

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No.: 2016-001494

80408  
**RECEIVED**  
JUL 27 2016  
**SC Court of Appeals**

Theodore P. Polansky,.....Respondent.

v.

SC Office of Attorney General, employer,  
and State Accident Fund, carrier.....Appellants.

APPELLANTS' MOTION TO HOLD APPEAL IN ABEYANCE

Pursuant to Rules 240 and 263(b) of the South Carolina Appellate Court Rules, Appellants hereby moves for an Order of this Court holding this Appeal in Abeyance.

The Grounds for this motion are as follows:

- 1) This appeal arises from an Order of the South Carolina Worker's Compensation Commission, which was appealed by both the current Appellant's and Respondent to the Circuit Court before the Honorable L. Casey Manning.
- 2) The Appeal and the Cross Appeal were both assigned separate Civil Action Numbers (2015-CP-40-07380 for the Appeal and 2015-CP-40-07468 for the Cross Appeal).
- 3) The Circuit Court, by Form 4 Orders signed June 3, 2016, affirmed the Orders of the Workers' Compensation Commission in both the Appeal and the Cross Appeals and

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indicated that formal Orders were attached for both. (See copies of both Form 4 Orders attached as Exhibits 1 & 2).

4) Despite the notation on the Form 4 Orders that formal orders were attached on both the Appeal and the Cross Appeal, as of the date of the filing of this Motion no formal Order has been issued by the Court that the Undersigned is aware of. The Formal Order was issued in the Appeal and gave rise the above-captioned Appeal.

5) In the event that a Formal Order is issued in the Cross Appeal and it is appealed, it should be conducted in conjunction with the above captioned Appeal, as both matters arise from the same Order of the South Carolina Worker's Commission.

6) Additionally, the Circuit Court issued an additional Order in both the Appeal and the Cross Appeal on July 5, 2016 addressing the issue of payment of accrued benefits. (See copy of Orders attached as Exhibit 3 & 4).

7) These Orders are the subject of now pending Motions for Reconsideration (See Copy of Motion for Reconsideration Attached as Exhibit 5).

8) The Orders on Payment of Accrued Benefits will likely be appealed to this Court after ruling on the Motions for Reconsideration. Such appeal should be conducted in conjunction with the above-captioned Appeal, as both matters arise from the same Order of the South Carolina Worker's Commission.

For the forgoing reasons, the Undersigned hereby request that the Court hold the above-captioned Appeal in abeyance until such time as the remaining Orders of the Circuit Court arising from the same Order of the South Carolina Workers Compensation Commission as the above-captioned Appeal are finalized and a determination as to if they will be appealed and, if so, consolidated with the above captioned Appeal is made.

A handwritten signature in black ink, appearing to be 'Tom', is located in the bottom right corner of the page.

Respectfully submitted,



---

Temus C. Miles, Jr.  
Post Office Box 7212  
Columbia, South Carolina 29201  
(803) 256-4645  
Attorney for Appellants

July 27, 2016

Other Counsel of Record copied:

Preston F. McDaniel, Esquire  
McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, SC 29201  
Attorney for Respondent

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4007380

Theodore Polansky

sc attorney general

PLAINTIFF(S)

South Carolina State Accident Fund  
DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment entered by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : affirmed. Formal Order attached

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge Preston F. McDaniel

Judge Code 2061

Date 6-3-16

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 9 day of June, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Preston F. McDaniel

Temus C. Miles Jr.

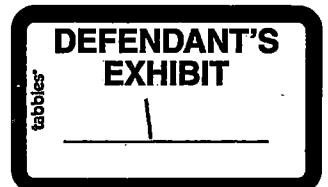
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court Jeanette W. McBride

**SCANNED**



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
OF THE FIFTH JUDICIAL CIRCUIT

THEODORE P. POLANSKY, )  
 )  
Employee, )  
Respondent/Cross-Appellant, )

Docket Nos: 2015-CP-40-07380  
(Appeal);  
2015-CP-40-07468  
(Cross-Appeal)

v. )

SC OFFICE OF THE ATTORNEY )  
GENERAL, )

ORDER AFFIRMING THE  
SC WORKERS' COMPENSATION  
COMMISSION AS TO THE ISSUES  
RAISED ON APPEAL BY THE  
APPELLANTS

Employer, and )

STATE ACCIDENT FUND, )

DOCKET NO.: 2015-CP-40-07380  
(APPEAL)

Carrier, )  
Appellants/Cross-Respondents, )

JEANETTE W. MERRITT  
C.C.P. & C.S.  
2016 JUN -6 AM 11:37

RICHLAND COUNTY  
FILED

This matter came to be heard by me on May 20, 2016, as  
on an appeal and a cross-appeal filed by the parties in the  
above-referenced matter. This Order applies to the appeal  
(Docket No. 2015-CP-40-07380) filed by the Appellants, the  
Defendants, (the employer and the workers' compensation  
insurance carrier), below. The Appellants were represented by  
Temus C. Miles, Jr., of the McKay Law Firm, a member of the  
Richland County Bar. The Respondent, the Claimant below, was  
represented by Preston F. McDaniel, also of the Richland County  
Bar.

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After review of the Record, the Briefs, the arguments of counsel and the issues raised by the Appellants in their Appeal to this Court, I affirm the Decision of the Commission.

STANDARD OF REVIEW

The SC Administrative Procedures Act (APA) establishes the standard for judicial review of Decisions by the S.C. Workers' Compensation. Under the scope of review established in the APA, this Court may not substitute its judgment for the Commission as to the weight of the evidence on questions of fact, and may only reverse or modify the Decision if the Appellants' substantial rights have been prejudiced because the Decision is effected by an error of law or is clearly erroneous in review of the reliable, probative, and substantial evidence on the whole Record. See: SC Code §1-23-380(5)(e) (Supp. 2015). Our Supreme Court has defined substantial evidence as evidence that, "in viewing the Record as a whole, would allow reasonable minds to reach the same conclusion the Appellate Panel reached." Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1976). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an Administrative Agency's Findings from being supported by substantial evidence. Palmetto Alliance, Inc. v. SC Public Service Commission, 282 S.C. 430, 319 S.E.2d 695 (1984). Where there is a conflict in the evidence, the Commission's Findings of Fact are conclusive. The final determination of witness credibility and the weight to the

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accorded evidence is reserved to the Commission. Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999); Brown v. Peoplease, 402 S.C. 476, 741 S.E.2d 761 (SC App. 2013) (emp. added).

REVIEW AND DECISION OF THE ISSUES ON APPEAL

By way of appeal, the Defendants raised twelve (12) Exceptions which were combined into three (3) arguments for decision by the Court. The first centers around the "inclusion" of, but yet in the same argument the lack of weight given to, reports, referred to as "updated", medical reports of Dr. Avie Rainwater, Ph.D; and to the reference to Dr. Rainwater as an authorized medical provider. The second argument is whether the Commission erred as a matter of fact and/or concluding as a matter of law that the Claimant suffered physical brain damage and by finding such brain damage compensable under the standard established by the Supreme Court. The third argument is whether the Commission erred as a matter of fact by finding that the Defendants should have had notice of physical brain injury; and whether the Claimant's request for benefits should be barred under the equitable doctrine of *laches*.

As to the first issue, the Court finds no error of law or fact. The Court would note that Defendants sought to exclude the report of Dr. Rainwater based simply and only on a set of pleadings put into evidence over objection filed in an unrelated matter after the date of the report sought to be excluded. Those

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pleadings establish only that Dr. Rainwater's group filed a Complaint against the State Accident Fund, months after the challenged report, over non-payment of medical bills in totally unrelated matters. The Court would also note that such evidence is in the nature of impeachment evidence which does not go to admissibility but goes to the weight to be given such evidence. As noted in the Standard of Review and specifically as to expert evidence, the weight and credit to be given any expert testimony or evidence is for the Commission as the factfinder. Tiller v. National Home Center of Sumter, 334 S.C. 333, 513 S.E.2d 843 (1999); "Impeachment by Proof of Bias", Sanders and Nichols, Trial Handbook for S.C. Lawyers, §25:7, 5<sup>th</sup> Edition (2015). The final determination of witness credibility and the weight to be afforded evidence is reserved to the Workers' Compensation Commission, and it is not the task of the Court to weight the evidence as found by the Commission. Sharpe v. Case Produce, Inc., supra.

Also as to the report of Dr. Avie Rainwater, the Defendants take exception to the Commissioner's reference to him as an authorized treating provider. In Brief, in argument, and in the Record they do not question that he was an authorized treating medical provider, at least during some period of the time during the course of this claim between 1999 and the date of the hearing. The Record reveals specifically; that he was an authorized provider to perform psychological tests and paid for performing those tests in 2001. Clearly he was an authorized provider and there is no problem with the reference to him as being an authorized medical provider.

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Also as to these reports, while the Defendants challenged their admissibility and the reference of Dr. Rainwater as being an authorized medical provider, the Defendants then conversely challenge the fact that the Hearing Commissioner gave his reports little weight. After making numerous detailed Findings of Fact in her Award including citation to pages and pages of testimony and evidence from Dr. Frank Forsthoefel; Dr. Jean Jonet, Ph.D.; Dr. Ezra Riber, MD; Dr. Marturano; Dr. Krebs; and Dr. Adams, the Commissioner then found as a fact that she would have made the same decision regardless of Dr. Rainwater's Opinion and report and made a finding that she gave those little weight. The weight and credibility to be given to any evidence as noted above, is for the Commission. There is no merit to this argument or issue.

As to the second argument for review whether the Claimant sustained physical brain damage and whether it met the compensability standard, the Court finds no error of law or fact in the decision by the Workers' Compensation Commission and the same is hereby affirmed as to this basis for review. Without citation, where there is substantial evidence in the Record from a factual standpoint, the Decision of the Commission must be affirmed. The Defendants admit and it is agreed that the Claimant sustained a chemical encephalopathy, drug-drug interaction in 2002. Encephalopathy by its very definition is a disease of the brain, especially one involving alterations of brain structure. Merriam Webster Dictionary, URL [http: "www.merriam-webster.com"](http://www.merriam-webster.com). That condition is specifically addressed in the hospital records as occurring during and as being one of the reasons for the hospitalization in the 2002. It

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is then regularly and consistently referred to throughout the medical records thereafter; see for example, the letter of the treating psychiatrist, Dr. Frank Forsthoefel of July 29, 2004 referring to the, "allergic encephalopathy to Seroquel". (APA Submissions, p. 11). During this time, 2002 to 2005, not only does Dr. Ezra Riber, the authorized chronic pain medicine specialist refer to the encephalopathy and make a specific request for referral to a neurologist for evaluation due to the cognitive problems that this man was having but as noted by this Court he specifically forwarded a copy of all of his treatment notes to the State Accident Fund assigned adjuster, Ms. Mee-Ling Khör-Ghould. There is repeated reference to problems with memory, concentration, and requests for neuropsychological testing, and neurological evaluation throughout the medical records. By 2009, the Claimant specifically placed the Defendants on notice of his specific request for compensation benefits for permanent residual brain damage due to his encephalopathy that occurred in 2002. (APA Submissions, p. 699). There are not only numerous opinions that the Claimant sustained physical brain damage that was severe, Dr. Forsthoefel testified extensively as to the Claimant's brain damage and as to its severity. There is clearly substantial evidence that the Claimant sustained physical brain damage that it was severe and also that the Defendants were placed on notice of the Claimant's injury to the brain.

