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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

RECEIVED

JUL 27 2016

Appellate Case No. 2014-001788

SC Court of Appeals

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

v.

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

PER THE ORDER OF THE SC SUPREME COURT,  
MOTION FOR AN EX PARTE PROTECTIVE ORDER CANCELLING  
THE DEPOSITION SET FOR AUGUST 1, 2016 AND FOR A  
PROTECTIVE ORDER AFTER PROPER NOTICE ENFORCING  
THE COURT'S ORDER OF MARCH 18, 2016

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

YOU WILL PLEASE TAKE NOTICE that the Movant is applying to  
the SC Court of Appeals pursuant to the Order of the SC Supreme  
Court (attached hereto) for an Ex Parte Protective Order  
directing the Appellants to cancel the deposition set in the  
above-referenced matter for August 1, 2016. The Movant is  
further moving for an Order of the Court after Notice and  
Response enforcing its Order of March 18, 2016 and for such

other and further relief in reference to discovery or any further action during the pendency of the appeal while there is no pending action or proceeding before the SC Workers' Compensation Commission as the Court deems appropriate. The Movant also moves for the Court to set a period of time for the Movant to file a Memorandum in Support of the Petition for enforcement of the Order and direction of the Court concerning discovery or any further action during the pendency of the appeal while there is no pending action or proceeding before the SC Workers' Compensation Commission. This Motion is based upon the Order of the Supreme Court and the emergent Motion that was filed with the SC Supreme Court, which is attached hereto and incorporated herein, that resulted in the Supreme Court's Order remanding this matter to the SC Court of Appeals for a Protective Order, as well as the previous filings with this Court, and the Court's Order of March 18, 2016 wherein the Appellants had sought to take depositions prior to the provision of this medical care and the Court ordered that they not raise the issue as to whether or not this was related care until after they had provided that medical care, and specifically the surgery. As will be set forth more fully in the Memorandum in Support of the Petition for a Protective Order as to whether or not and on what basis the Appellants may be allowed to contact the doctors, "during the pendency of the appeal" the Appellants

have denied the Respondent sustained an injury by accident and that the Respondent is entitled to any medical care related to the accident. As stated in the Appellants' previous responses the purpose of this discovery during appeal is an attempt to deny further medical care and to establish that certain medical care is not causally related to the accident.

As will further be set out in the Petition, subsequent to the Court's Order directing that the Appellants not further address the issue of whether or not medical care is causally related until at least after the treatment is provided, the Appellants have obtained and forwarded medical records not related to the workers' compensation accident to the doctors at MUSC without the permission of the Respondent, who is the doctors' patient, and have sought to obtain the deposition of the doctor during the pendency of the appeal and while there is no pending action before the Commission and without compliance with SC Code §42-15-95. That Code Section both allows for but also limits the Appellants' right to contact the Respondent's doctors wherein they cannot contact the doctors without first notifying the Respondent as to purpose and intent of such communication simultaneous with or prior to the time of such communication.

Without any decision by the Court on their appeal, wherein the Appellants have denied the Respondent the right to medical

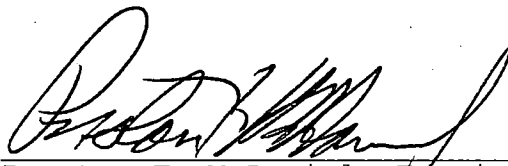
care in any way, shape or form in reference to the provision of medical care as being related to the injury by accident found to be compensable by the Workers' Compensation Commission, the Appellants have not sought and have not obtained from any Court a ruling as to whether or not there is any entitlement to further discovery during the pendency of the appeal.

That there is simply no pending action or proceeding at this time before the SC Workers' Compensation Commission that would allow for any discovery pursuant to the Commission's authority under SC Code §42-3-140, 150 and/or 160 which applies specifically only to discovery in proceedings pending before the Commission.

That again, the Supreme Court has specifically remanded this matter because the proceeding is pending before this Court for enforcement and further action in reference to its March 18, 2016 Order.

I SO MOVE.

