

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1402652

RECEIVED
JUL 28 2016
SC Court of Appeals

James Lipscomb, Employee,

Respondent,

v.

Stein Fibers/Innovative Fibers, Employer,
and Key Risk Management, Carrier,

Appellants.

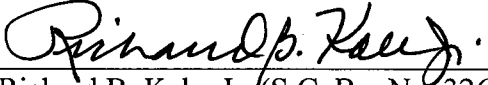
AMENDED NOTICE OF APPEAL

Stein Fibers/Innovative Fibers and StarNet Insurance Company appeal the Orders of the South Carolina Workers' Compensation Commission Appellate Panel, dated May 18, 2016, and June 20, 2016 on the following grounds:

1. Whether the Commission erred in finding that Claimant suffered a compensable injury by accident arising out of and in the course of employment, that error being that Claimant stepped outside the course and scope of his employment when he violated the Employer's specific, written Alcohol Abuse policy by working with a blood alcohol level of .097%?
2. Whether the Commission erred in not finding that Respondent's injury did not arise out of and in the course of employment after it found as a fact that Claimant specifically violated the Employer's written Alcohol Abuse policy?
3. Whether the Commission's finding which gave very little weight to the report of Dr. John H. Mennear, Toxicologist, because he never met or examined the Respondent, constituted an abuse of discretion?
4. Whether the Commission's finding which gave very little weight to the report of Dr. John H. Mennear, Toxicologist, because it was not clear whether Dr. Mennear had specific details of how the accident occurred, constituted an abuse of discretion?

5. Whether the Commission erred in finding that Appellants failed to prove by the greater weight of the evidence that Respondent's intoxication proximately caused his injury, that error being that Respondent's blood alcohol level and the opinion of Toxicologist John H. Mennear clearly established by the greater weight of the evidence that Respondent's intoxication was the probable cause?
6. Whether the Commission erred in finding and concluding that Respondent's intoxication was not the proximate cause of his injury, that error being that such finding was not supported by credible, reliable and substantial evidence in the whole record?
7. Whether the Commission erred in finding that the "totality of the evidence" was insufficient to meet the Appellants' burden of proof to prevail on the intoxication defense, that error being that Appellants' burden of proof was by the greater weight of the evidence, not the totality of the evidence?
8. Whether the Commission erred in awarding Respondent compensation for permanent disability and ordering payment of his medical expenses, that error being that Respondent did not suffer a compensable injury by accident arising out of and in the course of employment?

July 28, 2016


Richard B. Kale, Jr. (S.C. Bar No. 3264)
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(864) 527-3272
Attorney for Appellants

Other Counsel of Record:

W. Scott Palmer, Esquire
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Santee, South Carolina 29142
(803) 854-4417
Attorney for Respondent

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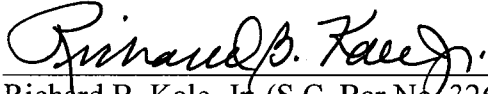
Stein Fibers/Innovative Fibers, Employer,
and Key Risk Management, Carrier,

Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on James Lipscomb by depositing a copy of it in the United State Mail, postage prepaid, on July 20, 2016, addressed to his attorney of record, W. Scott Palmer, W. Scott Palmer Law Firm, P.A., P.O. Box 722, Santee, South Carolina 29142 and have served a copy of the Notice of Appeal on the South Carolina Workers' Compensation Commission by depositing a copy of it in the United State Mail, postage prepaid on July 20, 2016, addressed to Post Office Box 1715, Columbia, South Carolina 29202-1715.

July 28, 2016


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Attorney for Appellants

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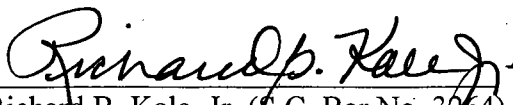
Stein Fibers/Innovative Fibers, Employer,
and Key Risk Management, Carrier,

Appellants.

PROOF OF SERVICE

I certify that I have served the Amended Notice of Appeal on James Lipscomb by depositing a copy of it in the United State Mail, postage prepaid, on July 28, 2016, addressed to his attorney of record, W. Scott Palmer, W. Scott Palmer Law Firm, P.A., P.O. Box 722, Santee, South Carolina 29142 and have served a copy of the Amended Notice of Appeal on the South Carolina Workers' Compensation Commission by depositing a copy of it in the United State Mail, postage prepaid on July 28, 2016, addressed to Post Office Box 1715, Columbia, South Carolina 29202-1715.

July 28, 2016


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July 28, 2016

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

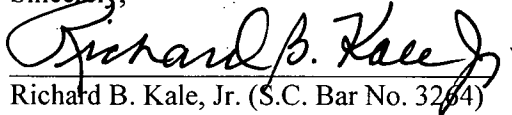
Re: James T. Lipscomb vs. Stein Fibers, LTD
WCC File No.: 1402652 DOI: 3/20/2014
Appellate Case No.: 2016-001509
Claim No.: 03149911
WJC&B File No.: 0310.01577

Dear Ms. Kitchings:

Pursuant to your letter of July 21, 2016, enclosed for filing is an Amended Notice of Appeal in the above case. Also enclosed is a Proof of Service indicating that the Amended Notice of Appeal has been served on the Respondent and the South Carolina Workers' Compensation Commission.

Also pursuant to your letter of July 21, 2016, I am enclosing a Proof of Service indicating that the original Notice of Appeal filed on July 20, 2016 was served on the South Carolina Workers' Compensation Commission on July 20, 2016.

Sincerely,



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Willson Jones Carter & Baxley, P.A.
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RBK/jcw
Enclosures

cc: Mr. W. Scott Palmer
W. Scott Palmer Law Firm, P.A.
P.O. Box 722
Santee, South Carolina 29142
(803) 854-4417
Attorney for Respondent

cc: South Carolina Workers' Compensation Commission