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Next, there is not only uncontradicted medical opinion testimony but numerous medical and psychological opinions in evidence that the Claimant sustained physical brain damage and that it was severe and that it is compensable under the criteria established by the SC Supreme Court. Again, the Commission is the factfinder and the report from Dr. Frank Forsthoefel, the authorized treating psychiatrist, found at the Claimant's APA Submissions, pp. 2-3, is more than sufficient evidence to meet the criteria compensability of severe brain damage as established by the Supreme Court in Sparks v. Palmetto Hardware, Inc., 406 S.C. 124, 750 S.E.2d 61 (2013) and Crisp v. Southco., Inc., 401 S.C. 627, 738 S.E.2d 835 (2013). Dr. Forsthoefel at that point specifically states that the Claimant has physical brain damage and that it is severe enough to constitute a hindrance or obstacle to employment and that it is permanent. On pp. 6 and 8, again Dr. Forsthoefel specifically states that the Claimant is totally and permanently disabled, and specifically that he is totally and permanently disabled due to the physical brain damage that he sustained as a result of the encephalopathy. The authorized treating chronic pain medicine specialist, Dr. Ezra Riber, MD, states the same opinion on pp. 12, 13 and 14 of the Claimant's APA Submissions. Finally, the Hearing Commissioner sets out repeated quotes in her Order from the testimony of Dr. Forsthoefel and in fact appointed a Guardian ad litem from the bench during the hearing due to the

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severity of the Claimant's condition. The Decision of the Workers' Compensation Commission is therefore affirmed as to this issue and these issues raised on appeal.

As to the third argument and as to the issues raised, first there is substantial evidence to support the Commission's Decision as to notice of the physical brain injury and therefore the Decision must be affirmed by this Court. For the reasons set forth hereinbefore in reference to the second argument and the group of issues raised as to whether or not there was sufficient evidence of brain damage and whether that brain damage met the criteria for an Award for compensable brain damage entitling the Claimant to lifetime benefits, that same evidence clearly establishes that from 2002 forward that the Defendants were placed on notice of the Claimant's physical brain injury. As noted throughout the Decision on that argument, the Defendants were placed on notice in 2002 of a brain injury and from 2002 until the very date of the hearing continued to pay for all medical care related to the brain injury.

The Defendants also raise the issue of *laches* and based upon the Briefs of the parties and review of the Decisions of our SC Supreme Court and Court of Appeals, the issue of *laches* simply does not apply.<sup>1</sup> Under the doctrine of *laches*, the

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<sup>1</sup> The Court notes that it is doubtful whether or not this issue was preserved for appeal as to the doctrine of *laches*. While not only was it not raised in the first Form 51 and was not set out and detailed as a specific defense until the Form 58 filed by present Counsel who was not substituted as Counsel until less than fifteen (15) days prior to the scheduled hearing, the Mediation Agreement specifically provides that the Claimant is totally and permanently disabled by agreement, and that the only

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doctrine only applies if a party: 1) knowing of his rights; 2) does not timely assert them; and 3) by any unreasonable delay causes his adversary to occur expenses or otherwise detrimentally change his position and also 4) the affected party must affirmatively prove material prejudice. Only when all four elements are met will equity bar the enforcement of those known rights. Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (SC App. 1999). The concept of *laches* only applies in a very limited set of circumstances and applies equally to both of the parties, that being the Claimant and the Defendants in this case. While the Claimant has the responsibility to raise issues and claims in a timely manner, the Defendants have the same responsibility to assert any defenses that they claim. This Court agrees with the Commissioner and the Commission that the doctrine of *laches* simply does not apply. Both parties had access to the same medical records from 2002 through the date that a claim was filed in 2011, Both parties knew that the Claimant suffered a physical brain injury in 2002 as a result of the encephalopathy and knew that by 2004 the treating psychiatrist, and in fact three (3) other and different authorized treating and/or evaluation physicians in 2004 and 2005 recommended a complete neurological workup to include

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issue left open is the, "compensability" of the physical brain damage that the Claimant incurred. In that same Mediation Agreement, the Defendants admit that they had always authorized all of the treatment for and by the treating physicians that have expressed the opinions concerning the brain damage and agreed to provide their continuing medical care for life.

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neuropsychological testing. Neuropsychological testing was not authorized and provided by the Defendants and were not performed until 2008. That testing in 2008 recorded severe cognitive deficits. The neuropsychologist who performed those tests in 2008, Dr. Nicholas Lind, Ph.D., subsequently in 2012 concurred in the opinion that the Claimant had sustained physical brain damage and that it was severe. In 2009 the Claimant wrote the Defendants and specifically placed them on notice that he was claiming severe physical brain damage and an entitlement to lifetime compensation due to that brain damage. In 2011, within one (1) week of the date that the authorized treating psychiatrist issued his opinion that the Claimant had sustained physical brain damage and that he was totally and permanently disabled from all work due to that brain damage, the Claimant filed a claim for lifetime compensation benefits due to that severe, permanent physical brain damage. In addition, the Commission, as is recorded in the Hearing Commissioner's Order found that the Defendants had paid for all medical care and specifically all of this care and had the same access to all of the medical records as did the Claimant. The doctrine of laches simply does not apply.

Also, as noted above, there was no definitive diagnosis until 2011 of physical brain damage that was permanent and severe and within one (1) week of that diagnosis the Claimant filed.

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Finally, even if the other elements were in existence, which they are not in the opinion of this Court, there is no prejudice to the Defendants because the Defendants had total access to all the medical records. There is simply no material prejudice to the Defendants in not moving forward with the defense since they had access to the same exact medical evidence as did the Claimant. In addition, while the Court is of the opinion that the doctrine of *laches* does not apply, it was not raised as a defense in the initial response to the Form 50 that was filed by the Claimant seeking compensation for compensable brain damage and an entitlement to lifetime compensation benefits. Also, in the mediation, simply the compensability of the brain injury was left open for decision. It was agreed that the Claimant was totally and permanent disabled.

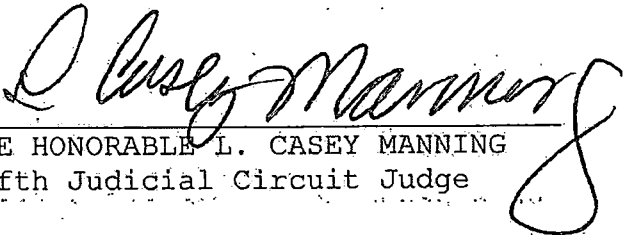
Finally, the Court would note that if it did apply it would apply to the Defendants failure to timely raise the defense. Both parties had the same notice from 2002 through 2011 concerning the Claimant's injury to his brain. Further, it was the Defendants and not the Claimant that did not provide the neuropsychological testing for a period of over four (4) years from the date it was requested. The Defendants were placed on notice of the claim no later than 2009. For all these reasons as to these bases for the appeal in the third argument, the Decision of the SC Workers' Compensation Commission is hereby affirmed.

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For all the foregoing reasons, after due and proper consideration of the Record, the Briefs and arguments of the parties, the Decision of the SC Workers' Compensation Commission is hereby affirmed as to the appeal filed by the Defendants as Appellants in this Court.

THEREFORE, IT IS ORDERED that the Decision of the SC Workers' Compensation Commission as to the appeal filed by the Defendants as Appellants before this Court be and hereby is AFFIRMED.

AND IT IS SO ORDERED.

  
THE HONORABLE L. CASEY MANNING  
Fifth Judicial Circuit Judge

Dated: June 3, 2016

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**Temus C. Miles Jr.**  
**PO Box 7217**  
**Columbia, SC 29202**

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4007468

Theodore P Polansky

SC Office Of Attorney General

PLAINTIFF(S)

State Accident Fund

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.  
Additional Information for the Clerk: \_\_\_\_\_

*Affirmed. Formal order attached*

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: \_\_\_\_\_

RICHLAND COUNTY  
FILED  
JUN - 6 2016  
JEANETTE W. BRIDE  
CLERK OF COURT

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Circuit Court Judge *J. M. Manning* Judge Code 2061 Date 6-3-16

**For Clerk of Court Office Use Only**

This judgment was entered on the 9 day of June, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 9 day of June, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Preston F. McDaniel

Temus C. Miles Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court *Jeanette W. Bride*

**SCANNED**

**DEFENDANT'S EXHIBIT**  
2

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
OF THE FIFTH JUDICIAL CIRCUIT

THEODORE P. POLANSKY, )  
 )  
Employee, )  
Respondent/Cross-Appellant, )

Docket Nos: 2015-CP-40-07380  
(Appeal);  
2015-CP-40-07468  
(Cross-Appeal)

v. )

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ORDER AFFIRMING THE  
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Employer, and )

STATE ACCIDENT FUND, )

DOCKET NO.: 2015-CP-40-07380  
(APPEAL)

Carrier, )  
Appellants/Cross-Respondents, )

2016 JUN -6 AM 11:37  
JEANNETTE W. MERRIDG  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

This matter came to be heard by me on May 20, 2016, on an appeal and a cross-appeal filed by the parties in the above-referenced matter. This Order applies to the appeal (Docket No. 2015-CP-40-07380) filed by the Appellants, the Defendants, (the employer and the workers' compensation insurance carrier), below. The Appellants were represented by Temus C. Miles, Jr., of the McKay Law Firm, a member of the Richland County Bar. The Respondent, the Claimant below, was represented by Preston F. McDaniel, also of the Richland County Bar.

SCANNED

After review of the Record, the Briefs, the arguments of counsel and the issues raised by the Appellants in their Appeal to this Court, I affirm the Decision of the Commission.

