule 3007 of the Federal Rules of Bankruptcy Procedure and Rule 3007-1 of the Local Rules of Bankruptcy Procedure with Respect to Certain Workers' Compensation Claims ("Amendment to Objection 1/13/09") (a copy of which is made a part hereof and attached hereto as Exhibit B).

³ Order the Honorable Christopher S. Sontchi, allowing payment to workers' compensation claimants of Six Hundred, Seventy-Three Thousand, Two Hundred and Seventy-Two Dollars (\$673,272.00) for future medical care and expenses, dated January 30, 2009 (a copy this Order is made a part hereof and attached hereto as Exhibit C).

Delta Woodside Industries, Inc. ("Employer" or "Self-Insurer") (which was filed years *after* the Commission had determined that the claims were compensable and that the Self-Insurer was responsible for the payment of benefits) was addressed below and is the central focus of the current litigation. Respondent has made no showing that the Bankruptcy Court Notice, Amendment, and Order meet the Rule 12(f) standard warranting the relief sought.

Furthermore, Appellant asserts that the Bankruptcy Court Notice, Amendment, and Order are pertinent and material to this case. The Claimant amended his Form 50 to add the Fund only after and only because the Employer filed for protection under Chapter 11 of the U.S. Bankruptcy Code.⁴ At the hearing before the single commissioner below on September 21, 2007, the Fund objected to jurisdiction and moved to be dismissed from the action, contending that it was not a proper party and that it had been substantially prejudiced because it was not a defendant in the earlier hearing (wherein compensability was established and the Self-Insurer was found liable). The Commissioner denied the Fund's motion and proceeded with the hearing, apparently buoyed by the belief that the Employer's petition in for protection under Chapter 11 meant that the Claimant was without any option to pursue his claim in the Bankruptcy Court: the Employer is "without coverage . . . they are here without coverage. They at one time were self insured" (Transcript of Hearing of September 21, 2007, page 4, lines 11 – 14).

A hearing was held before the Full Commission on April 29, 2008. At oral arguments, the Full Commission addressed, *inter alia*, the interaction of the Bankruptcy

⁴ The Employer's filing of Chapter 11, along with the Notice of the missed bar date, appears to have precipitated the Claimant's filing of the 2007 Form 50, as the Claimant's attorney noted in bold type on her transmittal letter of July 19, 2007, that she "**would appreciate it if [the Judicial Director] would set this matter for an emergency hearing because the defendants have filed for bankruptcy.**"

proceeding with the issues on appeal. Like the hearing before the Hearing Commissioner, the Panel apparently proceeded under the mistaken belief that the filing of Chapter 11 protection meant that there were no funds available for distribution to the Claimant or under the mistaken belief that the Fund (which would represent, at best, a meaningless and impotent post-petition liability in the Bankruptcy case) was better positioned than the Claimant's attorney to follow the claim through bankruptcy.⁵

The Bankruptcy Court Notice, Amendment, and Order clearly establishes that the Claimant, like all of the Employer's creditors, including other similarly situated workers' compensation Claimants, had options available to him that were overlooked below.

Furthermore, the Bankruptcy Court Notice, Amendment, and Order support one the Appellant's arguments, which is that a Chapter 11 bankruptcy filing does not, automatically, in and of itself, constitute a failure of a self-insured employer to have deposited adequate security to pay the workers' compensation claims pending against it.

II. Rules 209(b) and 210(c) of the SCACR supports inclusion of the Bankruptcy materials

In Respondent's motion, he indicates the motion is submitted per Rule 209(b) and 210(c). Rule 209(b) addresses, *inter alia*, relevancy and Rule 210(c) addresses content. Germaine hereto, Rule 210 (c) requires that the content to have been

⁵ Transcript of Full Commission Hearing, page 6 lines 15 – 17 (Commissioner Williams: "They then – they go into bankruptcy. There are no funds there to pay for it. Who pays it?"), page 7, lines 17 – 18 (Commissioner Huffstetler: " – a matter of fact they ran out of money."), page 7, line 25 – page 8, line 1 (Commissioner Roche: "It's not that there's no coverage; there's just no money."), page 21, lines 7 – 16 (Commissioner Huffstetler: "I'm just thinking through – the bankruptcy part of it is – I suppose if the Fund were required to pay, they could go with the other folks in a bankruptcy action trying to get any money that might be there . . . but if not, then, does your client have that same option . . . [?]"), page 22, lines 6 – 15 (Claimant's Counsel: "In bankruptcy court my client is not without rights. He does have a claim, but he is an unsecured, back of the line, far down the road creditor in the bankruptcy action. He gets paid last. Whereas, if the UEF pays, they have been accorded by this statute priority status as a creditor. They are accorded the same status as the – the only person they're behind is the IRS.").

presented to the lower court. In this case, the materials were included as exhibits to the Appellant's Circuit Court brief.

However, the Respondent's argument seems to rest in the fact that the documents were not included as part of the Appellant's APA Submissions before the Commission. It is the Appellant's position that the substance was addressed below and is the entire reason the Appellant is involved in this matter. Without the Chapter 11 bankruptcy proceeding, the Appellant would never have been made a party. Additionally, the Amendment and the Order did not exist prior to the hearing before the single commissioner. Accordingly, it would have been impossible to present the same to the single commissioner.

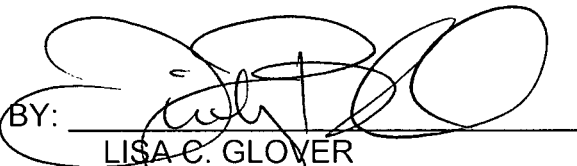
III. This Honorable Court may take judicial notice of the Legislative Audit Council's report pursuant to Rule 201 of the Rules of Evidence.

Though Appellant did not submit the Bankruptcy Court Notice, Amendment, and Order as exhibits before the single commissioner, Appellant asserts that this Court has the authority to take judicial notice of the Bankruptcy Court Notice, Amendment, and Order pursuant to the Rules of Evidence.

The Rules of Evidence allow court to take judicial notice of facts "not subject to reasonable dispute" either because they are "generally known within the territorial jurisdiction of the trial court" or they are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." S.C.R. Evid. 210(b). Here, the Bankruptcy Court Notice, Amendment, and Order present facts about the Self-Insured's bankruptcy proceeding and were prepared by a governmental body and a judge whose accuracy cannot reasonably be questioned. Further, judicial notice "may be taken at any stage of the proceeding." S.C. R. Evid. 201(f). Thus, Petitioner

requests that this Court take judicial notice of the Bankruptcy Court Notice, Amendment, and Order and deny Respondent's request to strike them from the record.

Respectfully Submitted,

BY: 

LISA C. GLOVER
TIMOTHY B. KILLEN
S.C. WORKERS' COMPENSATION
UNINSURED EMPLOYERS' FUND
100 Executive Center Drive, Suite 101
Columbia, South Carolina 29210
Telephone: 803-798-2722, ext. 124
Facsimile: 803-798-5290

ATTORNEYS FOR THE DEFENDANT/APPELLANT

July 12, 2010
Columbia, South Carolina

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
DELTA MILLS, INC., <u>et al.</u> ¹ ,	)	Case No. 06-11144 (CSS)
	)	
Debtors.	)	Jointly Administered
	)	
_____	)	Re: D.I. 239

**NOTICE OF SPECIAL BAR DATE FOR
ADDITIONAL WORKERS COMPENSATION CLAIMANTS**

PLEASE TAKE NOTICE THAT Delta Mills, Inc., Delta Woodside Industries, Inc. and Delta Mills Marketing, Inc. (collectively the "Debtors"), hereby advise the Court that pursuant to the Order: (I) Establishing (A) February 1, 2007 At 4:00 P.M. (ET) As The Bar Date For Filing Proofs Of Claim, And (II) Request For Administrative Expenses (D.I. 239) (the "Bar Date Order")² the Debtors have established **April 11, 2007 at 4:00 p.m. (ET)** (the "Special Bar Date") as the last date and time workers compensation claimants (the "Workers Compensation Claimants") may file proofs of claim against the Debtors.

PLEASE TAKE NOTICE THAT a list of the Workers Compensation Claimants is attached hereto as Exhibit "A."

PLEASE TAKE NOTICE THAT the notice which will be sent to the Workers Compensation Claimants pursuant to the Bar Date Order is attached hereto as Exhibit "B."

PLEASE TAKE FURTHER NOTICE THAT the Special Bar Date shall apply only to the Workers Compensation Claimants. However, as to any of the Workers

¹ These jointly administered cases are those of the following debtors: Delta Mills, Inc.; Delta Woodside Industries, Inc.; and Delta Mills Marketing, Inc.

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Bar Date Order.

Compensation Claimants who may be found to have received effective notice of the Bar Date, the Debtors do not waive their rights to assert that the Initial Bar Date, rather than the Special Bar Date, governs. Moreover, the Initial Bar Date will remain effective, and it is the Debtors' intention that it be fully enforceable both with respect to known parties who have received actual notice thereof pursuant to the Initial Bar Date Notice and with respect to unknown parties who are deemed to have received constructive notice thereof pursuant to the Publication Notice.

Dated: March 12, 2007
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Thomas F. Driscoll III

Robert J. Dehney (No. 3578)
Gregory T. Donilon (No. 4244)
Thomas F. Driscoll III (No. 4703)
1201 North Market Street
Post Office Box 1347
Wilmington, Delaware 19899-1347
Telephone: (302) 658-9200
Facsimile: (302) 658-3989

- and -

RAYBURN COOPER & DURHAM, P.A.
C. Richard Rayburn, Jr.
John R. Miller, Jr.
Shelley K. Abel
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202

*Counsel to Delta Mills, Inc., et al.,
Debtors and Debtors-in-Possession*

EXHIBIT A

ADDITIONAL WORKERS COMPENSATION CLAIMANTS

Larry Burgess
854 South Piedmont Hwy.
Piedmont, S.C. 29673

William Ketron
Salvation Army Mens Shelter
417 Rutherford Rd.
Greenville, S.C. 29609

Rhoda Wilson
1160 Gap Creek Rd.
Lyman, S.C. 29365

Floyd Aiken
124 Farmer Street
Anderson, S.C. 29624

Bobby Joe Roper
545 S. Old Piedmont Hwy. Lot #9
Greenville, S.C. 29611

Alan Herndon
300 Premier Drive
Piedmont, S.C. 29673

Kathy Spence
121 Capeview Lane
Anderson, S.C. 29626

Raymond Sosebee
106 Gridley St.
Greenville, S.C. 29609

CERTIFICATE OF SERVICE

I, Thomas F. Driscoll III, Esquire, certify that I am not less than 18 years of age, and that service of the foregoing **Notice Of Special Bar Date For Additional Workers Compensation Claimants**, was caused to be made on March 12, 2007, in the manner indicated upon the entities identified on the attached service list.

Date: March 12, 2007

/s/ Thomas F. Driscoll III
Thomas F. Driscoll III (No. 4703)

SERVICE LIST

VIA HAND DELIVERY

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Lockbox 35
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VIA FIRST CLASS MAIL

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Boston, MA 02110

EXHIBIT B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
DELTA MILLS, INC., <u>et al.</u> ,	)	Case No. 06-11144 (CSS)
<u>Debtors.</u>	)	Jointly Administered

**NOTICE OF SPECIAL BAR DATE OF APRIL 11, 2007 AT 4:00 P.M. (ET) TO FILE (I)
PROOFS OF CLAIM AND (II) REQUESTS FOR PAYMENT OF ADMINISTRATIVE
EXPENSES FOR ADDITIONAL WORKERS COMPENSATION CLAIMANTS**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On October 13, 2006, (the "Petition Date"), Delta Mills, Inc., Delta Woodside Industries, Inc., and Delta Mills Marketing, Inc. (the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Bankruptcy Court (as amended, the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court").

Under the Bankruptcy Code, the Debtors are granted certain protections against creditors. A creditor is anyone to whom the Debtors owe money or property. Creditors are prohibited from taking any actions to collect money or property from the Debtors. If unauthorized actions are taken by a creditor against any of the Debtors, the Court may penalize that creditor. A creditor who is considering taking action against any of the Debtors, or property of the Debtors, may wish to consult an attorney. The staff of the Clerk of the Court is not permitted to give legal advice.

Initial Bar Date

By Order of this Court entered on December 14, 2006 (the "Bar Date Order"), the last date and time for filing proofs of claim against the Debtors for any and all Prepetition Claims (as defined below) is February 1, 2007 at 4:00 p.m. (ET) (the "General Bar Date"), provided that the bar date applicable to governmental units (as defined in section 101(27) of the Bankruptcy Code) is April 11, 2007 at 4:00 p.m. (ET). The General Bar Date and the procedures set forth below for the filing of proofs of claim apply to all claims against the Debtors that arose on or before the Petition Date ("Prepetition Claims").

Special Bar Date

Any person holding a workers compensation claim or potential claim must file a proof of claim **so as to be received on or before April 11, 2007 at 4:00 p.m. (Eastern Time)** (the "Special Bar Date"), which is 30 days from the date of this notice. The Special Bar Date and the procedures set forth below are for filing of proofs of claims against the Debtors that arose on or before the Petition Date.

You **MUST** file a proof of claim if you have a claim that arose on or before the Petition Date, and it is not an Excluded Prepetition Claim (as defined below). Acts or omissions of the Debtors that arose on or before the Petition Date may give rise to claims against the Debtors notwithstanding that such claims may not have matured or become fixed or liquidated prior to such date. Under section 101(5) of the Bankruptcy Code as used herein, the word "claim" means (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, or (b) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured. All Entities asserting claims against more than one Debtor are required to file a separate proof of claim

with respect to each such Debtor.

The General Bar Date applies to all Prepetition Claims, except that the following entities do not need to file proofs of claim:

- (a) any entity that has already properly filed with the Claims Docketing Center (as defined below) a proof of claim against one or more of the Debtors;
- (b) any entity (i) whose Prepetition Claim is not listed as "disputed," "contingent," or "unliquidated" in the Debtors' schedules of assets and liabilities (the "Schedules") and (ii) that agrees with the nature, classification, and amount of such Prepetition Claim set forth in the Schedules;
- (c) any Entity whose Prepetition Claim has been allowed previously by, or paid pursuant to, an order of the Court;
- (d) any of the Debtors that hold Prepetition Claims against one or more of the other Debtors;
- (e) any stockholder that seeks to assert only stock ownership interests;¹ and
- (f) any entity whose claim is limited exclusively to the repayment of principal, interest and/or other applicable fees and charges (a "Debt Claim") on or under (i) any bond or note issued by a Debtor pursuant to an indenture, including the 9 5/8% Senior Notes due 2007 (the "Notes"); and (ii) any economic development bonds or industrial revenue bonds (collectively with the Notes, the "Debt Instruments"); provided, however, that (i) the foregoing exclusion in this subparagraph shall not apply to the indenture trustee or similar agent under the applicable Debt Instruments (the "Indenture Trustee"); (ii) the Indenture Trustee for a Debt Instrument is required to file a proof of claim, on or before the General Bar Date, with respect to all of the Debt Claims on or under such Debt Instrument; and (iii) any holder of a Debt Claim wishing to assert a claim, other than a Debt Claim, arising out of or relating to a Debt Instrument is required to file a proof of claim on or before the General Bar Date, unless another exception in this paragraph applies.

The foregoing claims are collectively referred to herein as the "Excluded Prepetition Claims."

YOU SHOULD NOT FILE A PROOF OF CLAIM IF YOU DO NOT HAVE A CLAIM AGAINST A DEBTOR. THE FACT THAT YOU HAVE RECEIVED THIS NOTICE DOES NOT MEAN THAT YOU HAVE A CLAIM OR THAT THE DEBTORS OR THE COURT BELIEVE THAT YOU HAVE A CLAIM.

If you wish to submit a rejection damages claim arising from the Debtors' rejection of an executory contract or unexpired lease during these chapter 11 cases, such proof of claim must be filed by the later of (a) the General Bar Date and (b) thirty (30) days after the effective date of rejection of such executory contract or unexpired lease as provided by an order of this Court or pursuant to a notice under procedures approved by this Court. Any other claims arising before the Petition Date with respect to any leases or contracts of the Debtors must be filed by the General Bar Date.

¹ Any stock holder claiming damages or asserting causes of action based upon or arising from stock ownership would be required to file a proof of claim by the General Bar Date.

THE INITIAL BAR DATE SHALL CONTINUE TO APPLY TO ALL OTHER PROOFS OF CLAIM AND REQUESTS FOR PAYMENT SUBJECT TO THE INITIAL BAR DATE ORDER. THE INITIAL BAR DATE ORDER SHALL REMAIN BINDING ON AND ENFORCEABLE AGAINST ALL CREDITORS, EQUITY INTEREST HOLDERS AND OTHER PARTIES IN INTEREST. EXCEPT WITH RESPECT TO EXCLUDED WORKERS COMPENSATION CLAIMANTS, ANY ENTITY WHO FAILS TO FILE A PROOF OF CLAIM ON OR BEFORE APRIL 112, 2007 AT 4:00 P.M. (ET), FOR ANY PREPETITION CLAIMS THAT SUCH ENTITY HOLDS OR WISHES TO ASSERT AGAINST A DEBTOR, WILL BE FOREVER BARRED, ESTOPPED AND ENJOINED FROM ASSERTING SUCH PREPETITION CLAIM (OR FILING A PROOF OF CLAIM WITH RESPECT TO SUCH PREPETITION CLAIM) AGAINST THE DEBTORS, AND THE DEBTORS AND THEIR PROPERTY WILL BE FOREVER DISCHARGED FROM ANY AND ALL INDEBTEDNESS OR LIABILITY WITH RESPECT TO SUCH PREPETITION CLAIM, AND SUCH ENTITY SHALL NOT BE PERMITTED TO VOTE ON ANY PLAN OF LIQUIDATION OR PARTICIPATE IN ANY DISTRIBUTION IN THESE CHAPTER 11 CASES ON ACCOUNT OF SUCH PREPETITION CLAIM, OR TO RECEIVE FURTHER NOTICES REGARDING SUCH PREPETITION CLAIM.

Administrative Claim Bar Date

Pursuant to the Bar Date Order, the last date and time for filing requests for payment of Administrative Expenses (as defined herein) that accrued prior to December 15, 2006, against the Debtors is February 1, 2007 at 4:00 p.m. (ET) (the "Administrative Bar Date" and, together with the General Bar Date, the Rejection Bar Date and the Amended Schedule Bar Date, the "Bar Dates"). You MUST file a request for payment by the Administrative Bar Date if you hold or assert an Administrative Expense that accrued prior to December 15, 2006, and that is not an Excluded Administrative Expense (as defined below).

For purposes of application of the Administrative Bar Date, an "Administrative Expense" includes: (a) any right to payment constituting a cost or expense of administration under sections 503(b) (including, but not limited to, claims for goods delivered to a Debtor within twenty (20) days of the Petition Date under 503(b)(9)) and 507(a)(1) of the Bankruptcy Code, including without limitation (i) any actual and necessary costs and expenses of preserving the Debtors' estates, (ii) any actual and necessary costs and expenses of operating the Debtors' businesses, (iii) any indebtedness or obligations incurred or assumed by the Debtors post-petition in the ordinary course of their businesses and (iv) any claim for compensation and reimbursement of expenses held or asserted by any person or professional not retained or employed by the Debtors or the official committee of unsecured creditors (the "Committee") pursuant to an Order of the Court; (b) any right to payment or performance arising from and after the order for relief in the Debtors' bankruptcy cases in respect of any unexpired lease of nonresidential real property pursuant to section 365(d)(3) of the Bankruptcy Code; and (c) any right to payment or performance first arising from or after 60 days after the order for relief in the Debtors' bankruptcy cases in respect of any unexpired lease of personal property pursuant to section 365(d)(5) of the Bankruptcy Code. All Entities asserting claims against more than one Debtor are required to file a separate request for payment of an Administrative Expense with respect to each such Debtor.

