

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2014-001788

RECEIVED
JUL 20 2016
SC Court of Appeals

Clarence Winfrey, Employee, Claimant, . Respondent/Petitioner,

v.

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

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

TO: MR. BRETT BAYNE, ESQUIRE, COUNSEL FOR THE APPELLANTS:

YOU WILL PLEASE TAKE NOTICE that due to the fact that
after the filing of the Motion for an Emergency Protective
Order asking this Court to postpone the deposition set for

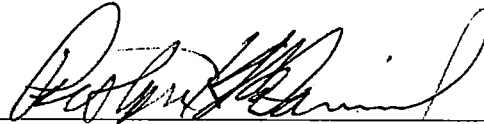
July 11, 2016, that the Appellants cancelled the deposition on Friday, July 8, 2016 after the filing of an emergency Petition on July 7, 2016 with the Supreme Court, the Respondent, pursuant to Rule 240, SCACR, would hereby move for an Order of Judge Thomas vacating her Order as being moot and/or superceded by the voluntary withdrawal of the deposition. In the alternative, the Respondent, as Petitioner before the Court, hereby petitions the Court for Rehearing pursuant to SCACR, Rule 240(j) as to the Order of the Honorable Paula H. Thomas issued on July 6, 2016 holding that, "Because this Motion is more appropriate for the Appellate Panel, the Motion for an Order of Protection from this Court is denied", and thus basically holding that this issue is not within the jurisdiction of the Court under the Appeal pending in this Court.

Due to the 2007 statutory Amendments to SC Code §42-17-60, providing for direct appeal to this Court of workers' compensation Awards and as particularly applying to the provision of weekly benefits and medical care under Awards by the Commission after appeal, the parties and the Bench and Bar need clarity on those issues and as to jurisdiction to address those issues under law that may arise, particularly as to the provision of weekly benefits and medical care during the pendency of an appeal;

previously these issues were handled by the Circuit Court after appeal. The Petitioner would suggest pursuant to Rule 219(b), SCACR, that the Court consider speaking with one voice en banc after Briefing and Hearing on these issues.

Said Motion, or in the alternative Petition, is based on the Memorandum attached hereto and incorporated herein by reference.

Respectfully submitted,



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

Attorney for
Movant/Petitioner/Respondent

July 20, 2016

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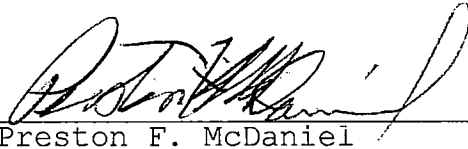
PROOF OF SERVICE

I certify that I have served the 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 with MEMORANDUM IN SUPPORT by depositing a copy of it in the United States Mail, postage prepaid, on July 20, 2016 addressed to:

VIA HAND DELIVERY

Brett H. Bayne, Esquire
McAngus, Goudelock & Courie
1320 Main Street
Meridian, 10th Floor
Columbia, SC 29202

Dated: July 20, 2016



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

Attorney for
Movant/ Petitioner/Respondent

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

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel
Matthew Robertson

Telephone (803) 771-7211
Facsimile (803) 252-0709

July 20, 2016

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SC Court of Appeals

VIA HAND DELIVERY

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

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

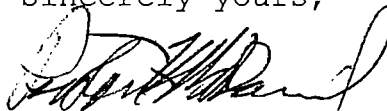
Dear Ms. Kitchings:

Please find enclosed my **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 with MEMORANDUM IN SUPPORT** along with the required number of copies and required filing fee.

By copy of this letter I am notifying and serving Counsel for the Appellants with a copy of this Motion.

As always, I appreciate all the courtesies and kindnesses shown to me by the Court.

Sincerely yours,


Preston F. McDaniel

PFM/kth
Enclosures

cc: Brett H. Bayne, Esquire (Via Hand Delivery)

McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201

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Jenny Abbott Kitchings
Clerk of Court

SC Court of Appeals
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