STANDARD OF REVIEW

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REVIEW AND DECISION OF THE ISSUES ON APPEAL

By way of appeal, the Defendants raised twelve (12) Exceptions which were combined into three (3) arguments for decision by the Court. The first centers around the "inclusion" of, but yet in the same argument the lack of weight given to, reports, referred to as "updated", medical reports of Dr. Avie Rainwater, Ph.D; and to the reference to Dr. Rainwater as an authorized medical provider. The second argument is whether the Commission erred as a matter of fact and/or concluding as a matter of law that the Claimant suffered physical brain damage and by finding such brain damage compensable under the standard established by the Supreme Court. The third argument is whether the Commission erred as a matter of fact by finding that the Defendants should have had notice of physical brain injury; and whether the Claimant's request for benefits should be barred under the equitable doctrine of *laches*.

As to the first issue, the Court finds no error of law or fact. The Court would note that Defendants sought to exclude the report of Dr. Rainwater based simply and only on a set of pleadings put into evidence over objection filed in an unrelated matter after the date of the report sought to be excluded. Those

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pleadings establish only that Dr. Rainwater's group filed a Complaint against the State Accident Fund, months after the challenged report, over non-payment of medical bills in totally unrelated matters. The Court would also note that such evidence is in the nature of impeachment evidence which does not go to admissibility but goes to the weight to be given such evidence. As noted in the Standard of Review and specifically as to expert evidence, the weight and credit to be given any expert testimony or evidence is for the Commission as the factfinder. Tiller v. National Home Center of Sumter, 334 S.C. 333, 513 S.E.2d 843 (1999); "Impeachment by Proof of Bias", Sanders and Nichols, Trial Handbook for S.C. Lawyers, §25:7, 5<sup>th</sup> Edition (2015). The final determination of witness credibility and the weight to be afforded evidence is reserved to the Workers' Compensation Commission, and it is not the task of the Court to weight the evidence as found by the Commission. Sharpe v. Case Produce, Inc., supra.

Also as to the report of Dr. Avie Rainwater, the Defendants take exception to the Commissioner's reference to him as an authorized treating provider. In Brief, in argument, and in the Record they do not question that he was an authorized treating medical provider, at least during some period of the time during the course of this claim between 1999 and the date of the hearing. The Record reveals specifically, that he was an authorized provider to perform psychological tests and paid for performing those tests in 2001. Clearly he was an authorized provider and there is no problem with the reference to him as being an authorized medical provider.

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Also as to these reports, while the Defendants challenged their admissibility and the reference of Dr. Rainwater as being an authorized medical provider, the Defendants then conversely challenge the fact that the Hearing Commissioner gave his reports little weight. After making numerous detailed Findings of Fact in her Award including citation to pages and pages of testimony and evidence from Dr. Frank Forsthoefel; Dr. Jean Jonet, Ph.D.; Dr. Ezra Riber, MD; Dr. Marturano; Dr. Krebs; and Dr. Adams, the Commissioner then found as a fact that she would have made the same decision regardless of Dr. Rainwater's Opinion and report and made a finding that she gave those little weight. The weight and credibility to be given to any evidence as noted above, is for the Commission. There is no merit to this argument or issue.

As to the second argument for review whether the Claimant sustained physical brain damage and whether it met the compensability standard, the Court finds no error of law or fact in the decision by the Workers' Compensation Commission and the same is hereby affirmed as to this basis for review. Without citation, where there is substantial evidence in the Record from a factual standpoint, the Decision of the Commission must be affirmed. The Defendants admit and it is agreed that the Claimant sustained a chemical encephalopathy, drug-drug interaction in 2002. Encephalopathy by its very definition is a disease of the brain, especially one involving alterations of brain structure. Merriam Webster Dictionary, URL [http: "www.merriam-webster.com"](http://www.merriam-webster.com). That condition is specifically addressed in the hospital records as occurring during and as being one of the reasons for the hospitalization in the 2002. It

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is then regularly and consistently referred to throughout the medical records thereafter; see for example, the letter of the treating psychiatrist, Dr. Frank Forsthoefel of July 29, 2004 referring to the, "allergic encephalopathy to Seroquel". (APA Submissions, p. 11). During this time, 2002 to 2005, not only does Dr. Ezra Riber, the authorized chronic pain medicine specialist refer to the encephalopathy and make a specific request for referral to a neurologist for evaluation due to the cognitive problems that this man was having but as noted by this Court he specifically forwarded a copy of all of his treatment notes to the State Accident Fund assigned adjuster, Ms. Mee-Ling Khor-Gould. There is repeated reference to problems with memory, concentration, and requests for neuropsychological testing, and neurological evaluation throughout the medical records. By 2009, the Claimant specifically placed the Defendants on notice of his specific request for compensation benefits for permanent residual brain damage due to his encephalopathy that occurred in 2002. (APA Submissions, p. 699). There are not only numerous opinions that the Claimant sustained physical brain damage that was severe, Dr. Forsthoefel testified extensively as to the Claimant's brain damage and as to its severity. There is clearly substantial evidence that the Claimant sustained physical brain damage that it was severe and also that the Defendants were placed on notice of the Claimant's injury to the brain.

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Next, there is not only uncontradicted medical opinion testimony but numerous medical and psychological opinions in evidence that the Claimant sustained physical brain damage and that it was severe and that it is compensable under the criteria established by the SC Supreme Court. Again, the Commission is the factfinder and the report from Dr. Frank Forsthoefel, the authorized treating psychiatrist, found at the Claimant's APA Submissions, pp. 2-3, is more than sufficient evidence to meet the criteria compensability of severe brain damage as established by the Supreme Court in Sparks v. Palmetto Hardware, Inc., 406 S.C. 124, 750 S.E.2d 61 (2013) and Crisp v. Southco., Inc., 401 S.C. 627, 738 S.E.2d 835 (2013). Dr. Forsthoefel at that point specifically states that the Claimant has physical brain damage and that it is severe enough to constitute a hindrance or obstacle to employment and that it is permanent. On pp. 6 and 8, again Dr. Forsthoefel specifically states that the Claimant is totally and permanently disabled, and specifically that he is totally and permanently disabled due to the physical brain damage that he sustained as a result of the encephalopathy. The authorized treating chronic pain medicine specialist, Dr. Ezra Riber, MD, states the same opinion on pp. 12, 13 and 14 of the Claimant's APA Submissions. Finally, the Hearing Commissioner sets out repeated quotes in her Order from the testimony of Dr. Forsthoefel and in fact appointed a Guardian ad litem from the bench during the hearing due to the

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severity of the Claimant's condition. The Decision of the Workers' Compensation Commission is therefore affirmed as to this issue and these issues raised on appeal.

As to the third argument and as to the issues raised, first there is substantial evidence to support the Commission's Decision as to notice of the physical brain injury and therefore the Decision must be affirmed by this Court. For the reasons set forth hereinbefore in reference to the second argument and the group of issues raised as to whether or not there was sufficient evidence of brain damage and whether that brain damage met the criteria for an Award for compensable brain damage entitling the Claimant to lifetime benefits, that same evidence clearly establishes that from 2002 forward that the Defendants were placed on notice of the Claimant's physical brain injury. As noted throughout the Decision on that argument, the Defendants were placed on notice in 2002 of a brain injury and from 2002 until the very date of the hearing continued to pay for all medical care related to the brain injury.

The Defendants also raise the issue of *laches* and based upon the Briefs of the parties and review of the Decisions of our SC Supreme Court and Court of Appeals, the issue of *laches* simply does not apply.<sup>1</sup> Under the doctrine of *laches*, the

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<sup>1</sup> The Court notes that it is doubtful whether or not this issue was preserved for appeal as to the doctrine of *laches*. While not only was it not raised in the first Form 51 and was not set out and detailed as a specific defense until the Form 58 filed by present Counsel who was not substituted as Counsel until less than fifteen (15) days prior to the scheduled hearing, the Mediation Agreement specifically provides that the Claimant is totally and permanently disabled by agreement, and that the only

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doctrine only applies if a party: 1) knowing of his rights; 2) does not timely assert them; and 3) by any unreasonable delay causes his adversary to occur expenses or otherwise detrimentally change his position and also 4) the affected party must affirmatively prove material prejudice. Only when all four elements are met will equity bar the enforcement of those known rights. Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (SC App. 1999). The concept of laches only applies in a very limited set of circumstances and applies equally to both of the parties, that being the Claimant and the Defendants in this case. While the Claimant has the responsibility to raise issues and claims in a timely manner, the Defendants have the same responsibility to assert any defenses that they claim. This Court agrees with the Commissioner and the Commission that the doctrine of laches simply does not apply. Both parties had access to the same medical records from 2002 through the date that a claim was filed in 2011. Both parties knew that the Claimant suffered a physical brain injury in 2002 as a result of the encephalopathy and knew that by 2004 the treating psychiatrist, and in fact three (3) other and different authorized treating and/or evaluation physicians in 2004 and 2005 recommended a complete neurological workup to include

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issue left open is the, "compensability" of the physical brain damage that the Claimant incurred. In that same Mediation Agreement, the Defendants admit that they had always authorized all of the treatment for and by the treating physicians that have expressed the opinions concerning the brain damage and agreed to provide their continuing medical care for life.

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neuropsychological testing. Neuropsychological testing was not authorized and provided by the Defendants and were not performed until 2008. That testing in 2008 recorded severe cognitive deficits. The neuropsychologist who performed those tests in 2008, Dr. Nicholas Lind, Ph.D., subsequently in 2012 concurred in the opinion that the Claimant had sustained physical brain damage and that it was severe. In 2009 the Claimant wrote the Defendants and specifically placed them on notice that he was claiming severe physical brain damage and an entitlement to lifetime compensation due to that brain damage. In 2011, within one (1) week of the date that the authorized treating psychiatrist issued his opinion that the Claimant had sustained physical brain damage and that he was totally and permanently disabled from all work due to that brain damage, the Claimant filed a claim for lifetime compensation benefits due to that severe, permanent physical brain damage. In addition, the Commission, as is recorded in the Hearing Commissioner's Order found that the Defendants had paid for all medical care and specifically all of this care and had the same access to all of the medical records as did the Claimant. The doctrine of laches simply does not apply.

Also, as noted above, there was no definitive diagnosis until 2011 of physical brain damage that was permanent and severe and within one (1) week of that diagnosis the Claimant filed.