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 Respondent/Petitioner

July 27, 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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Petitioner has filed a request that this Court, in its original jurisdiction, issue a writ of mandamus to direct the Court of Appeals to enforce its order dated March 18, 2016. He subsequently filed a document entitled "Supplemental Emergent Motion to the July 7th Petition Including Writ of Mandamus (Taken Under Advisement), For an Ex Parte Order, or Order After Notice, Cancelling the Deposition Set for August 1, 2016; Ordering and Allowing Petitioner to File a Petition with the Court of Appeals to Enforce its Prior Order; and Staying or Dismissing the Writ of Mandamus Pending in this Court."

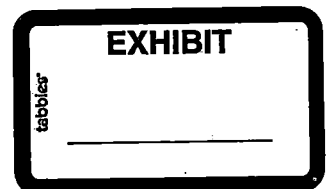
Because this matter is pending before the Court of Appeals, and there is no reason that court cannot rule on petitioner's requests, we deny both motions. As to petitioner's argument that there is insufficient time for a motion to enforce the March 18th order, it is unclear why petitioner cannot request an expedited decision by the Court of Appeals. We are confident that, upon petitioner's request, the Court of Appeals can and will address petitioner's issues in a timely manner so that the issues will not become moot.

  
\_\_\_\_\_  
FOR THE COURT

A.C.J.

Columbia, South Carolina

July 26, 2016



cc:

Preston F. McDaniel, Esquire

Brett Harris Bayne, Esquire

The Honorable Jenny Abbott Kitchings

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Appellate Case No: 2016-001426

**RECEIVED**

JUL 22 2016

**S.C. SUPREME COURT**

Clarence Winfrey, Employee, ..... Movant/Petitioner,

v.

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

SUPPLEMENTAL EMERGENT MOTION TO THE  
JULY 7<sup>TH</sup> PETITION INCLUDING WRIT OF MANDAMUS (TAKEN UNDER  
ADVISEMENT), FOR AN EX PARTE ORDER, OR ORDER  
AFTER NOTICE, CANCELLING THE DEPOSITION SET FOR  
AUGUST 1, 2016; ORDERING AND ALLOWING PETITIONER TO FILE  
A PETITION WITH THE COURT OF APPEALS  
TO ENFORCE ITS PRIOR ORDER; AND STAYING OR DISMISSING  
THE WRIT OF MANDAMUS PENDING IN THIS COURT

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

YOU WILL PLEASE TAKE NOTICE that pursuant to Rules 240,  
245(a)(b), SCACR, and in compliance with Rule 266, SCACR, since  
the Writ of Prohibition was found to be moot due to the actions  
of the Respondents (Appellants in the Court of Appeals), and in

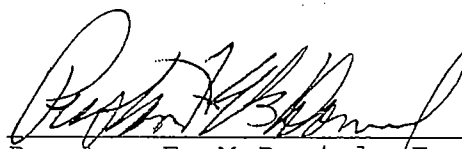
**EXHIBIT**

tabbles

accordance with all applicable SC Rules of Appellate Court procedure, the Movant/Petitioner hereby moves for an ex parte, or Order after such Notice and time to Reply as is directed by the Court, for an Order of the Court ordering the Respondents/Appellants to cancel the deposition set for August 1<sup>st</sup>; ordering and allowing the Petitioner to file a Petition with the SC Court of Appeals within fourteen (14) days or such other time as designated by the Court to enforce the March 18, 2016 Order of the SC Court of Appeals; and staying and/or dismissing the Writ of Mandamus, and for such other Order in reference to the previous Petition and Requests for Writs filed with the Court by the Petitioner as the Court deems just and appropriate. Said Motion is based upon the Memorandum attached hereto and incorporated herein by reference.

I SO MOVE.

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

July 21, 2016

**RECEIVED**

JUL 22 2016

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Appellate Case No: 2016-001426

Clarence Winfrey, Employee, .....Movant/Petitioner,

v.

