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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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JUL 20 2016

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 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.

MEMORANDUM IN SUPPORT OF  
MOTION TO VACATE THE ORDER OF  
HONORABLE PAULA H. THOMAS ISSUED JULY 6, 2016  
ON THE BASIS THAT THE DEFENDANTS CANCELLED  
THE DEPOSITION THUS OBTAINING THE NECESSITY  
FOR AN EMERGENCY ORDER AS REQUESTED  
IN THE MOTION FILED WITH THE COURT

OR IN THE ALTERNATIVE

PETITION FOR REHEARING AS TO THE ORDER OF HONORABLE PAULA  
H. THOMAS ISSUED ON JULY 6, 2016  
SUGGESTION FOR HEARING EN BANC

The Petitioner, Respondent before this Court as to the  
appeal filed in the above-referenced matter, would  
respectfully show unto the Court as follows:

1. That as to the request that Judge Thomas vacate her Order, the Petitioner filed a Motion for an Emergency Order of Protection with this Court for the reasons set forth in the Motion and supporting Memorandum on July 5, 2016.

2. That as set forth in the Motion for an Emergency Protective Order filed with this Court, this Court had previously ordered the Appellants before this Court to provide medical care and specifically the surgery referred to in the Court's Order. The Order provided that the Appellants could not challenge that medical care in any way, shape or fashion including depositions until after that medical care had been provided. That surgery in particular has still not been provided and was delayed in part by the pending deposition.

3. That on July 6<sup>th</sup> per the ruling of Judge Paula H. Thomas, Judge Thomas denied the Motion for an Emergency Protective Order on the basis that the, "Appellate Panel" of the SC Workers' Compensation Commission, "retained jurisdiction over motions related to this type of discovery and depositions" and then ruled that, "because this motion is more appropriate for the Appellate Panel", the motion for a protective order was denied. A copy of that Order is attached hereto and incorporated herein by reference as

Exhibit "A".

4. That subsequent to the Order of Judge Thomas, the Petitioner on July 7, 2016, filed a Petition with SC Supreme Court seeking an Emergency Protective Order cancelling the deposition and for a Writ of Mandamus and a Writ of Prohibition. The Appellants after confirming that Respondent's Counsel did in fact have protection for the week of July 11-18, 2016, notified the Supreme Court that they were cancelling the deposition. The Supreme Court then issued its Order finding that the voluntary cancellation rendered a decision on the request for an Emergency Order and as to the Writ of Prohibition prohibiting the enforcement of the Order of the Court of Appeals dated July 6, 2016 to be moot. A copy of that Order is attached hereto and incorporated herein by reference as Exhibit "B".

5. That based upon the cancellation of the deposition for July 11, 2016, the Movant would respectfully request that the Order of Judge Thomas be vacated or withdrawn as being moot in accordance with the Supreme Court Decision issued on this same basis.

**Petition for Rehearing**

6. That in the alternative, the Petitioner, the Respondent before this Court on the appeal of the Appellants, would petition the Court for rehearing as to

the Order of Judge Thomas issued July 6, 2016 on the basis that the above-referenced matter is currently on appeal to this Court and is an appeal by the Appellants from a Decision rendered in favor of the injured worker, wherein the SC Workers' Compensation Commission determined that the Respondent had suffered compensable injury by accident and was entitled to temporary total disability benefits and medical care until further Order of the Commission.

7. That the provisions of SC Code §42-17-60 (as Amended effective July 1, 2007) require that after appeal to this Court, the Employer and its Insurance Carrier, Appellants and the Defendants below, are required to make payments of weekly compensation benefits and to provide for, "medical treatment ordered by the Commission involved in the appeal or certification until the questions at issue have been fully determined in accordance with the provisions of this Title". In this case, the Appellants have appealed the compensability of the injury and the Claimant's entitlement to compensation, and more importantly, medical care pursuant to the Award of the Commission. Rule 205, SCACR, provides that "upon the service of the Notice of Appeal, the Appellate Court shall have exclusive jurisdiction over the appeal." The only exception under the Rule is that nothing in these Rules

would prohibit the Commission from, "proceeding with matters not affected by the appeal". One of the specific issues before the Court is whether or not the Claimant is entitled to medical care pursuant to the Award.