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Finally, even if the other elements were in existence, which they are not in the opinion of this Court, there is no prejudice to the Defendants because the Defendants had total access to all the medical records. There is simply no material prejudice to the Defendants in not moving forward with the defense since they had access to the same exact medical evidence as did the Claimant. In addition, while the Court is of the opinion that the doctrine of *laches* does not apply, it was not raised as a defense in the initial response to the Form 50 that was filed by the Claimant seeking compensation for compensable brain damage and an entitlement to lifetime compensation benefits. Also, in the mediation, simply the compensability of the brain injury was left open for decision. It was agreed that the Claimant was totally and permanent disabled.

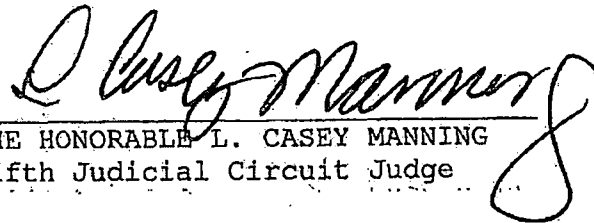
Finally, the Court would note that if it did apply it would apply to the Defendants failure to timely raise the defense. Both parties had the same notice from 2002 through 2011 concerning the Claimant's injury to his brain. Further, it was the Defendants and not the Claimant that did not provide the neuropsychological testing for a period of over four (4) years from the date it was requested. The Defendants were placed on notice of the claim no later than 2009. For all these reasons as to these bases for the appeal in the third argument, the Decision of the SC Workers' Compensation Commission is hereby affirmed.

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For all the foregoing reasons, after due and proper consideration of the Record, the Briefs and arguments of the parties, the Decision of the SC Workers' Compensation Commission is hereby affirmed as to the appeal filed by the Defendants as Appellants in this Court.

THEREFORE, IT IS ORDERED that the Decision of the SC Workers' Compensation Commission as to the appeal filed by the Defendants as Appellants before this Court be and hereby is AFFIRMED.

AND IT IS SO ORDERED.

  
THE HONORABLE L. CASEY MANNING  
Fifth Judicial Circuit Judge

Dated: June 3, 2016

SCANNED

**Temus C. Miles Jr.**  
**PO Box 7217**  
**Columbia, SC 29202**

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4007380

Theodore Polansky

SC Attorney General

South Carolina State Accident Fund

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code 2061 Date \_\_\_\_\_

For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 8 day of July, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Preston F. McDaniel

Temus C. Miles Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court Jeanette W. McBride

SCANNED

DEFENDANT'S EXHIBIT  
3

RICHLAND COUNTY  
FILED  
2016 JUL 7 PM 12:36  
JEANETTE W. MCBRIDE  
Clerk of Court

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
OF THE FIFTH JUDICIAL CIRCUIT

THEODORE P. POLANSKY, )  
 )  
Employee, )  
Respondent/Cross-Appellant )  
And As Movant, )

Docket No: 2015-CP-40-07468  
&  
2015-CP-40-07380 ✓

v. )

SC OFFICE OF THE ATTORNEY )  
GENERAL, )

ORDER ORDERING PAYMENT OF  
ACCRUED AWARD PURSUANT TO  
S.C. CODE §42-17-60

Employer, and )

STATE ACCIDENT FUND, )

Carrier, )  
Appellants/Cross-Respondents )  
And As Motion-Respondents )

2016 JUL -7 PM 12:34  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.

RICHLAND COUNTY  
FILED

This matter came to be heard by me on February 8, 2016 based on a Motion filed by the Employee/Claimant for payment of the accrued Award of the South Carolina Workers' Compensation Commission pursuant to SC Code §42-17-60. The Commission made an Award to Mr. Polansky of lifetime weekly compensation benefits reinstated as of March 8, 2011 under the Award. The Movant was represented by Preston F. McDaniel of the Richland County Bar and the Respondents to the Motion, and Appellants in this Court were represented by Peter J. Leventis, IV, also the Richland County Bar.

The Award made in this matter arose out of and as a result of two accepted injuries by accident that occurred in 1999 and 2000 and thus the provisions of SC Code §42-17-60 as amended,

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through July 1, 2007, apply to these pre-2007 claims. Prior to July 1, 2007, SC Code §42-17-60 in reference to the issue before the Court provided that:

"In the case of an appeal from the Decision of the Commission on questions of law, the appeal does not operate as a supersedes and thereafter the employer is required to **make payment of the Award involved in the appeal** . . . until the questions at issue have been fully determined . . . ."

(Emphasis added).

In this case, the Hearing Commissioner Awarded the Claimant lifetime benefits on July 1, 2015 and specifically provided in her Award that:

"THEREFORE IT IS ORDERED that the Claimant is found to be entitled to an Award for lifetime weekly compensation benefits in the amount of \$507.34/week due to having sustained serious, severe permanent physical brain damage as a result of the injuries stemming from his work-related accidents. Those payments are to resume (sic, with) the last payment of compensation to the Claimant, which was made on or about the week of March 8, 2011. All compensation that has accrued shall be paid in a lump sum through the date that weekly compensation benefits are resumed." (Emphasis added).

That Award was appealed to the SC Workers' Compensation Commission and Full Commission by Order dated and filed November 10, 2015, affirmed that Award. Subsequent to the Decision of the Full Commission, on December 9<sup>th</sup>, the Award was appealed to this Court by the Defendants.

Based on the arguments presented to the Court and the Record at the Motion hearing, the parties agree that after filing the Appeal, even after request, the Defendants did not make any payment either as to the accrued Award nor did they

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restart weekly payments and as a result, the Claimant filed the Motion for Payment pursuant to the Act. Subsequently the Defendants agreed to and have resumed weekly payments of compensation but only beginning thirty (30) days after the Decision of the Full Commission but have continued to refuse to make payment of the accrued Award.

After review of the arguments, the statutes and the case law it is the finding of the Court that the Defendants shall make payment of the weekly compensation Award that has accrued from the date compensation was reinstated on March 8,, 2011 through the date that the Defendants resumed payments of weekly payments pursuant to the Award. The Supreme Court has repeatedly held and reaffirmed that in this factual scenario where a Hearing Commissioner has made an Award and that Award is affirmed on appeal by the Full Commission, that the Defendants are required to make full payment under the Award of all accrued compensation through the time that weekly compensation payments are resumed; and are required to make continuing payments of weekly compensation until the appeal is resolved. This is especially true in a case that has been accepted; weekly benefits are then stopped; and then the Commission reinstates benefits back to the date they were stopped as in this case. The Court takes note of the facts that this was an accepted case and that the parties agree the claimant is totally and permanently disabled and only disagree as to his entitlement to lifetime compensation benefits.

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The Supreme Court in the case of Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960) went over its previous decisions concerning various fact scenarios and from what date in each of those fact situations, payment of an Award was due under §42-17-60. In the Case, Decision, supra, the Supreme Court reaffirmed its previous four (4) decisions concerning those various factual scenarios concerning payment of the Commission, "Award". As part of that confirmation, the Court reaffirmed its Decision in Godfrey v. Mills Mill No. 2, 234 S.C. 401, 108 S.E.2d 587 (1959). In Godfrey, the Supreme Court held that in the fact scenario where payment of weekly compensation benefits was ordered to be reinstated (as here) and where that Award was affirmed by the Full Commission on Appeal (as here), full payment of accrued Award back to the date of reinstatement was required under the "Award" of the Commission. This Court has read the paragraph from Case vs. Hermitage, supra, that is actually dicta to its decision, but which was cited by both parties in support of their positions and agrees with the Claimant's reading of the decision. In the first part of that paragraph, the Court makes it clear that the Court and statute require payment, "after the date" of the, "Commission's Award" of, "weekly benefits" and that it is such, "additional amounts" in, "Addition to weekly benefits" that are not required to be paid. When read in conjunction with the last two sentences of that paragraph, it is clear that the weekly compensation required to be paid is all compensation "accruing" after the

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Award. In this case the date of the "Commission's Award" was all compensation, "accruing" after March 8, 2011.

In further confirmation of this interpretation of the Act, in 2007 the language of §42-17-60 was changed to specifically require payment of only weekly payments after the date of appeal to the Court of Appeals and a specific provision was added to provide that any unpaid portion of an Award would accrue interest. The provision of §42-17-60 in the last paragraph prior to July 1, 2007 concerning payment stated that the appeal does not operate as a supersedes and

"thereafter the employer is required to make payment of the Award involved in the appeal . . ."

And after July 1, 2007, it was changed to read,

"the appeal does not operate as a supersedes and, after that time, the employer is required to make weekly payments of compensation . . . until the questions have been fully determined."

And to that, a sentence was added that, "interest accrues on any unpaid portion of the Award . . ." Therefore the Legislature amended the Statute to provide that the employer was only responsible for payment of weekly payments after the appeal and interest accrued on the unpaid portion. There is no reference to "payment of the Award". The Legislature therefore clearly changed but also reaffirmed the intent and meaning of the pre-2007 language and requirement of the Act.

Thus, defendants are required to make payment of the weekly compensation benefits under the Award that have accrued from

SCANNED

March 8, 2011 through the date that benefits were restarted in this matter. The Act under SC Code §42-9-240 requires that payment under an Award is to be paid within fourteen (14) days which this Court finds to be reasonable as to payment of the accrued Award in this case. The Act also provides that if payment is not made within that time period pursuant to SC Code §42-9-90 a 10% penalty is to be added to the amount due under §42-9-240 plus interest shall accrue at the legal rate of interest after that date. This Court finds both of those sections to be appropriate and reasonable.

Further, SCACR Rule 241(a) and (b) reaffirms that payment is not stayed by an appeal of the Order of this Court ordering payment and that this Court retains jurisdiction and, "the authority to enforce" its Order.

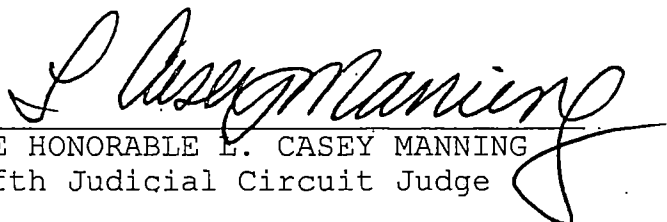
Finally, the motion sets out that the Claimant had made demand for payment of the accrued Award and that as of November 10, 2015 the accrued temporary total disability weekly compensation benefits due and owing under the Award was the amount of \$123,791.00. The Defendants agree that they did not restart weekly compensation benefits until thirty (30) days after that date, meaning December 10<sup>th</sup> and therefore a period of thirty (30) days should be added to that figure as being due and payable to the claimant at this time. The defendants shall therefore pursuant to this Order calculate the amount that is to be paid to the claimant as accrued compensation under the Award of the Commission including this thirty (30) day period.

