

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Honorable William P. Keesley

Case No. 2013-CP-32-01272
Case No. 2014-CP-32-00399

RECEIVED

AUG 01 2016

SC Court of Appeals

Alexander Guice,Appellant,

v.

US Food Service, Inc., Employer, and
ACE American Insurance Company
c/o Gallagher Bassett Services, Inc., Respondents.

**RESPONDENTS' RETURN IN OPPOSITION TO
MOTION TO RECUSE AND/OR DISQUALIFY
THE HONORABLE JAMES E. LOCKEMY**

Pursuant to Rule 240, SCACR, Respondents US Food Service, Inc. and ACE American Insurance Company c/o Gallagher Bassett Services, Inc. hereby oppose Appellant Alexander Guice's Motion to Recuse and/or Disqualify the Honorable James E. Lockemy ("Motion to Recuse"). There is no merit whatsoever to Appellant's Motion to Recuse. In addition, Appellant makes a number of spurious accusations in his Motion to Recuse that are baseless, unwarranted and wholly unsupported.

Appellant has not presented any evidence of personal bias on the part of Judge Lockemy that would justify recusal. *E.g.*, Christensen v. Mikell, 324 S.C. 70, 74, 476

S.E.2d 692, 694 (1996) (“[i]t is not enough for a party to allege bias; a party seeking disqualification of a judge must show some evidence of bias or prejudice”). The evidence must show that the bias is “personal, as distinguished from judicial, in nature.” *Id.*; see also Parker v. Shecut, 340 S.C. 460, 497, 531 S.E.2d 546, 566 (Ct. App. 2000), *overruled on other gds.* 349 S.C. 226, 562 S.E.2d 620 (2002) (denying recusal where party seeking recusal failed to present evidence of personal, as opposed to judicial bias).

The basis for Appellant’s Motion to Recuse appears to be the brevity of two orders issued by Judge Lockemy denying Appellant’s Motion for Summary Judgment and a subsequent Motion to Strike (“Orders”). Although Appellant alleges the Orders violate Rule 220(b), SCACR, this Court routinely decides motions in the same format and manner as the Orders. Rule 220(b) provides that, “[i]n every *decision* rendered by an appellate court, every point distinctly stated in the case which is necessary to the *decision of the appeal* and fairly arising upon *the record of the court* must be stated in writing and must, with the reason for the court’s decision, be preserved in the record of the case.” Rule 220(b), SCACR (emphasis added). Neither of the Orders complained of by Appellant decided the appeal and, because this appeal is still in the briefing stage, no Record has been filed with the Court. In addition, Rule 220(b)(2) provides that this Court “need not address a point which is manifestly without merit.” Rule 220(b)(2), SCACR. Because the Orders were not decisions on the merits of this appeal and because the points raised in Appellant’s Motion for Summary Judgment and Motion to Strike were manifestly without merit, the Orders did not violate Rule 220(b). Finally, and contrary to Appellant’s arguments, the brevity of the Orders neither denied Appellant due process nor evidenced any personal bias against him.

Next, Appellant alleges that Judge Lockemy's denial of his Motion to Strike constitutes obstruction of a criminal investigation. There is no pending criminal investigation. As a result, there is no obstruction. Further, although Section 42-9-440 directs the Workers' Compensation Commission to "report all cases of suspected false statement or misrepresentation, as defined in Section 38-55-530(D) to the Insurance Fraud Division of the office of the Attorney General for investigation and prosecution, if warranted," S.C. Code Ann. § 42-9-440, that section does not pertain to this Court.

Appellant's vague and self-serving allegations of obstruction of justice (based on his assertion that he should have prevailed on his Motion to Strike) do not constitute evidence of bias or justify recusal. As noted above, the evidence must show some personal, as opposed judicial bias. Christensen, 324 S.C. at 74, 476 S.E.2d at 694; Parker, 340 S.C. at 497, 531 S.E.2d at 566.

Appellant asserts as proven fact various allegations and charges that, not only have not been proven, but which are simply false. For example, he asserts that he has established that Respondents "knowingly and willfully failed to report the May 27, 2004 Compensable Work-related injury sustained to Appellant's Back to the Workers' Compensation Commission," and that Respondents "subjected appellant to a Retaliatory Discharge on November 2, 2005 ..." (Motion to Recuse pp. 10-11). In addition to his false accusations concerning insurance fraud against the undersigned and others, Appellant's allegations are unsubstantiated and patently false.

Appellant's exposition on "Black Codes" and "Jim Crow" laws have no bearing on this case. There is no evidence whatsoever that anyone at any stage in his protracted litigation over his workers' compensation claim has demonstrated racial bias against

Appellant. Mere disagreement with his position does not constitute racially-based animus.

Particularly troubling is Appellant's assertion that Judge Lockemy should be recused because Appellant has filed "a formal Request for Investigation regarding C.J. Lockemy's actions taken in the instant appeal with the Office of the Attorney General." Appellant's Request for Investigation, attached to his Motion to Recuse, repeats a number of the false statements and unsupported accusations contained in his Motion to Recuse.¹ There is no reason to believe that the Attorney General will conduct any "investigation" of Judge Lockemy based on the allegations contained in Appellant's unsubstantiated Request for Investigation. To allow a litigant or appellant to "manufacture" a supposed conflict in order to have a judge recused by simply filing a meritless complaint against that judge, as Appellant has done here, would allow parties to block any judge that they believe might render an unfavorable decision from hearing their case by filing false accusations with the Attorney General. Parties should not be allowed to play fast and loose with the judicial system in this manner.

Respondents dispute that Appellant has filed his Motion to Recuse in good faith. In fact, he has a history of filing recusal motions against judges who rule against him. First, he moved to disqualify Judge Thomas A. Russo from hearing his appeal from the Commission, accusing him of, among other things, "deliberate ignorance of the facts," "a

¹ Respondents note that, although Appellant's Request for Investigation indicates that copies of that request were served on the undersigned, Appellant's Motion to Recuse constitutes the first notice Respondents have received of his request and, as of today's date, the undersigned still has not received a service copy of the Request for Investigation. Given the serious nature and lack of evidence of or truth in the allegations made in Appellant's Request for Investigation, at a minimum, Respondents should have been served promptly with Appellant's filing with the Attorney General.

gross abuse of authority,” “deliberate deprivation of the substantial rights of the Appellant,” and “a level of incompetence that merits review for possible removal from the positions of both Circuit Court Judge and Chief Administrative Judge.” (Att. A).

Later, as part of his Motion for New Trial, Appellant accused Judge Brian M. Gibbons of “fraud upon the court,” as well as “a lack of integrity and the ability to adjudicate the instant case fairly and impartially,” and “intentional acts of abuse of discretionary authority,” and moved for recusal. Appellant also sought a criminal investigation into the actions of Judge Gibbons, among others. (Att. B, pp. 16-29). Although Judge Gibbons denied Appellant’s motion to recuse, in light of what he deemed “numerous pages of meritless and spurious allegations of unethical, incompetent, and impartial behavior from the Appellant/Claimant,” Judge Gibbons recused himself from further participation in this case on his own motion. (Att. C).