8. That previously the Appellants refused to pay for medical care as directed by the authorized treating physicians, Dr. Jeffrey Travis and Dr. Lanneau Lide, through the Medical University of SC in Charleston, SC. A Petition was filed ordering the Appellants to provide care. By Order of this Court, this Court ordered the Appellants to provide medical care and specifically the recommended surgery and at this time that surgery has not been provided and was delayed by the scheduled deposition, and has currently not been set.

9. That further there is no such standing entity as the, "Appellate Panel" as referred to by the SC Court of Appeals at the SC Workers' Compensation Commission. Workers' compensation claims are heard by a Hearing Commissioner under SC Code §42-17-40 and then that decision can be appealed to the Full Commission pursuant to SC Code §42-17-50. That review may be assigned to three-member panels for the hearing of those appeals under §42-3-20. Those panels are assigned on a rotating basis among the Commissioners and the three-member panels only meet for

three (3) days out of one week each month to hear only appeals. The panels and the Full Commission were not meeting the week of July 4-8, 2016 and only meet on the third week of each month. Petitioner would request that the Court take judicial notice of this fact.

10. That under the Commission's Regulations, individual Commissioners hear motions in reference to discovery and depositions, not an, "Appellate Panel". See: S.C. Workers' Compensation Regulation 67-215. Therefore, there is no standing entity known as "Appellate Panel" and there is no, "Appellate Panel" in existence at this time to which the Petitioner could file a motion as referred to in the SC Court of Appeal's Order. Therefore, the Order refers to an entity that does not exist as a standing entity and does not exist in reference to the hearing of motions nor to an entity with any jurisdiction over motions.

11. That further as noted above, the SC Court of Appeals has exclusive jurisdiction over the appeal and all matters in reference thereto and specifically the provision of medical care and compensation. See: Rule 205, SCACR.

Also as noted prior to 2007, the Circuit Courts after appeal enforced the Awards of the Commission as to the payment of compensation. See for an excellent discussion:

Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960). The 2007 Amendments again changed the appeal process from being to the Circuit Court directly to this Court. The statutory change made no change in the responsibility of the Court on appeal, again that being the Circuit Court prior to 2007 and now this Court, to address and have jurisdiction over all issues that were pending on the appeal which had been appealed to this Court. The Claimant's right to medical care pursuant to the Award is one of the specific issues on appeal to this Court. The Respondent would submit that the statute is clear and this Court has exclusive jurisdiction to enforce the Award of the Commission.

The Court will find in addition in support of this the fact that the Commission has very little enforcement power under the Act except that SC Code §42-3-175 was added in 2007 which greatly increased the enforcement power as to final Awards of the Commission. However, that applies to final Awards. The Court will also find that the other provisions as to enforcement of final Awards of the Commission by the Circuit Court as being a final Judgment were not changed. See for example: SC Code §42-17-70. The Respondent would submit (and would state unfortunately) the Legislature simply shifted from the Circuit Court to this

Court the responsibility to enforce the Awards of the Commission during the pendency of the Appeal as to the issues on Appeal and specifically the provision of weekly compensation benefits and medical care. In fact, there is no provision in the statute, whose wording must be strictly construed and which must be liberally construed in favor of benefits to the injury worker, that there is any right during the pendency of the appeal for the employer and/or its insurance carrier to in any way challenge the provision of the medical care during the pendency of the Appeal. The Amendments in 2007 were made specifically to make sure that the injured worker could not be starved out, mistreated, and not provided medical care during the pendency of an appeal. There must be a mechanism to consider this and enforce this entitlement in a rapid fashion.