The Bar Date Order further provides that requests for payment of the following

Administrative Expenses are not required to be filed by the Administrative Bar Date:

- (a) any Administrative Expense in respect of which the claimant has already filed a formal request for payment with the Court;
- (b) any Administrative Expense of a person or professional retained or employed by the Debtors or the Committee pursuant to an Order of the Court for compensation and reimbursement of expenses pursuant to sections 327, 328, 330 or 331 of the Bankruptcy Code;
- (c) any Administrative Expense that has been fixed and allowed by Order of the Court; and
- (d) any Administrative Expense of the Office of the United States Trustee in respect of claims that arise in connection with fees due under 28 U.S.C. § 1930.

The foregoing Administrative Expenses are collectively referred to herein as the "Excluded Administrative Expenses."

EXCEPT WITH RESPECT TO EXCLUDED ADMINISTRATIVE EXPENSES, ANY ENTITY THAT FAILS TO FILE ON OR BEFORE APRIL 11, 2007 AT 4:00 P.M. (ET), A REQUEST FOR PAYMENT OF AN ADMINISTRATIVE EXPENSE ARISING PRIOR TO DECEMBER 15, 2006, WILL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH ADMINISTRATIVE EXPENSE (OR FILING A REQUEST FOR PAYMENT WITH RESPECT TO SUCH ADMINISTRATIVE EXPENSE) AGAINST THE DEBTORS, AND THE DEBTORS AND THEIR RESPECTIVE PROPERTY WILL BE FOREVER DISCHARGED FROM ANY AND ALL INDEBTEDNESS OR LIABILITY WITH RESPECT TO SUCH ADMINISTRATIVE EXPENSE, AND SUCH ENTITY SHALL NOT BE PERMITTED TO PARTICIPATE IN ANY DISTRIBUTION IN THESE CHAPTER 11 CASES ON ACCOUNT OF SUCH ADMINISTRATIVE EXPENSE.

**Procedures Generally Applicable to the Filing of
Proofs of Claim and Requests for Payment of Administrative Expenses**

Except as provided herein, proofs of claim and requests for payment of Administrative Expenses must be filed so as to be received on or before **April 11, 2007 at 4:00 p.m. (ET)**.

A proof of claim or a request for payment of an Administrative Expense will be deemed timely filed only if the original proof of claim or request for payment of an Administrative Expense, as appropriate, is mailed or delivered by hand, courier or overnight service so as to be actually received by Bankruptcy Services, LLC ("BSI"), at the following addresses (the "Claims Docketing Center") on or before the General Bar Date or Administrative Bar Date, as applicable:

If via U.S. mail:

Delta Mills, Inc. – Claims Processing Center
P.O. Box 5082
FDR Station
New York, NY 10150-5082

**If via delivery by hand, courier, or
overnight service:**

Delta Mills, Inc. – Claims Processing
Center
757 Third Avenue
3rd Floor
New York, NY 10017

Proofs of claim and requests for payment of Administrative Expenses may not be sent by facsimile, telecopy or other electronic means.

If you file a proof of claim or request for payment of an Administrative Expense, your filed proof of claim or request for payment must (a) be written in the English language, (b) be denominated in lawful currency of the United States, (c) if (i) a proof of claim, conform substantially with the enclosed proof of claim form or to Official Form No. 10 and, (ii) a request for payment of an Administrative Expense, conform substantially with the enclosed request for payment form, and (d) attach copies of any writings upon which your asserted Prepetition Claim or Administrative Expense is based. If a proof of claim form or request for payment form is not enclosed herewith, you may obtain a proof of claim form or request for payment form by written request to BSI sent to the appropriate address set forth above, faxed to (646) 282-2501, or at the website maintained for these cases by BSI at the address www.bsillc.com under "Online Case Information." Additionally, you may obtain a proof of claim form from any bankruptcy court clerk's office, from your lawyer or from certain business supply stores.

You may be listed as the holder of a claim against the Debtors in the Debtors' respective Schedules. To determine if and how you are listed on the , if a proof of claim form is enclosed herewith, please refer to the proof of claim form, near the top of the right hand side of the first page, for the scheduled claim information.

Copies of the Schedules and the Bar Date Order are available and may be examined by interested parties (i) at the website maintained for these cases by BSI at the address www.bsillc.com under "Online Case Information," (ii) at the office of the Clerk of the Court, 824 Market Street, Wilmington, Delaware 19801 between the hours of 8:00 a.m. and 3:00 p.m. (ET), or (iii) on the Court's electronic docket of these cases at the address www.deb.uscourts.gov.

If you have any questions regarding the filing, amount, nature or processing of a proof of claim or request for payment of an Administrative Expense, please call BSI at (646) 282-2500. **YOU SHOULD CONSULT YOUR ATTORNEY REGARDING ANY OTHER INQUIRIES, SUCH AS WHETHER YOU SHOULD FILE A PROOF OF CLAIM OR REQUEST FOR PAYMENT OF AN ADMINISTRATIVE EXPENSE. DO NOT ATTEMPT TO CONTACT THE COURT FOR ADVICE.**

Dated: March 12, 2007
Wilmington, Delaware

**BY ORDER OF THE UNITED STATES
BANKRUPTCY COURT**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
DELTA MILLS, INC., <u>et al.</u> , ¹	)	Case No. 06-11144 (CSS)
	)	
Debtors.	)	Jointly Administered
	)	

Hearing Date: February 3, 2009 at 11:30 a.m.
Objection Deadline: January 27, 2009 at 4:00 p.m.

**AMENDMENT TO DEBTORS' THIRD OMNIBUS OBJECTION (SUBSTANTIVE) TO
CERTAIN CLAIMS PURSUANT TO 11 U.S.C. §§ 502 AND 546,
RULE 3007 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE
AND RULE 3007-1 OF THE LOCAL RULES OF BANKRUPTCY PROCEDURE
WITH RESPECT TO CERTAIN WORKERS' COMPENSATION CLAIMS**

Delta Mills, Inc. ("Delta Mills" or the "Merged Debtor"), successor by merger to Delta Woodside Industries, Inc. and Delta Mills Marketing, Inc., pursuant to section 502 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), hereby files this amended objection (the "Amended Objection"), seeking entry of an order allowing certain workers' compensation claims in the amounts set forth herein. In support of the Amended Objection, the Merged Debtor respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of the Merged Debtor's chapter 11 cases and this Motion in this district are proper pursuant to 28 U.S.C. §§

¹ These jointly administered cases are those of the following debtors: Delta Mills, Inc.; Delta Woodside Industries, Inc.; and Delta Mills Marketing, Inc.

1408 and 1409. The statutory bases for the relief sought herein are section 502 of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1.

BACKGROUND

2. On October 13, 2006 (the "Petition Date"), the Debtors commenced their respective bankruptcy cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

3. On the Petition Date, the Bankruptcy Court entered the Order Appointing Bankruptcy Services, LLC as Claims, Noticing and Balloting Agent of the Bankruptcy Court Pursuant to 28 U.S.C. § 156(c) (D.I. 19).

4. On December 14, 2006, the Bankruptcy Court entered the Order (i) Establishing Bar Dates for Filing Proofs of Claim and Requests for Payment of Administrative Expenses, (ii) Approving Proof of Claim and Administrative Expense Payment Request Forms, Bar Date Notices and Mailing and Publication Procedures and (iii) Providing Certain Supplemental Relief (D.I. 223) (the "Bar Date Order"). Pursuant to the procedures set forth in the Bar Date Order, all creditors who hold and assert against the Debtors a prepetition claim, or a claim for administrative expenses under section 503 of the Bankruptcy Code arising on or before December 15, 2006, were required to file a proof of claim so that it was received on or before February 1, 2007, at 4:00 p.m. (ET). The bar date for governmental units, as set forth in section 101(27) of the Bankruptcy Code, was April 11, 2007, at 4:00 p.m. (ET). In addition, the Bar Date Order allows for the fixing of a special bar date for certain creditors in the event such creditors are given notice of the bar date at a later date. On March 9, 2007, the Debtors filed their first Notice of Special Bar Date for Workers' Compensation Claimants, establishing April 9, 2007, as the last date and time by which certain workers' compensation claimants set forth therein may file proofs of claim (D.I. 362). Further, on March 11, 2007, the Debtors filed their

second Notice of Special Bar Date for Workers' Compensation Claimants, establishing April 11, 2007, as the last date and time by which certain workers' compensation claimants set forth therein may file proofs of claim (D.I. 365 (together with D.I. 362, the "Special Bar Date Notices")). Pursuant to the Special Bar Date Notices, special bar dates of April 9, 2007, and April 11, 2007, were established for certain workers' compensation claimants listed therein.

5. Prior to and for a brief period following the Petition Date, Delta Mills was self-insured pursuant to South Carolina law. On or about January 1, 2007, the Debtors became insured under a workers' compensation insurance policy issued by a third-party insurer. Prior to the Petition Date and in accordance with South Carolina law, Delta Mills posted a letter of credit in the amount of \$750,000.00 (the "L/C") in favor of the South Carolina Workers' Compensation Commission (the "Commission") as security for its workers compensation obligations as a self-insured employer.

6. Shortly after the Petition Date, on or about October 19, 2006, the Court entered the Amended Order Under 11 U.S.C. §§ 105(a), 363(b), 507(a)(4) and 507(a)(5) (I) Authorizing the Debtors to Continue Payroll and Payroll Related Practices Including Payment of Certain Pre-Petition (A) Wages, Salaries, Vacation Pay and Other Compensation and Amounts Withheld from Such Compensation; (B) Employee Medical Claims, Health Benefits, Retirement Plan Benefits and Similar Benefits; (C) Employee Severance Pay; (D) Reimbursement of Employee Expenses and (E) Payment of All Costs Incident Thereto and (II) Authorizing and Directing Applicable Banks and Other Financial Institutions to Receive, Process, Honor and Pay Certain Checks and Transfers (D.I. 46) (the "Payroll Order"), which, *inter alia*, authorized the Debtors to pay, up to an aggregate cap of \$900,000.00, pre- and post-petition workers' compensation claimants in the ordinary course of the Debtors' business pursuant to the Debtors' self-insured plan.

7. In accordance with the Payroll Order, the Debtors continued to pay pre-petition workers' compensation claims as they came due until mid-February 2007. As of mid-February 2007, the Debtors had paid out approximately \$150,000.00 in workers' compensation payments since the Petition Date. Therefore, the Debtors believed that, when combined with the \$750,000.00 L/C, the Debtors had no further authority to pay workers' compensation claims pursuant to the Payroll Order.

8. On or about February 27, 2007, the Debtors notified the Commission that the Debtors would no longer be paying workers' compensation claims as they came due and consented to the Commission's draw-down of the L/C. The Debtors have paid no workers' compensation claims directly since February 27, 2007.

9. Upon information and belief, and according to information provided by the Commission, upon notification that a self-insured employer will no longer pay workers' compensation claims as they come due, the Commission takes possession of any security posted by the employer and transfers those funds to a special account to be administered by the Commission or the South Carolina Second Injury Fund (the "SIF"). The Commission or SIF then oversees the administration of each workers' compensation case, seeks to settle such cases, and pays any liquidated amounts to claimants on a first-come, first-served basis in an effort to pay as many claims as much of their valid amount as possible.

10. On May 8, 2007, the Debtors filed the Third Omnibus Objection to Claims [D.I. 464] (the "Third Objection"), objecting to, among others, certain workers' compensation claims, including all four claims that are the subject of this Motion. By subsequent orders, this Court has disallowed or otherwise resolved each claim addressed in the Third Objection except the following claims: Claim No. 372 (Rhoda Wilson); Claim No. 375 (Larry Burgess); Claim No. 382 (Raymond Sosebee); and Claim No. 367 (Dorothy McKeever) (collectively, the

"Workers' Compensation Claims"). The hearing to consider the Third Objection with respect to the Workers' Compensation Claims has been adjourned numerous times.

11. On July 17, 2007, the Merged Debtors filed their First Amended Joint Plan of Liquidation [D.I. 626] (the "Plan").

12. On October 10, 2007, the Court entered its Findings of Fact, Conclusions of Law and Order Under 11 U.S.C. §§ 1129(a) and 1129 (b) and Fed. R. Bankr. P. 3020 Confirming First Amended Joint Plan of Liquidation Proposed By Delta Mills, Inc., Delta Woodside Industries, Inc., and Delta Mills Marketing, Inc. [D.I. 800] (the "Confirmation Order").

13. The Confirmation Order and Plan appoint Leon Szlezinger as the Chief Designated Officer of the Merged Debtor, and Mr. Szlezinger continues to act in such capacity.

14. Compliance with Local Rule 3007-1. The Debtors have reviewed Local Rule 3007-1 and hereby state that, to the best of their knowledge and belief, this Motion is in compliance therewith.

RELIEF REQUESTED

15. For the reasons set forth below, the Merged Debtor seeks allowance of each of the Workers' Compensation Claims as a Class 6 Claim in the amounts set forth in Paragraph 21, below. By this Amended Objection, the Merged Debtor respectfully requests that the Court enter an order pursuant to section 502(b) of the Bankruptcy Code, Bankruptcy Rule 3007 and Local Rule 3007-1 modifying, for the reasons more fully set forth below, each of the Workers' Compensation Claims.

BASIS FOR THE RELIEF REQUESTED

16. Each of the following claimants (the "Workers' Compensation Claimants") has filed one or more proofs of claim against the Merged Debtor's estate in the following amounts:

- a. Rhoda Wilson (Claim No. 372): \$ 84,623.44
- b. Larry Burgess (Claim No. 375): \$254,592.00
- c. Raymond Sosebee (Claim No. 382): Unliquidated
- d. Dorothy McKeever (Claim No. 367): \$180,000.00

Counsel to Ms. Wilson, Mr. Burgess and Ms. McKeever have also asserted damages in an unliquidated amount in addition to the liquidated amounts set forth above.

17. Each of the Workers' Compensation Claimants asserts that he or she is entitled to a claim against the Merged Debtor for lifetime medical expenses, and each such claimant has obtained an order from the South Carolina Workers' Compensation Commission (the "Commission") finding that Delta Mills is liable to each Workers' Compensation Claimant for the cost of lifetime medical expenses.

18. Upon information and belief, each Workers' Compensation Claimant has been paid all amounts to which he or she is entitled, other than lifetime medical expenses, from the proceeds of a L/C posted prior to the Petition Date by Delta Mills in favor of the Commission.

19. After the Debtors filed the Third Objection, because of the complexity of estimating future lifetime medical expenses, the Merged Debtor determined that it was appropriate to use a consistent approach for all Workers' Compensation Claims, and the Merged Debtor therefore engaged CorVel Corporation ("CorVel"), a company with expertise in estimating lifetime medical expenses for workers' compensation claimants, to evaluate each

Workers' Compensation Claimant's claims and estimate each such claimant's lifetime medical expenses.

20. At the Merged Debtor's request and expense, CorVel prepared "Medicare Set-Aside Arrangement Reports" (each an "MSA Report") that estimate each claimant's lifetime medical expenses related to the injury sustained by each employee while employed by Delta Mills.

21. In summary, CorVel estimated, via its MSA Reports, that each of the Workers' Compensation Claimants' lifetime medical expenses for Delta Mills work-related injuries would be as follows:

- a. Rhoda Wilson (Claim No. 372): \$237,496.00
- b. Larry Burgess (Claim No. 375): \$222,816.00
- c. Raymond Sosebee (Claim No. 382): \$ 11,552.00
- d. Dorothy McKever (Claim No. 367): \$201,408.00

22. The Merged Debtor has determined, based upon its review of the Workers' Compensation Claims and the MSA Reports, that CorVel's estimate of each Workers' Compensation Claimant's lifetime medical expenses set forth in Paragraph 21, above, is reasonable and represents a fair estimation of such claimant's remaining claims against the Merged Debtor's estate.

23. Upon information and belief, Medicare and the Medicare-related agency known as the Centers for Medicare and Medicaid Services ("CMS") require, under the Medicare Secondary Payer statute, 42 U.S.C. §1395y (b), protection of Medicare's interests with respect to any settlement of a workers' compensation claim paid by an employer with primary payment responsibility. Under the Medicare Secondary Payer statute, Medicare is not required to pay for any services for which payment has been or can reasonably be expected to be made under applicable workers' compensation laws or insurance. 42 U.S.C. § 1395y (b)(2)(B)(i)(ii).

Therefore, under the Medicare Secondary Payer statute, Medicare may seek reimbursement of medical expenses paid by Medicare which should have been paid by a workers' compensation provider, including a self-insured entity. 42 U.S.C. § 1395y (b)(2)(B)(i)(ii).

24. Medicare has indicated, in its Memorandum concerning the "Commutation of Future Benefits in Workers' Compensation Cases" that workers' compensation claimants, employers and insurance providers can avoid liability with respect to settlements of workers' compensation claims under the Medicare Secondary Payer statute by obtaining Medicare's approval of either (1) a Medicare Set-Aside Custodial Arrangement, whereby a portion of the settlement proceeds are placed into a trust fund and used to pay the claimant's future medical expenses or (2) a Medicare Set-Aside Arrangement, whereby a portion of the settlement funds are used to purchase an annuity or structured settlement that pays the claimant monthly for anticipated future medical expenses. Once the funds available under the settlement are exhausted, Medicare would then become the primary payer.

25. Beginning in June 2008, the Merged Debtor has attempted to contact Medicare and CMS regarding any claim allowance in these cases, however to date the Merged Debtor has received no response from Medicare or CMS.

26. Because the Merged Debtor simply proposes to allow each of the Workers' Compensation Claims in the amount set forth in Paragraph 21, above, the Merged Debtor asserts that any distributions to the Workers' Compensation Claimants on account of their Allowed Class 6 Claims (should this Amended Objection be sustained) would not qualify as a settlement under the Medicare Secondary Payer statute or related laws or regulations, and therefore no settlement approval by Medicare or CMS would be required. Further, neither the Merged Debtor nor the Workers' Compensation Claimants, by virtue of any distributions on

Allowed Workers' Compensation Claims, should have any reporting requirements or liability to Medicare or CMS.

27. Therefore, the Merged Debtor requests that the Court enter an order allowing the Workers' Compensation Claims as Class 6 Claims in the amounts set forth in Paragraph 21, above, and further finding that neither the allowance of the Workers' Compensation Claims nor any distributions on the Workers' Compensation Claims qualifies as a "settlement" under the Medicare Secondary Payer statute, and that neither the Merged Debtor nor any of the Workers' Compensation Claimants has any reporting or other duty to Medicare or CMS by virtue of the allowance of or distribution on the Workers' Compensation Claims.

SEPARATE AND CONTESTED MATTERS

28. Each of the Workers' Compensation Claims and the Amended Objection with respect thereto constitutes a separate contested matter as contemplated by Bankruptcy Rule 9014. The Merged Debtor requests that any order entered by this Court with respect to a request for disallowance, reclassification and/or estimation for voting and distribution purposes herein shall be deemed a separate order with respect to each Workers' Compensation Claim.