Appellant later moved Judge William P. Keesley to disqualify himself, accusing Judge Keesley of, among other things, partiality, unlawful orders and abuse of his office and of his discretionary authority. (Att. D). Throughout these recusal motions, Appellant has made numerous and spurious allegations impugning the character and actions of both counsel and presiding judges without producing any evidence of unprofessional, biased, sanctionable or criminal actions taken by either counsel or court. At some point, and Respondents believe that point has been reached in this case, Appellant must be required to either provide proof of the serious accusations he makes, or be cautioned by the Court regarding impugning the character and actions of counsel and court. At some point, and Respondents believe that point has been reached in this case, sanctions should be

imposed on Appellant to dissuade him from continuing to file frivolous motions. Rule 269, SCACR.

Finally, other than suspending the briefing schedule until the various motions are decided, there is no reason to suspend action on any other motion pending before this Court.

CONCLUSION

For all the reasons stated herein, this Court should deny and dismiss Appellant's Motion to Recuse. In addition, this Court should caution and/or sanction Appellant under Rule 269, SCACR, pertaining to frivolous motions.

Respectfully submitted,

July 28, 2016



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(843) 576-2900
Attorney for Respondents

Attachment A

COUNTY OF LEXINGTON

Alexander Guice

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.

Appellant,

US Foodservice, Inc., and Ace American
Insurance Company, c/o Gallagher Bassett
Services, Inc.

Respondents,

Docket No. 2014-CP-32-00399

Plaintiff PROSE Alexander Guice, Bar No. <i>MA</i> Address: Post Office Box 13281 Tampa, Florida 33681 Phone: (813) 562-0547 Fax _____ E-mail: alguice@hotmail.com Other: _____	Defendant's Attorney: Erin L. Hantske, Bar No. 76313 Address: Post Office Box 650007 Mt. Pleasant, South Carolina 29465 Phone: (843) 576-2946 Fax (843) 534-0605 E-mail: erin.hantske@mgclaw.com Other: _____
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- 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.

Alexander Guice
 Signature of *Prose* for Plaintiff / Defendant Date submitted 03/15/2014

SECTION III: Motion Fee

- PAID - AMOUNT: \$ 25.00
 - 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: _____
 Judge Signature: _____

CLERK'S VERIFICATION

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

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	Civil Action No.: 2014-CP-32-00399
)	
<hr/>		
Alexander Guice,)	
Employee, Claimant,)	
Appellant,)	
)	
Versus)	MOTION TO DISQUALIFY
)	(NO ORAL ARGUMENTS REQUESTED)
US Foodservice, Inc., and Ace American)	
Insurance Company, c/o Gallagher Bassett)	
Services, Inc.,)	
Employer AND Carrier,)	
Respondents'.)	
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PLEASE TAKE NOTICE that ALEXANDER GUICE, the APPELLANT, proclaims the pleadings in this case are being filed by Appellant in *Propria Persona*, wherein pleadings are to be considered without regard to technicalities. Pursuant to Rule 501(3)(E)(1), CJC, Rule 501, SCACR Appellant presents this Motion to Disqualify and moves the Court for the DISQUALIFICATION of the Honorable Thomas A. Russo ("Judge Russo") as the assigned Judge to hear and adjudicate the above captioned matter currently scheduled to heard before the same on **April 3, 2014 at 2:00 p.m.** Appellant DEMANDS that this matter be reassigned to a FAIR and IMPARTIAL Judge to consider the merits of this appeal. The grounds in support of this action are stated below.

FACTS

1. Appellant was hired by US Foodservice, Inc., located at 120 Longs Pond Road, Lexington, SC 29072 as a delivery driver on October 1, 2001 (**EXHIBIT 1**).
2. Appellant was involved in an admitted work-related traffic accident within the scope of Appellant's official duties while on the job on May 5, 2005 which was timely reported to the employer and the Workers' Compensation Commission

(Commission) and assigned case number 0506205 (**EXHIBIT 1**).

3. Appellant's mutually agreed average weekly wage at the time of the May 5, 2005 work-related injury was \$1,161.00 (**EXHIBIT 1**).

4. Appellant was represented by Robert Glenn Bacon and Harry Pavilack and Associates, LLC and the Bacon Law Firm, LLC (Representative Bacon) from May 2005 to November 2012. On December 7, 2012 Appellant duly served a Form 27 (Subpoena) upon Representative Bacon to provide a copy of the Appellant's client file. To date, Representative Bacon has failed to comply with the Form 27 (**EXHIBIT 2**).

5. Appellant's educational level consisted of a General Equivalency Diploma or "G.E.D." and Appellant was under the prescribed medications(s) of Hydrocodone, Flexiril, and Ibuprofen by the authorized treating physician, Dr. Alan Tamadon (**EXHIBIT 3**).

6. On October 27, 2005 the authorized treating physician, Alan Tamadon, MD opined maximum medical improvement, assigned a five (5) percent impairment rating to the whole person of the Appellant, assigned permanent lifting restrictions to the Appellant, and reported to the employer and carrier that the Appellant was no longer able to perform the duties of a delivery driver (**EXHIBIT 4**).

7. On November 2, 2005 the employer discharged the Appellant on the grounds of "permanent lifting restrictions" and "no position available" (**EXHIBIT 5**).

8. Prior to discharging the Appellant, the employer never afforded or offered the Appellant suitable employment to accommodate the Appellant's work-related incapacity.

9. On November 2, 2005 when the employer discharged the Appellant, the

Appellant had received temporary compensation payments for approximately 181 consecutive days, including the First 150 Days (**EXHIBIT 6**).

10. On November 2, 2005 when Appellant was discharged, Appellant immediately informed Representative Bacon, who took no action on behalf of Appellant to protect Appellant's legal right to continued employment.

11. On November 7, 2005 the employers' representative reduced the Appellant's average weekly wage from \$1,161.00 to \$592.56 per week, without a hearing or permission from the commission (**EXHIBIT 7**).

12. After Appellant was discharged, Appellant stopped receiving compensation payments. Appellant informed Representative Bacon, who took no action on behalf of Appellant.

13. On December 4, 2005 the employer's representative terminated compensation payments to the Appellant without a hearing or permission from the commission. At the time the employer's representative terminated compensation payments, the Appellant had received temporary compensation payments for approximately 213 consecutive days, including the First 150 Days (**EXHIBIT 6**).

14. On December 22, 2005 under the advisement of Representative Bacon, Appellant entered into a Settlement Agreement and Release which was approved by the Workers' Compensation Commission (Commission), and in particular, Commissioner David W. Huffstetler on January 5, 2006 (**EXHIBIT 8**).

15. Commissioner Huffstetler never convened a hearing, formal conference, or informal conference with the parties prior to Commissioner Huffstetler approving the Settlement Agreement and Release on January 5, 2006.