SCANNED

THEREFORE IT IS ORDERED THAT the motion is granted and the defendants shall make immediate payment to the claimant in a lump sum of all accrued weekly compensation payments that have accrued under the Award of the Commission which awarded reinstatement of weekly compensation benefits as of March 8, 2011 and before weekly compensation payments were reinstated.

IT IS FURTHER ORDERED THAT pursuant to the authority vested in the Executive Director of the State Accident Fund under SC Code §42-7-20, the Executive Director shall direct that this payment of the Award be made and that such payment shall be made within fourteen (14) days of the date of this order. If payment pursuant to this Order is not made within fourteen (14) days, upon notice, pursuant to SC Code §42-17-60 (as amended through 2007) and SCACR, Rule 241(a) and (b) this Court will issue a Rule to Show Cause to enforce the Order of this Court.

AND IT IS SO ORDERED.

  
THE HONORABLE L. CASEY MANNING  
Fifth Judicial Circuit Judge

Dated: July 5, 2016

RECORDED

CERTIFICATE OF SERVICE

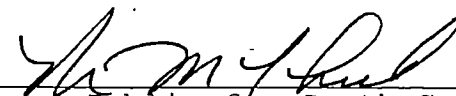
C/A NOS.: 2015-CP-40-07468  
&  
2015-CP-40-07380

I hereby certify that I have on this day served the following in the matter of Ted Polansky v. SC Office of Attorney General with a copy of the and Proposed **Order Ordering Payment of Accrued Award Pursuant to SC Code §42-17-60** addressed as follows:

VIA EMAIL - tmiles@mckayfirm.com  
AND US MAIL  
Temus C. Miles, Jr., Esquire  
McKay Law firm  
1303 Blanding Street  
Columbia, South Carolina 29201

  
\_\_\_\_\_  
Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this  
28 day of June, 2016.

  
\_\_\_\_\_  
Notary Public for South Carolina (L.S.)  
My Commission Expires: 2/4/24

SCANNED

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4007468

Theodore P Polansky

SC Office Of Attorney General

PLAINTIFF(S)

State Accident Fund

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRCP;  Rule 41(a), SCRCP (Vol. Nonsuit);  
 Rule 43(k), SCRCP (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRCP;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award:  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

JEANETTE W. MBRIDE  
 S.C.P. & G.  
 2016 JUL -7 PM 2: 31  
 RICHLAND COUNTY  
 FILED

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCIES OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code 2061 Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 8 day of July, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Preston F. McDaniel

Temus C. Miles Jr.

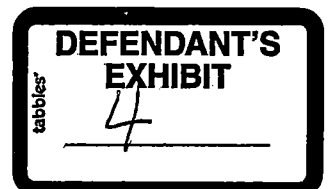
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court Jeanette W. Mbride

**SCANNED**



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 THEODORE P. POLANSKY, )  
 )  
 Employee, )  
 Respondent/Cross-Appellant )  
 And As Movant, )  
 )  
 v. )  
 )  
 SC OFFICE OF THE ATTORNEY )  
 GENERAL, )  
 )  
 Employer, and )  
 )  
 STATE ACCIDENT FUND, )  
 )  
 Carrier, )  
 Appellants/Cross-Respondents )  
 And As Motion-Respondents )  
 )

IN THE COURT OF COMMON PLEAS  
 OF THE FIFTH JUDICIAL CIRCUIT

Docket No: 2015-CP-40-07468  
 &  
 2015-CP-40-738

ORDER ORDERING PAYMENT OF  
 ACCRUED AWARD PURSUANT TO  
 S.C. CODE §42-17-60

2016 JUL -7 PM 12:28  
 JEANETTE W. BRIDE  
 C.C.P.  
 RICHLAND COUNTY  
 FILED

This matter came to be heard by me on February 8, 2016 based on a Motion filed by the Employee/Claimant for payment of the accrued Award of the South Carolina Workers' Compensation Commission pursuant to SC Code §42-17-60. The Commission made an Award to Mr. Polansky of lifetime weekly compensation benefits reinstated as of March 8, 2011 under the Award. The Movant was represented by Preston F. McDaniel of the Richland County Bar and the Respondents to the Motion, and Appellants in this Court were represented by Peter J. Leventis, IV, also the Richland County Bar.

The Award made in this matter arose out of and as a result of two accepted injuries by accident that occurred in 1999 and 2000 and thus the provisions of SC Code §42-17-60 as amended,

SCANNED

through July 1, 2007, apply to these pre-2007 claims. Prior to July 1, 2007, SC Code §42-17-60 in reference to the issue before the Court provided that:

"In the case of an appeal from the Decision of the Commission on questions of law, the appeal does not operate as a supersedes and thereafter the employer is required to **make payment of the Award involved in the appeal** . . . until the questions at issue have been fully determined . . ." (Emphasis added).

In this case, the Hearing Commissioner Awarded the Claimant lifetime benefits on July 1, 2015 and specifically provided in her Award that:

"THEREFORE IT IS ORDERED that the Claimant is found to be entitled to an Award for lifetime weekly compensation benefits in the amount of \$507.34/week due to having sustained serious, severe permanent physical brain damage as a result of the injuries stemming from his work-related accidents. Those payments are to resume (sic, with) the last payment of compensation to the Claimant, which was made on or about the week of March 8, 2011. All compensation that has accrued shall be paid in a lump sum through the date that weekly compensation benefits are resumed." (Emphasis added).

That Award was appealed to the SC Workers' Compensation Commission and Full Commission by Order dated and filed November 10, 2015, affirmed that Award. Subsequent to the Decision of the Full Commission, on December 9<sup>th</sup>, the Award was appealed to this Court by the Defendants.

Based on the arguments presented to the Court and the Record at the Motion hearing, the parties agree that after filing the Appeal, even after request, the Defendants did not make any payment either as to the accrued Award nor did they

SCANNED 2

restart weekly payments and as a result, the Claimant filed the Motion for Payment pursuant to the Act. Subsequently the Defendants agreed to and have resumed weekly payments of compensation but only beginning thirty (30) days after the Decision of the Full Commission but have continued to refuse to make payment of the accrued Award.

After review of the arguments, the statutes and the case law it is the finding of the Court that the Defendants shall make payment of the weekly compensation Award that has accrued from the date compensation was reinstated on March 8,, 2011 through the date that the Defendants resumed payments of weekly payments pursuant to the Award. The Supreme Court has repeatedly held and reaffirmed that in this factual scenario where a Hearing Commissioner has made an Award and that Award is affirmed on appeal by the Full Commission, that the Defendants are required to make full payment under the Award of all accrued compensation through the time that weekly compensation payments are resumed; and are required to make continuing payments of weekly compensation until the appeal is resolved. This is especially true in a case that has been accepted; weekly benefits are then stopped; and then the Commission reinstates benefits back to the date they were stopped as in this case. The Court takes note of the facts that this was an accepted case and that the parties agree the claimant is totally and permanently disabled and only disagree as to his entitlement to lifetime compensation benefits.

The Supreme Court in the case of Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960) went over its previous decisions concerning various fact scenarios and from what date in each of those fact situations, payment of an Award was due under §42-17-60. In the Case, Decision, supra, the Supreme Court reaffirmed its previous four (4) decisions concerning those various factual scenarios concerning payment of the Commission, "Award". As part of that confirmation, the Court reaffirmed its Decision in Godfrey v. Mills Mill No. 2, 234 S.C. 401, 108 S.E.2d 587 (1959). In Godfrey, the Supreme Court held that in the fact scenario where payment of weekly compensation benefits was ordered to be reinstated (as here) and where that Award was affirmed by the Full Commission on Appeal (as here), full payment of accrued Award back to the date of reinstatement was required under the "Award" of the Commission. This Court has read the paragraph from Case vs. Hermitage, supra, that is actually dicta to its decision, but which was cited by both parties in support of their positions and agrees with the Claimant's reading of the decision. In the first part of that paragraph, the Court makes it clear that the Court and statute require payment, "after the date" of the, "Commission's Award" of, "weekly benefits" and that it is such, "additional amounts" in, "Addition to weekly benefits" that are not required to be paid. When read in conjunction with the last two sentences of that paragraph, it is clear that the weekly compensation required to be paid is all compensation "accruing" after the

Award. In this case the date of the "Commission's Award" was all compensation, "accruing" after March 8, 2011.

In further confirmation of this interpretation of the Act, in 2007 the language of §42-17-60 was changed to specifically require payment of only weekly payments after the date of appeal to the Court of Appeals and a specific provision was added to provide that any unpaid portion of an Award would accrue interest. The provision of §42-17-60 in the last paragraph prior to July 1, 2007 concerning payment stated that the appeal does not operate as a supersedes and

"thereafter the employer is required to make payment of the Award involved in the appeal . . ."

And after July 1, 2007, it was changed to read,

"the appeal does not operate as a supersedes and, after that time, the employer is required to make weekly payments of compensation . . . until the questions have been fully determined."

And to that, a sentence was added that, "interest accrues on any unpaid portion of the Award . . ." Therefore the Legislature amended the Statute to provide that the employer was only responsible for payment of weekly payments after the appeal and interest accrued on the unpaid portion. There is no reference to "payment of the Award". The Legislature therefore clearly changed but also reaffirmed the intent and meaning of the pre-2007 language and requirement of the Act.

Thus, defendants are required to make payment of the weekly compensation benefits under the Award that have accrued from

SCANNED

March 8, 2011 through the date that benefits were restarted in this matter. The Act under SC Code §42-9-240 requires that payment under an Award is to be paid within fourteen (14) days which this Court finds to be reasonable as to payment of the accrued Award in this case. The Act also provides that if payment is not made within that time period pursuant to SC Code §42-9-90 a 10% penalty is to be added to the amount due under §42-9-240 plus interest shall accrue at the legal rate of interest after that date. This Court finds both of those sections to be appropriate and reasonable.

Further, SCACR Rule 241(a) and (b) reaffirms that payment is not stayed by an appeal of the Order of this Court ordering payment and that this Court retains jurisdiction and, "the authority to enforce" its Order.