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

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MEMORANDUM IN SUPPORT OF  
SUPPLEMENTAL EMERGENT MOTION TO THE  
JULY 7<sup>TH</sup> PETITION INCLUDING WRIT OF MANDAMUS (TAKEN UNDER  
ADVISEMENT), FOR AN EX PARTE ORDER, OR ORDER  
AFTER NOTICE, CANCELLING THE DEPOSITION SET FOR  
AUGUST 1, 2016; ORDERING AND ALLOWING PETITIONER TO FILE  
A PETITION WITH THE COURT OF APPEALS  
TO ENFORCE ITS PRIOR ORDER; AND STAYING OR DISMISSING  
THE WRIT OF MANDAMUS PENDING IN THIS COURT

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1. That the Movant/Petitioner filed a Motion for a Protective Order and Petition for Writs of Mandamus and Prohibition on July 7, 2016 concerning the deposition of Dr. Ikonomidis that had been set by Appellants in the Court of

Appeals contrary to that Court's Order of March 18, 2016 for July 11, 2016.

2. That the Court asked for an immediate Reply and on the morning on Friday, July 8, 2016, the Appellants before the Court of Appeals responded and notified the Court that they were cancelling the deposition. That afternoon the Court issued its Order finding the need for an Emergency Order and for the Writ of Prohibition were both rendered moot by the Respondents'/Appellants' actions and took the request for a Writ of Mandamus addressed to the Court of Appeals under advisement.

3. That following the Court's Order, late in the afternoon of July 8<sup>th</sup>, Counsel who was leaving on vacation forwarded an email at 5:04 o'clock p.m. to Respondents'/Appellants' Counsel that upon his return on the 18<sup>th</sup>, he would get with Counsel to find tentative dates but notifying Counsel that he intended to file a Petition with the Court of Appeals to enforce its Order holding that the Appellants could not schedule further discovery or depositions until after they had provided the recommended medical care and in particularly, the surgery. As set out in the Attachments to the July 7<sup>th</sup> Petition and subsequent emails of July 12<sup>th</sup>, that surgery has still not been scheduled. A copy of the email of July 8<sup>th</sup> and other emails are attached hereto and incorporated

herein by reference. Counsel would ask for the Court's attention to this email and Counsel's attempt to resolve this in a civil manner.

4. That upon his return to the office on July 18, 2016, Counsel was advised by his Chief Paralegal that during his absence, Appellants' Counsel had called and had asked whether or not Movant/Petitioner Counsel was free one (1) day for deposition, that being August 1, 2016. Counsel for the Petitioner immediately contacted Counsel for the Appellants via email and asked Counsel to obtain a date at the latter part of August for the deposition which would allow time for him to file for a Petition to enforce the Order of the Court of Appeals and would allow Appellants' Counsel sufficient response time according to the Court Rules so that a final resolution could be made on this issue. That email is attached hereto and incorporated herein by reference.

5. That from July 18, 2016 until the time of the filing of this Motion, Counsel for Movant/Petitioner has received no reply from Counsel for the Respondents/Appellants.

6. That on July 20<sup>th</sup> via regular US Mail, the Movant/Petitioner received a Notice of Deposition wherein the deposition had actually been set by Counsel for the Appellants.

A copy of that Notice is attached hereto and incorporated herein by reference.

7. That Movant/Petitioner's Counsel, pursuant to his previous notification to the Court in the Petition and to Respondents'/Appellants' Counsel, filed a Petition for Rehearing as to the Order of Judge Thomas (issued July 6, 2016) with the SC Court of Appeals on July 20, 2016.

8. That due to the pendency of the Writ of Mandamus requesting a Writ from the Court ordering the Court of Appeals to enforce its Order; and because of the emergent circumstances created by the subsequent actions of Respondents'/Appellants' Counsel wherein the Movant/Petitioner does not even have time pursuant to the Rules of the Court to file and have a Petition or Motion filed in the Court of Appeals to enforce its prior Order with proper Notice and time to respond by the Appellants; and due to the apparent disregard from the clear intent of the previous Order of the SC Court of Appeals by the Appellants, the Movant/Petitioner believes this Court is the appropriate Court with jurisdiction to address these issues in this emergent situation.