16. After the Appellant entered into the Settlement Agreement and Release on December 22, 2005, Appellant received an envelope from the employer's representative containing three (3) separate envelopes which contained 3 compensation checks and the checks were dated December 2, 2005 or prior (**EXHIBIT 9**).

17. On December 7, 2012 Appellant filed a Form 50 requesting a hearing with the commission in the matter of W.C.C. case number 0506205 (**EXHIBIT 10**).

18. On January 29, 2013 the Commission issued a Notice of Hearing scheduling the Appellant's Form 50 to be heard before the Commission, and in particular, Commissioner Susan S. Barden (Commissioner Barden) on March 28, 2013. The Notice of Hearing stated the employer's address as "125 FORT MILL PARKWAY FORT MILL, SC 29715" (**EXHIBIT 11**).

19. On February 3, 2013 Appellant filed and served a "Motion to Transfer Jurisdiction" seeking to transfer jurisdictional authority of the case from District 4 (Charleston) to District 7 (Richland) based on the proper address of the employer (**EXHIBIT 12, exhibits to motion not included**).

20. On February 13, 2013 Respondents' filed and served a "Defendants' Reply to Claimant's Motion to Transfer Jurisdiction" and mutually agreed with the Appellant that employer's proper address was 120 Longs Pond Road Lexington, SC 29072 and had no objection to the transfer of jurisdiction from District 4 to District 7 (**EXHIBIT 13**).

21. On February 22, 2013 Commissioner Susan S. Barden, while within the jurisdictional authority of District 2 (Anderson) issued an Order in the matter of Workers' Compensation Commission (W.C.C.) case number 0506205 (**EXHIBIT 14**).

22. On February 28, 2013 Appellant filed and served a Form 30 appealing the single commissioner's Order dated February 22, 2013 (**EXHIBIT 15**).

23. On March 4, 2013 Appellant filed and served a "Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments (Motion for Reinstatement)" with regards to W.C.C. Case No.: 0506205 (**EXHIBIT 16, exhibits to motion not included**).

24. On March 14, 2013 Respondents' filed and served a "Defendants' Reply to Claimant's Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments (Reply)" (**EXHIBIT 17, exhibit to motion not included**).

25. On March 17, 2013 Appellant filed and served a "Claimant's Answer to Defendants' Reply to Claimant's Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments (Answer)" (**EXHIBIT 18, exhibits to motion not included**).

26. On March 18, 2013 Appellant filed and served a proposed "Order Granting Claimant's Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments" (**EXHIBIT 19**).

27. On March 25, 2013 Respondents' submitted *ad hoc* "Motion for Reinstatement" correspondence to the Commission, and in particular, jurisdictional Commissioner Andrea C. Roche (**Appellant's EXHIBIT 20**).

28. On March 27, 2013 Gary M. Cannon, Executive Director of the Workers' Compensation Commission (Mr. Cannon), issued a Decision returning the Appellant's "Motion for Reinstatement", un-adjudicated by the jurisdictional Commissioner, on the grounds that the "Commission does not have subject matter jurisdiction" (**EXHIBIT 21, enclosures not included**).

29. On April 8, 2013 Appellant filed a "Appeal/Complaint" regarding the March 27, 2013 Decision of Mr. Cannon with the Lexington County Court of Common Pleas and the same was served upon the Respondents' on April 22, 2013 under Civil Action No.: 2013-CP-32-01272 (**EXHIBIT 22, exhibits to the complaint not included**).

30. On May 2, 2013 Respondents' filed and served a "Defendants' Motion to Dismiss" (**EXHIBIT 23, exhibits to the motion not included**).

31. On June 10, 2013 the Honorable Thomas A. Russo (Judge Russo) issued an "Order Granting Defendants' Motion to Dismiss" (**EXHIBIT 24**).

32. On July 17, 2013 the Full Commission issued a "Decision and Order" affirming the Order of the single commissioner dated February 22, 2013 with respect to Appellant's Form 30 dated February 28, 2013 (**EXHIBIT 25**).

33. On September 6, 2013 Judge Russo issued a Form 4 affirming his previous Order dated June 10, 2013 regarding Civil Action No.: 2013-CP-32-01272 (**EXHIBIT 26**).

34. On November 1, 2013 Judge Russo submitted ex-parte correspondence to the Appellant (**EXHIBIT 30**).

35. On December 23, 2013 Appellant filed a "Motion to Proceed in Forma Pauperis" to the Lexington County Court of Common Pleas with respect to seeking a waiver of the \$150.00 Appeal Filing Fee with respect to Civil Action No.: 2014-CP-32-00399 (**EXHIBIT 27**).

36. On January 3, 2014 Judge Russo denied the Appellant's "Motion to Proceed in Forma Pauperis" (**EXHIBIT 28**).

37. On February 14, 2014 Appellant was served with a "THREE DAY NOTICE TO PAY RENT OR DELIVER POSSESSION" (EXHIBIT 29).

STATEMENT OF THE CASE

The Respondents' continue to be in willful noncompliance with S.C. Code Ann. 42-9-260(F) of the Act and corresponding S.C. Reg. 67-506(D) of the Act with respect to the unlawful discharge of the Appellant's employment on November 2, 2005 (EXHIBIT 4) and unlawful reduction and subsequent termination of Appellant's temporary compensation payments on November 7, 2005 (EXHIBIT 7) and December 4, 2005, respectively, based on the fact that at the time Respondents' discharged the Appellant from employment and reduced/terminated the Appellant's temporary compensation payments, as of November 2, 2005 (EXHIBIT 5) the Appellant had received temporary compensation payments for approximately 181 consecutive days, including the first 150 days (EXHIBIT 6). S.C. Reg. 67-506(D) of the Act in relevant part states,

After the one hundred fifty day period, when the claimant is receiving temporary compensation and the authorized health care provider assigns an impairment rating and reports the claimant is unable to return to work at the same or other suitable job, the employer's representative must continue payment of temporary compensation until the Commission finds the employer's representative may terminate temporary compensation.

Additionally, NO HEARING TO STOP COMPENSATION PAYMENTS HAS EVER BEEN REQUESTED BY THE RESPONDENTS' PURSUANT TO S.C. REG. 67-506(E) OF THE ACT; THE COMMISSION HAS NEVER CONVENED A HEARING TO CONSIDER TERMINATION OF APPELLANT'S COMPENSATION

PAYMENTS; AND THE COMMISSION HAS NEVER GRANTED PERMISSION TO THE RESPONDENTS' TO REDUCE OR TERMINATE TEMPORARY COMPENSATION PAYMENTS TO THE APPELLANT AS REQUIRED PURSUANT TO S.C. CODE ANN. 42-9-260 (F) OF THE ACT AND S.C. REG. 67-506(D) & (E) OF THE ACT. The commission failed to perform its required regulatory responsibilities pursuant to S.C. Reg. 67-202 (5) & (10) of the Act in 2005, and has continued to fail to perform its required regulatory duties to ensure that the Respondents' are in compliance with S.C. Code Ann. 42-9-260(F) and S.C. Reg. 67-506(D) of the Act with respect to continuing to pay temporary compensation to the Appellant.