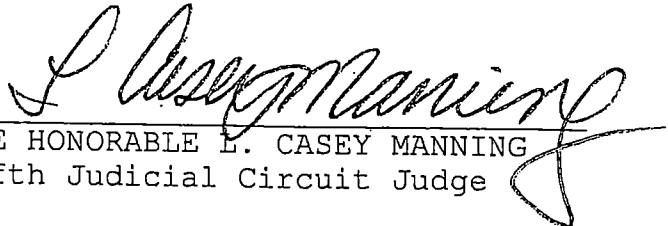
Finally, the motion sets out that the Claimant had made demand for payment of the accrued Award and that as of November 10, 2015 the accrued temporary total disability weekly compensation benefits due and owing under the Award was the amount of \$123,791.00. The Defendants agree that they did not restart weekly compensation benefits until thirty (30) days after that date, meaning December 10<sup>th</sup> and therefore a period of thirty (30) days should be added to that figure as being due and payable to the claimant at this time. The defendants shall therefore pursuant to this Order calculate the amount that is to be paid to the claimant as accrued compensation under the Award of the Commission including this thirty (30) day period.

**SCANNED**

THEREFORE IT IS ORDERED THAT the motion is granted and the defendants shall make immediate payment to the claimant in a lump sum of all accrued weekly compensation payments that have accrued under the Award of the Commission which awarded reinstatement of weekly compensation benefits as of March 8, 2011 and before weekly compensation payments were reinstated.

IT IS FURTHER ORDERED THAT pursuant to the authority vested in the Executive Director of the State Accident Fund under SC Code §42-7-20, the Executive Director shall direct that this payment of the Award be made and that such payment shall be made within fourteen (14) days of the date of this order. If payment pursuant to this Order is not made within fourteen (14) days, upon notice, pursuant to SC Code §42-17-60 (as amended through 2007) and SCACR, Rule 241(a) and (b) this Court will issue a Rule to Show Cause to enforce the Order of this Court.

AND IT IS SO ORDERED.

  
THE HONORABLE L. CASEY MANNING  
Fifth Judicial Circuit Judge

Dated: July 5, 2016

SCANNED 7

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Theodore Polansky, )  
Plaintiff, )

vs. )

SC Office of Attorney General, )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
5th JUDICIAL CIRCUIT

CASE NO.: 2015-CP-40-07380 &  
2015-CP-40-07468

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

RICHLAND COUNTY  
FILED  
2016 JUL 22 PM 4:19  
JEANNETTE W. MCKAY  
C.C.P. & G.S.

Plaintiff's Attorney:  
Preston F. McDaniel, Bar No. \_\_\_\_\_  
Address:  
1315 Elmwood Ave, Columbia, SC 29201  
Phone: \_\_\_\_\_ Fax \_\_\_\_\_  
E-mail: \_\_\_\_\_ Other: \_\_\_\_\_

Defendant's Attorney:  
Temus C. Miles, Jr., Bar No. \_\_\_\_\_  
Address:  
PO Box 7271, Columbia, SC 29202  
Phone: 803-256-4645 Fax 803-753-5705  
E-mail: tmiles@mckayfirm.com Other: \_\_\_\_\_

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: \_\_\_\_\_  
Estimated Time Needed: \_\_\_\_\_ Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

- Written motion attached
  - Form Motion/Order
- I hereby move for relief or action by the court as set forth in the attached proposed order.

Tem Miles  
Signature of Attorney for  Plaintiff /  Defendant Date submitted \_\_\_\_\_

**SECTION III: Motion Fee**

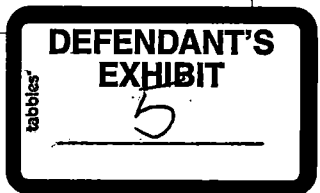
- PAID - AMOUNT: \$ 50.00
  - EXEMPT: (check reason)
    - Rule to Show Cause in Child or Spousal Support
    - Domestic Abuse or Abuse and Neglect
    - Indigent Status  State Agency v. Indigent Party
    - Sexually Violent Predator Act  Post-Conviction Relief
    - Motion for Stay in Bankruptcy
    - Motion for Publication  Motion for Execution (Rule 69, SCRPC)
    - Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

**JUDGE'S SECTION**

- Motion Fee to be paid upon filing of the attached order.
  - Other: \_\_\_\_\_
- JUDGE CODE \_\_\_\_\_  
Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_  
 MOTION FEE COLLECTED: \$ \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_



THE STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Theodore Polansky, )  
 )  
 Employee )  
 Respondent/Cross Appellant, )  
 )  
 vs. )  
 )  
 SC Office of Attorney General, )  
 )  
 Employer, )  
 )  
 and )  
 )  
 South Carolina State Accident Fund, )  
 )  
 Carrier )  
 Appellants/Cross Respondents. )

IN THE COURT OF COMMON PLEAS  
 OF THE FIFTH JUDICIAL CIRCUIT  
 Case No.: 2015-CP-40-07468 &  
 2015-CP-40-07380

**NOTICE OF MOTION AND MOTION  
 TO ALTER OR AMEND JUDGMENT**

2016 JUL 22 PM 4:19  
 JEANNETTE W. HOBBS  
 C.C.P. & G.S.  
 RICHLAND COUNTY  
 FILED

Defendants respectfully move this Honorable Court, for an order reconsidering, altering or amending the Orders in these matters signed by the Honorable L. Casey Manning on June 3, 2016 and filed on July 5, 2016. The Defendants received written notice of these Orders on July 14, 2016. Copies of these Orders are attached and incorporated by reference (Exhibit 1 & 2). Defendants move, pursuant to Rule 59(e), S.C.R.C.P., and the Court’s inherent authority to amend its own ruling, that the Court reconsider, alter or amend the July 5, 2016 Orders as outlined below.

**BACKGROUND**

These matters came before the Court February 8, 2016 for a hearing on Respondent/Cross Appellant, Theodore Polansky’s, Motion for payment of accrued Worker’s Compensation benefits. By Orders filed July 5, 2016, the Court ordered that the “Defendants shall make

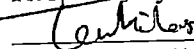
immediate payment to the Claimant in a lump sum of all accrued weekly compensation payment” dating back to the date of accident (March 8, 2011). This Motion for reconsideration follows.

It is undisputed that the Defendants have made weekly payments to the Claimant beginning 30 days after the Order of the Full Workers’ Compensation Commission, dated November 10, 2015 and that the appeal of the underlying award continues to this day. This issue is controlled by *Case v. Hermitage Cotton Mills*, 236 S.C. 515, 115 S.E.2d 57 (1960), in which the South Carolina Supreme Court clearly established what benefits are due during the pendency of an appeal for a pre-2007 injury, as we have here. The Supreme Court interpreted Section 72-356, the earlier version of what became S.C. Code Ann. 42-17-60, to require “payment, after the expiration of the thirty-day supersedeas period and during the pendency of the employer’s appeal...only of the weekly compensation accruing after the date of the Commission’s Award.” Id., 533. Accordingly, the Defendants have made all payments that are due as the appeal of this award continues and the Orders of the Court on payment of accrued benefits should be reconsidered and reissued in-line with *Case v. Hermitage Cotton Mills*.

### CONCLUSION

For the reasons stated above, the Defendants request that the Court alter or amend the Orders filed on July 5, 2016.

Respectfully submitted,



Temus C. Miles, Jr., Esquire  
McKay, Cauthen, Settana & Stubley, PA  
Post Office Box 7217  
Columbia, SC 29202  
803-256-4645  
Attorney for the Defendants

Columbia, South Carolina  
July \_\_\_\_, 2016

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2015CP4007380

Theodore Polansky

SC Attorney General

South Carolina State Accident Fund

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code 2061 Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the 8 day of July, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 8 day of July, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Preston F. McDaniel

Temus C. Miles Jr.

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
Court Reporter

\_\_\_\_\_  
Clerk of Court

*Jeannette W. McBride*



RICHLAND COUNTY  
 FILED  
 2016 JUL -7 PM 2:36  
 JEANNETTE W. MCBRIDE  
 C. C. P. & G.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
OF THE FIFTH JUDICIAL CIRCUIT

THEODORE P. POLANSKY, )  
 )  
Employee, )  
Respondent/Cross-Appellant )  
And As Movant, )

Docket No: 2015-CP-40-07468  
&  
2015-CP-40-07380 ✓

v. )

SC OFFICE OF THE ATTORNEY )  
GENERAL, )

ORDER ORDERING PAYMENT OF  
ACCRUED AWARD PURSUANT TO  
S.C. CODE §42-17-60

Employer, and )

STATE ACCIDENT FUND, )

Carrier, )  
Appellants/Cross-Respondents )  
And As Motion-Respondents )

2016 JUL -7 PM 12:34  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

This matter came to be heard by me on February 8, 2016 based on a Motion filed by the Employee/Claimant for payment of the accrued Award of the South Carolina Workers' Compensation Commission pursuant to SC Code §42-17-60. The Commission made an Award to Mr. Polansky of lifetime weekly compensation benefits reinstated as of March 8, 2011 under the Award. The Movant was represented by Preston F. McDaniel of the Richland County Bar and the Respondents to the Motion, and Appellants in this Court were represented by Peter J. Leventis, IV, also the Richland County Bar.

The Award made in this matter arose out of and as a result of two accepted injuries by accident that occurred in 1999 and 2000 and thus the provisions of SC Code §42-17-60 as amended,

SCANNED

through July 1, 2007, apply to these pre-2007 claims. Prior to July 1, 2007, SC Code §42-17-60 in reference to the issue before the Court provided that:

"In the case of an appeal from the Decision of the Commission on questions of law, the appeal does not operate as a supersedes and thereafter the employer is required to make payment of the Award involved in the appeal . . . until the questions at issue have been fully determined . . ." (Emphasis added).

In this case, the Hearing Commissioner Awarded the Claimant lifetime benefits on July 1, 2015 and specifically provided in her Award that:

"THEREFORE IT IS ORDERED that the Claimant is found to be entitled to an Award for lifetime weekly compensation benefits in the amount of \$507.34/week due to having sustained serious, severe permanent physical brain damage as a result of the injuries stemming from his work-related accidents. Those payments are to resume (sic, with) the last payment of compensation to the Claimant, which was made on or about the week of March 8, 2011. All compensation that has accrued shall be paid in a lump sum through the date that weekly compensation benefits are resumed." (Emphasis added).

That Award was appealed to the SC Workers' Compensation Commission and Full Commission by Order dated and filed November 10, 2015, affirmed that Award. Subsequent to the Decision of the Full Commission, on December 9<sup>th</sup>, the Award was appealed to this Court by the Defendants.