ADJOURNMENT OF HEARING

29. The Merged Debtor reserves the right to seek an adjournment of the Hearing on any Responses to the Amended Objection. In the event that the Merged Debtor seeks such an adjournment, it will be noted on the notice of agenda for the Hearing, and such agenda will be served on the affected Claimant by serving the person designated in the Response.

RESERVATION OF RIGHTS

30. Should one or more of the grounds for the relief requested in this Amended Objection be dismissed or overruled, the Merged Debtor reserves the right to object to each of the Workers' Compensation Claims on any other grounds that the Debtors discover or elect to pursue.

NOTICE

31. Notice of this Amended Objection has been given to (a) the Office of the United States Trustee, (b) each of the Workers' Compensation Claimants and their counsel; (c) Medicare; (d) Centers for Medicare and Medicaid Services and (e) all other parties that have requested notice as of the date of this Objection pursuant to Rule 2002 of the Bankruptcy Rules. In light of the nature of the relief requested, the Merged Debtor submits that no further notice need be given.

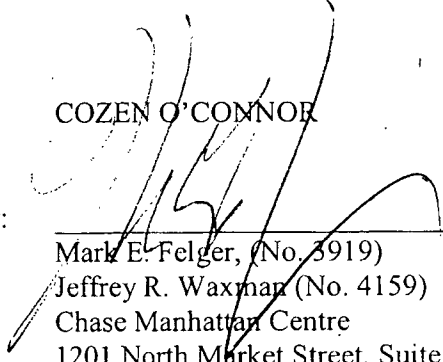
WHEREFORE, the Merged Debtor respectfully requests that the Court enter an Order, substantially in the form attached hereto as Exhibit A:

- (a) Allowing each of the Workers' Compensation Claims as Class 6 Claims in the amount set forth in Paragraph 21, above;
- (b) Finding that neither the allowance of the Workers' Compensation Claims nor any distributions by the Merged Debtor on the Workers' Compensation Claims qualifies as a "settlement" under the Medicare Secondary Payer statute, and that neither the Merged Debtor nor any of the Workers' Compensation Claimants has any reporting or other duty or liability to Medicare or CMS by virtue of the allowance of or distribution by the Merged Debtor on the Workers' Compensation Claims; and

(c) Granting such other and further relief as the Court deems just and proper.

Dated: January 13, 2009
Wilmington, Delaware

COZEN O'CONNOR

By: 

Mark E. Felger, (No. 3919)
Jeffrey R. Waxman (No. 4159)
Chase Manhattan Centre
1201 North Market Street, Suite 1400
Wilmington, DE 19801
(302) 295-2028 Phone
(302) 295-2013 Fax

Counsel for the Merged Debtor

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
DELTA MILLS, INC., ¹	:	Case No. 06-11144 (CSS)
	:	
	:	(Jointly Administered)
Debtors.	:	RE: D.I. _____

**ORDER GRANTING AMENDMENT TO DEBTORS' THIRD OMNIBUS
OBJECTION (SUBSTANTIVE) TO CERTAIN CLAIMS PURSUANT TO
11 U.S.C. §§ 502 AND 546, RULE 3007 OF THE FEDERAL RULES
OF BANKRUPTCY PROCEDURE AND RULE 3007-1 OF THE
LOCAL RULES OF BANKRUPTCY PROCEDURE WITH RESPECT
TO CERTAIN WORKERS' COMPENSATION CLAIMS.**

This cause came before the Court on the *Amendment to Debtors' Third Omnibus Objection (Substantive) to Certain Claims Pursuant to 11 U.S.C. §§ 502 and 546, Rule 3007 of the Federal Rules of Bankruptcy Procedure and Rule 3007-1 of the Local Rules of Bankruptcy Procedure With Respect to Certain Workers' Compensation Claims* filed by the Merged Debtor² on January 13, 2009. Upon due deliberation and for good cause shown, and finding that neither the allowance of the Workers' Compensation Claims nor any distributions by the Merged Debtor on the Workers' Compensation Claims qualifies as a "settlement" under the Medicare Secondary Payer statute, and that neither the Merged Debtor nor any of the Workers' Compensation Claimants has any reporting or other duty or liability to Medicare or CMS by virtue of the

¹ These jointly administered cases are those of the following debtors; Delta Mills, Inc., DeltaWoodside Industries, Inc., and Delta Mills Marketing, Inc. (collectively, the "Merged Debtors"). The Merged Debtors were merged pursuant to the terms of the Debtors' liquidating plan of reorganization that was confirmed by the Court on October 10, 2007.

² Capitalized terms herein shall have the meanings ascribed to such terms in the Amended Objection.

allowance of or distribution by the Merged Debtor on the Workers' Compensation Claims ,it is hereby ORDERED, ADJUDGED AND DECREED:

1. The Objection is SUSTAINED;
2. The claim filed by Rhoda Wilson, docketed as claim number 372, is hereby allowed as a Class 6 Claim under the Plan in the amount of \$237,496.00;
3. The claim filed by Larry Burgess, docketed as claim number 375, is hereby allowed as a Class 6 Claim under the Plan in the amount of \$222,816.00;
4. The claim filed by Raymond Sosebee, docketed as claim number 382, is hereby allowed as a Class 6 Claim under the Plan in the amount of \$11,552.00; and
5. The claim filed by Dorothy McKeever, docketed as claim number 367, is hereby allowed as a Class 6 Claim under the Plan in the amount of \$201,408.00.

Dated: _____, 2009

The Honorable Christopher S. Sontchi
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
DELTA MILLS, INC., <u>et al.</u> ,	)	Case No. 06-11144 (CSS)
	)	
Debtors.	)	(Jointly Administered)

CERTIFICATE OF SERVICE

I, Mark E. Felger, hereby certify that on the 13th day of January, 2009, I caused copies of the foregoing *Amendment to Debtors' Third Omnibus Objection (Substantive) to Certain Claims Pursuant to 11 U.S.C. §§ 502 and 546, Rule 3007 of the Federal Rules of Bankruptcy Procedure and Rule 3007-1 of the Local Rules of Bankruptcy Procedure With Respect to Certain Workers' Compensation Claims* to be served upon the Notice Parties in the manner indicated:

Hand Delivery

Mark S. Kenney, Esq.
Office of the U.S. Trustee
844 King Street, Suite 2207
Lockbox 35
Wilmington, DE 19801

First Class Mail

Eric B. Amstutz, Esquire
Wyche, Burgess, Freeman & Parham, P.A.
44 East Comperdown Way
Greenville, SC 29601

First Class Mail

Daniel F. Fiorillo, Esq.
Otterbourg, Steindler, Houston & Rosen, PC
230 Park Avenue
New York, NY 10169-0075

First Class Mail

Raymond Soesbee
106 Gridley Street
Greenville, SC 29609

First Class Mail

Dana C. Mitchell, III, Esq.
Mitchell Law Firm, LLC
7 Mills Avenue
P.O. Box 10285
Greenville, SC 29603

First Class Mail

Johnnie Fulton, Esq.
Fulton & Barr, P.A.
1001 East Washington Street
Greenville, SC 29601

First Class Mail

Calvin A. Rouse, Esq.
P.O. Box 3945
Augusta, GA 30914

First Class Mail

Jack Miller, Esq.
Rayburn, Cooper & Durham, P.C.
227 West Trade St., Suite 1200
Charlotte, NC 28202

First Class Mail

Rebecca Halberg, Esq.
Collins & Lacy
P.O. Box 12487
Columbia, SC 29211

First Class Mail

MSPRC
P.O. Box 33838
Detroit, MI 48232-5828

First Class Mail

Department of Health and Human Services
The U.S. Department of Health and Human
Services
200 Independence Avenue, S.W.
Washington, DC 20201

First Class Mail

South Carolina Claims, CMS
The Atlanta Federal Center
61 Forsyth Street, Suite 4T20
Atlanta, GA 30303-8909
Attn: Larry Jones

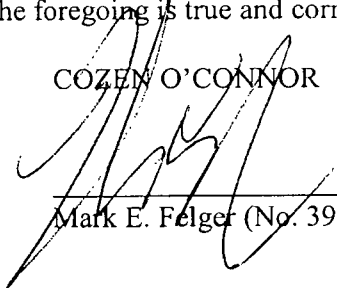
First Class Mail

Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Under penalty of perjury, I declare that the foregoing is true and correct.

Dated: January 13, 2008

COZEN O'CONNOR



Mark E. Felger (No. 3919)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
DELTA MILLS, INC., <u>et al.</u> , ¹	)	Case No. 06-11144 (CSS)
	)	
	)	(Jointly Administered)
Debtors.	)	RE: D.I. 994

**ORDER GRANTING AMENDMENT TO DEBTORS' THIRD OMNIBUS
OBJECTION (SUBSTANTIVE) TO CERTAIN CLAIMS PURSUANT TO
11 U.S.C. §§ 502 AND 546, RULE 3007 OF THE FEDERAL RULES
OF BANKRUPTCY PROCEDURE AND RULE 3007-1 OF THE
LOCAL RULES OF BANKRUPTCY PROCEDURE WITH RESPECT
TO CERTAIN WORKERS' COMPENSATION CLAIMS.**

This cause came before the Court on the *Amendment to Debtors' Third Omnibus Objection (Substantive) to Certain Claims Pursuant to 11 U.S.C. §§ 502 and 546, Rule 3007 of the Federal Rules of Bankruptcy Procedure and Rule 3007-1 of the Local Rules of Bankruptcy Procedure With Respect to Certain Workers' Compensation Claims* filed by the Merged Debtor² on January 13, 2009. Upon due deliberation and for good cause shown, and finding that neither the allowance of the Workers' Compensation Claims nor any distributions by the Merged Debtor on the Workers' Compensation Claims qualifies as a "settlement" under the Medicare Secondary Payer statute, and that neither the Merged Debtor nor any of the Workers' Compensation Claimants has any reporting or other duty or liability to Medicare or CMS by virtue of the allowance of or distribution by the Merged Debtor on the Workers' Compensation Claims, it is hereby ORDERED, ADJUDGED AND DECREED:

1. The Objection is SUSTAINED;

¹ These jointly administered cases are those of the following debtors: Delta Mills, Inc.; Delta Woodside Industries, Inc.; and Delta Mills Marketing, Inc. (collectively, the "Merged Debtors"). The Merged Debtors were merged pursuant to the terms of the Debtors' liquidating plan of reorganization that was confirmed by the Court on October 10, 2007.

² Capitalized terms herein shall have the meanings ascribed to such terms in the Amended Objection.

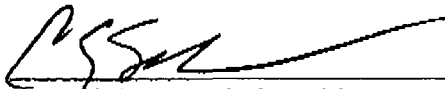
2. The claim filed by Rhoda Wilson, docketed as claim number 372, is hereby allowed as a Class 6 Claim under the Plan in the amount of \$237,496.00;

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4. The claim filed by Raymond Sosebee, docketed as claim number 382, is hereby allowed as a Class 6 Claim under the Plan in the amount of \$11,552.00; and

5. The claim filed by Dorothy McKeever, docketed as claim number 367, is hereby allowed as a Class 6 Claim under the Plan in the amount of \$201,408.00.

Dated: 1/30, 2009


Hon. Christopher S. Sontchi
United States Bankruptcy Judge

The South Carolina Second Injury Fund



WILLIAM E. GUNN
INTERIM DIRECTOR

100 EXECUTIVE CENTER DRIVE, SUITE 101
SANTEE BUILDING
COLUMBIA, S.C. 29210
www.scsif.sc.gov

(803) 798-2722
FAX: (803) 798-5290

July 12, 2010
VIA U.S. MAIL

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JUL 13 2010

SC Court of Appeals

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

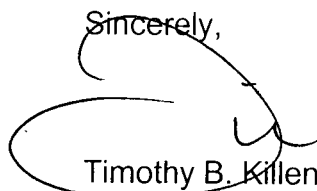
**RE: William G. Ketron, Employee v. Delta Woodside Industries, Inc.,
Employer, and S.C. Workers' Compensation Uninsured Employers'
Fund, Case No. 2008-CP-23-5220**

Dear Ms. Gee:

Enclosed please find the original and seven (7) copies of the Appellant's Return to Respondent's Motion to Strike and Proof of Service upon opposing counsel. If you will, please return one filed copy to me in the enclosed self-addressed stamped envelope.

By copy I am serving the Fund's Motion on Kathryn Williams, Esquire and on Delta Woodside Industries, Inc.

Sincerely,



Timothy B. Killen

Enclosure

cc: Kathryn Williams, Esq.
Delta Woodside Industries, Inc.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JUL 13 2010

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

Edward W. Miller, Circuit Court Judge

Circuit Case No. 2008-CP-23-5220

William G. Ketron, Jr., Employee Respondent,

v.

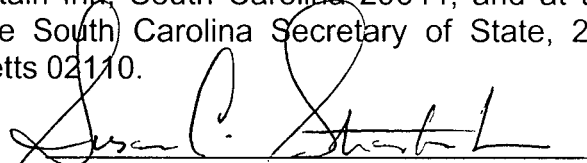
Delta Woodside Industries, Inc., Self-insured
Employer and S.C. Workers' Compensation
Uninsured Employers Fund, ...Defendants,

Of whom S.C. Workers' Compensation
Uninsured Employers' Fund is Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Return to Respondent's Motion to Strike on William G. Ketron, Jr., Employee/Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on May 14, 2010, addressed to his attorney of record, Kathryn Williams, Kathryn Williams, P.A., Post Office Box 10693, Greenville, South Carolina 29603, and on Delta Woodside Industries, Inc., by depositing a copy of it in the United States Mail, postage prepaid, on May 14, 2010, addressed to its last known address of 710 Woods Drive, Fountain Inn, South Carolina 29644, and at the address for service as it appears with the South Carolina Secretary of State, 265 Franklin St., 16th Floor, Boston, Massachusetts 02110.

July 12, 2010



Susan C. Strausbaugh
S.C.W.C.U.E.F.
100 Executive Center Drive, Suite 101
Columbia, South Carolina 29210
Ph.: 803-798-2722
Fax: 803-798-5290

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Granted.

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Circuit Court Case No. 2008-CP-23-5220

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JUL 06 2010

SC Court of Appeals

Joseph D. Smith
July —, 2010

FILED

7/6/10

William G. Ketron, Jr., Employee, ... Respondent,

vs.

Delta Woodside Indus., Inc., Self-insured Employer
and S.C. Uninsured Employers' Fund of whom
S.C. Uninsured Employers' Fund is Appellant.

MOTION TO STRIKE

Kathryn Williams
Kathryn Williams, P.A.
619 North Main St.
P.O. Box 10693
Greenville, SC 29603
(864) 235-6254

Attorney for Respondent

Appellant UEF filed its Designation of Matter to Be Included in the Record on Appeal on May 6, 2010. Therein, UEF improperly included matters which were not presented to the lower court, which in this case is the Workers' Compensation Commission. Pursuant to Rule 209 (b) and 210 (c), SCACR, this motion to strike those portions of the designation is made on the following grounds:

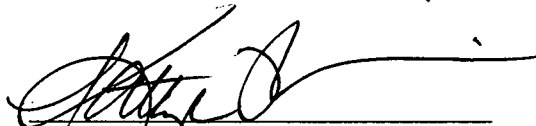
1. In UEF's Designation of Matter to Be Included in the Record on Appeal filed on May 6, 2010, UEF included "(12) Brief of Appellant to Circuit Court (with Exhibits), dated June 19, 2009." Respondent Ketron only challenges the exhibits attached to UEF's brief to the circuit court.
2. In UEF's Designation of Matter to Be Included in the Record on Appeal filed on May 6, 2010, UEF included

(16) Amendment to Debtor's Third Omnibus Objection (Substantive) to Certain Claims Pursuant to 11 U.S.C. §§ 502 and 546, Rule 3007 of the Federal Rules of Bankruptcy Procedure and Rule 3007-1 of the Local Rules of Bankruptcy Procedure with Respect to Certain Workers' Compensation Claims, dated January 13, 2009.
3. This information was not presented to the trial court, which in this case was the Hearing Commissioner of the S.C. Workers' Compensation Commission. (See attached ex. #1 – Form 58 filed by UEF indicated no submissions; see also attached ex. #2 – Order of the Hearing Commissioner, p. 2, listing submissions made by the parties)

4. The Honorable Edward W. Miller specifically considered UEF's attachment of material to its appellant's brief filed with that court, in response to Ketron's objection, and specifically ruled that the information was "not a part of the record, were apparently not presented to the Commission, and cannot be considered in this appeal." (see attached ex. #3 – Order of the circuit court, and see specifically p.7) Also note that UEF did not appeal this aspect of the circuit court's order. (see UEF's initial brief of Appellant, which is on file with this Court)

WHEREFORE, respondent prays for an Order striking portions of appellant UEF's Designation of Matter to Be Included in the Record on Appeal, specifically the attachments to UEF's brief to the circuit court referenced in designation #12 and all of designation #16.

Respectfully submitted,



Kathryn Williams
Kathryn Williams, P.A.
P.O. Box 10693
Greenville, S.C. 29603
(864) 235-6254
Attorney for Respondent

Dated 7/21/10
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Circuit Court Case No. 2008-CP-23-5220

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JUL 06 2010

SC Court of Appeals

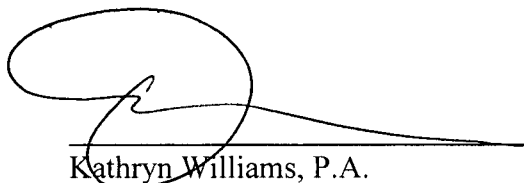
William G. Ketron, Jr., Employee, ... Respondent,

vs.

Delta Woodside Indus., Inc., Self-insured Employer
and S.C. Uninsured Employers' Fund of whom
S.C. Uninsured Employers' Fund is Appellant.

PROOF OF SERVICE

I certify that I have served the **MOTION TO STRIKE** on Respondents/Appellants by depositing a copy in the U.S. Mail, postage prepaid, on 7/2/10, addressed to their attorneys of record, Timothy B. Killen and Lisa C. Glover of S.C. Uninsured Employers' Fund, 100 Executive Center Dr., Suite 101, Santee Building, Columbia, SC 29210.



Kathryn Williams, P.A.
P.O. Box 10693
Greenville, S.C. 29603
(864) 235-6254
Attorney for Respondent

KATHRYN WILLIAMS, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 10693
GREENVILLE, SC 29603

KATHRYN WILLIAMS
DONALD E. KAMB, JR.
MELISSA S. MILLER
TOM J. ERVIN
OF COUNSEL

619 N. MAIN STREET
GREENVILLE, SC 29601
TELEPHONE (864) 235-6254
FAX (864) 233-6591

7/2
~~June 22~~, 2010

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
23781
JUL 06 2010
2500
SC Court of Appeals

Re: **William G. Ketron, Jr. v. Delta Woodside Indus., Inc., et al.**
WCC File Nos.: 0115236, 0115237
Circuit Court Case No.: 08-CP-23-5220

Dear Mr. Richstad:

Enclosed herein please find the following items for filing in the above-referenced matter:

1. Motion to Strike, with attachments (original and six copies);
2. Proof of Service by Mail; and
3. Filing fee (\$25.00).

By copy of this letter, I am also serving Appellants' attorney with a copy of the same.

