

McDANIEL LAW FIRM
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Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

July 28, 2016

RECEIVED

JUL 28 2016

SC Court of Appeals

VIA HAND-DELIVERY

V. Claire Allen, Deputy Clerk
SC Court of Appeals
1220 Senate Street
Columbia, South Carolina 29211

**RE: Clarence Winfrey v. American Fire & Casualty
Appellate Case No.: 2014-001788
Addendum To Motion For Ex Parte Emergency
Protective Order**

Dear Ms. Allen:

I am filing this as an Addendum to my Motion for an Ex Parte Protective Order cancelling the deposition set as Monday.

The appropriate copies are attached and by copy of this letter, I will serve this Addendum on Counsel for the Appellants via hand-delivery.

As is set out in the email stream between Betsy Hyland who is the assistant to Dr. Iknonmidis who is the subject of the deposition on Monday, the emails confirm that as of the date of the emails, the Appellants have never guaranteed payment of the surgery which was ordered to be performed by Order of this Court March 18, 2016 prior to further discovery action by the Appellants.

The email also confirms that the Appellants actions in trying to set up this deposition have resulted in the surgery not being scheduled. Quoting Ms. Hyland, "If we can proceed with surgery, what is the purpose of the deposition?" Your Movant/Petitioner would submit these emails in support of the request for an Ex Parte Order and for the Petition for a Protective Order to prevent further delay and interference in care during the pendency of the Appeal.

The other stream of emails are between Appellants Counsel and the South Carolina Workers' Compensation Commission and while the Appellants have not filed a response to the Motion, through this series of emails, they are taking the position and asserting to the Commission that it does not have jurisdiction over the pending matter to act on an emergency basis.

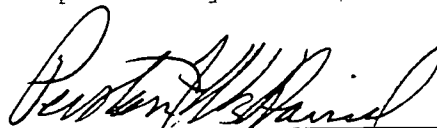
V. Claire Allen, Deputy Clerk
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Also, the emails from the Judicial Director confirm that no action will be taken by the Administrative Assistant to Commissioner Beck, Chairman of the Commission until Friday, July 29th and that the Commission is not set up for nor can it nor does it have the authority to rapidly address emergency situations like this Court.

Also, contrary to the Commission Rules, this stream of emails is not supported by affidavit nor part of a formal response to the Emergency Motion that was filed with the Commission per Judge Thomas' prior Order as is referred to in the documents filed with the Court.

For the foregoing reasons and per the Supreme Court directive, the Petitioner would respectfully submit this Court has jurisdiction to rule on an emergency basis in this situation.

Respectfully submitted by:

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

Preston F. McDaniel
Attorney for the Petitioner
And Respondent to the Appeal

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2014-001788

RECEIVED
JUL 28 2016
SC Court of Appeals

Clarence Winfrey, Employee,Respondent/Movant,

v.

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

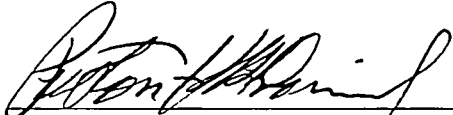
AFFIDAVIT OF PRESTON F. MCDANIEL IN RE:
PER THE ORDER OF THE SC SUPREME COURT,
MOTION FOR AN EX PARTE PROTECTIVE ORDER CANCELLING
THE DEPOSITION SET FOR AUGUST 1, 2016 AND FOR A
PROTECTIVE ORDER AFTER PROPER NOTICE ENFORCING
THE COURT'S ORDER OF MARCH 18, 2016

I, PRESTON F. MCDANIEL, having been duly and properly sworn
do depose and state:

1. That I am the attorney for the Petitioner who is the
Respondent to the Appeal of the Appellants filed in the above-
referenced matter. The emails which are attached to this
Affidavit are business records kept in the normal course and

practice of my law firm in the above-referenced matter.

FURTHER THE AFFIANT SAYETH NOT.


PRESTON F. MCDANIEL, Affiant

SWORN TO BEFORE ME this

26th day of July, 2016.