Based on the arguments presented to the Court and the Record at the Motion hearing, the parties agree that after filing the Appeal, even after request, the Defendants did not make any payment either as to the accrued Award nor did they

SCANNED

restart weekly payments and as a result, the Claimant filed the Motion for Payment pursuant to the Act. Subsequently the Defendants agreed to and have resumed weekly payments of compensation but only beginning thirty (30) days after the Decision of the Full Commission but have continued to refuse to make payment of the accrued Award.

After review of the arguments, the statutes and the case law it is the finding of the Court that the Defendants shall make payment of the weekly compensation Award that has accrued from the date compensation was reinstated on March 8,, 2011 through the date that the Defendants resumed payments of weekly payments pursuant to the Award. The Supreme Court has repeatedly held and reaffirmed that in this factual scenario where a Hearing Commissioner has made an Award and that Award is affirmed on appeal by the Full Commission, that the Defendants are required to make full payment under the Award of all accrued compensation through the time that weekly compensation payments are resumed; and are required to make continuing payments of weekly compensation until the appeal is resolved. This is especially true in a case that has been accepted; weekly benefits are then stopped; and then the Commission reinstates benefits back to the date they were stopped as in this case. The Court takes note of the facts that this was an accepted case and that the parties agree the claimant is totally and permanently disabled and only disagree as to his entitlement to lifetime compensation benefits.

SCANNED

The Supreme Court in the case of Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960) went over its previous decisions concerning various fact scenarios and from what date in each of those fact situations, payment of an Award was due under §42-17-60. In the Case, Decision, supra, the Supreme Court reaffirmed its previous four (4) decisions concerning those various factual scenarios concerning payment of the Commission, "Award". As part of that confirmation, the Court reaffirmed its Decision in Godfrey v. Mills Mill No. 2, 234 S.C. 401, 108 S.E.2d 587 (1959). In Godfrey, the Supreme Court held that in the fact scenario where payment of weekly compensation benefits was ordered to be reinstated (as here) and where that Award was affirmed by the Full Commission on Appeal (as here), full payment of accrued Award back to the date of reinstatement was required under the "Award" of the Commission. This Court has read the paragraph from Case vs. Hermitage, supra, that is actually dicta to its decision, but which was cited by both parties in support of their positions and agrees with the Claimant's reading of the decision. In the first part of that paragraph, the Court makes it clear that the Court and statute require payment, "after the date" of the, "Commission's Award" of, "weekly benefits" and that it is such, "additional amounts" in, "Addition to weekly benefits" that are not required to be paid. When read in conjunction with the last two sentences of that paragraph, it is clear that the weekly compensation required to be paid is all compensation "accruing" after the

SCANNED

Award. In this case the date of the "Commission's Award" was all compensation, "accruing" after March 8, 2011.

In further confirmation of this interpretation of the Act, in 2007 the language of §42-17-60 was changed to specifically require payment of only weekly payments after the date of appeal to the Court of Appeals and a specific provision was added to provide that any unpaid portion of an Award would accrue interest. The provision of §42-17-60 in the last paragraph prior to July 1, 2007 concerning payment stated that the appeal does not operate as a supersedes and

"thereafter the employer is required to make payment of the Award involved in the appeal . . ."

And after July 1, 2007, it was changed to read,

"the appeal does not operate as a supersedes and, after that time, the employer is required to make weekly payments of compensation . . . until the questions have been fully determined."

And to that, a sentence was added that, "interest accrues on any unpaid portion of the Award . . ." Therefore the Legislature amended the Statute to provide that the employer was only responsible for payment of weekly payments after the appeal and interest accrued on the unpaid portion. There is no reference to "payment of the Award". The Legislature therefore clearly changed but also reaffirmed the intent and meaning of the pre-2007 language and requirement of the Act.

Thus, defendants are required to make payment of the weekly compensation benefits under the Award that have accrued from

SCANNED

March 8, 2011 through the date that benefits were restarted in this matter. The Act under SC Code §42-9-240 requires that payment under an Award is to be paid within fourteen (14) days which this Court finds to be reasonable as to payment of the accrued Award in this case. The Act also provides that if payment is not made within that time period pursuant to SC Code §42-9-90 a 10% penalty is to be added to the amount due under §42-9-240 plus interest shall accrue at the legal rate of interest after that date. This Court finds both of those sections to be appropriate and reasonable.

Further, SCACR Rule 241(a) and (b) reaffirms that payment is not stayed by an appeal of the Order of this Court ordering payment and that this Court retains jurisdiction and, "the authority to enforce" its Order.

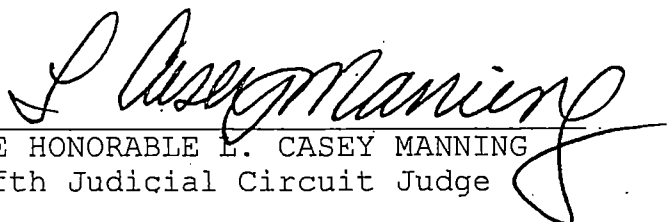
Finally, the motion sets out that the Claimant had made demand for payment of the accrued Award and that as of November 10, 2015 the accrued temporary total disability weekly compensation benefits due and owing under the Award was the amount of \$123,791.00. The Defendants agree that they did not restart weekly compensation benefits until thirty (30) days after that date, meaning December 10<sup>th</sup> and therefore a period of thirty (30) days should be added to that figure as being due and payable to the claimant at this time. The defendants shall therefore pursuant to this Order calculate the amount that is to be paid to the claimant as accrued compensation under the Award of the Commission including this thirty (30) day period.

SCANNED

THEREFORE IT IS ORDERED THAT the motion is granted and the defendants shall make immediate payment to the claimant in a lump sum of all accrued weekly compensation payments that have accrued under the Award of the Commission which awarded reinstatement of weekly compensation benefits as of March 8, 2011 and before weekly compensation payments were reinstated.

IT IS FURTHER ORDERED THAT pursuant to the authority vested in the Executive Director of the State Accident Fund under SC Code §42-7-20, the Executive Director shall direct that this payment of the Award be made and that such payment shall be made within fourteen (14) days of the date of this order. If payment pursuant to this Order is not made within fourteen (14) days, upon notice, pursuant to SC Code §42-17-60 (as amended through 2007) and SCACR, Rule 241(a) and (b) this Court will issue a Rule to Show Cause to enforce the Order of this Court.

AND IT IS SO ORDERED.

  
THE HONORABLE L. CASEY MANNING  
Fifth Judicial Circuit Judge

Dated: July 5, 2016

SCANNED  
7

CERTIFICATE OF SERVICE

C/A NOS.: 2015-CP-40-07468  
&  
2015-CP-40-07380

I hereby certify that I have on this day served the following in the matter of Ted Polansky v. SC Office of Attorney General with a copy of the and Proposed **Order Ordering Payment of Accrued Award Pursuant to SC Code §42-17-60** addressed as follows:

VIA EMAIL - tmiles@mckayfirm.com  
AND US MAIL  
Temus C. Miles, Jr., Esquire  
McKay Law firm  
1303 Blanding Street  
Columbia, South Carolina 29201

  
\_\_\_\_\_  
Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this  
28 day of June, 2016.

  
\_\_\_\_\_  
Notary Public for South Carolina (L.S.)

My Commission Expires: 2/4/24

SCANNED

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4007468

Theodore P Polansky

SC Office Of Attorney General

State Accident Fund

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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 Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

RICHLAND COUNTY  
 FILED  
 2016 JUL -7 PM 2:31  
 JEANETTE W. BRIDE  
 J.C.P. & G.S.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court

**ORDER INFORMATION**

This order  ends  does not end the case.  
Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: \_\_\_\_\_

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code 2061 Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 8 day of July, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Preston F. McDaniel

Temus C. Miles Jr.

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
Court Reporter

Jeanette W. Bride  
Clerk of Court

**SCANNED**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
OF THE FIFTH JUDICIAL CIRCUIT

THEODORE P. POLANSKY, )  
 )  
Employee, )  
Respondent/Cross-Appellant )  
And As Movant, )

Docket No: 2015-CP-40-07468  
&  
2015-CP-40-380

v. )

SC OFFICE OF THE ATTORNEY )  
GENERAL, )

ORDER ORDERING PAYMENT OF )  
ACCRUED AWARD PURSUANT TO )  
S.C. CODE §42-17-60 )

Employer, and )

STATE ACCIDENT FUND, )

Carrier, )  
Appellants/Cross-Respondents )  
And As Motion-Respondents )

2016 JUL -7 PM 12:28  
JEANETTE W. BRIDGE  
C.C.P. & S.C.  
RICHLAND COUNTY  
FILED

This matter came to be heard by me on February 8, 2016 based on a Motion filed by the Employee/Claimant for payment of the accrued Award of the South Carolina Workers' Compensation Commission pursuant to SC Code §42-17-60. The Commission made an Award to Mr. Polansky of lifetime weekly compensation benefits reinstated as of March 8, 2011 under the Award. The Movant was represented by Preston F. McDaniel of the Richland County Bar and the Respondents to the Motion, and Appellants in this Court were represented by Peter J. Leventis, IV, also the Richland County Bar.

The Award made in this matter arose out of and as a result of two accepted injuries by accident that occurred in 1999 and 2000 and thus the provisions of SC Code §42-17-60 as amended,

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through July 1, 2007, apply to these pre-2007 claims. Prior to July 1, 2007, SC Code §42-17-60 in reference to the issue before the Court provided that:

"In the case of an appeal from the Decision of the Commission on questions of law, the appeal does not operate as a supersedes and thereafter the employer is required to make payment of the Award involved in the appeal . . . until the questions at issue have been fully determined . . ." (Emphasis added).

In this case, the Hearing Commissioner Awarded the Claimant lifetime benefits on July 1, 2015 and specifically provided in her Award that:

"THEREFORE IT IS ORDERED that the Claimant is found to be entitled to an Award for lifetime weekly compensation benefits in the amount of \$507.34/week due to having sustained serious, severe permanent physical brain damage as a result of the injuries stemming from his work-related accidents. Those payments are to resume (sic, with) the last payment of compensation to the Claimant, which was made on or about the week of March 8, 2011. All compensation that has accrued shall be paid in a lump sum through the date that weekly compensation benefits are resumed." (Emphasis added).

That Award was appealed to the SC Workers' Compensation Commission and Full Commission by Order dated and filed November 10, 2015, affirmed that Award. Subsequent to the Decision of the Full Commission, on December 9<sup>th</sup>, the Award was appealed to this Court by the Defendants.