Kindest regards,

Yours truly,


Kathryn Williams

KW:d
Enclosures

cc: Timothy B. Killen, Esq.
Lisa C. Glover, Esq.
S.C. Uninsured Employers' Fund
100 Executive Center Dr., Suite 101
Santee Building
Columbia, SC 29210

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Circuit Court Case No. 2008-CP-23-5220

RECEIVED

JUN 15 2010

SC Court of Appeals

William G. Ketron, Jr., Employee, ... Respondent,

vs.

Delta Woodside Indus., Inc., Self-insured Employer
and S.C. Uninsured Employers' Fund of whom
S.C. Uninsured Employers' Fund is Appellant.

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

1. UEF's Form 58, dated September 10, 2007, consisting of 1 page.
2. Delta Woodside's APA submissions pp. 11, 12, 13.

I certify that this designation contains no matter which is irrelevant to this appeal.

A handwritten signature in black ink, appearing to read 'Kathryn Williams', written over a horizontal line.

Kathryn Williams
Kathryn Williams, P.A.
619 North Main St.
P.O. Box 10693
Greenville, S.C. 29603
(864) 235-6254
Attorney for Respondent

Dated: _____

6/14/10

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Circuit Court Case No. 2008-CP-23-5220

RECEIVED

JUN 15 2010

SC Court of Appeals

William G. Ketron, Jr., Employee, ... Respondent,

vs.

Delta Woodside Indus., Inc., Self-insured Employer
and S.C. Uninsured Employers' Fund of whom
S.C. Uninsured Employers' Fund is Appellant.

CERTIFICATE OF SERVICE

This is to certify that the undersigned did cause the **INITIAL BRIEF OF RESPONDENT AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL** to be served upon the Appellant by mailing a copy of same to their attorney of record at the address shown below by U.S. Mail, proper postage prepaid, on the 14th day of June, 2010.

Timothy B. Killen, Esq.
Lisa C. Glover, Esq.
S.C. Uninsured Employers' Fund
100 Executive Center Dr., Suite 101
Santee Building
Columbia, SC 29210



KATHRYN WILLIAMS, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 10693
GREENVILLE, SC 29603

KATHRYN WILLIAMS
DONALD E. KAMB, JR.
MELISSA S. MILLER
TOM J. ERVIN
OF COUNSEL

619 N. MAIN STREET
GREENVILLE, SC 29601
TELEPHONE (864) 235-6254
FAX (864) 233-6591

June 11, 2010

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

JUN 15 2010

SC Court of Appeals

Re: **William G. Ketron, Jr. v. Delta Woodside Indus., Inc., et al.**
WCC File Nos.: 0115236, 0115237
Circuit Court Case No.: 08-CP-23-5220

Dear Ms. Gee:

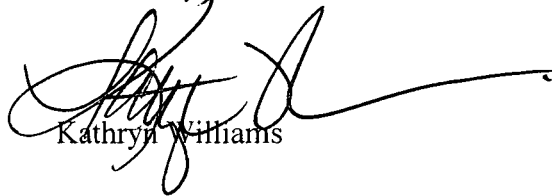
Enclosed herein please find the following items for filing in the above-referenced matter:

1. Initial Brief of Respondent;
2. Designation of Matter to be Included in the Record on Appeal; and
3. Certificate of Service by Mail.

By copy of this letter, I am also serving defendants' attorney with copies of the same.

Kindest regards,

Yours truly,



Kathryn Williams

KW:d
Enclosures

cc: Timothy B. Killen, Esq.
Lisa C. Glover, Esq.
S.C. Uninsured Employers' Fund
100 Executive Center Dr., Suite 101
Santee Building
Columbia, SC 29210

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Circuit Court Case No. 2008-CP-23-5220

RECEIVED

JUN 15 2010

SC Court of Appeals

William G. Ketron, Jr., Employee, ... Respondent,

vs.

Delta Woodside Indus., Inc., Self-insured Employer
and S.C. Uninsured Employers' Fund of whom
S.C. Uninsured Employers' Fund is Appellant.

INITIAL BRIEF OF RESPONDENT

Kathryn Williams
Kathryn Williams, P.A.
619 North Main St.
P.O. Box 10693
Greenville, SC 29603
(864) 235-6254

Attorney for Respondent

TABLE OF CONTENTS

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TABLE OF AUTHORITIES

Cases

<u>Anderson v. Baptist Medical Ctr.</u> , 343 S.C. 487, 541 S.E.2d 526 (2001)	10
<u>Brown v. Greenwood Mills, Inc.</u> , 366 S.C. 379, 622 S.E.2d 546 (Ct.App.2005)	6-7
<u>Case v. Hermitage Cotton Mills</u> , 236 S.C. 515, 115 S.E.2d 57 (1960)	13
<u>Frier v. South Carolina Penitentiary</u> , 216 S.C. 84, 56 S.E.2d 752 (1949)	11
<u>Ham v. Mullins Lumber Co.</u> , 193 S.C. 66, 7 S.E.2d 712 (1940)	8,10
<u>Hamm v. South Carolina Public Serv. Comm'n</u> , 287 S.C. 180, 336 S.E.2d 470 (1985)	10
<u>Kiawah Resort Assoc. v. S.C. Tax Comm'n</u> , 318 S.C. 502, 458 S.E.2d 542 (1995)	8,11
<u>Reese v. CCI Constr. Co.</u> , 334 S.C. 600, 514 S.E.2d 144 (Ct.App.1999)	8,11
<u>Roche v. S.C. Alcoholic Beverage Control Comm'n</u> , 263 S.C. 451, 211 S.E.2d 243 (1975)	11
<u>South Carolina Coastal Council v. S.C. State Ethics Comm'n</u> , 306 S.C. 41, 410 S.E.2d 245 (1991)	10
<u>Smith v. Southern Builders</u> , 202 S.C. 88, 24 S.E.2d 109 (1943)	9,13

Statutes

S.C. Code Ann. § 42-5-10 (2001)	9,14
S.C. Code Ann. § 42-5-20 (2000)	9,15
S.C. Code Ann. §42-7-200 (2001)	3,4,9,13-14

Other Authority

Op.Atty.Gen., 1990 WL 599328 (dated October 25, 1990)	15
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STATEMENT OF ISSUES ON APPEAL

- I. Did the Commission err in finding and ruling Delta Woodside failed to acquire necessary workers' compensation coverage for its employees or failed to provide necessary and acceptable surety for its employees?
- II. Does UEF's failure to appeal or argue against other related findings in the Commission's Order, specifically Findings of Fact #37 and #39-42, render moot its arguments against Finding of Fact #38 and essentially end the issue?
- III. Are UEF's arguments concerning Delta Woodside's bankruptcy and Ketron's alleged failure to follow through with his supposed obligations as a creditor in the bankruptcy proceedings properly before this Court for determination?
- IV. Did the Commission correctly determined that Ketron will become a public charge if Delta Woodside does not meet its obligations under the Workers Compensation Act?
- V. Did the Commission correctly determine that UEF should pay benefits pursuant to S.C. Code Ann. § 42-7-200 if Delta Woodside proved unable to provide such benefits?

STATEMENT OF THE CASE

This is an appeal from the Workers' Compensation Commission. By previous Order of the Commission dated July 3, 2003, William G. Ketron, Jr. sustained injuries by accident on August 27, 2001 and September 2, 2001 causing compensable injuries to his back, left hip, and both lower extremities and entitling him to continuing medical and temporary compensation benefits. Defendant Delta Woodside Indus., Inc., which was then self-insured, appealed to the Circuit Court for Greenville County, but on July 22, 2004, the Honorable John C. Few affirmed the Commission's Order in its entirety.

Delta Woodside did not appeal further and began payment of medical and compensation benefits as ordered by the Commission. However, Delta Woodside, who again was a qualified self-insurer at the time of these injuries by accident, then filed for bankruptcy protection¹ and became unable to meet their workers' compensation obligations. As a result of this default, the Workers' Compensation Commission drew down on Delta Woodside's \$750,000.00 surety deposit in order to pay claims. (def's APA p. 13) Ketron was subsequently given notice that this surety deposit was nearly exhausted, that there were

¹ While the issue is not properly before this Court on appeal, as discussed hereinafter, UEF states repeatedly that Ketron was notified of the bankruptcy proceeding and his right to file a claim therein but that he failed to make such a claim. However, Ketron did not in fact receive notice of the bankruptcy proceeding until the time for filing a Proof of Claim had passed. Ketron had lost his home following this injury by accident and lived for a time at a variety of temporary addresses before finding more permanent arrangements. It was later determined that Delta Woodside served the bankruptcy notice on one of these temporary addresses, long after he had left that address. For some reason, despite knowledge of his attorney's involvement, Delta Woodside did not serve the notice on his attorney. When Ketron discovered that the time for filing had passed, he contacted a bankruptcy attorney but did not have the funds to file a petition to be included in the bankruptcy action.

multiple open claims, and that benefits would only be paid until the funds were exhausted. (def's APA p. 11; see also def's APA p. 12)

In response, Ketron requested a hearing with the Commission in order to determine his entitlement to permanent disability benefits and continuing medical benefits before the exhaustion of the surety deposit funds. Due to his need for continuing medical treatment and anticipating that the surety deposit funds would like be exhausted, Ketron joined defendant Uninsured Employers' Fund (hereafter "UEF") as a party contending the UEF is liable to him under the terms of the Workers' Compensation Act if Delta Woodside is unable to meet all of its obligations. Defendant UEF appeared at the hearing and contended that it has no obligation to Ketron under the Act arguing that the date of accident controls and that defendant Delta Woodside was acting as a qualified self-insurer at the time of these injuries by accident. Of note, UEF made no mention of Delta Woodside's bankruptcy at the hearing. (tr. p. 4, line 7-p. 16, line25)

By Order dated December 14, 2007, the Hearing Commissioner found Ketron is entitled to permanent total disability benefits, including lifetime causally-related medical treatment. The Commissioner also found that Delta Woodside failed to acquire necessary workers' compensation coverage for its employees, in that it defaulted on its obligations and its surety deposit proved insufficient, and that as of February 28, 2007, it was operating without insurance or as an unqualified self-insurer within the meaning of the Act. The Commissioner directed that Delta Woodside pay such permanent total disability benefits to Ketron; however, if defendant Delta Woodside proved unable to provide such benefits, the Commissioner determined that UEF shall pay the benefits pursuant to S.C. Code Ann. §42-7-200. (R. pp. x-x)

UEF appealed this Order to the Full Commission Panel contending primarily that the Commissioner erred in finding that it should pay benefits pursuant to S.C. Code Ann. § 42-7-200 if defendant Delta Woodside proved unable to provide such benefits. Defendant UEF did not challenge the Commissioner's findings concerning Ketron's entitlement to permanent total disability. Of significant note, UEF did not allege any point of error involving Delta Woodside's bankruptcy or Ketron's lack of involvement in such proceedings. (Form 30, dated 11/8/07) Delta Woodside did not appeal. By Order dated June 4, 2008, the Commission's Appellate Panel affirmed and adopted the Hearing Commissioner's Order without change. (R. pp. x-x)

UEF then appealed to the Circuit Court for Greenville County contending the Commission erred in finding and ruling that Delta Woodside failed to acquire necessary coverage or to provide necessary and acceptable surety for its employees (specifically Finding of Fact #38 of the Hearing Commissioner's Order, see R. p. x), in finding and ruling that Delta Woodside became an unqualified self-insurer (Finding of Fact #42, see R. p. x), in finding and ruling Ketron will become a public charge if Delta Woodside is unable to meet its obligations (Ruling of Law #18, see R. p. x), and in finding and ruling that UEF shall pay benefits to Ketron if Delta Woodside is unable to do so (Ruling of Law #19, see R. p. x). Of note, UEF did not allege any point of error involving Delta Woodside's bankruptcy or Ketron's lack of involvement in such proceedings. (Notice of Appeal, dated 7/3/08)

By Order dated October 12, 2009, the Honorable Edward W. Miller affirmed the Commission's Order determining that the challenged findings were supported by substantial evidence and not affected by error of law. Furthermore, Judge Miller rejected UEF's bankruptcy arguments finding that those issues were not raised to the Commission below and

were not appealed to the Full Commission Panel. He sustained Ketron's objection to the bankruptcy-related documents on which UEF based its arguments determined that the documents were not a part of the record and cannot be considered on appeal. (R. pp. x-x)

UEF now appeals to this Court.

ARGUMENTS

In Brown v. Greenwood Mills, Inc., this Court explained at length the standard of review in workers' compensation cases.

The South Carolina Administrative Procedures Act ("APA") establishes the standard for judicial review of decisions of the workers' compensation commission. A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions, or decisions of that agency are "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." Under the scope of review established in the APA, this Court may not substitute its judgment for that of the appellate panel as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law.

The substantial evidence rule of the APA governs the standard of review in a workers' compensation decision. Pursuant to the APA, this Court's review is limited to deciding whether the appellate panel's decision is unsupported by substantial evidence or is controlled by some error of law. Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action.

The appellate panel is the ultimate fact finder in workers' compensation cases and is not bound by the single commissioner's findings of fact. The final determination of witness credibility and the weight to be accorded evidence is reserved to the appellate panel. The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Where there are conflicts in the evidence over a factual issue, the findings of the appellate panel are conclusive.

The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. It is not within our province to reverse findings of the appellate panel which are supported by substantial evidence.

Brown v. Greenwood Mills, Inc., 366 S.C. 379, 391-93, 622 S.E.2d 546, 553-54

(Ct.App.2005)(citations omitted).

- I. **The Commission correctly determined that Delta Woodside failed to acquire necessary workers' compensation coverage or to provide necessary and acceptable surety for its employees.** (response to UEF's arguments I and II)

A review of the circumstances of this claim in light of relevant statutory law shows that the Commission correctly determined that Delta Woodside failed to acquire necessary workers' compensation coverage for its employees or failed to provide necessary and acceptable surety for its employees.

This is a challenge to the Commission's Finding of Fact #38. In reviewing this finding, it is important to note that UEF has not appealed or argued against other related findings in the Commission's Order, specifically Findings of Fact #37 and #39-42. (see Form 30, dated 11/8/07; Notice of Appeal, dated 7/3/08) Those findings are as follows:

37. Due to bankruptcy, defendant Delta Woodside defaulted on its responsibilities to pay its self-insured workers' compensation liabilities on February 27, 2007, and on that date, the Commission's Self-Insurance Division drew down on the company's surety deposit of \$750,000.00 to pay the open claims; however, because defendant Delta Woodside intentionally under-reserved their open claims and failed to comply with a July 19, 2006 request from the Self-Insurance Division for a surety increase, the surety held by the Commission is insufficient to meet all of defendant Delta

Woodside's workers' compensation claim liabilities. . . .

39. As of February 28, 2007, defendant Delta Woodside was operating without insurance or as an unqualified self-insurer within the meaning of the Act. . . .
40. The purpose of the statutory section creating the Uninsured Employers' Fund is to insure payment of workers' compensation benefits to injured employees whose employers have failed to acquire necessary coverage for employees.
41. Pursuant to the Act, a tax is levied on self-insured employers in order to establish and maintain the Uninsured Employers' Fund.
42. While defendant Delta Woodside was operating as a qualified self-insurer on the dates of accident in these claims, defendant Delta Woodside failed to maintain such coverage as required by the Act in that they failed to provide acceptable security and became an unqualified self-insurer within the meaning of the Act.

(R. pp. x-x) Defendants' failure to appeal these findings to the Full Commission Panel, to the Circuit Court, and to this Court is abandonment of those issues. Kiawah Resort Assoc. v. S.C. Tax Comm'n, 318 S.C. 502, 458 S.E.2d 542 (1995); Reese v. CCI Constr. Co., 334 S.C. 600, 514 S.E.2d 144 (Ct.App.1999). See also Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940)(appeal is limited to consideration of the issues contained in the appellate exceptions by the parties and that all other findings of the Hearing Commissioner are final and not subject to review or reversal). The fact that these related findings are final and not before this Court on appeal significantly renders moot UEF's arguments against Finding of Fact #38 and is essentially an end to this issue.

Furthermore, Finding of Fact #38 is supported by substantial evidence on the record. This includes a letter from W.C. Smith of the Commission stating that defendant Delta

Woodside defaulted on its responsibilities to pay its claims on February 27, 2007 and under-reserved their surety causing it to be insufficient to meet its workers' compensation liabilities. (See def's APA p. 13) Also, a letter from Hewitt Coleman, the company hired to administrate disbursement of the surety bond, states that Delta Woodside is in bankruptcy and no longer able to meet its obligations. (def's APA p. 11; see also def's APA p. 12) Such circumstances directly violate the mandate of S.C. Code Ann. §§ 42-5-10 and 42-5-20, which state that every employer who accepts the compensation provisions shall secure the payment of compensation to his employees in the manner provided in the Act and that self-insurers shall deposit an acceptable security, indemnity, or bond to secure the payment of compensation liabilities.

UEF argues that the relevant time period for the determination of whether an employer is operating without coverage or as an unqualified self-insurer can only be the date of accident. It makes this argument based on the phrase "when an employee makes a claim for benefits" in S.C. Code Ann. § 42-7-200(A). However, there is no support in the Act for this argument, as the word "claim" is not so defined in the Act. In fact, the word is not defined in the Act at all.

Ketron here made a claim for benefits under the Act on July 19, 2007 when he filed a Form 50 requesting a hearing and contending that he is entitled to permanent total disability benefits. Such claim made by way of the Form 50 on July 19, 2007 clearly satisfies the requirements of § 42-7-200(A), and as shown above, Delta Woodside had defaulted on its obligations in February 2007 and was thereafter operating without insurance or as an unqualified self-insurer. To find otherwise would leave claimant without coverage for his injuries, an interpretation of this section that cannot have been intended by the General Assembly. See Smith v. Southern Builders, 202 S.C. 88, 24 S.E.2d 109 (1943)(purpose of the

Act is to place upon the employer, and not the injured worker, the economic burden of the casualties of doing business); Anderson v. Baptist Medical Ctr., 343 S.C. 487, 541 S.E.2d 526 (2001)(Act must be given liberal construction in furtherance of the purposes for which it was designed); Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940)(reasonable doubts regarding construction must be resolved in favor of claimant). See also Hamm v. South Carolina Public Serv. Comm'n, 287 S.C. 180, 336 S.E.2d 470 (1985)(interpretation of a term set forth in a statute should support the statute and should not lead to an absurd result); South Carolina Coastal Council v. South Carolina State Ethics Comm'n, 306 S.C. 41, 410 S.E.2d 245 (1991)(in interpreting a statute, one does not look merely at a particular clause in which a word may be used, but rather looks at the word and its meaning in conjunction with the purpose of the whole statute, and in light of the object and policy of the law).

The Commission's determination that Delta Woodside failed to acquire necessary workers' compensation coverage or to provide necessary and acceptable surety and was operating without insurance or as an unqualified self-insurer within the meaning of the Act as of February 28, 2007 is supported by substantial evidence on the record and is not affected by any error of law. Furthermore, UEF failed to appeal the Commission's Findings of Fact #37 and #39-42, which renders their arguments moot and is essentially an end to this issue. The Commission's Order should be affirmed by this Court.

II. UEF's arguments concerning Delta Woodside's bankruptcy and Ketron's alleged failure to follow through with his supposed obligations as a creditor in the bankruptcy proceedings are not properly before this Court for determination.