The Court will note that these provisions are under the statute that also provides that there is no supersedes or stay of the Award. To Rule otherwise as to jurisdiction and a prompt mechanism would eviscerate the statute, its intent, and expose critically injured workers to the whims and desires of billion-dollar insurance companies.

Wherefore, the Respondent would respectfully request rehearing as to the Order of the Honorable Paula H. Thomas remanding this matter to the Commission for the reasons as

set forth above and specifically wherein the Order provided not only that the matter be remanded to the Commission, but that it be remanded to the Appellate Panel which is not a standing entity at the Commission, and thus provides no relief to the Respondent especially in an emergent situation. For example, in this case, the surgery as ordered by the Court in March has now been delayed four (4) months.

As set forth above, because of the importance of this issue not only to the parties but also to the Bench and Bar, and to the injured workers of our State, the Respondent would suggest rehearing en banc and Briefing and Hearing particularly on the issue of the provision of medical care and weekly compensation benefits during the pendency of an appeal.

Respectfully submitted,



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(803) 771-7211

Attorney for  
Movant/Petitioner/Respondent

July 20, 2016

# The South Carolina Court of Appeals

Clarence Winfrey, Employee, Claimant, Respondent,

v.

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

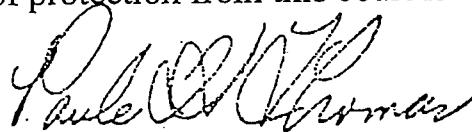
Appellate Case No. 2014-001788

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## ORDER

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Respondent has filed an emergency motion for an order of protection, seeking this court to postpone a deposition set for July 11, 2016. As this court has previously noted, the Appellate Panel has retained jurisdiction over motions relating to this type discovery and depositions. Because this motion is more appropriate for the Appellate Panel, the motion for an order of protection from this court is denied.



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FOR THE COURT

Columbia, South Carolina

cc:  
Brett Harris Bayne, Esquire  
Preston F. McDaniel, Esquire  
Amy Bracy

**FILED**

July 6, 2016



# The Supreme Court of South Carolina

Clarence Winfrey, Employee, Petitioner,

v.

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

Appellate Case No. 2016-001426


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## ORDER

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An appeal from an order of the Workers' Compensation Commission is currently pending before the court of appeals. Petitioner asks this Court to issue an emergency *ex parte* protective order postponing a deposition scheduled in this matter for July 11, 2016. Petitioner also moves for a writ of prohibition to prohibit the court of appeals from enforcing its order dated July 6, 2016, directing petitioner to file a motion for a protective order with the Appellate Panel of the Workers' Compensation Commission.

The Court has been advised that the Workers' Compensation Commission has granted petitioner protection through July 18, 2016, and the deposition will be rescheduled. Accordingly, we dismiss the request for an emergency protective order and the request for a writ of prohibition as moot.<sup>1</sup>

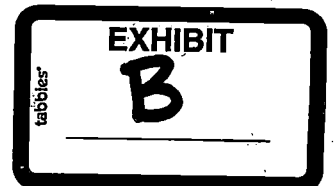


C.J.

FOR THE COURT

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<sup>1</sup> Petitioner has also requested a writ of mandamus to direct the court of appeals to enforce its order "in reference to the deposition and to rule on matters within its jurisdiction pursuant to the appeal which is currently pending before the SC Court of Appeals in reference to the Motion for a Protective Order as to the provision of medical care and for such further relief as requested in the Motion." This request will be taken under advisement by the Court.



Columbia, South Carolina

July 8, 2016

cc:

Preston F. McDaniel, Esquire

Brett Harris Bayne, Esquire

The Honorable Jenny Abbott Kitchings

McDaniel Law Firm  
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**RECEIVED**

JUL 20 2016

**VIA HAND DELIVERY**

Jenny Abbott Kitchings  
Clerk of Court

SC Court of Appeals  
1220 Senate Street

Columbia, South Carolina 29211

**SC Court of Appeals**