Humbly H. H. H. L.S.

Notary Public for South Carolina

My Commission Expires: 4/26/20

Kim Hinkle

From: Brett Bayne <brett.bayne@mgclaw.com>
Sent: Wednesday, July 27, 2016 4:47 PM
To: Hyland, Betsy
Cc: Altman, Howard; Kim Hinkle
Subject: RE: Clarence Winfrey

I will work to obtain all of that but I am not sure if I will have it all before August 1.

The purpose of the deposition is to explore causal relation to the original alleged injury from 2013, future medical needs, future medical casual relation, and disability. All of these issues are still unresolved as far as the Workers' Compensation Commission is concerned.

I don't imagine the deposition will take too long overall. Just a review of records and discussion of the above.

From: Hyland, Betsy [mailto:puthofey@musc.edu]
Sent: Wednesday, July 27, 2016 4:44 PM
To: Brett Bayne
Cc: Altman, Howard; Kim Hinkle
Subject: RE: Clarence Winfrey

Mr. Bayne,

I have talked with Dr. Ikonomidis. Yes, you are correct regarding payment to MUSC for Clarence Winfrey's surgery. We need, in writing, a guarantee that payment will be made for Mr. Winfrey's surgery, hospital, work up, etc. Also, the name of the carrier making payment?

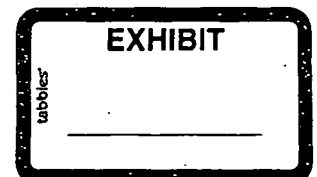
If we can proceed with surgery, what is the purpose of the deposition?

Betsy

Betsy P. Hyland
Administrative Assistant John S. Ikonomidis, MD
MUSC Cardiothoracic Surgery
843-876-4842 Office
843-876-4866 Fax
puthofey@musc.edu

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JUL 28 2016
SC Court of Appeals

From: Brett Bayne [mailto:brett.bayne@mgclaw.com]
Sent: Monday, July 25, 2016 7:49 AM
To: Hyland, Betsy
Cc: Altman, Howard; Kim Hinkle
Subject: Re: Clarence Winfrey



Kim Hinkle

From: Brett Bayne <brett.bayne@mgclaw.com>
Sent: Thursday, July 28, 2016 9:04 AM
To: Bracy, Amy
Cc: Kim Hinkle; DeBruhl, Shawn
Subject: Re: Clarence B. Winfrey v. Archway Services, Inc.; WCC File No.: 1306305

Thank you Amy.

Brett H. Bayne
Attorney
MGC
O: 803-227-2281
C: 214-405-8175

Sent from my iPhone

On Jul 28, 2016, at 9:03 AM, Bracy, Amy <abracy@wcc.sc.gov<<mailto:abracy@wcc.sc.gov>>> wrote:

Shawnee will be back in the office tomorrow and will respond then.

Amy A. Bracy
Judicial Director
SC Workers' Compensation Commission
803-737-5672

From: Brett Bayne [<mailto:brett.bayne@mgclaw.com>]
Sent: Wednesday, July 27, 2016 6:04 PM
To: Bracy, Amy; Kim Hinkle
Cc: DeBruhl, Shawn
Subject: RE: Clarence B. Winfrey v. Archway Services, Inc.; WCC File No.: 1306305
Importance: High

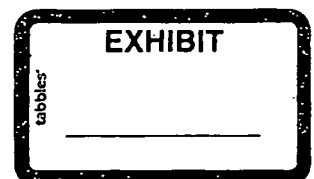
Amy/Shawnee,

While preparing a reply as requested, I was served with the attached. This is a brand new motion filed today by Mr. McDaniel with the Court of Appeals relating to this deposition. Based on the prior letter/Order of Commissioner Beck (that the Commission lacked jurisdiction because of the pending motion in the court above), I am asking how you want me to proceed. It would appear that Commissioner Beck's prior ruling and letter that he is unable to hear anything about this deposition while there is an active motion related to the deposition in the Court of Appeals/Supreme Court would still be applicable.