UEF argues extensively to this Court concerning Delta Woodside's bankruptcy and Ketron's alleged failure to file a claim in the bankruptcy proceeding. However, UEF did not

raise this argument before the Hearing Commissioner, though given extensive opportunity to raise any and all issues. (tr. p. 4, line 7-p. 16, line 25) The issue does not appear in UEF's pre-hearing brief to the Hearing Commissioner. (Form 58, dated 9/10/07) The Commissioner did not mention the issue in his Order. (R. pp. x-x) Furthermore, UEF did not mention the issue in their appeal to the Full Commission Panel. (Form 30, dated 11/8/07) Defendants' failure to mention the issue in their Form 30 appeal to the Commission's Appellate Panel is abandonment of the issue. Roche v. S.C. Alcoholic Beverage Control Comm'n, 263 S.C. 451, 211 S.E.2d 243 (1975)(the purpose of an appeal is to determine whether the trial judge erroneously acted or failed to act and where the appellant's contentions are not presented or passed on by the trial judge, such contentions will not be considered on appeal). See also Reese v. CCI Constr. Co., 334 S.C. 600, 514 S.E.2d 144 (Ct.App.1999); Kiawah Resort Assoc. v. S.C. Tax Comm'n, 318 S.C. 502, 458 S.E.2d 542 (1995); Frier v. South Carolina Penitentiary, 216 S.C. 84, 56 S.E.2d 752 (1949).

UEF also did not mention the issue in their notice of appeal to the Circuit Court. (Notice of Appeal, dated 7/3/08) Nevertheless, UEF argued the issue in their brief to the Circuit Court and attached documents from the bankruptcy action to their brief. Ketron objected to those documents arguing that they were not presented to the Commission and were not a part of the record. Judge Miller found that the issue was not before him, since it has not been raised to the Commission, and further sustained Ketron's objection to the documents finding that they were not a part of the record on appeal.

Of note, UEF did not challenge Judge Miller's determination concerning the bankruptcy issue and the bankruptcy-related documents in its appeal to this Court.

UEF did not raise the bankruptcy issue to the Commission, did not appeal the issue

to the Circuit Court, and did not challenge to this Court Judge Miller's determinations that the issue was not before him on appeal and that the bankruptcy-related documents were not a part of the record. This issue has been thoroughly abandoned by UEF and should not be considered by this Court in any manner.

III. The Commission correctly determined that Ketron will become a public charge if Delta Woodside does not meet its obligations under the Workers Compensation Act.

A review of the evidence on the record in this claim shows that the Commission correctly determined that Ketron will become a public charge if Delta Woodside does not meet its obligations under the Workers Compensation Act.

Before the Hearing Commissioner, Ketron testified that he feels abandoned by Delta Woodside and has had to rely on treatment and assistance from the Veterans' Administration for things such as his walker since Delta Woodside has not provided such assistance. (tr. p. 25, line 8-p. 26, line 3) He also stated that he needs a lump-sum payment of his award in order to obtain stable housing, as he was at that time living in a temporary shelter. Ketron stated that he is eligible for and is receiving Social Security retirement benefits, and he is eligible for Medicare benefits. (tr. p. 22, lines 5-21)

It is therefore obvious that Ketron is in a desperate situation. At the time of the hearing, he was not able to put a roof over his head and was having to rely on a charity for shelter. The workers' compensation carrier had also not been providing him with medical assistance, and he was forced to look to the Veterans' Administration for such assistance. If Delta Woodside is now unable to provide the benefits that the Commission has ordered, Ketron will be forced to continue to rely on various charities and the federal government,

through the Veterans' Administration and Medicare, for assistance and his medical needs and supplies.

It is simply contrary to the purposes of the Act to force claimant to rely on the federal government or the public at large for his compensation and medical needs, as the Act places such responsibility on the employer and provides that the Uninsured Employers' Fund is to stand in the employer's place if the employer is unable to meet its obligations. See Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960)(purpose of the Act is to compensate worker for his loss of earnings because of injury and to enable the worker to live without being a burden to others, to aid in preventing the worker from becoming a public charge); Smith v. Southern Builders, 202 S.C. 88, 24 S.E.2d 109 (1943)(purpose of the Act is to place upon the employer, and not the injured worker, the economic burden of the casualties of doing business).

The Commission correctly determined that Ketron will become a public charge if Delta Woodside does not meet its obligations under the Workers Compensation Act, as such is fully supported by evidence on the record and related case law.

IV. The Commission correctly determined that UEF should pay benefits pursuant to S.C. Code Ann. § 42-7-200 if defendant Delta Woodside proved unable to provide such benefits.

Based on the foregoing and the evidence and related case and statutory law, it is apparent that the Commission correctly determined that UEF should pay benefits pursuant to S.C. Code Ann. § 42-7-200 if Delta Woodside proved unable to provide such benefits.

Section 42-7-200(A) provides for the establishment of the Uninsured Employers' Fund and specifically states that the Fund's purpose is to

ensure payment of workers' compensation benefits to injured employees whose employers have failed to acquire necessary coverage for employees.

S.C. Code Ann. § 42-7-200(A)(2001). The code section goes on to mandate that the Fund pay benefits under the Act when the Commission determines that an employer is subject to the Act and is operating as an unqualified self-insurer. Such has occurred in this case.

Based on the evidence, and S.C. Code Ann. §§ 42-5-10, et seq., and 42-7-200, the Commission determined that Delta Woodside failed to acquire necessary coverage, or to provide necessary surety, for its employees and was thus operating without insurance or as an unqualified self-insurer within the meaning of the Act, as it defaulted on its responsibilities to pay its self-insured workers' compensation liabilities on February 27, 2007 and under-reserved its surety leaving it unable to meet all of its workers' compensation claim liabilities in violation of the Act. (See Findings of Fact #37-39 and Rulings of Law #15-16) It also found that the purpose of the statutory section creating the Uninsured Employers' Fund is to insure payment of workers' compensation benefits to injured employees whose employers have failed to acquire necessary coverage for employees and that

[i]f defendant Delta Woodside does not or cannot meet its obligations to claimant under the Act and defendant Uninsured Employers' Fund is not made to pay the obligation to claimant as provided in the Act, claimant will become a public charge dependent on Medicare, the Veterans' Administration, and other sources for compensation and medical care that is the responsibility of his employer, and such is directly contrary to the purposes of the Workers' Compensation Act.

(See Findings of Fact #40,43 and Rulings of Law #17,18) Therefore, under the above cited code section, the Commission determined that "if defendant Delta Woodside is unable to meet all of its obligation to claimant as provided in this Order, defendant Uninsured Employers' Fund shall pay the claim pursuant to this Order." (See Finding of Fact #44 and Ruling of Law #19)

This decision is consistent with the Act, and it is also consistent with an Attorney General's Opinion cited by defendant UEF to the Circuit Court. While certainly not dispositive, this Attorney General's opinion lends further support to the Commission's decision. On October 25, 1990, the Office of the Attorney General issued an opinion in response to the following question:

Should claims against qualified self-insurers who become bankrupt be paid by the Uninsured Employers' Fund?

Op.Atty.Gen., 1990 WL 599328 (dated October 25, 1990). The Attorney General fully analyzed the construction of the code sections involved and the intent of the General Assembly in enacting and amending the code sections and reasoned that

if an employer has failed to deposit adequate security and has become insolvent, that employer has "failed to acquire necessary coverage for employees"; however, it is unclear as to whether or not that employer is an "an unqualified self-insurer." Section 42-5-20 requires a self-insurer to deposit "an acceptable security, indemnity or bond to secure the payment of the compensation liabilities as they are incurred." **If a self-insurer's security is not sufficient to pay all of its claims, it seems reasonable that one could conclude that the security was not acceptable. To conclude otherwise would result in injured employees being unjustly denied workers' compensation benefits.** However Act No. 589 of 1990 provides that the State Workers' Compensation

Commission determine whether the employer is subject to Title 42 and is operating as an unqualified self-insurer. Therefore, the decision as to whether or not a self-insurer has deposited an acceptable security, indemnity or bond lies with the State Workers' Compensation Commission.

The Attorney General went on to conclude that

If the State Workers' Compensation Commission should determine that a bankrupt self-insurer has not deposited an acceptable security, indemnity or bond, that self-insurer would be considered unqualified and claims should be paid by the Fund. This is consistent with Section (C) of 1990 Act No. 589 which requires that funds be earmarked from collections of the tax on self-insured persons in order to establish and maintain the [Uninsured Employers' Fund].

As stated above, the Commission's decision is fully supported by the evidence and the statutory and case law - including the stated purposes of the Act - and should be affirmed in its entirety.

CONCLUSION

It is, therefore, respectfully submitted that the Commission correctly determined based on the evidence and the statutory and case law that Delta Woodside was operating without insurance and in violation of the Act, and that as of February 28, 2007, defendant Delta Woodside was operating without insurance or as an unqualified self-insurer within the meaning of the Act. The Commission also correctly determined that Ketron will become a public charge if Delta Woodside does not meet its obligations under the Workers Compensation Act. Based on these findings and the supporting evidence and workers' compensation law, the Commission properly determined that Uninsured Employers' Fund should pay benefits to claimant pursuant to S.C. Code Ann. § 42-7-200 if Delta Woodside proves unable to provide such benefits.

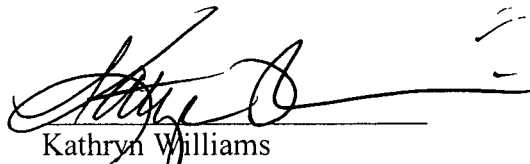
Furthermore, UEF failed to appeal the Commission's Findings of Fact #37 and #39-42, which renders moot their arguments that the Commission erred in finding that Delta Woodside was operating without insurance and in violation of the Act and is essentially an end to this issue.

Also, UEF did not raise their bankruptcy issue to the Commission, did not appeal the issue to the Circuit Court, and did not challenge to this Court Judge Miller's determinations that the issue was not before him on appeal and that the bankruptcy-related documents were not a part of the record. As such, this issue has been thoroughly abandoned by UEF and is not before this Court on appeal.

All of the Commission's findings are correct, are supported by substantial evidence

on the record, are not affected by any error of law, and should be affirmed by this Court.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Kathryn Williams', written over a horizontal line.

Kathryn Williams
Kathryn Williams, P.A.
619 North Main St.
P.O. Box 10693
Greenville, S.C. 29603
(864) 235-6254
Attorney for Respondent

Date: 6/14/10



The South Carolina Court of Appeals

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June 15, 2010

Lisa C. Glover, Esquire
Timothy Blair Killen, Esquire
The SC Second Injury Fund
100 Executive Center Dr
Ste 101
Columbia, SC 29210-8408

Re: Ketron, William v. SC Uninsured (2)

Dear Counsel:

We have received your Initial Brief of Appellant and Designation of Matter in the above entitled case on appeal.

According to our records, the caption of the above matter should read exactly as follows:

William G. Ketron, Jr., Employee,
v.

Respondent,

Delta Woodside Industries, Inc., Self-Insured
Employer and S.C. Uninsured Employers'
Fund,

Defendants,

Of Whom S.C. Uninsured Employers' Fund is

Appellant.

All future filings by any party to this appeal must feature the caption exactly as shown above.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ma

cc: Kathryn Williams, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAY 17 2010

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-5220

William G. Ketron, Jr., Employee Respondent,

v.

Delta Woodside Industries, Inc., Self-insured Employer and
S.C. Workers' Compensation Uninsured Employers Fund, of
whom S.C. Workers' Compensation Uninsured Employers'
Fund is Appellant,

APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL

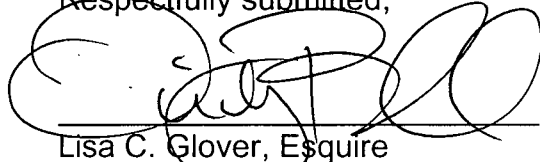
Pursuant to Rule 209 of the South Carolina Appellate Court Rules, Appellant South Carolina Workers' Compensation Uninsured Employers' Fund designates the following materials for inclusion in the Record on Appeal:

- (1) Decision and Order of Commissioner, dated November 27, 2002.
- (2) Decision and Order of Commissioner, dated December 14, 2007.
- (3) Decision and Order of the Full Commission, dated June 4, 2008.
- (4) Order of Judge Miller, dated October 12, 2009.
- (5) Claimant's Form(s) 50, dated 2002.
- (6) Claimant's Form 50, dated May 17, 2007.
- (7) Claimant's Form 50, dated July 19, 2007.
- (8) Employer's Form 51, dated June 14, 2007.
- (9) Fund's Form 51, dated August 14, 2007.

- (10) Fund's Form 30, dated November 8, 2007.
- (11) Fund's Petition and Notice of Appeal, dated July 2, 2008.
- (12) Brief of Appellant to Circuit Court (with Exhibits), dated June 19, 2009.
- (13) Single Commissioner Hearing Transcript, dated September 21, 2007.
- (14) Full Commission Hearing Transcript, dated April 29, 2008.
- (15) Circuit Court Hearing Transcript, dated June 19, 2009.
- (16) Amendment to Debtor's Third Omnibus Objection (Substantive) to Certain Claims Pursuant to 11 U.S.C. §§ 502 and 546, Rule 3007 of the Federal Rules of Bankruptcy Procedure and Rule 3007-1 of the Local Rules of Bankruptcy Procedure with Respect to Certain Workers' Compensation Claims, dated January 13, 2009.

Counsel for the Fund certifies that this designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Lisa C. Glover", is written over a horizontal line.

Lisa C. Glover, Esquire
Timothy B. Killen, Esquire
100 Executive Center Drive, Suite 101
Columbia, South Carolina 29210
Ph.: 803-798-2722
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Attorneys for the S.C.W.C.U.E.F.

Columbia, South Carolina
May 6, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAY 17 2010

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-5220

William G. Ketron, Jr., Employee Respondent,

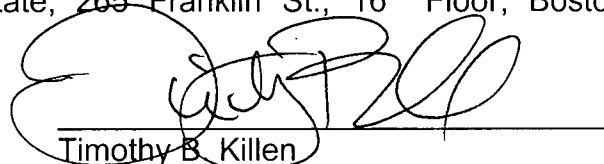
v.

Delta Woodside Industries, Inc., Self-insured Employer and S.C. Workers'
Compensation Uninsured Employers Fund, of whom S.C. Workers' Compensation
Uninsured Employers' Fund is..... Appellant.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal on William G. Ketron, Jr., Employee/Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on May 14, 2010, addressed to his attorney of record, Kathryn Williams, Kathryn Williams, P.A., Post Office Box 10693, Greenville, South Carolina 29603, and on Delta Woodside Industries, Inc., by depositing a copy of it in the United States Mail, postage prepaid, on May 14, 2010, addressed to its last known address of 710 Woods Drive, Fountain Inn, South Carolina 29644, and at the address for service as it appears with the South Carolina Secretary of State, 265 Franklin St., 16th Floor, Boston, Massachusetts 02110.

May 14, 2010



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAY 17 2010

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-5220

William G. Ketron, Jr., Employee Respondent,

v.

Delta Woodside Industries, Inc., Self-insured Employer and
S.C. Workers' Compensation Uninsured Employers Fund, of
whom S.C. Workers' Compensation Uninsured Employers'
Fund is Appellant.

INITIAL BRIEF OF APPELLANT

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(A) Employer had valid workers' compensation insurance coverage on the dates of accident;	
(B) The coverage continued to be available to the Claimant through the date of the hearing in this matter;	
(C) Other Claimants with claims pending against this same employer continued to be covered; and	
(D) The Claimant failed to follow through with his obligations as a creditor in the bankruptcy proceeding.	
II. The Trial Court erred in finding that the Employer became an unqualified self-insurer when coverage was in effect at the time the Claimant filed his claim and remained available to the Claimant following the hearing.	
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STATEMENT OF ISSUES ON APPEAL

- I. The Trial Court erred in finding that the Employer failed to acquire necessary coverage or to provide necessary and acceptable surety for its employees where:
 - (A) Employer had valid workers' compensation insurance coverage on the dates of accident;
 - (B) The coverage continued to be available to the Claimant through the date of the hearing in this matter;
 - (C) Other Claimants with claims pending against this same employer continued to be covered; and
 - (D) The Claimant failed to follow through with his obligations as a creditor in the bankruptcy proceeding.
- II. The Trial Court erred in finding that the Employer became an unqualified self-insurer when coverage was in effect at the time the Claimant filed his claim and remained available to the Claimant following the hearing.
- III. The Trial Court erred in finding that the Claimant will become a "public charge."
- IV. The Trial Court erred in finding that if the Employer is unable to meet its entire obligation to Claimant as provided in its Order then the Fund shall pay.

STATEMENT OF THE CASE

This is an appeal in a Workers' Compensation case. The Defendant, South Carolina Workers' Compensation Uninsured Employers' Fund ("the Fund") appeals from a Circuit Court order that affirmed the decision of the Appellate Panel of the Workers' Compensation Commission ("the Commission") finding that the Fund was liable for the payment of benefits to the Claimant.

The Claimant asserted that the Fund was liable for the payment of such benefits because the Defendant, Delta Woodside Industries, Inc. ("Employer" or "Self-Insurer"), which was both the Employer and a qualified self-insurer, filed Chapter 11 bankruptcy years after the Commission had determined that the claims were compensable and that the "Self-Insurer" was responsible for the payment of benefits.

The Circuit Court heard argument and on October 12, 2009, entered an order affirming the Commission's rule. This appeal follows.

FACTS

On August 27, 2001, and September 2, 2001, the Claimant sustained what were determined to be compensable work-related injuries by accident to his back, left hip, and bilateral lower extremities.

The Claimant filed his claims for benefits. After the Claimant filed his claims for benefits, the Single Commissioner issued an Order dated November 27, 2002, in Workers' Compensation Commission File Numbers 0115236 and 0115237, the Claimant was awarded continuing medical treatment and temporary compensation benefits until further Order of the Commission or until agreement of the parties.

The Employer, which had posted a \$750,000.00 letter of credit in favor of the Commission as security for its workers' compensation obligations, was ordered to make all such payments to Claimant.

Because the Employer was self-insured and had acquired necessary coverage for its employees, the South Carolina Workers' Compensation Uninsured Employers Fund ("the Fund") was not then a party to the action and was not provided an opportunity to appear or argue.

Following that Order, the Employer and Self-Insurer provided treatment and temporary total disability compensation to the Claimant for years. However, after years of providing benefits under the Commission's Order, on October 13, 2006, Delta Mills, Inc., Delta Woodside Industries, Inc., and Delta Mills Marketing, Inc., in a consolidated action, filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court").

Of course, a case filed under chapter 11 of the United States Bankruptcy Code is frequently referred to as a "reorganization" bankruptcy. A chapter 11 debtor usually proposes a plan of reorganization to keep its business alive and pay creditors, including Workers' Compensation claimants, over time.

On February 27, 2007, the Self-Insurer notified the Commission that it would no longer be paying workers' compensation claims as they came due, and it consented to the Commission's drawdown of the \$750,000.00 letter of credit.

In the meantime, the bankruptcy case proceeded. There were numerous Workers' Compensation claims pending or possibly pending against the Employer and Self-Insured, and these claims became subject to the bankruptcy proceeding, just like

any other debts of the companies. All Claimants, including the Claimant herein, and all known possible Claimants were notified of the bankruptcy proceeding and their responsibilities therein, should they wish to continue their claim against the Employer.