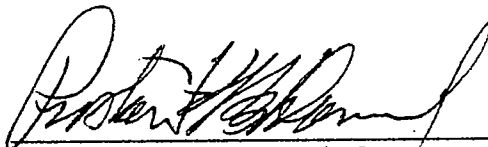
WHEREFORE, the Movant/Petitioner would respectfully request an Order simply:

1. Ordering the Respondents/Appellants to cancel the deposition of August 1, 2016 until further Order of the Court;

2. Ordering the Movant/Petitioner to file a Petition and/or Motion in the Court of Appeals to enforce its March 18, 2016 Order; and

3. Ordering that the Respondents/Appellants take no further action to schedule depositions or further discovery until after decisions by the Court of Appeals on a Petition for a Protective Order enforcing the Court of Appeals' Order of March 18<sup>th</sup> and on the Petition that was filed with the Court of Appeals on Wednesday, July 20<sup>th</sup> requesting that Judge Thomas vacate or withdraw her decision based on the Respondents/Appellants voluntary cancellation of the deposition that had called for the Emergency Order and/or on the Petition for Rehearing that was also filed with the Court of Appeals requesting rehearing as to Judge Thomas' July 6<sup>th</sup> Order

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

July 21, 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.

EXHIBIT

Columbia, South Carolina

July 8, 2016

cc:

Preston F. McDaniel, Esquire  
Brett Harris Bayne, Esquire  
The Honorable Jenny Abbott Kitchings

## Rose Thielke

---

**From:** Rose Thielke <rose@pfmcdlaw.com>  
**Sent:** Friday, July 08, 2016 5:04 PM  
**To:** brett.bayne@mgclaw.com  
**Subject:** Clarence Winfrey v Archway Services

Dear Brett,

With the Court's ruling and the Court having taken under advisement, the Writ of Mandamus, I believe that we are barred from doing anything further in reference to the deposition, at least until my 15 days to request rehearing as to Judge Thomas' Order has run. Also my request to have the Court of Appeals ordered to enforce its Order concerning the deposition would probably further delay it, but unless we agree on what the Court of Appeals Order says, when I get back, I will file to enforce the Order. The 15 days from the date of Judge Thomas' Order would be July 21<sup>st</sup>.

However, true to my word upon my return on the 18<sup>th</sup> if you want to go ahead and set the deposition again I will be glad to work with you that week to get that done. Subject to my right to object to it going forward at least until after the surgery or during the pendency of the Appeal or otherwise based on the Court of Appeals further orders.

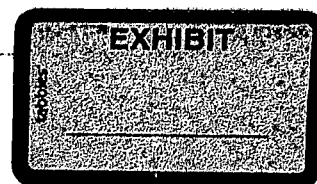
You may want to go ahead and start getting dates from the doctor for conducting the deposition and I will be glad to look at those upon my return. I promise you the week after the 18<sup>th</sup> I will file and we will find out if and when and who can make decisions on the deposition.

Again, I do not know if you are out of town on personal business or firm business, but I hope you enjoy the remainder of your week.

Also, on a final note I will tell you that this is not the first time I have had this happen in reference to the new scheduling system over at your law firm. I have no earthly idea how that is accomplished and think the insurance companies are being totally unreasonable.

Sincerely yours,

Preston



## Kim Hinkle

---

**From:** Altman, Howard <Howard.Altman@genexservices.com>  
**Sent:** Tuesday, July 12, 2016 5:46 PM  
**To:** Kim Hinkle  
**Cc:** puthofey@musc.edu  
**Subject:** RE: URGENT - Clarence Winfrey

Kim,

We are waiting for Dr. Ikonmidis to determine timing of surgery. I have not received any further notification from his office regarding scheduling. I will forward any information you are not copied on.

Thank you,

**Howard Altman, RN, BSN**  
Field Medical Case Manager / Charlotte Midlands  
Genex Services  
O 704.503.4775  
C 803.530.9693 (preferred)  
F 866.268.3974  
TF 800.456.7890  
[howard.altman@genexservices.com](mailto:howard.altman@genexservices.com)

*CONFIDENTIAL: The information contained in this message may be privileged and confidential and protected from disclosure. If the recipient of this message is not the intended, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by reply email and delete all copies of it from your computer. Thank you. GENEX Services, Inc.*

*Please note in the HIPAA Privacy Rule Standards: "A covered entity is permitted to disclose an individual's protected health information as necessary to comply with and to the full extent authorized by workers' compensation law. See 45 CFR 164.512(I)"*

