

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUL 05 2016

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SC Court of Appeals

Appellate Case Nos: 2014-001788

Clarence Winfrey, Employee, Claimant, Respondent,

v.

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

**EMERGENCY MOTION FOR AN ORDER OF PROTECTION
POSTPONING THE DEPOSITION OF DR. JOHN IKONOMIDIS
SET FOR JULY 11, 2016 UNTIL FURTHER ORDER OF
THE COURT AND FURTHER TO A MEMORANDUM SCHEDULE
AS TO WHETHER OR NOT THE DEFENDANTS HAVE THE
RIGHT TO TAKE DEPOSITIONS DURING THE
PENDENCY OF THE APPEAL(S)**

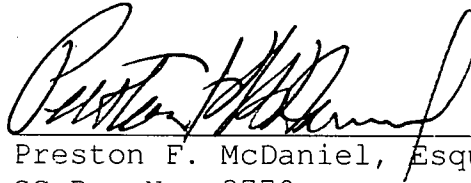
TO: SC COURT OF APPEALS AND MR. BRETT BAYNE, COUNSEL FOR
THE APPELLANTS:

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 240
(and specifically subsections (d)(e), SCACR, the Respondent
hereby moves for an Order of Protection from the Court
cancelling and postponing the deposition scheduled for July
11th and ordering that it not be reset until further Order

of the Court and for the further relief as requested in the Motion. Pursuant to Rule 240(e), SCACR, and due to the emergent situation involved, the Respondent would request that the Court limit the time for filing the Return and Order the Appellants to respond in forth-eight (48) hours or less and/or that the Court after review of the Motion grant the Motion ex parte to the extent of cancelling the deposition scheduled for July 11, 2016. This extraordinary request is made because of the facts as more specifically set forth in the Memorandum in Support of the Motion but specifically the Respondent was served with the Notice of Deposition without Subpoena at approximately 4:00 o'clock p.m. on Friday, July 1st and this Motion is being filed with the Court and served on the Defendants on the next business day July 5th, 2016; the Deposition is set for Monday, July 11, 2016 at 2:00 o'clock p.m. The Respondent further requests in this Motion that the Court set a timetable for the filing of Memorandums from the parties as to whether or not during the pendency of an appeal where the Appellants are paying benefits pursuant to SC Code §42-17-60 the Appellants have the right to take the depositions as to any issues on appeal and if so, under what procedure. Said Motion is further based upon the Memorandum in Support attached hereto and incorporated herein by reference.

I SO MOVE.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Preston F. McDaniel", written over a horizontal line.

Preston F. McDaniel, Esquire
SC Bar No. 3770
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

Attorney for Movant/Respondent

July 5, 2016

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AFFIDAVIT OF PRESTON F. MCDANIEL

I, Preston F. McDaniel, having been duly and properly sworn, do depose and state:

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

2. That on Friday, July 1, 2016, my office received a series of emails, which are attached hereto and incorporated herein by reference, including an email from Betsy Hyland at MUSC (11:37 a.m., 7/1/16), to which Counsel for the Appellants responded (11:40 a.m., 7/1/16, iPhone)

both of which mention a deposition of Dr. John Ikonomidis on July 11, 2016.

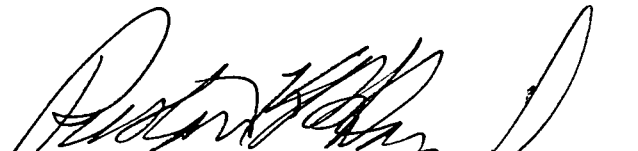
3. That upon notification of these emails, Counsel for the Movant/Respondent immediately forwarded an email to Counsel for the Appellants notifying him that Respondent's Counsel was unaware of the deposition set for July 11th, had not received or been served with Notice of the Deposition and also Counsel for the Respondent advised Counsel for the Appellants that he had protection for the weeks of July 4th and July 11th and in fact was out of the country on vacation during the week of July 11th. On all of these bases I asked that this deposition be cancelled.

4. That in reply, Respondent's Counsel received an email at 3:37 o'clock p.m. from Counsel for the Appellants notifying him that the deposition was going forward, attaching a copy of a Notice of Deposition signed that day, July 1st, and also notifying Counsel for the Respondent that he would be served that afternoon via courier with a copy of the Notice of Deposition in compliance with the ten (10) days' notice requirement of the Circuit Court Rules.

5. That subsequent thereto at approximately 4:00 o'clock p.m. on July 1st, Counsel's office received via courier hand delivered a copy of the Notice of Deposition without Subpoena.

6. That Respondent's Counsel was and is under the impression in accordance with the Court's Order which became final on April 8, 2016, the Appellants can take no further action until at least after the medical care is provided and as noted in the emails, the dental records were not submitted until June 16, 2016 and the surgery has not been scheduled in part due to Appellants' actions as to the deposition.

FURTHER THE AFFIANT SAYETH NOT.



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

SWORN TO BEFORE ME this
5th day of July 2016.

H. Wesley T. Hinkle (L.S.)
Notary Public for South Carolina

My Commission Expires: 4-26-20

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PROOF OF SERVICE

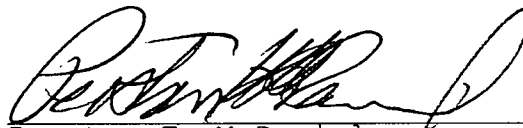
I certify that I have served the **EMERGENCY MOTION FOR AN ORDER OF PROTECTION POSTPONING THE DEPOSITION OF DR. JOHN IKONOMIDIS SET FOR JULY 11, 2016 UNTIL FURTHER ORDER OF THE COURT AND FURTHER TO A MEMORANDUM SCHEDULE AS TO WHETHER OR NOT THE DEFENDANTS HAVE THE RIGHT TO TAKE DEPOSITIONS DURING THE PENDENCY OF THE APPEAL(S) with MEMORANDUM IN SUPPORT, and AFFIDAVIT OF PRESTON F. MCDANIEL on July 5, 2016** addressed as follows:

VIA EMAIL - callen@sccourts.org
AND VIA FACSIMILE - 734-1839
AND HAND DELIVERY

Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate Street
Columbia, South Carolina 29211

VIA EMAIL - brett.bayne@mgclaw.com
AND HAND DELIVERY

Brett H. Bayne, Esquire
McAngus, Goudelock & Courie
1320 Main Street, 10th Floor
Columbia, SC 29211.



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