As explained in further detail below, pursuant to proper Notice, the Claimant was required to file his Proof of Claim with the Bankruptcy Court prior to April 11, 2007 at 4:00 p.m. For whatever reason, the Claimant failed to do so.¹

On July 19, 2007, approximately three (3) months following the Claimant's Bar Date in the Bankruptcy matter, the Claimant filed an Amended Form 50² Requesting a Hearing, contending

that [the Claimant] has also sustained injury to his lungs, aggravation of his diabetes, and injury to his psyche (psychological overlay) as a result of his injuries by accident and his other compensable injuries. He further contends that he has reached maximum medical improvement and seeks permanent total disability benefits. In the alternative, he seeks substantial permanent partial disability compensation to maintain his current level of functioning. Claimant requests a lump-sum payment of any award, with a lifetime allocation of compensation benefits so as to reduce any potential offsets from other disability sources.

(ROA _____, Hearing Commissioner's Order of December 14, 2007, page 4).

On the Amended Form 50, the Claimant indicated that he was currently "receiving temporary total disability benefits" from the Employer and Self-Insurer. Without regard to the fact that Employer and Self-Insurer was providing him benefits as Ordered by the Commission, the Claimant moved to add the Fund as a Defendant in the Workers' Compensation matters by and through his Form 50.

Nevertheless, according to the face of the Form 50, the Form 50 was filed and the Fund was named prior to the termination of any benefits. Further, the Form 50 was

¹ To date, the Claimant has not filed or attempted to file a Proof of Claim in the bankruptcy proceeding or attempted, in any fashion, to make any sort of claim in the Bankruptcy proceeding, substantially prejudicing any claim the Fund may be forced to assert.

² It should be noted that the Claimant did not file a new claim for benefits, but amended his established claims.

filed only until after the Employer and Self-Insurer sought protection under Chapter 11.³ Of course, as the General Assembly declared, the Fund was "created to ensure payment of workers' compensation benefits whose employers have failed to acquire necessary coverage for employees" S.C. Code Ann. § 42-7-200(A). Additionally, the Fund is to "pay or defend" such claims "[w]hen an employee makes a claim for benefits pursuant to Title 42 and the State Workers' Compensation Commission determines that the employer is subject to Title 42 and is operating without insurance or as an unqualified self-insurer" S.C. Code Ann. § 42-7-200(B).

A hearing was held on September 21, 2007. At the hearing, the Fund objected to jurisdiction and moved to be dismissed from the action, contending that it was not a proper party and that it had been substantially prejudiced because it was not a defendant in the earlier hearing. The Commissioner denied the Fund's motion and proceeded with the hearing, apparently buoyed by the belief that the Employer's petition in Bankruptcy Court meant that the Employer was, at the time of the 2007 hearing, "without coverage . . . they are here without coverage. They at one time were self insured" (ROA ____, Transcript of Hearing of September 21, 2007, page 4, lines 11 – 14).

Following the hearing, the Hearing Commissioner found, *inter alia*, that the Claimant was permanently and totally disabled and that he was entitled to lifetime causally related medical treatment and permanent total disability compensation. The Employer and Self-Insurer was ordered to pay these benefits. "However," the Hearing Commissioner wrote, "if defendant Delta Woodside is unable to provide the above

³ The Employer's filing of Chapter 11, along with the Notice of the missed bar date, appears to have precipitated the Claimant's filing of the 2007 Form 50, as the Claimant's attorney noted in bold type on her transmittal letter of July 19, 2007, that she "would appreciate it if [the Judicial Director] would set this matter for an emergency hearing because the defendants have filed for bankruptcy."

awarded benefits, defendant Uninsured Employers' Fund shall pay the Claim pursuant to this Order." (ROA ____, Hearing Commissioner's Order of December 14, 2007, page 23).

The Fund made a timely appeal of that decision. Of course, the Employer and Self-Insurer, after being given the option not to pay out this claim any longer, took no appeal.

A hearing was held before the Full Commission on April 29, 2008. At oral arguments, the Full Commission addressed, *inter alia*, the interaction of the Bankruptcy proceeding with the issues on appeal. Like the hearing before the Hearing Commissioner, the Panel apparently proceeded under the mistaken belief that the filing of Chapter 11 protection meant that there were no funds available for distribution to the Claimant or under the mistaken belief that the Fund (which would represent, at best, a meaningless and impotent post-petition liability in the Bankruptcy case) was better positioned than the Claimant's attorney to follow the claim through bankruptcy.⁴ Again, the Claimant and/or his attorney made no effort to follow the claim through the bankruptcy proceedings.

In its Order of June 4, 2008, the Full Commission affirmed the Order of the Hearing Commissioner in full. The Fund appealed that Order to the Circuit Court. The

⁴ Transcript of Full Commission Hearing, page 6 lines 15 – 17 (Commissioner Williams: "They then – they go into bankruptcy. There are no funds there to pay for it. Who pays it?"), page 7, lines 17 – 18 (Commissioner Huffstetler: " – a matter of fact they ran out of money."), page 7, line 25 – page 8, line 1 (Commissioner Roche: "It's not that there's no coverage; there's just no money."), page 21, lines 7 – 16 (Commissioner Huffstetler: "I'm just thinking through – the bankruptcy part of it is – I suppose if the Fund were required to pay, they could go with the other folks in a bankruptcy action trying to get any money that might be there . . . but if not, then, does your client have that same option . . . [?]").), page 22, lines 6 – 15 (Claimant's Counsel: "In bankruptcy court my client is not without rights. He does have a claim, but he is an unsecured, back of the line, far down the road creditor in the bankruptcy action. He gets paid last. Whereas, if the UEF pays, they have been accorded by this statute priority status as a creditor. They are accorded the same status as the – the only person they're behind is the IRS.").

Circuit Court heard argument and on October 12, 2009, entered an order affirming the Commission's ruling.

Despite his finding that the Fund was liable for the payment of benefits, Judge Edward W. Miller found that the Self-Insurer "was a qualified self-insurer at the time these injuries occurred." (ROA p.____, 10/12/09 Circuit Court Order). This appeal follows.

STANDARD OF REVIEW

The substantial evidence rule of Administrative Procedures Act governs the standard of review in a Workers' Compensation decision. Corbin v. Kohler Co., 351 S.C. 613, 571 S.E.2d 91 (Ct.App. 2002); Gray v. Club Group, Ltd., 339 S.C. 173, 528 S.E.2d 435 (Ct.App. 2000); Lake v. Reeder Construction Co., 330 S.C. 242, 498 S.E.2d 650 (Ct.App. 1998). In an appeal from the Commission, the Court of Appeals may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Hamilton v. Bob Bennett Ford, 336 S.C. 72, 518 S.E.2d 599 (Ct.App. 1999); see also Etheredge v. Monsanto Co., 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002). The Court of Appeals' review is limited to deciding whether the Commission's decision is unsupported by substantial evidence or is controlled by some error of law. See Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E. 2d 304 (1981).

Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action. Etheredge, 349 S.C. at 456, 562 S.E.2d at 684; Broughton v. South of the Border, 336 S.C. 488, 520 S.E.2d 634 (Ct.App. 1999).

ARGUMENTS

- I. The Trial Court erred in finding that the Employer failed to acquire necessary coverage or to provide necessary and acceptable surety for its employees where:
 - (A) Employer had valid workers' compensation insurance coverage on the dates of accident and at the time the claims were filed;
 - (B) The coverage continued to be available to the Claimant through the date of the hearing in this matter;
 - (C) Other Claimants with claims pending against this same employer continued to be covered; and
 - (D) The Claimant failed to follow through with his obligations as a creditor in the bankruptcy proceeding.

The Employer had valid Workers' Compensation insurance coverage on the dates of accident and at the time the Claimant filed his claims with the Commission. At the time of the Claimant's injuries in 2001, the Employer was a qualified self-insurer. After the Claimant filed his claim with the Commission and following the hearing in 2002, the Claimant's injuries were ruled to be compensable under the Act and the Employer was ordered to pay benefits to him.

S.C. Code Ann. § 42-7-200(B) reads as follows:

When an employee makes a claim for benefits pursuant to Title 42 and the State Workers' Compensation Commission determines that the employer is subject to Title 42 and is operating without insurance or as an unqualified self-insurer, the commission shall notify the fund of the claim. The fund shall pay or defend the claim as it considers necessary in accordance with the provisions of Title 42.

Thus, the statute requires a determination by the Commission that the self-insured employer, such as the Defendant herein, failed to "acquire necessary coverage" at the time claim is filed by the Claimant. It is the Fund's position that the time the claim is filed by the Claimant is governed by the date of injury. However, in the alternative,

the Fund would argue that the time the claim is filed as the point at which the Claimant takes an affirmative step file the claim with the Commission.

The Commission has promulgated regulations setting forth how claims are to be filed with the Commission. S.C. Code Ann. Reg. 67-205; S.C. Code Ann. Reg. 67-206. S.C. Code Ann. Reg. 67-205 reads as follows: "To file a claim, file with the Commission's Claims Department a Form 50, Form 52m or a letter as provided below." Inarguably, the Claimant filed his claims by Form 50 prior to the initial 2002 hearing in the case. Therefore, either that date or the dates of injury are significant in any analysis or whether the Fund is liable to make any payment herein.

Under South Carolina law, the right to compensation for a workers' compensation injury "shall be forever barred unless a claim is filed with the Commission within two years after an accident" S.C. Code Ann. § 42-15-40. In Rogers v. Spartanburg Regional Medical Center, 328 S.C. 415, 491 S.E.2d 667 (2000), the Supreme Court ruled that, *inter alia*, the filing of a claim required a written agreement between the parties.

For years, the Employer provided benefits as it was ordered.

However, on October 13, 2006, Employer filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code. On February 27, 2007, the Employer notified the Commission that it would no longer be paying workers' compensation claims as they came due and consented to the Commission's drawdown of its \$750,000.00 letter of credit. At that point in time, this workers' compensation claim became subject to the bankruptcy proceeding.

Accordingly, a Notice of Special Bar Date for Additional Workers' Compensation Claimants dated March 12, 2007, was served on the Claimant on March 13, 2007.

Pursuant to federal law, the Claimant herein and/or his attorney was required to file the Claimant's Proof of Claim for the workers' compensation case, along with his request for payment of administrative expenses, with the Bankruptcy Court on or before April 11, 2007 at 4:00 p.m.

Without dispute, the Claimant had a pre-petition claim against the Employer. However, for whatever reason, the Claimant failed to take any of the necessary steps to protect his claim in the bankruptcy proceeding. Thus, he failed to protect himself and his claim.

Because the Claimant failed to protect himself and his claim, if the Fund is ordered to pay the Employer's obligation as a result of the Claimant's lack of diligence, the Fund will be significantly prejudiced in any attempt to exert its statutory rights of attachment and collection as set forth by S.C. Code Ann. §42-7-200(D). Despite the arguments put forth by Claimant's counsel before the Full Commission that though her

client does have a claim [in bankruptcy court], but he is an unsecured, back of the line, far down the road creditor in the bankruptcy action. He gets paid last. Whereas, if the UEF pays, they have been accorded by this statute priority status as a creditor. They are accorded the same status as the – the only person they're behind is the IRS[.]

this simply is a misstatement of the law. (ROA ____, Transcript of Full Commission Hearing, page 22, lines 6 – 15). Apparently, Claimant's counsel was referring to the Fund's right to file a lien on the Employer's real estate following a finding of liability. Any liability giving rise to such a lien would necessarily only sprout following the Commission's first Order, which was filed after the bankruptcy petition was filed. Thus, a post-petition lien filed by the Fund would not shoot them to the front of the line, despite Claimant's position.

The Coverage afforded to the Claimant continued to be available to him through the date of the hearing in this matter. This is even recognized in the Claimant's Form 50, where he indicates that he's still receiving benefits. Additionally, this Claimant's case is not the only case that was pending against the Employer on or before the petition date. In fact, there are and/or were numerous cases that have been handled through the bankruptcy proceeding.

In a document from as recent a date as January 13, 2009, entitled Amendment to Debtor's Third Omnibus Objection (Substantive) to Certain Claims Pursuant to 11 U.S.C. §§ 502 and 546, Rule 3007 of the Federal Rules of Bankruptcy Procedure and Rule 3007-1 of the Local Rules of Bankruptcy Procedure with Respect to Certain Workers' Compensation Claims ("Amendment to Objection 1/13/09"), the Employer's continued handling of certain workers' compensation claims in some cases where the Claimant or his or her attorney properly filed proofs of claims are addressed.

In that document, the Employer indicates that it has "paid all amounts to which [each Claimant] is entitled, other than lifetime medical expenses" out of the \$750,000.00 letter of credit. (ROA ____, Amendment to Objection 1/13/09, ¶ 18). However, in an effort to pay further debts remaining as part of those outstanding Workers' Compensation claims, just like the Claimant's, the document indicates that the Employer engaged "CorVel Corporation[], a company with expertise in estimating lifetime medical expenses for workers' compensation claimants, to evaluate each Workers' Compensation Claimant's claims and estimate such claimant's lifetime medical expenses." (ROA ____, Amendment to Objection 1/13/09, ¶ 19).

Following that, by Order of January 30 of this year, the Honorable Christopher S. Sontchi allowed the payment of Six Hundred, Seventy-Three Thousand, Two Hundred and Seventy-Two Dollars (\$673,272.00) for future medical care and expenses.

Clearly, there were funds to pay the Claimant's claim. The Claimant had a simple obligation, but he failed to meet that obligation. Because of that failure, because the Claimant failed to file a proof of claim, the Claimant relinquished his claim against the Employer, as well as any chance of recovery. Furthermore, his failure to file a claim against the Employer obliterated the Fund's opportunity to recover any amounts through subrogation.

As of June 16, 2009, Employer's bankruptcy case is still pending in Delaware.

II. The Trial Court erred in finding that the Employer became an unqualified self-insurer when coverage was in effect at the time the Claimant filed his claim and remained available to the Claimant following the hearing.

The Fund incorporates herein its arguments as set forth in Number One (1), above.

III. The Trial Court erred in finding that the Claimant will become a "public charge."

In his Order, the Hearing Commissioner found the Claimant will become a public charge if the Employer and/or the Fund do not meet the obligations under the Act. (ROA _____, Hearing Commissioner's Order of December 14, 2007, pages 18, 22). There is no such proof. Though the Fund sympathizes with Claimant in that the entity ordered to pay a debt to him filed for Chapter 11 Bankruptcy protection, there is no evidence that the Claimant will become a public charge if the Fund is not required to pay the Employer's debts.

Furthermore, whether or not other public funds will be required to pay an obligation to a Claimant is not a legitimate consideration pursuant to the Workers' Compensation statute in determining the liability of the Fund. Also, Claimant's argument that he will become a public charge is contrary to the evidence in the record. The Claimant testified that he receives retirement and Medicare benefits. (ROA ____, Transcript of Hearing of September 21, 2007, page 22, lines 6 – 14). This was recognized in Order of the Hearing Commissioner in Finding of Fact Number 35, where the Commissioner allocates the funds in "a theoretical stream of periodic payments extending over his lifetime so as to minimize . . . any potential offset or reduction he may experience in social security disability benefits or other disability benefits."

Additionally, as has been discussed at length, the Claimant had an opportunity to seek full payment of the obligations owed to him in the bankruptcy action.

IV. The Trial Court erred in finding that if the Employer is unable to meet its entire obligation to Claimant as provided in its Order then the Fund shall pay.

In his Order, the Hearing Commissioner found the Fund to be liable for the claim if Employer is unable to meet its obligations to the Claimant. (ROA ____, Hearing Commissioner's Order of December 14, 2007, pages 19, 23). The Fund contends it is not a proper party to the action. A Motion to Dismiss the Fund with prejudice was made and denied at the hearing. (ROA ____, Transcript of Hearing of September 21, 2007, page 8, lines 2 – 3).

S.C. Code Ann. § 42-7-200 governs the Fund. By stipulation of the parties, the Employer was operating as a qualified self-insured on the dates of accident, which were August 27, 2001, and September 2, 2001. (ROA ____, Hearing Commissioner's Order of December 14, 2007, page 17). The Employer was also a solvent company doing

business in South Carolina on those dates, as it was for years following. Section 42-7-200(A) requires that,

[w]hen an employee makes a claim for benefits pursuant to Title 42 *and* the State Worker's Compensation Commissioner *determines* that the employer is subject to Title 42 *and is operating* without insurance *or as an unqualified self-insurer*, the commission shall notify the fund of the claim.

(emphasis added).

In the instant case, the South Carolina Workers' Compensation Commission has never made a determination that the Employer was an unqualified self-insurer pursuant to S.C. Code Ann. § 42-7-200(A). This is based upon information in the Commission's file. Further, S.C. Code Ann. § 42-5-20 states, "... the commission shall require the deposit of an acceptable security, indemnity, or bond to secure the payment of the compensation liabilities as they are incurred." The Fund contends the Employer's liability was incurred on August 27, 2001, and September 2, 2001, the dates of the accidents herein. As discussed above, by stipulation of the parties, the Employer was a qualified self-insurer on those dates. Therefore, the Fund is not a proper party to this action.

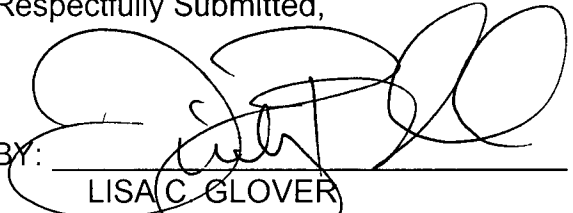
"Construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should be overruled without cogent reasons." Dunton v. South Carolina Board of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987); and Barton v. Higgs, 381 S.C. 367, 674 S.E.3d 175 (2009).

CONCLUSION

As argued herein and at the hearing of the Appeal and for all the grounds and reasons cited, the Fund seeks the Circuit Court's review of the evidence presented, the Commission's file, the Orders complained of and applicable statutory and caselaw and

the Court's Order reversing the Commission as follows: in finding that the Employer failed to acquire necessary coverage, in finding that the Employer became an unqualified self-insurer when coverage remained available to Claimant, in finding that the fund is maintained by a tax on self-insurers, in finding and concluding as a matter of law that the Claimant will become a "public charge" if the Fund is not tasked with Employer's obligations, and in finding and concluding as a matter of law that the Fund is required to pay the Defendant's obligation.

Respectfully Submitted,

BY: 

LISAC C. GLOVER

TIMOTHY B. KILLEN

S.C. WORKERS' COMPENSATION

UNINSURED EMPLOYERS' FUND

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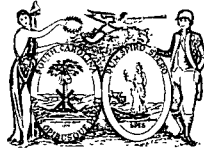
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Columbia, South Carolina

The South Carolina Second Injury Fund



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VIA U.S. MAIL

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MAY 17 2010

SC Court of Appeals

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
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Columbia, South Carolina 29211

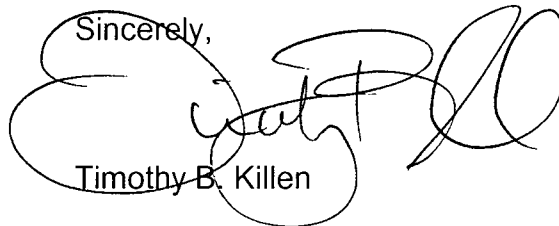
**RE: William G. Ketron, Employee v. Delta Woodside Industries, Inc.,
Employer, and S.C. Workers' Compensation Uninsured Employers'
Fund, Case No. 2008-CP-23-5220**

Dear Ms. Gee:

Enclosed please find the original and one copy of the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal and Proof of Service upon opposing counsel. If you will, please return the filed copy to me in the enclosed self-addressed stamped envelope.