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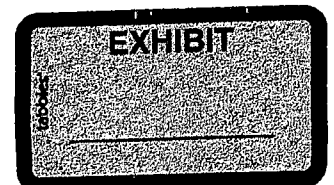
**From:** Kim Hinkle [mailto:kim@pfmcdlaw.com]  
**Sent:** Tuesday, July 12, 2016 5:20 PM  
**To:** Altman, Howard  
**Cc:** puthofey@musc.edu  
**Subject:** URGENT - Clarence Winfrey  
**Importance:** High

Howard:

Please update me on the status of getting Mr. Winfrey's surgery scheduled. Thanks! Kim

Kimberley T. Hinkle, Senior Paralegal  
to Preston F. McDaniel, Esquire  
McDaniel Law Firm  
1915 Elmwood Avenue  
Columbia, SC 29201  
T: 803-771-7211  
F: 803-252-0709

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**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 18, 2016

VIA EMAIL ONLY: [brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com)

Brett H. Bayne, Esquire  
McAngus Goudelock & Courie, LLC  
Post Office Box 12519  
Columbia, South Carolina 29211

**RE: Clarence B. Winfrey, Jr. v. Archway Services, Inc.**  
**WCC File No. 1306305**

Dear Brett:

I would request you "tentatively" schedule the deposition at the end of August. I make this request because I want to try to simplify this in the Court of Appeals and Supreme Court if at all possible. When I returned today, I thought Kim told me that you had actually reset the deposition for August 1<sup>st</sup> but come to find out that was the date that you had given us to see if we would agree to the deposition on August 1<sup>st</sup>. Before the Courts I would like to deal further with this issue allowing both of us to have a full amount of time to address these issues before the Court of Appeals and/or Supreme Court. In that regard, I don't think there is any question that the Court of Appeals directed that you not take any depositions until after the surgery was performed. I am sure it was an unintended consequence, but apparently the surgery was held up and is being held up by this continuing deposition issue.

Would you at least be agreeable to seek a date in the latter part of August to set the deposition and then this week I can file for an Order of Protection and you can have an appropriate ten (10) days to respond? Otherwise, tomorrow I have got to get out an emergency Motion which I have already began drafting requesting that the Court of Appeals issue an emergency Order cancelling the deposition and dealing with whether or not you can take the deposition now before surgery.

Quite frankly, I always expected to have to deal with this issue after the surgery was performed.

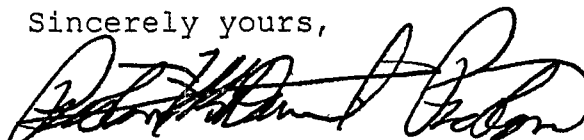
**EXHIBIT**

Brett H. Bayne, Esquire  
July 18, 2016  
Page 2

Let me know as soon as you can, either today or tomorrow if you are agreeable to at least seeking a date at the end of August with Dr. Ikonomidis, which again would allow us time to both timely address all these issues. Apparently this may be a case of first impression in the Court of Appeals.

I look to hear from you.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Preston F. McDaniel", written in a cursive style.

Preston F. McDaniel

PFM/kth

**Reply To**  
BRETT H. BAYNE  
Direct Dial: (803) 227-2281  
brett.bayne@mgclaw.com

July 18, 2016

Preston F. McDaniel, Esquire  
The McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, South Carolina 29201

RE: Clarence Winfrey v. Archway Services and American Fire & Casualty  
Insurance Company c/o Liberty Mutual Group  
Date of Accident: May 22, 2013  
WCC File No.: 1306305  
Our File No.: 2095.13137  
Claim No.: 22209963


Dear Preston:

Enclosed and served upon you is a Notice of Deposition of Dr. John Ikonomidis in the above-referenced matter. This deposition will take place on Monday, August 1, 2016, at 3:00pm at the Storm Thurmond Building at MUSC.

If you have any problems with the time, date, or location, please contact either Fiona R. Reed in my office or me and we will be glad to reschedule it.