The grounds used to discharge the Appellant by the Respondents', in particular, **"No position available"** and **"permanent lifting restrictions"** is in willful noncompliance of S.C. Code Ann. 42-1-620 of the Act; S.C. Code Ann. 42-9-260(F) of the Act; and S.C. Reg. 67-506(D) of the Act. The comments as stated on the discharge notice, in particular, **"Termination of Employment-Released from Doctor with permanent lifting restrictions not compatible with job duties"** (emphasis added) (EXHIBIT 5) reflects a blatant disregard to comply with the Act.

The Appellant was afforded gross misrepresentation and ineffective counsel from Representative Bacon, who **REPRESENTED THE APPELLANT FOR MORE THAN SEVEN YEARS (EXHIBIT 2)** and took no actions on behalf of the Appellant to protect both the Appellant's legal right to continued employment AND the Appellant's continued legal right to temporary compensation. The employer NEVER afforded or offered suitable employment to accommodate the Appellant's incapacity prior to discharging the Appellant on November 2, 2005 after the authorized treating physician

opined maximum medical improvement, assigned permanent lifting restrictions, assigned a 5 percent impairment rating and reported to the Respondents' that the Appellant could no longer perform the duties of a delivery driver on October 27, 2005 (**EXHIBIT 4**).

THE COMMISSION, THE RESPONDENTS' AND THE APPELLANT'S FORMER REPRESENTATIVE ABUSED THE APPELLANT'S MENTAL INCAPACITY BASED ON THE FACT THE APPELLANT'S EDUCATION LEVEL CONSISTED OF A G.E.D. AND THE APPELLANT WAS UNDER THE MEDICAL TREATMENT OF THE PRESCRIBED MEDICATIONS OF HYDROCODONE, FLEXIRIL AND IBUPROFEN BY THE AUTHORIZED TREATING PHYSICIAN, DR. ALAN TAMADON (**EXHIBIT 3, pages 3-4; EXHIBIT 4, page 1**). The Appellant was unaware and uninformed, pursuant to the gross misrepresentation received by Representative Bacon, and the LACK OF AGENCY CONTROL BY THE COMMISSION, of the Appellant's legal right to continued employment and continued temporary compensation payments.

As it relates to the Settlement Agreement and Release entered into by the parties on December 22, 2005 and approved by the Commission, and in particular, Commissioner David W. Huffstetler (**EXHIBIT 8**), THE SETTLEMENT AGREEMENT AND RELEASE CANNOT LAWFULLY SERVE TO TERMINATE OR RESOLVE APPELLANT'S LEGAL RIGHT TO CONTINUED COMPENSATION PAYMENTS OR EMPLOYMENT PURSUANT TO S.C. CODE ANN. 42-1-610 OF THE ACT; S.C. CODE ANN. 42-1-620 OF THE ACT; S.C. CODE ANN. 42-9-260(F) OF THE ACT; AND S.C. REG. 67-506(D) OF THE ACT.

**THERE ARE NO STATUTE OF LIMITATION PROVISIONS
CONTAINED WITHIN THE ACT WHICH ALLOWS THE REPRESENTATIVE
FOR THE RESPONDENTS' TO CONTINUE WITHHOLDING
COMPENSATION PAYMENTS BASED ON WILLFUL NONCOMPLIANCE OF
THE ACT BY THE RESPONDENTS' REPRESENTATIVE UNDER ANY
TERMS, CONDITIONS OR EXCEPTIONS.**

Appellant filed a Form 30 on February 28, 2013 following the Order issued by Commissioner Susan S. Barden, based on the FACT that the parties MUTUALLY AGREED that the proper jurisdictional District within the Commission to adjudicate W.C.C. Case number 0506205 with respect to a commission hearing regarding the Form 50 filed by the Appellant was District 7 (**EXHIBITS 10 – 13**). When Commissioner Barden issued the aforementioned Order dated February 22, 2013 (**EXHIBIT 14**) Commissioner Barden was within the jurisdictional control of District 2 and scheduled to rotate into District 4 on March 1, 2013, where W.C.C. Case number 0506205 was erroneously placed in by the commission's judicial department (**EXHIBIT 15**).

Appellant filed a proper "Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments (Motion for Reinstatement)" on March 4, 2013 (**EXHIBIT 16**). The Motion for Reinstatement constituted "new and material evidence" previously not considered by the commission. Additionally, S.C. Reg. 67-707 of the Act provides clear and specific procedures with respect to adjudicating a Motion filed by a party within the commission AFTER a Form 30 has been filed in a contested case before the commission.

On March 14, 2013 Respondents' filed a 'Reply' to Appellant's Motion for Reinstatement (**EXHIBIT 17**); however the Respondents' failed to "affirm or deny" the

averments contained in the Appellant's Motion for Reinstatement pursuant to Rule 8(b) SCRPC. On March 17, 2013 Appellant filed an Answer to the Respondents' Reply wherein the Appellant properly asserted the averments contained in the Motion for Reinstatement were "admitted" pursuant to Rule 8(d) SCRPC (**EXHIBIT 18**). On March 18, 2013 Appellant filed a proposed Order granting the Motion for Reinstatement (**EXHIBIT 19**).

On March 25, 2013 the Respondents' submitted unrequested ad hoc correspondence to the Commission, and in particular, District 7 jurisdictional Commissioner Andrea C. Roche (Commissioner Roche) re-asserting the Respondents' erroneous rationale that the Appellant's legal right to employment and compensation benefits were resolved via the Settlement Agreement and Release. **Pursuant to S.C. Reg. 67-215(G) of the Act; S.C. Reg. 67-707(C)(2)(c) of the Act; S.C. Code Ann. 42-3-20(C) of the Act; and Rule 501(3)(B)(1), CJC, Rule 501 SCACR, Commissioner Roche had a statutory, regulatory, and adjudicative responsibility to adjudicate the Appellant's Motion for Reinstatement, but neglected to do so, WHICH PREJUDICED THE SUBSTANTIAL RIGHTS OF THE APPELLANT.**

Instead of Commissioner Roche properly adjudicating the aforementioned Motion for Reinstatement, on March 27, 2013 Gary M. Cannon, Executive Director of the commission (Mr. Cannon) issued a letter wherein Mr. Cannon returned the Appellant's Motion for Reinstatement to the Appellant, un-adjudicated by Commissioner Roche, on the grounds that the commission did not have subject matter jurisdiction to adjudicate the Appellant's Motion for Reinstatement (**EXHIBIT 21**). Mr. Cannon **ACTED OUTSIDE THE SCOPE OF THE AUTHORITY OF THE OFFICE OF THE EXECUTIVE**

DIRECTOR, PURSUANT TO S.C. CODE ANN. 42-3-80 BASED ON THE FACT THAT MR. CANNON DOES NOT HAVE AUTHORITY TO RENDER DECISIONS IN CONTESTED CASES BROUGHT BEFORE THE COMMISSION.