By copy I am serving the Fund's Motion on Kathryn Williams, Esquire and on Delta Woodside Industries, Inc.

Sincerely,



Timothy B. Killen

Enclosure

cc: Kathryn Williams, Esq.
Delta Woodside Industries, Inc.



The South Carolina Court of Appeals

JOHN CANNON FEW
CHIEF JUDGE

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April 13, 2010

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Re: Ketron, William v. SC Uninsured (2)
201015068

Dear Counsel:

This letter serves as an Order granting Appellant's request for an extension of time in which to file the Appellant's Initial Brief and Designation of Matter. I have extended the due date until May 14, 2010. I realize that this extension may not give you all the time you need to complete the Appellant's Initial Brief and Designation of Matter. I have set a conference call for 9:00 a.m. on Tuesday, April 27, 2010 to discuss an overall approach to setting due dates for all filings in this appeal. **The Appellant is responsible for initiating the conference call by getting all parties on the phone at the allotted time.** The call should last less than ten minutes. The participants in the call will include counsel for all parties and me. In preparation for the call, please consider the other time commitments you have in the near future so we can discuss a suitable timeframe for all parties to complete their briefs. If the time scheduled for the conference call creates a conflict, please contact the Clerk's Office at 734-1890 with all counsel on the phone. We will reschedule the call to suit you.

I look forward to talking to you on Tuesday.

Sincerely yours,

John Cannon Few
John Cannon Few
By V. Claire Allen
Deputy Clerk

JCF/dw

FILED

4/13/10

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-5220

RECEIVED

APR 09 2010

SC Court of Appeals

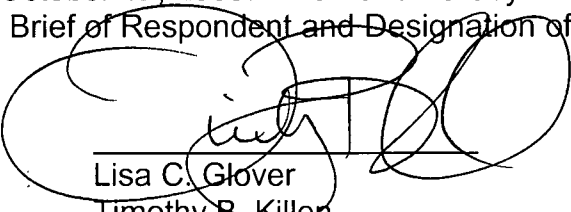
1st AIB
4-14-10
5-14-10

William G. Ketron, Jr., Employee Respondent,
v.
Delta Woodside Industries, Inc., Self-insured Employer and S.C. Workers'
Compensation Uninsured Employers Fund, of whom S.C. Workers' Compensation
Uninsured Employers' Fund is Appellant.

MOTION

The S.C. Workers' Compensation Uninsured Employers' Fund appeals the Order of the Honorable Edward W. Miller, filed October 12, 2009. The Fund hereby moves for a thirty (30) day extension to file its initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal.

April 7, 2010


Lisa C. Glover

Timothy B. Killen

100 Executive Center Drive, Suite 101

Columbia, South Carolina 29210

Ph.: 803-798-2722

Fax: 803-798-5290

Attorneys for the S.C.W.C.U.E.F.

Other Counsel of Record:

Kathryn Williams, Esquire

Kathryn Williams, P.A.

Post Office Box 10693

Greenville, South Carolina 29603

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-5220

RECEIVED

APR 09 2010

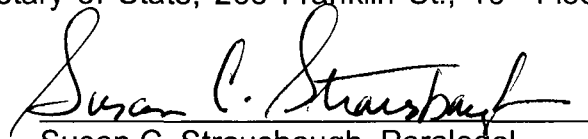
SC Court of Appeals

William G. Ketron, Jr., Employee Respondent,
v.
Delta Woodside Industries, Inc., Self-insured Employer and S.C. Workers'
Compensation Uninsured Employers Fund, of whom S.C. Workers' Compensation
Uninsured Employers' Fund is..... Appellant.

PROOF OF SERVICE

I certify that I have served the Motion to Extend Time to File its Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal on William G. Ketron, Jr., Employee/Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on April 8, 2010, addressed to his attorney of record, Kathryn Williams, Kathryn Williams, P.A., Post Office Box 10693, Greenville, South Carolina 29603, and on Delta Woodside Industries, Inc., by depositing a copy of it in the United States Mail, postage prepaid, on April 8, 2010, addressed to its last known address of 710 Woods Drive, Fountain Inn, South Carolina 29644, and at the address for service as it appears with the South Carolina Secretary of State, 265 Franklin St., 16th Floor, Boston, Massachusetts 02110.

April 8, 2010



Susan C. Strausbaugh, Paralegal
S.C.W.C.U.E.F.

100 Executive Center Drive, Suite 101
Columbia, South Carolina 29210
Ph.: 803-798-2722
Fax: 803-798-5290

The South Carolina Second Injury Fund



WILLIAM E. GUNN
INTERIM DIRECTOR

100 EXECUTIVE CENTER DRIVE, SUITE 101
SANTEE BUILDING
COLUMBIA, S.C. 29210
www.scsif.sc.gov
April 7, 2010

(803) 798-2722
FAX: (803) 798-5290

RECEIVED

APR 09 2010

SC Court of Appeals

Tanya Gee, Acting Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**RE: William G. Ketron, Employee v. Delta Woodside Industries,
Inc., Employer, and S.C. Workers' Compensation Uninsured
Employers' Fund, Case No. 2008-CP-23-5220**

Dear Ms. Gee:

Enclosed please find a Motion for an extension to file its initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal. It is my understanding the \$25.00 fee is waived since the Second Injury Fund is a South Carolina State Agency.

By copy I am serving the Fund's Motion on Kathryn Williams, Esquire and on Delta Woodside Industries, Inc.

Sincerely,

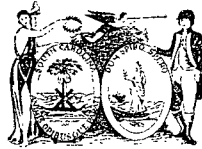
Susan Strausbaugh
Paralegal
Telephone Extension 123

/ss

Enclosure

cc: Kathryn Williams, Esq.
Delta Woodside Industries, Inc.

The South Carolina Second Injury Fund



WILLIAM E. GUNN
INTERIM DIRECTOR

100 EXECUTIVE CENTER DRIVE, SUITE 101
SANTEE BUILDING
COLUMBIA, S.C. 29210
www.scsif.sc.gov
April 7, 2010

RECEIVED

(803) 798-2722
FAX: (803) 798-5290

APR 09 2010

SC Court of Appeals

S.C. Office of Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

**RE: William G. Ketron, Employee v. Delta Woodside Industries, Inc.,
Employer, and S.C. Workers' Compensation Uninsured Employers'
Fund, Case No. 2008-CP-23-5220**

Dear Sir or Madam:

Please note that on March 15, 2010, we received a copy of the transcript from the Circuit Court arguments.

Sincerely,

Susan Strausbaugh
Paralegal
Telephone Extension 123

/ss

Enclosure

cc: Kathryn Williams, Esq.
Delta Woodside Industries, Inc.
The Honorable Tanya A. Gee

KATHRYN WILLIAMS, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 10693
GREENVILLE, SC 29603

KATHRYN WILLIAMS
DONALD E. KAMB, JR.
MELISSA S. MILLER
TOM J. ERVIN
OF COUNSEL

619 N. MAIN STREET
GREENVILLE, SC 29601
TELEPHONE (864) 235-6254
FAX (864) 233-6591

March 16, 2010

S.C. Office of Court Administration
1015 Sumter St., Suite 200
Columbia, SC 29201

Re: **William G. Ketron, Jr. v. Delta Woodside Indus., Inc., et al.**
WCC File Nos.: 0115236, 0115237
Circuit Court Case No.: 08-CP-23-5220
Court of Appeals Tracking No.: 2010150668

RECEIVED

MAR 18 2010

SC Court of Appeals

Dear Sir/Madam:

This firm represents the respondent Ketron in the above matter. Please note that on March 15, 2010, we received a copy of the transcript from the Circuit Court arguments.

Kindest regards,

Yours truly,

Kathryn Williams, P.A.

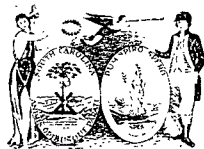


Donald E. Kamb, Jr.

dek
Enclosure

cc: Timothy B. Killen, Esq.
The Honorable Tanya A. Gee
Ms. Teresa B. Johnson

The South Carolina Second Injury Fund



WILLIAM E. GUNN
INTERIM DIRECTOR

100 EXECUTIVE CENTER DRIVE, SUITE 101
SANTEE BUILDING
COLUMBIA, S.C. 29210
www.scsif.sc.gov

(803) 798-2722
FAX: (803) 798-5290

February 23, 2010
VIA U.S. MAIL

RECEIVED

FEB 24 2010

SC Court of Appeals

Teresa Johnson, Certified Court Reporter
Post Office Box 2812
Greenville, South Carolina 29602

RE: William G. Ketron, Jr., v. Delta Woodside Industries, Inc., and
S.C. Workers' Compensation Uninsured Employers' Fund
Case No. 2008-CP-23-5220

Dear Ms. Johnson:

I received your letter dated February 8, 2010 in this matter. For some unknown reason, the Clerk's office lists this case as "South Carolina Uninsured Employers' Fund v. Pamela J. Krauss." This error was pointed out to the Clerk's office, but for some reason that office never corrected the error. All of the filings by the parties and the Order filed by Judge Miller following the arguments on June 19, 2009 reference the correct party names, William G. Ketron, Jr. v. Delta Woodside Indus., Inc. and S.C. Uninsured Employers' Fund. I would appreciate your ensuring that the transcript also references the case name, William G. Ketron, Jr. v. Delta Woodside Indus., Inc. and S.C. Uninsured Employers' Fund.

At any rate, please send me a copy of the transcript from oral arguments in the case numbered 2008-CP-23-5220. These arguments were held on June 19, 2009 in Greenville County before the Honorable Edward W. Miller.

Please let me know if you need additional information.

Sincerely,

S.C.W.C.U.E.F.

Timothy B. Killen
100 Executive Center Drive, Suite 101
Columbia, South Carolina 29210
Ph.: 803-798-2722
Fax: 803-798-5290
Attorneys for the Appellant

cc: Kathryn Williams, Esquire
Ms. Tanya A. Gee, SC Court of Appeals
Ms. Desiree Allen, SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
WWW.SCCOURTS.ORG

February 18, 2010

Lisa C. Glover, Esquire
SC Second Injury Fund & Workers Compensation
Uninsured Employers' Fund
100 Executive Center Dr, Ste 1
Columbia, SC 29210

Re: Ketron, William v. SC Uninsured (2)
Case Tracking Number 2010-50668

Dear Ms. Glover:

The following Order has been endorsed on your Motion in the above entitled case on appeal.

"GRANTED.

John Cannon Few C.J.
For the Court

By s/ Tanya A. Gee
Clerk

February 18, 2010."

You are reminded to provide written confirmation of the date the transcript is received from the Court Reporter. Be sure to copy opposing counsel with all correspondence concerning the transcript.

Very truly yours,

V. Claire Allen, Deputy Clerk
CLERK

TAG/pd

cc: Timothy Blair Killen, Esquire
Kathryn Williams, Esquire

KATHRYN WILLIAMS, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 10693
GREENVILLE, SC 29603

KATHRYN WILLIAMS
DONALD E. KAMB, JR.
MELISSA S. MILLER
TOM J. ERVIN
OF COUNSEL

619 N. MAIN STREET
GREENVILLE, SC 29601
TELEPHONE (864) 235-6254
FAX (864) 233-6591

February 11, 2010

RECEIVED

FEB 12 2010

SC Court of Appeals

Ms. Teresa B. Johnson
P.O. Box 2812
Greenville, SC 29602

Re: **William G. Ketron, Jr. v. Delta Woodside Indus., Inc., et al.**
WCC File Nos.: 0115236, 0115237
Circuit Court Case No.: 08-CP-23-5220

Dear Teresa:

I received your letter dated February 8, 2010 in this matter and apologize for the incorrect case number listed. The correct case number is as above.

As discussed in our e-mail exchange, the correct case name is also listed above. For some unknown reason, the clerk's office has this case listed as "South Carolina Uninsured Employers Fund v. Pamela J. Krauss." This error was pointed out to the clerk's office, but for some reason that office never corrected the error. All of the filings by the parties and the Order filed by Judge Miller following the arguments on June 19, 2009 reference the correct party names, William G. Ketron, Jr. v. Delta Woodside Indus., Inc. and S.C. Uninsured Employers Fund. I would appreciate your ensuring that the transcript also references the case name, William G. Ketron, Jr. v. Delta Woodside Indus., Inc. and S.C. Uninsured Employers Fund.

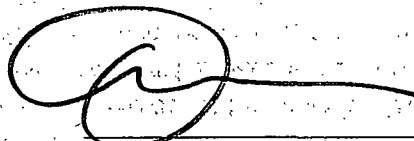
At any rate, please send me a copy of the transcript from oral arguments in the case numbered 2008-CP-23-5220. These arguments were held on June 19, 2009 in Greenville County before the Honorable Edward W. Miller.

Please let me know if you need additional information.

Kindest regards,

Yours truly,

Kathryn Williams, P.A.



Donald E. Kamb, Jr., Esq.

dek

cc: Timothy B. Killen, Esq.
S.C. Workers' Comp. Uninsured Employers' Fund
100 Executive Ctr. Dr., Suite 101
Columbia, SC 29210

Ms. Tanya A. Gee
Acting Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Ms. Desiree Allen
S.C. Office of Court Administration
1015 Sumter St., Suite 200
Columbia, SC 29201

State of South Carolina

Thirteenth Judicial Circuit

Teresa B. Johnson
Official Court Reporter

RECEIVED

FEB 09 2010

SC Court of Appeals

305 East North Street
Judicial Wing, Suite 301
Greenville, South Carolina 29601
Fax: (864) 467-8504

Mailing Address:
Post Office Box 2812
Greenville, South Carolina 29602
Email: TJohnson@sccourts.org

February 8, 2010

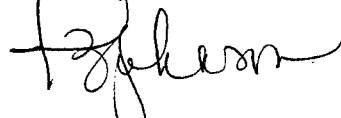
Kathryn Williams, Esquire
P.O. Box 10693
Greenville, S.C. 29603

RE: William G. Ketron, Employee v. Delta Woodside Industries, Inc., Employer, and S.C.
Workers' Compensation Uninsured Employers' Fund,
Case No. 2008-CP-23-4473

Dear Mrs. Williams,

I have received your request dated January 27, 2010 for the transcript of the above referenced case. I have no record of a hearing in this case for the date you have listed. Please check your files for the correct date or reporter.

Sincerely,



Teresa B. Johnson

cc: Timothy B. Killen, Esquire
Ms. Tanya A. Gee, SC Court of Appeals
Ms. Desiree Allen, SC Court Administration

State of South Carolina

Thirteenth Judicial Circuit

Teresa B. Johnson

Official Court Reporter

RECEIVED

FEB 09 2010

SC Court of Appeals

305 East North Street
Judicial Wing, Suite 301
Greenville, South Carolina 29601
Fax: (864) 467-8504

Mailing Address:
Post Office Box 2812
Greenville, South Carolina 29602
Email: TJohnson@sccourts.org

February 8, 2010

Timothy B. Killen, Esquire
100 Executive Center Drive, Suite 101
Columbia, S.C. 29210

RE: William G. Ketron, Employee v. Delta Woodside Industries, Inc., Employer, and S.C.
Workers' Compensation Uninsured Employers' Fund,
Case No. 2008-CP-23-5220

Dear Mr. Killen,

I have received your request dated January 29, 2010 for the transcript of the above referenced case. I have no record of a hearing in this case for the date you have listed. Please check your files for the correct date or reporter.

Sincerely,

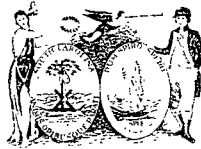


Teresa B. Johnson

cc: Kathryn Williams, Esquire
Ms. Tanya A. Gee, SC Court of Appeals
Ms. Desiree Allen, SC Court Administration

NOTED FOR THE COURT OF APPEALS
RECEIVED
FEB 10 2010
CLERK OF THE COURT OF APPEALS

The South Carolina Second Injury Fund



WILLIAM E. GUNN
INTERIM DIRECTOR

100 EXECUTIVE CENTER DRIVE, SUITE 101
SANTEE BUILDING
COLUMBIA, S.C. 29210
www.scsif.sc.gov

(803) 798-2722
FAX: (803) 798-5290

January 29, 2010
VIA U.S. MAIL

RECEIVED

FEB 01 2010

SC Court of Appeals

Teresa Johnson, Certified Court Reporter
Post Office Box 2812
Greenville, South Carolina 29602

RE: William G. Ketron, Employee v. Delta Woodside Industries, Inc.,
Employer, and S.C. Workers' Compensation Uninsured Employers' Fund,
Case No. 2008-CP-23-5220

Dear Ms. Johnson:

On June 19, 2009, the above case was tried before the Honorable Edward W. Miller, Circuit Court Judge, in Greenville County. My records indicate that you were the court reporter for this case.

I request that you provide me with a transcript of the proceedings. Please transcribe the entire record. I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Sincerely,

S.C.W.C.U.E.F.

Timothy B. Killen
100 Executive Center Drive, Suite 101
Columbia, South Carolina 29210
Ph.: 803-798-2722
Fax: 803-798-5290
Attorneys for the Appellant

cc: Kathryn Williams, Esquire
Delta Woodside Industries, Inc.
Clerk, Court of Appeals

EXHIBIT "A"

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-5220

RECEIVED

FEB 01 2010

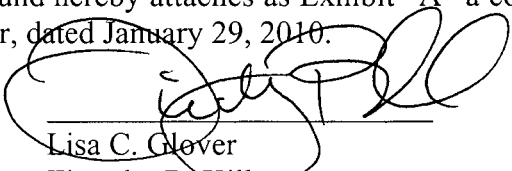
SC Court of Appeals

William G. Ketron, Jr., Employee Respondent,
v.
Delta Woodside Industries, Inc., Self-insured Employer and S.C. Workers' Compensation
Uninsured Employers Fund, of whom S.C. Workers' Compensation Uninsured Employers' Fund
is Appellant.

MOTION

The South Carolina Workers' Compensation Uninsured Employers' Fund (the Fund) appeals the Order of the Honorable Edward W. Miller, filed October 12, 2009. The Fund hereby moves for a four (4) day extension to request the transcript of the Circuit Court proceeding from the court reporter. As part of this Motion, the Fund hereby attaches as Exhibit "A" a copy of its letter to Teresa Johnson, Certified Court Reporter, dated January 29, 2010.

January 29, 2010


Lisa C. Glover
Timothy B. Killen
100 Executive Center Drive, Suite 101
Columbia, South Carolina 29210
Ph.: 803-798-2722
Fax: 803-798-5290
Attorneys for the S.C.W.C.U.E.F.

Other Counsel of Record:

Kathryn Williams, Esquire
Kathryn Williams, P.A.
Post Office Box 10693
Greenville, South Carolina 29603

John Cannon Few, C.J.
For the Court
By Tanya A. Lee W.C.
Clerk

2/18/10

FILED

2/19/10

1.25.10

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-5220

RECEIVED

FEB 01 2010

SC Court of Appeals

William G. Ketron, Jr., Employee Respondent,

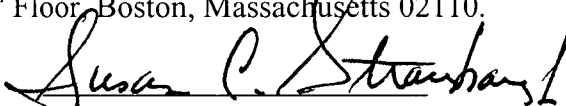
v.