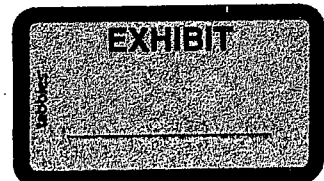
With kind regards, I am,

Very truly yours,



Brett H. Bayne

BHB/frr  
Enclosures

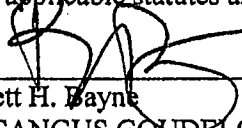


SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

TO: PRESTON F. MCDANIEL, ESQUIRE, ATTORNEY FOR CLAIMANT:

PLEASE TAKE NOTICE that the oral deposition of Dr. John Ikonmidis in the above-captioned action, will be taken pursuant to Section 42-3-160 of the South Carolina Code of Laws, 1976, before a Notary Public for South Carolina, or before some other officer authorized by law to take depositions on Monday the 1st day of August, 2016, at 3:00pm and from day to day thereafter until the taking of the deposition is adjourned, at the Strom Thurmond Building of MUSC at 114 Doughty Street, Charleston, South Carolina. You are hereby notified of the time and place, and you are further invited to attend and participate. This deposition is being taken for the purpose of discovery, for use at trial and for all other purposes as are permitted under the rules of the Commission and all applicable statutes and laws.



---

Brett H. Wayne  
MCANGUS GOUDELICK & COURIE, L.L.C.  
Post Office Box 12519, Capitol Station  
Meridian, 1320 Main Street, 10<sup>th</sup> Floor  
Columbia, South Carolina 29211-2519  
(803) 779-2300  
Attorney for Employer/Carrier

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July 18, 2016  
Columbia, South Carolina

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY  
INSURANCE COMPANY c/o LIBERTY  
MUTUAL GROUP,

Carrier,

Defendants.

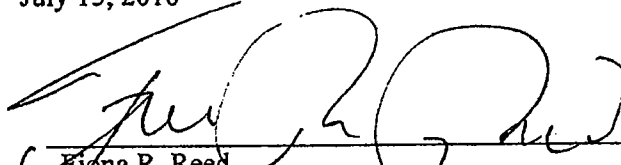
**CERTIFICATE  
OF  
SERVICE**

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Preston F. McDaniel, Esquire  
The McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, South Carolina 29201

DOCUMENT: Notice of Deposition of **Dr. John Ikonomidis**

DATE OF MAILING: July 15, 2016

  
\_\_\_\_\_  
Fiona R. Reed  
Legal Assistant to Brett H. Bayne

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

JUL 22 2016

Appellate Case No. 2016-001426

**S.C. SUPREME COURT**

Clarence Winfrey, Employee, .....Movant/Petitioner,

v.

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

**AFFIDAVIT OF PRESTON F. MCDANIEL**

I, Preston F. McDaniel, Attorney for the Movant/Petitioner before this Court and the Respondent in the SC Court of Appeals in this matter, having been duly and properly sworn, do depose and state as follows:

1. That the email attached to the Petition as an Exhibit forwarded to Counsel for the Respondents, Brett H. Bayne, forwarded to him at 5:04 o'clock p.m. on July 8<sup>th</sup> is maintained as part of the Business Records of my office in this matter.

2. That the emails from the Rehab Nurse assigned to this case to schedule the surgery dated July 12<sup>th</sup> and the email from my paralegal, Kimberley T. Hinkle, concerning the surgery are

part of the Business Records of my office.

3. That the letter sent via email on July 18<sup>th</sup> from me to Mr. Bayne, is part of the Business Records of my office.

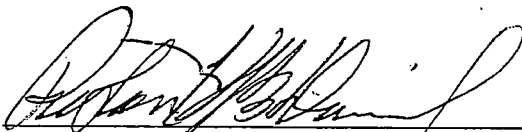
4. That as is set forth in the Records filed with both the SC Court of Appeals and the SC Supreme Court, that the Appellants were refusing to provide the surgery until after they took the deposition of the doctors at MUSC, resulting in a Motion being filed by me with the SC Court of Appeals and resulting in the Order of March 18, 2016 holding that the Appellants were to provide the surgery and could take no further discovery action at least until after that surgery was provided. As is set forth in the documents filed with this Court at this time and to Counsel's personal knowledge as of the filing of this affidavit, the surgery as ordered to be provided by the SC Court of Appeals has not been performed and has in fact been further delayed, intentionally or unintentionally, due to the deposition request for at least over a month. Today, July 22<sup>nd</sup>, we were advised that the doctor is not scheduling the surgery due to the reset deposition.