MR. CANNON'S MARCH 27, 2013 DECISION PREJUDICED THE SUBSTANTIAL RIGHTS OF THE APPELLANT, AND MET THE CRITERIA FOR THE DECISION TO BE MODIFIED PURSUANT TO S.C. CODE ANN. 1-23-380(5)(a)-(e).

MR. CANNON'S LETTER WAS IN FACT A DECISION WHICH SUMMARILY DISMISSED THE APPELLANT'S PROPER MOTION FOR REINSTATEMENT WITHOUT THE SAME BEING LAWFULLY ADJUDICATED BY COMMISSIONER ROCHE, WHICH MET THE CRITERIA FOR APPEAL PURSUANT TO RULE 201 SCACR. BASED ON THE FACT THAT APPELLANT'S MOTION FOR REINSTATEMENT WAS NEVER ADJUDICATED BY THE COMMISSION PURSUANT TO S.C. REG. 67-707 OF THE ACT, APPELLANT HAD IN FACT EXHAUSTED THE APPELLANT'S ADMINISTRATIVE REMEDIES REGARDING THE MOTION FOR REINSTATEMENT WITHIN THE WORKERS' COMPENSATION COMMISSION.

IF COMMISSIONER BARDEN WOULD HAVE PROPERLY ADJUDICATED THE APPELLANT'S MOTION FOR REINSTATEMENT, THE COMMISSION REVIEW REGARDING THE FORM 30 WOULD HAVE BEEN STAYED PURSUANT TO S.C. REG. 67-707(C)(2)(d).

Appellant filed a proper Complaint regarding the unlawful Decision of Mr. Cannon with the Lexington County Court of Common Pleas (**EXHIBIT 22**). Instead of the Respondents' filing a proper Answer to the Appellant's Complaint, Respondents'

filed a Motion to Dismiss (**EXHIBIT 23**). On June 10, 2013 Judge Russo issued an "Order Granting Defendants' Motion to Dismiss" (**EXHIBIT 24**), on the CLEARLY ERRONEOUS GROUNDS that the Appellant "failed to exhaust all administrative remedies within the workers' compensation forum" before initiating the appeal with the Lexington County Court of Common Pleas. However, Judge Russo's Order FAILED TO STATE THE SPECIFIC ADMINISTRATIVE REMEDIES UNDER THE ACT THE APPELLANT FAILED TO EXHAUST.

JUDGE RUSSO'S ORDER ALSO DISMISSED THE APPELLANT'S COMPLAINT WITH PREJUDICE, meaning if the Appellant did not appeal Judge Russo's ERRONEOUS order with the Court of Appeals, the issue regarding Mr. Cannon's unlawful March 27, 2013 Decision and the GROSS FAILURE of the Commission to properly adjudicate the Appellant's Motion for Reinstatement would not be able to heard before a proper convening authority again.

JUDGE RUSSO'S ORDER DATED JUNE 10, 2013 WAS CLEARLY ERRONEOUS; WAS NOT SUPPORTED BY S.C. REG. 67-707 OF THE ACT, and in clear violation of S.C. CODE ANN. 1-23-380(5). The Appellant's aforementioned Motion for Reinstatement WAS NEVER adjudicated by the commission, or considered in the commission's review of the Appellant's Form 30. The Full Commission issued a CLEARLY ERRONEOUS "Decision and Order" dated July 17, 2013 (**EXHIBIT 25**) affirming the improper Order dated February 22, 2013 from Commissioner Susan S. Barden.

JUDGE RUSSO'S ORDER DATED JUNE 10, 2013 PREJUDICED THE SUBSTANTIAL RIGHTS OF THE APPELLANT and the Order WAS NOT FAITHFUL TO THE LAW.

On September 6, 2013 Judge Russo affirmed the CLEARLY ERRONEOUS previous Order Judge Russo issued on June 10, 2013 (EXHIBIT 26). The Order of Judge Russo dated June 10, 2013 and subsequent Form 4 dated September 6, 2013 are currently pending review before the COURT OF APPEALS under Appellate Case number 2013-002941.

Judge Russo's previous Order(s) has directly resulted in the Appellant's continued INTENTIONALLY DELAY in the Appellant's RELIEF and RECOVERY of entitled compensation benefit payments and employment from the Respondents' and has INJURED THE APPELLANT. As such, Appellant has NO CONFIDENCE in the INTEGRITY of Judge Russo to adjudicate the present matter before this Court in a FAIR and IMPARTIAL manner.

ARGUMENT

1. Judge Russo's Order dated June 10, 2013 and subsequent Form 4 dated September 6, 2013 with respect to Civil Action Case No.: 2013-CP-32-01172 was not fair and impartial. After a review of the Appellant's Complaint, the Motion to Dismiss by the Respondents' and proper considerations of the applicable laws, Judge Russo determined that the Appellant had "failed to exhaust all administrative remedies within the workers' compensation forum" (EXHIBITS 22-24).

However, Judge Russo's Order failed to specifically state what administrative remedies the Appellant failed to exhaust within the South Carolina Workers' Compensation Commission Act. Further, Judge Russo's Order was vague in nature, based on the fact that Judge Russo provided no particular facts of the appeal, only referring to the unlawful Decision rendered by Mr. Cannon of the commission and

subsequent failure of the commission, and in particular, Commissioner Andrea C. Roche's failure to perform her adjudicative responsibilities with respect to adjudicating the Appellant's Motion for Reinstatement as the "Complaint". Appellant asserts that there were no administrative remedies that the Appellant could initiate within the "workers' compensation forum" after Mr. Cannon issued the unlawful decision on March 27, 2013.

Additionally, S.C. Code Ann. 1-23-380(5) afforded Judge Russo the legal right AND fiduciary responsibility to "modify" the decision of Mr. Cannon if the decision was determined to be "in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

Mr. Cannon lacked the authority to render a Decision in a contested case before the commission pursuant to S.C. Code Ann. 42-3-80, which was never addressed by Judge Russo in His Honor's Opinion of June 10, 2013. Jurisdictional Commissioner Andrea C. Roche failed to perform her required adjudicative responsibilities pursuant to S.C. Reg. 67-215(G) of the Act; S.C. Reg. 67-707(C)(2)(c) of the Act; S.C. Code Ann. 42-3-20(C) of the Act; and Rule 501(3)(B)(1), CJC, Rule 501 SCACR, which was never addressed by Judge Russo in His Honor's Opinion of June 10, 2013. As it relates to a party seeking the disqualification of a Judge from adjudicating a case before the Court, Rule 501(3)(E)(1), CJC, Rule 501, SCACR, in the "commentary" section states in relevant part that, **"Under this rule, a judge is disqualified whenever the judge's**

impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply (Emphasis added)”.