Delta Woodside Industries, Inc., Self-insured Employer and S.C. Workers' Compensation
Uninsured Employers Fund, of whom S.C. Workers' Compensation Uninsured Employers' Fund
is Appellant.

PROOF OF SERVICE

I certify that I have served the Motion to Extend Time to Request Hearing Transcript on William G. Ketron, Jr., Employee/Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on January 29, 2010, addressed to his attorney of record, Kathryn Williams, Kathryn Williams, P.A., Post Office Box 10693, Greenville, South Carolina 29603, and on Delta Woodside Industries, Inc., by depositing a copy of it in the United States Mail, postage prepaid, on January 15, 2010, addressed to its last known address of 710 Woods Drive, Fountain Inn, South Carolina 29644, and at the address for service as it appears with the South Carolina Secretary of State, 265 Franklin St., 16th Floor, Boston, Massachusetts 02110.

January 29, 2010



Susan C. Strausbaugh, Paralegal
S.C.W.C.U.E.F.

100 Executive Center Drive, Suite 101
Columbia, South Carolina 29210
Ph.: 803-798-2722
Fax: 803-798-5290

The seal of the University of California and the State of California. It features two circular emblems. The left emblem is the University of California seal, showing a tree and the text 'UNIVERSITY OF CALIFORNIA' and '1868'. The right emblem is the State of California seal, showing a grizzly bear and the text 'EUREKA' and '1850'. Two figures, a Native American on the left and a settler on the right, stand behind the emblems, holding a banner that reads 'EUREKA'.

Workers' Compensation Uninsured Employers' Fund



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 25, 2010

Lisa C. Glover, Esquire
Timothy Blair Killen, Esquire
SC Second Injury Fund & Workers Compensation
Uninsured Employers' Fund
100 Executive Center Dr, Ste 1
Columbia, SC 29210

Re: Ketron, W. v. SC Uninsured Employer (2)
Case Tracking Number 2010150668

Dear Counsel:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

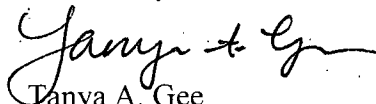
PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the

transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Sincerely,



Tanya A. Gee
Acting Clerk of Court

TAG/lm

cc: Kathryn Williams, Esquire



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 25, 2010

Lisa C. Glover, Esquire
Timothy Blair Killen, Esquire
SC Second Injury Fund & Workers Compensation
Uninsured Employers' Fund
100 Executive Center Dr, Ste 1
Columbia, SC 29210

Re: Ketron, William v. SC Uninsured Employer (2)
Case Tracking Number 2010150668

Dear Counsel:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence (but not on records, briefs, motions, and the like) relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Sincerely,

A handwritten signature in cursive script, reading "Tanya A. Gee".

Tanya A. Gee
Acting Clerk of Court

TAG/lm

cc: Kathryn Williams, Esquire

2010150668

POS 1115
PM 1115

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

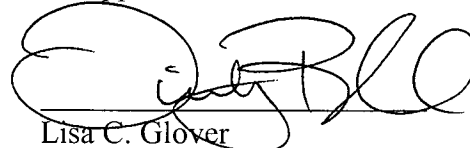
Case No. 2008-CP-23-5220

William G. Ketron, Jr., Employee Respondent,
v.
Delta Woodside Industries, Inc., Self-insured Employer and S.C. Workers' Compensation
Uninsured Employers Fund, of whom S.C. Workers' Compensation Uninsured Employers' Fund
is Appellant.

NOTICE OF APPEAL

The S.C. Workers' Compensation Uninsured Employers' Fund appeals the Order of the
Honorable Edward W. Miller dated October 12, 2009. Appellant received written notice of entry
of this Order on December 22, 2009.

January 15, 2010



Lisa C. Glover
Timothy B. Killen
100 Executive Center Drive, Suite 101
Columbia, South Carolina 29210
Ph.: 803-798-2722
Fax: 803-798-5290
Attorneys for the S.C.W.C.U.E.F.

Other Counsel of Record:

Kathryn Williams, Esquire
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RECEIVED

JAN 21 2010

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-5220

William G. Ketron, Jr., Employee Respondent,
v.
Delta Woodside Industries, Inc., Self-insured Employer and S.C. Workers' Compensation
Uninsured Employers Fund, of whom S.C. Workers' Compensation Uninsured Employers' Fund
is Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on William G. Ketron, Jr., Employee/Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on January 15, 2010, addressed to his attorney of record, Kathryn Williams, Kathryn Williams, P.A., Post Office Box 10693, Greenville, South Carolina 29603, and on Delta Woodside Industries, Inc., by depositing a copy of it in the United States Mail, postage prepaid, on January 15, 2010, addressed to its last known address of 710 Woods Drive, Fountain Inn, South Carolina 29644, and at the address for service as it appears with the South Carolina Secretary of State, 265 Franklin St., 16th Floor, Boston, Massachusetts 02110.

January 15, 2010



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January 15, 2010

VIA U.S. MAIL

RECEIVED

JAN 21 2010

SC Court of Appeals

The Honorable Kenneth A. Richstad
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: William G. Ketron, Employee v. Delta Woodside Industries, Inc.,
Employer, and S.C. Workers' Compensation Uninsured Employers' Fund,
Case No. 2008-CP-23-5220

Dear Mr. Richstad:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondents.
- (2) A Copy of the Order which is being challenged on appeal.

Sincerely,

Timothy B. Killen

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Columbia, South Carolina 29210
Ph.: 803-798-2722
Fax: 803-798-5290
Attorneys for the Appellant

cc: Kathryn Williams, Esquire
Delta Woodside Industries, Inc.

1034
50- 6085
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

William G. Ketron, Jr., Employee,)

Claimant/Respondent,)

vs.)

Delta Woodside Industries, Inc.,)
Self-insured Employer and S.C.)
Uninsured Employers' Fund,)

Defendants,)

of whom S.C. Uninsured Employers' Fund)
is)

Appellant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2008-CP-23-5220

WCC File Nos. 0115236, 0115237

ORDER

ENTERED COMPUTER

This is an appeal from the Workers' Compensation Commission. By previous Order of the Commission dated July 3, 2003, claimant sustained compensable injuries by accident on August 27, 2001 and September 2, 2001 causing compensable injuries to his back, left hip, and both lower extremities and was entitled to continuing medical and temporary compensation benefits. The Commission's Order was subsequently affirmed by the Honorable John C. Few of the circuit court for Greenville County on July 22, 2004.

Claimant now contends that he has also sustained injury to his lungs, aggravation of his diabetes, and injury to his psyche (psychological overlay) as a result of his injuries by accident and his other compensable injuries. He further contends that he has reached maximum medical improvement and seeks permanent total disability benefits. Defendant Delta Woodside joins in the

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Eee

request for a determination of permanent disability but denies that claimant is permanently and totally disabled as a result of his injuries by accident.

Defendant Delta Woodside, who was a qualified self-insurer at the time these injuries occurred, has filed for bankruptcy protection. Claimant joined defendant Uninsured Employers' Fund (hereafter "UEF") as a party contending the Fund is liable to him under the terms of the Workers' Compensation Act if Delta Woodside is unable to meet all of its obligations. Defendant UEF appeared at the hearing of this matter and moved to be dismissed contending that it is not a proper party; however, the motion was denied. Defendant UEF contends that it has no obligation to claimant under the Act arguing that the date of accident controls and that defendant Delta Woodside was acting as a qualified self-insurer at the time of these injuries by accident.

By Order dated December 14, 2007, the Hearing Commissioner found claimant is entitled to permanent total disability benefits, including lifetime causally-related medical treatment. The Commissioner also found that defendant Delta Woodside has failed to acquire necessary workers' compensation coverage for its employees and was operating without insurance or as an unqualified self-insurer within the meaning of the Act as of February 28, 2007. The Commissioner directed that claimant's permanent total disability benefits be provided by defendant Delta Woodside; however, if defendant Delta Woodside proved unable to provide such benefits, the Commissioner determined that defendant UEF shall pay the benefits pursuant to S.C. Code Ann. §42-7-200.

Defendant UEF appealed to the Full Commission Panel contending primarily that the Commissioner erred in finding that it should pay benefits pursuant to S.C. Code Ann. § 42-7-200 if defendant Delta Woodside proved unable to provide such benefits. Defendant UEF did not challenge the Commissioner's findings concerning claimant's entitlement to permanent total

disability. Defendant Delta Woodside did not appeal. By Order dated June 4, 2008, the Commission's Appellate Panel affirmed and adopted the Hearing Commissioner's Order without change.

Defendant UEF's subsequent appeal came before this Court on June 19, 2009.

SCOPE OF REVIEW

In *Brown v. Greenwood Mills, Inc.*, the Court of Appeals explained at length the standard of review in workers' compensation cases.

The South Carolina Administrative Procedures Act ("APA") establishes the standard for judicial review of decisions of the workers' compensation commission. A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions, or decisions of that agency are "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." Under the scope of review established in the APA, this Court may not substitute its judgment for that of the appellate panel as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law.

The substantial evidence rule of the APA governs the standard of review in a workers' compensation decision. Pursuant to the APA, this Court's review is limited to deciding whether the appellate panel's decision is unsupported by substantial evidence or is controlled by some error of law. Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action.

The appellate panel is the ultimate fact finder in workers' compensation cases and is not bound by the single commissioner's findings of fact. The final determination of witness credibility and the weight to be accorded evidence is reserved to the appellate panel. The possibility of drawing two inconsistent conclusions from the

evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Where there are conflicts in the evidence over a factual issue, the findings of the appellate panel are conclusive.

The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. It is not within our province to reverse findings of the appellate panel which are supported by substantial evidence.

Brown v. Greenwood Mills, Inc., 366 S.C. 379, 391-93, 622 S.E.2d 546, 553-54 (Cl.App.2005)(citations omitted).

ANALYSIS

Defendant UEF appeals to this Court contending the Commission erred in finding and ruling that defendant Delta Woodside failed to acquire necessary coverage or to provide necessary and acceptable surety for its employees (specifically Finding of Fact #38 of the Hearing Commissioner's Order), in finding and ruling that defendant Delta Woodside became an unqualified self-insurer (Finding of Fact #42), in finding a tax is levied on self-insured employers in order to establish and maintain the Uninsured Employers' Fund (Finding of Fact #41), in finding and ruling claimant will become a public charge if defendant Delta Woodside is unable to meet its obligations (Ruling of Law #18), and in finding and ruling that defendant UEF shall pay benefits to claimant if defendant Delta Woodside is unable to do so (Ruling of Law #19). Because I find all of the Commission's decisions to be supported by substantial evidence in the record and find no error of law, I affirm the Order of the Commission.

Finding of Fact #41. Defendant UEF's contention that the Commission erred in finding it is maintained by a tax levied on self-insured employers is incorrect. Section 42-7-200(C) clearly provides that "[t]o establish and maintain the South Carolina Workers' Compensation Uninsured Employers' Fund . . . there must be earmarked from the collections of the tax on insurance carriers and self-insured persons . . . an amount sufficient to establish and annually maintain the fund" S.C. Code Ann. § 42-7-200 (2001). See also S.C. Code Ann. § 42-5-190 (2001)(assessing a tax on self-insurers). The point of defendant UEF's argument seems to be that self-insured companies do not *solely* fund the UEF; however, the Commission did not so find, and this argument is rejected.

Finding of Fact #38. Defendant UEF's contention that the Commission erred in finding defendant Delta Woodside failed to acquire necessary coverage or to provide necessary and acceptable surety for its employees is also rejected, as substantial evidence on the record viewed in light of relevant statutory law supports the Commission's finding. Such evidence includes a letter from Hewitt Coleman, defendant Delta Woodside's workers' compensation administrator, stating that Delta Woodside is in bankruptcy and no longer able to meet its obligations and a letter from W.C. Smith of the Commission stating that defendant Delta Woodside defaulted on its responsibilities to pay its claims on February 27, 2007 and under-reserved their surety causing it to be insufficient to meet its liabilities. (See defendant Delta Woodside's APA pp. 11, 13) As such, the Commission's finding that defendant Delta Woodside violated the Workers' Compensation Act's requirements that an employer acquire necessary coverage or provide necessary and acceptable surety for its employees is clearly correct. See S.C. Code Ann. § 42-5-10 (2001)(every employer who accepts the compensation provisions shall secure the payment of compensation to

his employees); S.C. Code Ann. § 42-5-20 (2001)(self-insurers shall deposit an acceptable security, indemnity, or bond to secure the payment of compensation liabilities).

Of note, defendant UEF did not appeal the Commission's Finding of Fact #37 that defendant Delta Woodside's security held by the Commission is insufficient to meet its liabilities since Delta Woodside under-reserved their open claims and failed to comply with a request from the Commission for a surety increase. Accordingly, that finding is now the law of this case. Reese v. CCI Constr. Co., 334 S.C. 600, 514 S.E.2d 144 (Ct.App.1999)(unappealed finding of the Commission is the law of the case). See also Harn v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940)(appeal is limited to consideration of the issues contained in the appellate exceptions by the parties and that all other findings of the Hearing Commissioner are final and not subject to review or reversal). That fact cuts against UEF's argument that the Commission erred in its finding of Fact #38 and essentially requires affirmation of that finding.

Defendant UEF's contention that there has never been a finding that defendant Delta Woodside was operating without insurance and in violation of the Act is incorrect and is rejected, as that is the specific finding of the Commission in the Order now on appeal. (See Findings of Fact #37, 38, 39 and Rulings of Law #15, 16 in both the Hearing Commissioner's Order and the Appellate Panel's Order)

Defendant UEF's argument that the relevant time period for the determination of whether an employer is operating without coverage or as an unqualified self-insurer is the date of accident is without support in the Act. Defendant UEF argues that the phrase "when an employee makes a claim for benefits" in § 42-7-200(A) indicates that the relevant date is the date of accident, but the word "claim" is not so defined in the Act. In fact, the word is not defined in the Act at all. The

record shows that claimant here made a claim for benefits under the Act on July 19, 2007 when he filed a Form 50 requesting a hearing and contending that he is entitled to permanent total disability benefits. Such would seem to satisfy the requirements of § 42-7-200(A), and as shown above, since defendant Delta Woodside was determined to be operating without insurance or as an unqualified self-insurer at that time, it has clearly violated the Act.

Defendant UEF also argues extensively to this Court concerning defendant Delta Woodside's bankruptcy and claimant's alleged failure to file a claim in the bankruptcy proceeding. However, it does not appear that this argument was raised to the Commission, and the Appellate Panel certainly made no ruling on the issue. The contention was certainly not raised in UEF's Form 30 appeal to the Appellate Panel. Defendants' failure to mention the issue in their Form 30 appeal to the Commission's Appellate Panel is abandonment of the issue, and the issue cannot now be raised to this Court. Roche v. S.C. Alcoholic Beverage Control Comm'n, 263 S.C. 451, 211 S.E.2d 243 (1975)(the purpose of an appeal is to determine whether the trial judge erroneously acted or failed to act and where the appellant's contentions are not presented or passed on by the trial judge, such contentions will not be considered on appeal). See also Reese v. CCI Constr. Co., 334 S.C. 600, 514 S.E.2d 144 (Cl.App.1999); Kiawah Resort Assoc. v. S.C. Tax Comm'n, 318 S.C. 502, 458 S.E.2d 542 (1995); Frier v. South Carolina Penitentiary, 216 S.C. 84, 56 S.E.2d 752 (1949). Furthermore, the several bankruptcy related documents attached to defendant UEF's brief to this Court are not a part of the record, were apparently not presented to the Commission, and cannot be considered in this appeal. Claimant's objection to such documents is sustained.

Finding of Fact #42. Defendant UEF's contention that the Commission erred in finding and ruling that defendant Delta Woodside became an unqualified self-insurer is also rejected, as

that finding was not appealed to the Appellate Panel below. Defendant UEF's failure to mention the issue in their Form 30 is abandonment of the issue. Kiawah Resort Assoc. v. S.C. Tax Comm'n, 318 S.C. 502, 458 S.E.2d 542 (1995); Reese v. CCI Constr. Co., 334 S.C. 600, 514 S.E.2d 144 (Ct.App.1999). See also Ilan v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940)(appeal is limited to consideration of the issues contained in the appellate exceptions by the parties and that all other findings of the Hearing Commissioner are final and not subject to review or reversal).

Ruling of Law #18. Defendants next contend the Commission erred in ruling claimant will become a public charge if defendant Delta Woodside does not meet its obligations under the Workers Compensation Act. The Commission made a related finding at Finding of Fact #43. However, again, this finding and ruling are supported by substantial evidence on the record.

Before the Hearing Commissioner, claimant testified that he feels abandoned by defendant Delta Woodside and has had to rely on treatment and assistance from the Veterans' Administration for things such as his walker since Delta Woodside has not provided such assistance. (tr. p. 25, line 8-p. 26, line 3) He also stated that he needs a lump-sum payment of his award in order to obtain stable housing, as he was at that time living in a temporary shelter. Claimant stated that he is eligible for and is receiving Social Security retirement benefits, and he is eligible for Medicare benefits. (tr. p. 22, lines 5-21)

Obviously, if defendant Delta Woodside is unable to provide the benefits that the Commission has ordered, claimant will be forced to continue to rely on various charities and the federal government, through the Veterans' Administration and Medicare, for assistance and his

medical needs and supplies. Accordingly, there is substantial evidence to support the Commission's finding on this issue.

Furthermore, the Commission correctly determined that it is contrary to the purposes of the Act to force claimant to rely on the federal government or the public at large for his compensation and medical needs, as the Act places such responsibility on the employer. See Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960)(purpose of the Act is to compensate worker for his loss of earnings because of injury and to enable the worker to live without being a burden to others, to aid in preventing the worker from becoming a public charge); Smith v. Southern Builders, 202 S.C. 88, 24 S.E.2d 109 (1943)(purpose of the Act is to place upon the employer, and not the injured worker, the economic burden of the casualties of doing business).

Ruling of Law #19. Defendant UEF finally contends the Commission erred in determining that, pursuant to S.C. Code Ann. § 42-7-200, it should pay benefits to claimant if defendant Delta Woodside proved unable to provide such benefits.

Section 42-7-200(A) provides for the establishment of the Uninsured Employers' Fund and specifically states that the Fund's purpose is to

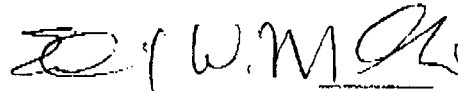
ensure payment of workers' compensation benefits to injured employees whose employers have failed to acquire necessary coverage for employees.

S.C. Code Ann. § 42-7-200(A)(2001). The code section goes on to mandate that the Fund pay benefits under the Act when the Commission determines that an employer is subject to the Act and is operating as an unqualified self-insurer. The Commission found that such has occurred in this case, and as stated above, those findings are either supported by substantial evidence and unaffected

by any error of law or were not appealed by defendant UEF. Therefore, the Commission's findings and award must be affirmed.

For the foregoing reasons, the Commission's Order in this matter is affirmed on all issues.

IT IS SO ORDERED.

A handwritten signature in dark ink, appearing to read 'E. W. Miller', written over a horizontal line.

Edward W. Miller
Judge, Thirteenth Judicial Circuit

Dated:

10/12/02