All of that to say, please let me know if a response is still needed since this appears to now be back in the jurisdiction of the Court of Appeals and not with the Commission.

Brett

From: Bracy, Amy [<mailto:abracy@wcc.sc.gov>]



Sent: Wednesday, July 27, 2016 10:28 AM
To: Brett Bayne; Kim Hinkle
Cc: DeBruhl, Shawn
Subject: RE: Clarence B. Winfrey v. Archway Services, Inc.; WCC File No.: 1306305

The motion is being processed and sent to Commissioner Beck. Brett, you can email your response to Shawnee. If you send it today or tomorrow, please copy me on the email. Thanks!

Amy A. Bracy
Judicial Director
SC Workers' Compensation Commission
803-737-5672

From: Brett Bayne [mailto:brett.bayne@mgclaw.com]
Sent: Tuesday, July 26, 2016 5:19 PM
To: Kim Hinkle; Falls, Kim
Cc: Bracy, Amy
Subject: RE: Clarence B. Winfrey v. Archway Services, Inc.; WCC File No.: 1306305

Amy,

Due to the fact there is still a pending matter before the Supreme Court filed by Mr. McDaniel relating to this deposition, as there was a few weeks ago when this same request was made, if Commissioner Beck intends to do anything other than send it back to Mr. McDaniel, I would request a reasonable period of time to prepare a response.

Thank you,

Brett

From: Kim Hinkle [mailto:kim@pfmcdlaw.com]
Sent: Tuesday, July 26, 2016 5:15 PM
To: kfalls@wcc.sc.gov<mailto:kfalls@wcc.sc.gov>
Cc: Brett Bayne; Amy Bracy
Subject: FW: Clarence B. Winfrey v. Archway Services, Inc.; WCC File No.: 1306305
Importance: High

Ms. Falls:

Please direct the attached to Commissioner Beck (since Shawnee is out of the office this afternoon and tomorrow) as soon as possible. Thank you in advance, Kim Hinkle

From: Kim Hinkle [mailto:kim@pfmcdlaw.com]
Sent: Tuesday, July 26, 2016 5:08 PM
To: 'sdebruhl@wcc.sc.gov<mailto:sdebruhl@wcc.sc.gov>'<sdebruhl@wcc.sc.gov<mailto:sdebruhl@wcc.sc.gov>>
Cc: Amy Bracy (abracy@wcc.sc.gov<mailto:abracy@wcc.sc.gov>)<abracy@wcc.sc.gov<mailto:abracy@wcc.sc.gov>>; Brett H. Bayne

(brett.bayne@mgclaw.com<mailto:brett.bayne@mgclaw.com>)
<brett.bayne@mgclaw.com<mailto:brett.bayne@mgclaw.com>>
Subject: Clarence B. Winfrey v. Archway Services, Inc.; WCC File No.: 1306305
Importance: High

The attached is being sent to you at the request of Preston F. McDaniel, Esquire.

Kimberley T. Hinkle, Senior Paralegal
to Preston F. McDaniel, Esquire
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201
T: 803-771-7211
F: 803-252-0709

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2014-001788

Clarence Winfrey, Employee, Respondent/Petitioner,

v.

Archway Services, Inc., Employer,

and American Fire & Casualty Insurance

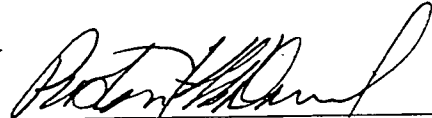
Company c/o Liberty Mutual Group, Carrier, Appellants.

PROOF OF SERVICE

I certify that I have served the **AFFIDAVIT OF PRESTON F. MCDANIEL IN RE: 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 ENGOVEING THE COURT'S ORDER OF MARCH 18, 2016 on July 28, 2016** addressed to:

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

VIA HAND-DELIVERY



Preston F. McDaniel, SC Bar #3770
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211
Attorney for Appellant

DATED: July 28, 2016