Appellant asserts based on the foregoing, it is more than “reasonable” for the Appellant to question the impartiality of Judge Russo, with respect to adjudicating the current matter pending before the Court, and the immediate disqualification of Judge Russo from adjudicating the above captioned matter pending before the Court is both just and proper.

2. Judge Russo’s Order dated June 10, 2013 and subsequent Form 4 dated September 6, 2013 with respect to Civil Action Case No.: 2013-CP-32-01272 prejudiced the substantial rights of the Appellant. Appellant asserts Judge Russo had an Adjudicative Responsibility, pursuant to Rule 501(3)(B)(5), CJC, Rule 501, SCACR, as stated, in relevant part, to “...perform judicial duties without bias or prejudice.” However, Appellant asserts Judge Russo’s Order dated June 10, 2013 clearly reflects a bias towards the Workers’ Compensation Commission, and the Respondents’, based on the failure of Judge Russo to address the CLEAR AND UNMISTAKEABLE ERROR of Commissioner Roche to perform her statutory, fiduciary, and regulatory functions with respect to adjudicating the Appellant’s Motion for Reinstatement, as well as Judge Russo failing to address the ABUSE OF AUTHORITY by Mr. Cannon with respect to issuing a decision in a contested case before the commission which was clearly outside the scope of Mr. Cannon’s authority. Appellant asserts Judge Russo’s prejudicial actions, with respect to deliberately failing to address the unlawful actions of Commissioner Andrea C. Roche and Mr. Cannon prejudiced the substantial rights of the Appellant.

Additionally, Rule 501(3)(B)(2), CJC, Rule 501, SCACR establishes that a “judge shall be faithful to the law* and maintain professional competence in it”; however, a review of the aforementioned June 10, 2013 Order reflects Judge Russo failed to assert **A SINGLE STATUTORY AUTHORITY** in support of His Honor’s Order granting the Respondents’ Motion to Dismiss. Appellant asserts the grounds used by Judge Russo to grant the Respondents’ motion to dismiss **WAS NOT SUPPORTED BY LAW**.

As it relates to a party seeking the disqualification of a Judge from adjudicating a case before the Court, Rule 501(3)(E)(1), CJC, Rule 501, SCACR, in the “commentary” section states in relevant part that, **“Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply (Emphasis added)”**.

Appellant asserts based on the foregoing, it is more than “reasonable” for the Appellant to question the impartiality of Judge Russo with respect to adjudicating the current matter pending before the Court, and the immediate disqualification of Judge Russo from adjudicating the above captioned matter pending before the Court is both just and proper.

3. Judge Russo’s questionable use of discretionary authority to deny the Appellant’s ‘Motion to Proceed in Forma Pauperis’ meets the criteria in support of disqualifying Judge Russo from presiding over the above captioned matter.

Appellant asserts the Motion to Proceed in Forma Pauperis duly informed Judge Russo that; **(A)** The Appellant had been unemployed since the unlawful termination of the Appellant’s employment by the employer, the co-respondent in this matter, since **November 2, 2005**; **(B)** The Appellant had no monthly income; the Appellant was receiving U.S. Department of Veterans Affairs (VA) Disability Benefits, for unrelated

Additionally, Rule 501(3)(B)(2), CJC, Rule 501, SCACR establishes that a “judge shall be faithful to the law* and maintain professional competence in it”; however, a review of the aforementioned June 10, 2013 Order reflects Judge Russo failed to assert **A SINGLE STATUTORY AUTHORITY** in support of His Honor’s Order granting the Respondents’ Motion to Dismiss. Appellant asserts the grounds used by Judge Russo to grant the Respondents’ motion to dismiss **WAS NOT SUPPORTED BY LAW**.

As it relates to a party seeking the disqualification of a Judge from adjudicating a case before the Court, Rule 501(3)(E)(1), CJC, Rule 501, SCACR, in the “commentary” section states in relevant part that, “**Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply (Emphasis added)**”.

Appellant asserts based on the foregoing, it is more than “reasonable” for the Appellant to question the impartiality of Judge Russo with respect to adjudicating the current matter pending before the Court, and the immediate disqualification of Judge Russo from adjudicating the above captioned matter pending before the Court is both just and proper.

3. Judge Russo’s questionable use of discretionary authority to deny the Appellant’s ‘Motion to Proceed in Forma Pauperis’ meets the criteria in support of disqualifying Judge Russo from presiding over the above captioned matter.

Appellant asserts the Motion to Proceed in Forma Pauperis duly informed Judge Russo that; **(A)** The Appellant had been unemployed since the unlawful termination of the Appellant’s employment by the employer, the co-respondent in this matter, since **November 2, 2005**; **(B)** The Appellant had no monthly income; the Appellant was receiving U.S. Department of Veterans Affairs (VA) Disability Benefits, for unrelated

active duty service connected impairments in the amount of \$1,366.00 per month; (C) The Appellant's monthly rental amount was \$600.00 per month, nearly half of the Appellant's VA Disability Benefits; and (D) The Appellant's was operating at a **monthly deficit** with respect to paying reoccurring monthly bills (**EXHIBIT 27**).

However, after reviewing the Appellant's aforementioned motion to proceed in forma pauperis and supporting affidavits, Judge Russo denied the motion based on the **2013 Federal Poverty Guidelines** as grounds to deny the same. Although Appellant asserts Judge Russo's decision to deny the Appellant's motion to proceed in forma pauperis was not illegal, the grounds used by Judge Russo to deny the same were clearly questionable. In addition to denying the Appellant's motion to proceed in forma pauperis, Judge Russo also ordered that "This case will be dismissed without further order of the court if the filing fee and associated costs are not paid on or before January 31, 2014" (**EXHIBIT 28**).

Appellant asserts Judge Russo's denial of the Appellant's motion to proceed in forma pauperis AND the requirement for the Appellant to pay the required filing fees within the time limits specified placed an extreme burden and undue significant hardship upon the Appellant. As a result of the conditions imposed upon the Appellant by Judge Russo, the Appellant was forced to pay the required filing fee out of the Appellant's monthly rent which resulted in the Appellant being served with a "Three Day Notice To Pay Rent or Deliver Possession" of Appellant's rental dwelling (**EXHIBIT 29**).

Appellant asserts upon review of the discretionary authority by Judge Russo with respect to denying the Appellant's proper motion to proceed in forma pauperis, when Judge Russo certainly could have granted the same, in addition to the restrictive

requirements placed upon the Appellant for immediate payment of the filing cost, to include the harm and injury imposed upon the Appellant as a direct result of His Honor's discretionary authority, that the Appellant is well within his rights to question Judge Russo's ability to adjudicate the above captioned matter in a fair and impartial manner, and an immediate disqualification of His Honor, pursuant to Rule 501(3)(E)(1), CJC, Rule 501, SCACR, as the presiding judicial officer in the above captioned matter, is both just and proper.