Based on the arguments presented to the Court and the Record at the Motion hearing, the parties agree that after filing the Appeal, even after request, the Defendants did not make any payment either as to the accrued Award nor did they

restart weekly payments and as a result, the Claimant filed the Motion for Payment pursuant to the Act. Subsequently the Defendants agreed to and have resumed weekly payments of compensation but only beginning thirty (30) days after the Decision of the Full Commission but have continued to refuse to make payment of the accrued Award.

After review of the arguments, the statutes and the case law it is the finding of the Court that the Defendants shall make payment of the weekly compensation Award that has accrued from the date compensation was reinstated on March 8, 2011 through the date that the Defendants resumed payments of weekly payments pursuant to the Award. The Supreme Court has repeatedly held and reaffirmed that in this factual scenario where a Hearing Commissioner has made an Award and that Award is affirmed on appeal by the Full Commission, that the Defendants are required to make full payment under the Award of all accrued compensation through the time that weekly compensation payments are resumed; and are required to make continuing payments of weekly compensation until the appeal is resolved. This is especially true in a case that has been accepted; weekly benefits are then stopped; and then the Commission reinstates benefits back to the date they were stopped as in this case. The Court takes note of the facts that this was an accepted case and that the parties agree the claimant is totally and permanently disabled and only disagree as to his entitlement to lifetime compensation benefits.

The Supreme Court in the case of Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960) went over its previous decisions concerning various fact scenarios and from what date in each of those fact situations, payment of an Award was due under §42-17-60. In the Case, Decision, supra, the Supreme Court reaffirmed its previous four (4) decisions concerning those various factual scenarios concerning payment of the Commission, "Award". As part of that confirmation, the Court reaffirmed its Decision in Godfrey v. Mills Mill No. 2, 234 S.C. 401, 108 S.E.2d 587 (1959). In Godfrey, the Supreme Court held that in the fact scenario where payment of weekly compensation benefits was ordered to be reinstated (as here) and where that Award was affirmed by the Full Commission on Appeal (as here), full payment of accrued Award back to the date of reinstatement was required under the "Award" of the Commission. This Court has read the paragraph from Case vs. Hermitage, supra, that is actually dicta to its decision, but which was cited by both parties in support of their positions and agrees with the Claimant's reading of the decision. In the first part of that paragraph, the Court makes it clear that the Court and statute require payment, "after the date" of the, "Commission's Award" of, "weekly benefits" and that it is such, "additional amounts" in, "Addition to weekly benefits" that are not required to be paid. When read in conjunction with the last two sentences of that paragraph, it is clear that the weekly compensation required to be paid is all compensation "accruing" after the

Award. In this case the date of the "Commission's Award" was all compensation, "accruing" after March 8, 2011.

In further confirmation of this interpretation of the Act, in 2007 the language of §42-17-60 was changed to specifically require payment of only weekly payments after the date of appeal to the Court of Appeals and a specific provision was added to provide that any unpaid portion of an Award would accrue interest. The provision of §42-17-60 in the last paragraph prior to July 1, 2007 concerning payment stated that the appeal does not operate as a supersedes and

"thereafter the employer is required to make payment of the Award involved in the appeal . . ."

And after July 1, 2007, it was changed to read,

"the appeal does not operate as a supersedes and, after that time, the employer is required to make weekly payments of compensation . . . until the questions have been fully determined."

And to that, a sentence was added that, "interest accrues on any unpaid portion of the Award . . ." Therefore the Legislature amended the Statute to provide that the employer was only responsible for payment of weekly payments after the appeal and interest accrued on the unpaid portion. There is no reference to "payment of the Award". The Legislature therefore clearly changed but also reaffirmed the intent and meaning of the pre-2007 language and requirement of the Act.

Thus, defendants are required to make payment of the weekly compensation benefits under the Award that have accrued from

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March 8, 2011 through the date that benefits were restarted in this matter. The Act under SC Code §42-9-240 requires that payment under an Award is to be paid within fourteen (14) days which this Court finds to be reasonable as to payment of the accrued Award in this case. The Act also provides that if payment is not made within that time period pursuant to SC Code §42-9-90 a 10% penalty is to be added to the amount due under §42-9-240 plus interest shall accrue at the legal rate of interest after that date. This Court finds both of those sections to be appropriate and reasonable.

Further, SCACR Rule 241(a) and (b) reaffirms that payment is not stayed by an appeal of the Order of this Court ordering payment and that this Court retains jurisdiction and, "the authority to enforce" its Order.

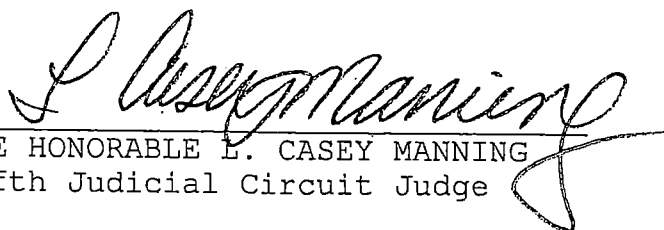
Finally, the motion sets out that the Claimant had made demand for payment of the accrued Award and that as of November 10, 2015 the accrued temporary total disability weekly compensation benefits due and owing under the Award was the amount of \$123,791.00. The Defendants agree that they did not restart weekly compensation benefits until thirty (30) days after that date, meaning December 10<sup>th</sup> and therefore a period of thirty (30) days should be added to that figure as being due and payable to the claimant at this time. The defendants shall therefore pursuant to this Order calculate the amount that is to be paid to the claimant as accrued compensation under the Award of the Commission including this thirty (30) day period.

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THEREFORE IT IS ORDERED THAT the motion is granted and the defendants shall make immediate payment to the claimant in a lump sum of all accrued weekly compensation payments that have accrued under the Award of the Commission which awarded reinstatement of weekly compensation benefits as of March 8, 2011 and before weekly compensation payments were reinstated.

IT IS FURTHER ORDERED THAT pursuant to the authority vested in the Executive Director of the State Accident Fund under SC Code §42-7-20, the Executive Director shall direct that this payment of the Award be made and that such payment shall be made within fourteen (14) days of the date of this order. If payment pursuant to this Order is not made within fourteen (14) days, upon notice, pursuant to SC Code §42-17-60 (as amended through 2007) and SCACR, Rule 241(a) and (b) this Court will issue a Rule to Show Cause to enforce the Order of this Court.

AND IT IS SO ORDERED.

  
THE HONORABLE L. CASEY MANNING  
Fifth Judicial Circuit Judge

Dated: July 5, 2016

THE STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
 )  
Theodore Polansky, )  
 )  
Employee )  
Respondent/Cross Appellant, )  
 )  
vs. )  
 )  
SC Office of Attorney General, )  
 )  
Employer, )  
 )  
and )  
 )  
South Carolina State Accident Fund, )  
 )  
Carrier )  
Appellants/Cross Respondents. )

IN THE COURT OF COMMON PLEAS  
OF THE FIFTH JUDICIAL CIRCUIT

Case No.: 2015-CP-40-07468 &  
2015-CP-40-07380

NOTICE OF MOTION AND MOTION  
TO ALTER OR AMEND JUDGMENT

**RECEIVED**  
JUL 27 2016  
SC Court of Appeals

RICHLAND COUNTY  
FILED  
2016 JUL 22 PM 4:19  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.

CERTIFICATE OF SERVICE

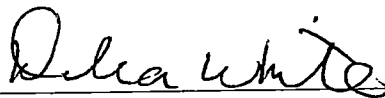
I, Debra White, being first duly sworn, states that she is a paralegal for the firm of McKay, Cauthen, Settana & Stubley, P.A, with offices in Columbia, South Carolina. This is to certify that a copy of the foregoing Defendants Motion to Reconsider has been served upon the following by placing a copy of the same in the United States mail, first class postage prepaid, addressed as shown below this the 22 day of July, 2016.

Via Hand Delivery

The Honorable Jeanette W. McBride  
Richland County Clerk of Court  
1701 Main Street, Room 205  
Columbia, South Carolina 29201

Preston F. McDaniel, Esquire  
McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, SC 29201

The Honorable L. Casey Manning  
Circuit Court Judge  
Richland County Judicial Center  
1701 Main Street  
Columbia, SC 29201

A handwritten signature in cursive script, appearing to read "Debra White", is written over a horizontal line.

Debra, Paralegal  
McKay, Cauthen, Settana & Stublely, P.A.  
Post Office Box 7817  
Columbia, South Carolina 29202-7217

(803) 256-4645

Julius W. McKay, II  
Mark D. Cauthen  
Daniel R. Settana, Jr.  
M. Stephen Stubley  
Janet Brooks Holmes  
Peter P. Leventis, IV\*  
Kelli L. Sullivan\*  
George D. Gallagher\*  
Temus C. Miles, Jr.  
David M. Bornemann  
Brandon P. Jones  
James E. L. Fickling+  
Charles A. Kinney, Jr.+  
Erica E. Loudin

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\*S.C. Certified Mediator  
+ Also licensed in N.C.

Of Counsel:  
C. E. Hardin, Jr.

July 27, 2016

**Via Hand Delivery**

The Honorable Jenny Abbott Kitchings  
The South Carolina Court of Appeals  
1220 Senate St.  
Columbia, South Carolina 29211

80408  
**RECEIVED**  
JUL 27 2016  
SC Court of Appeals


**RE: Theodore Polansky v. SC Attorney General**  
*Appellate Case No. 2016-001494*  
*Case No. 2015-CP-4007380*  
*WCC No.: 9922954 & 0024408*  
*Claim No.: 1999-003671 & 2000-3303*  
*DOA: 10/19/1999 & 5/30/2000*  
*Our File No.: 1200-0073 & 1200-0074*

Dear Mrs. Kitchings:

Enclosed please find the original and one (1) copy of the Appellants Motion to Hold Appeal in Abeyance regarding the above referenced claim. I have also enclosed a check in the amount of \$25.00 for the filing fee. Please return a clocked copy of this document to my courier.

By copy of this letter to opposing counsel, I am serving him with a copy of this Motion.

Sincerely,

  
Temus C. Miles, Jr.

TCM/ecs  
Enclosures

cc: Preston F. McDaniel, Esquire (w/encl)

LAW OFFICES

McKAY, CAUTHEN,  
SETTANA & STUBLEY, P.A.

Post Office Box 7217  
COLUMBIA, SOUTH CAROLINA 29202-7217

**RECEIVED**

JUL 27 2016

SC Court of Appeals

**Via Hand Delivery**

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1220 Senate St.  
Columbia, South Carolina 29211

1200-0074