5. That because of the timing of the deposition that has been reset by the Respondents/Appellants; and their actions which obviated a decision by this Court on the original request for a Protective Order and Writs; and by rescheduling the deposition at a time which would provide for adequate time

pursuant to the Rules of the Court to allow for the time for filing of Petitions and Motions, either with the SC Court of Appeals and/or the SC Workers' Compensation Commission, depending on the direction of the Court of Appeals, Counsel verily believes that the Respondents have created and that an emergent situation exists for this Court to rule in this matter.

6. That further, pursuant to Rule 266, SCACR, while no justice of this Court actually declined to grant an Order and/or Writ in this case and that this Court took the Writ of Mandamus under advisement pursuant to Chief Justice Costa Pleicones' Order that the exigent circumstances are explanatory of this request for a Supplemental Order. Pursuant to the Rules, the Order of Chief Justice Costa Pleicones is attached to the Supplemental Motion.

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  
22nd day of July 2016.

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

My Commission Expires: 4/26/20

# 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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This appeal stems from injuries Respondent sustained when Respondent was shocked with 240-480 volts of electricity while working on a rotisserie oven. On March 7, 2016, Respondent filed a motion to compel medical care pursuant to the award of the South Carolina Workers' Compensation Commission under section 42-17-60 of the South Carolina Code (2015). Respondent argued that Appellants had refused to authorize medical treatment recommended by Respondent's surgeon at the Medical University of South Carolina (MUSC), including a dental examination and valve repair surgery. On March 7, 2016, this court issued an order agreeing that medical treatment awarded by the Commission is not stayed on appeal pursuant to section 42-16-60, but finding the question of whether the medical treatment sought by Respondent was "medical treatment for his heart condition" as set forth in the Appellate Panel's order was a question more appropriate for the Commission.

Respondent has now filed a petition for rehearing, explaining that Respondent's "condition is extremely delicate," Respondent's surgeon at MUSC sought to schedule valve repair surgery within seven days of January 5, 2016, and any delay could result in "an absolutely devastating situation for [Respondent], up to and including his death."

After careful review of this matter, Respondent's motion is granted. We reject Appellants' position that depositions are necessary at this time to establish whether the recommended treatment is causally related to Respondent's heart condition given that Respondent's surgeon recommended valve repair surgery within seven days of January 5, 2016. We note that nothing prevents Appellants from raising the issue after Respondent receives the recommended treatment.

EXHIBIT

tabbles

*Paul W. Thomas*

J.

*John D. Beatty*

J.

*James E. Baker*

J.

Columbia, South Carolina

cc:

Brett Harris Bayne, Esquire  
George D. Gallagher, Esquire  
Preston F. McDaniel, Esquire

**FILED**  
March 18, 2016 *Jak*

RECEIVED

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

JUL 27 2016

SC Court of Appeals

Appellate Case No. 2014-001788

Clarence Winfrey, Employee, ..... Respondent,

v.

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

PROOF OF SERVICE

I certify that I have served the PER THE ORDER OF THE SC  
SUPREME COURT, MOTION FOR AN EX PARTE PROTECTIVE ORDER CANCELLING  
THE DEPOSITION SET FOR AUGUST 1, 2016 AND FOR A PROTECTIVE ORDER  
AFTER PROPER NOTICE ENFORCING THE COURT'S ORDER OF MARCH 18, 2016  
on July 27, 2016 addressed to:

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

Dated: July 27, 2016



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

Attorney for Respondent/Petitioner

**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

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

July 27, 2016

**VIA HAND DELIVERY**

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

**RECEIVED**

JUL 27 2016

**SC Court of Appeals**

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

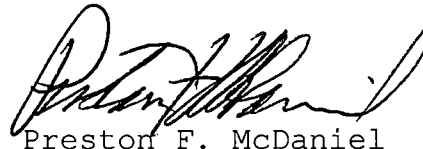
Dear Ms. Kitchings:

Please find enclosed my **PER THE ORDER OF THE SC SUPREME COURT, MOTION FOR AN EX PARTE PROTECTIVE ORDER CANCELLING THE DEPOSITION SET FOR AUGUST 1, 2016 AND FOR A PROTECTIVE ORDER AFTER PROPER NOTICE ENFORCING THE COURT'S ORDER OF MARCH 18, 2016** 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)