CONCLUSION

Judge Russo's ex-parte correspondence to the Appellant dated November 1, 2013 (**EXHIBIT 30**) respectfully reflects a clear break from reality as it directly relates to the merits of the case, the supporting affidavits, and the proper application of law in direct comparison to His Honor's stated rationale. Judge Russo's previous actions directly related to this matter would lead a reasonable party to question the fairness and impartiality of His Honor's conduct. Judge Russo issued a previous Order on June 10, 2013 related to this matter which was; (**A**) clearly erroneous; (**B**) prejudicial towards the Appellant; (**C**) improperly favorable towards the Workers' Compensation Commission and the Respondents'; (**D**) not supported by Law; and (**E**) in violation of the substantial rights of the Appellant. Appellant questions the use of the discretionary authority by Judge Russo in denying the Appellant's Motion to proceed in Forma Pauperis, as the decision by His Honor placed an undue burden and significant hardship upon the Appellant. Respectfully, Judge Russo's actions, as it directly relates to previous actions taken by His Honor in this matter, reflects; (**F**) a deliberate ignorance of the facts related to this case; (**G**) a gross abuse of authority, discretionary or otherwise; (**H**) a willful

failure to be faithful to the law; (I) a fear of criticism; (J) a deliberate deprivation of the substantial rights of the Appellant; (K) conduct detrimental to the preservation and administration of justice; OR (L) a level of incompetence that merits review for possible removal from the positions of both Circuit Court Judge and Chief Administrative Judge. The Appellant's demand for the immediate disqualification of Judge Russo as the presiding judicial officer and re-assignment of this case to a fair and impartial Justice is both reasonable and proper.

WHEREFORE, based on the foregoing and pursuant to Rule 501(3)(E)(1), CJC, Rule 501, SCACR, Appellant moves this honorable Court for the immediate disqualification of the Honorable Thomas A. Russo as the presiding judicial officer in the above captioned matter and the re-assignment of this case to a fair and impartial judge for immediate adjudication of this action based on the merits of the appeal.

Respectfully submitted,



Alexander Guice
Post Office Box 13281
Tampa, Florida 33681
Phone: (813) 562-0547
Appellant, *pro se*

March 15, 2014

cc: **S.C. Commission on Judicial Conduct**
Injured Workers' Advocates

Attachment B

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)
)
)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Civil CASE NO: 2014-CP-32-00399

Alexander Guice,
Employee, Claimant,
Appellant,

Versus

US Foodservice, Inc., and Ace American
Insurance Company, c/o
Gallagher Bassett Services, Inc.,
Employer AND Carrier,
Respondents'.

MOTION FOR NEW TRIAL
(No Oral Arguments Requested)

YOU WILL PLEASE TAKE NOTICE that ALEXANDER GUICE (Hereafter "Claimant" or "Employee" or "Injured Worker" or "Appellant"), the Appellant in the above styled caption PROCLAIMS that the pleadings in this matter are being filed by Appellant in *propria persona*, wherein pleadings are to be considered without regard to technicalities. In *propria*, pleadings are not held to the same high standards of perfection and expertise as practicing lawyers. See Haines v. Kerner, 92 Sct 594, also See Power 914 F2d 1459 (11th Cir 1990), also See Hulsey v. Ownes, 63 F3d 354 (5th Cir 1995). Pursuant to Rule 59(a) of the South Carolina Rules of Civil Procedure (SCRCP), Appellant presents this "MOTION FOR NEW TRIAL" seeking the Court to amend the findings of fact and conclusions of law and enter a new judgment with respect to the Order issued in this matter on July 21st, 2014, filed with the Clerk on July 30th, 2014 with receipt of the written entry of judgment by Appellant on August 4th, 2014. In support of this motion, Appellant

would further state as follows;

BRIEF FACTUAL STATEMENT OF THE CASE

This case is an appeal from the Appellate Panel of the Workers' Compensation Commission (hereafter "Commission") with respect to the "Decision and Order" issued by the Commission on July 17th, 2013 in the matter of Alexander Guice v. US Foodservice, et al, Workers' Compensation Case Number 0506205 which constitutes a final order (Rule 201 South Carolina Appellate Court Rules (SCACR)). Appellant timely appealed the Commission's Order to the Court of Appeals; however, Erin L. Hantske, Esq. and McAngus Goudebeck & Courie, LLC (hereafter "Attorney Hantske") the counsel of record to US Foodservice, Inc. (hereafter "Employer" or "Respondent") and Ace American Insurance Company, c/o Gallagher Bassett Services, Inc. (hereafter "Carrier" or "Respondent") argued to the Court of Appeals that this case should be appealed before the Court of Common Pleas, which the Court of Appeals accepted.

Pursuant to the remitter, Appellant timely appealed the Commission's aforementioned Order before this Court, which is not contested. As such, this Court serves in official appellate capacity to review the aforementioned Order dated July 17th, 2013 from the Commission. The timely appeal of the final Order of the Commission by Appellant is not contested.

Appellant argued seven (7) specific issues on appeal. First, Appellant challenged the "Findings of Fact" of the commission, arguing that the Commission erred by omitting relevant facts and factors contained in the record, as the findings of fact section of the Commission's Order began with the

Commission's approval of the "Settlement Agreement and Release" (hereafter "clincher") on January 5th, 2006. In particular, the Commission failed to include relevant and mandatory facts contained in the record, to include, but not limited to, the following; (a) the date Appellant was hired by employer; (b) the date Appellant was injured regarding the accepted compensable injury; (c) whether or not the parties are bound by the South Carolina Workers' Compensation Act (hereafter "Act"); (d) the former representation afforded to Appellant from on or around May 2005 to on or around December 2012 by Robert Glenn Bacon, Esquire and Harry Pavilack & Associates, P.A. and later The Bacon Law Firm, LLC (hereafter "Attorney Bacon"); (e) the amount of the mutually agreed average weekly wage; (f) the date Appellant reached Maximum Medical Improvement (MMI); (g) the discharge of Appellant's employment by employer on or around November 2nd, 2005; (h) the amount of consecutive days Appellant received temporary compensation payments; and (i) the manner in which the employer's representative terminated temporary total compensation payments (See Appellant's "Appeal Brief", p. 15-17).

Second, Appellant argued that the Commission's Order failed to address or rationalize any of the Appellant's arguments on appeal before the commission, to include the argument that Commissioner Susan S. Barden lacked jurisdictional authority when she issued the February 22nd, 2013 Order cancelling Appellant's hearing before the commission and dismissing any and all motions filed in the matter of W.C.C. # 0506205 (Appellant's Brief, p. 17-19).

Third, Appellant argued the same was afforded “negligent misrepresentation by Attorney Bacon, to include but not limited to the fact(s) that; (a) Attorney Bacon took no legal action on behalf of Appellant when the employer unlawfully discharged Appellant on or around November 2nd, 2005 on the grounds of “permanent lifting restrictions” and “no position available”; (b) Attorney Bacon took no legal action on behalf of Appellant when the employer’s representative unlawfully reduced Appellant’s temporary total compensation weekly payments on or around November 6th, 2005 from \$1,161.00 to \$592.56 per week subsequent the unlawful discharge of Appellant by employer; (c) Attorney Bacon took no legal action on behalf of Appellant when the employer’s representative unlawfully withheld temporary total compensation payments from Appellant on or around November 2nd, 2005 to on or around December 22nd, 2005 subsequent Appellant entering into the clincher agreement with Respondents; and (d) Attorney Bacon continues to be in willful noncompliance with a duly served Subpoena commanding the same provide Appellant with the client copy of the workers’ compensation commission case file (Appellant’s Brief, p. 26-27).

Fourth, Appellant argued the Commission failed to correct the error(s) of law contained in the record with respect to the Respondents’ unlawful discharge of Appellant’s employment on November 2nd, 2005 and unlawful termination of Appellant’s entitled temporary total compensation payments on or around December 4th, 2005, both actions in willful violation of S.C. Code Ann. § 42-1-610 & 620; S.C. Code Ann. § 42-9-260(F); and S.C. Code Reg. § 67-506(D) of the Act (Appellant’s Brief, p. 23-25).

Finally, Appellant argued that the Commission misconstrued and misapplied a statute, in particular, S.C. Code Reg. § 67-801 and S.C. Code Reg. § 67-801(E) with respect to a clincher legally serving as a means for Respondents to terminate protected employment afforded to Appellant and also serve as a means for the employer's representative to terminate entitled temporary total compensation payments to Appellant, particularly after Appellant received compensation payments after and including the first 150 days.

TABLE OF AUTHORITIES

APPELLANT'S STATUTORY RIGHT TO APPEAL

Rule 201 SCACR states in relevant part, "(a) Judgments, Orders and Decisions Subject to Appeal. Appeal may be taken, as provided by law, from any final judgment, appealable order or decision... (b) Who May Appeal. Only a party aggrieved by an order, judgment, sentence or decision may appeal."). As previously stated, this action is an appeal from the Appellate Panel of the Commission, which constitutes a final judgment, appealable by law.

APPELLANT'S STATUTORY RIGHT TO REQUEST A NEW TRIAL

Rule 59(a) SCRPC states in relevant part, "(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been

entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

In the instant case, the hearing was convened on June 16th, 2014; the Order of the Court was issued on July 21st, 2014, filed with the Clerk on July 30th, 2014; and received via regular mail by Appellant on August 4th, 2014, a copy of which is incorporated and enclosed herein as Exhibit "A". This motion has been duly submitted to the Court and the presiding judicial officer in question, within the required ten (10) days from receipt of service via regular by Appellant, and should be duly considered as a matter of law.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the workers' compensation commission. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Bass v. Isochem, 365 S.C. 454, 617 S.E.2d 369 (Ct. App. 2005); Hargrove v. Titan Textile Co., 360 S.C. 276, 599 S.E.2d 604 (Ct. App. 2004). A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions, or decisions of that agency are "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." Burse v. South Carolina Dep't of Health & Env'tl. Control, 360 S.C. 135, 141, 600 S.E.2d 80, 84 (Ct. App. 2004); S.C. Code Ann. § 1-23-380(5)(e) (2005). Under the scope of review established in the APA, this Court may not substitute its judgment for that of the appellate panel as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Liberty Mut. Ins. Co. v. South Carolina

Second Injury Fund, 363 S.C. 612, 611 S.E.2d 297 (Ct. App. 2005); Frame v. Resort Servs., Inc., 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004); Stephen v. Avins Constr. Co., 324 S.C. 334, 478 S.E.2d 74 (Ct. App. 1996); S.C. Code Ann. § 1-23-380(5)(d) (2005). Workers Compensation Commission's legal conclusions are reviewed *de novo*. Grant v. Grant Textiles, 372 S.C. 196, 200-201, 641 S.E.2d 869, 871 (2007). The Commission's factual findings are reviewed for "substantial evidence." Review is limited to whether reasonable minds could reach the conclusion that the agency reached: "Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached." Holmes v. Nat'l Serv. Ind., Inc., 395 S.C. 305, 308-309, 717 S.E.2d 751, 752 (2011). In the instant appeal, Appellant is arguing both questions of law and issues of fact with respect to the aforementioned Final Order of the Commission.

ABUSE OF DISCRETION STANDARD

"An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.", citing State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011). Appellant asserts the abuse of discretion standard must be adopted and applied with respect to conclusions of the Court serving in the appellate review capacity. In the instant appeal, Appellant shall establish that the Court "abused its discretion" based on the fact the conclusions of the Court; (1) lacked evidentiary support; and (2) were controlled by an error of law.

FRAUD UPON THE COURT STANDARD

Fraud upon the Court is defined as either a fraud perpetrated by an officer of the court or "that species of fraud which does, or attempts to, subvert the integrity of the court itself." See Chewning v. Ford Motor Company, 354 S.C. 72, 579 S.E.2d 605 (2003). In the instant appeal, Appellant was, and continues to be subjected to "fraud upon the court" by Attorney Bacon, Attorney Hantske, and the Commission.

EXTRINSIC FRAUD STANDARD

Extrinsic Fraud is defined by the Court as "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." See 358 S.C. at 19, 594 S.E.2d at 483 (citing Chewning, 354 S.C. at 81, 579 S.E.2d 610). In the instant appeal, Appellant previously established the same was and continues to be subjected to "extrinsic fraud" by Attorney Bacon. Additionally, Appellant will further establish the same has been subjected to "extrinsic fraud" by the Court, with respect to the intentional failure of the Court to provide a rationale in support of; (1) overruling the arguments submitted by Appellant on appeal; (2) sustaining the Respondents motion to dismiss; (3) overruling Appellant's arguments in opposition to Respondents motion to dismiss; and (4) failing to comply with the Order of the Court of Appeals dated April 24th, 2014.

CODES OF LAW

S.C. Constitution, Article 1, Section 22- No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

S.C. Code Ann. § 1-23-380(5) - Judicial review upon exhaustion of administrative remedies.- A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy...(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 42-1-610 - Agreement or regulation shall not limit liability of employer.- No contract or agreement, written or implied, and no rule, regulation or other device shall in any manner operate to relieve any employer, in whole or in part, of any obligation created by this Title except as otherwise expressly provided in this Title.

S.C. Code Ann. § 42-1-620 - Agreements of employee to waive rights shall be invalid. - No agreement by an employee to waive his rights to compensation under this Title shall be valid.

S.C. Code Ann. § 42-9-260(F)&(G)- Notice to Commission when payments have begun; suspension or termination of payments. - (F) After the one-hundred-fifty-day period has expired, the commission shall provide by regulation the method and procedure by which benefits may be suspended or terminated for any cause, but the regulation must provide for an evidentiary hearing and commission approval prior to termination or suspension unless such prior hearing is expressly waived in writing by the recipient or the circumstances identified in Section 42-9-260(B)(1) or (B)(2) are present. Further, the commission may not entertain any application to terminate or suspend benefits unless and until the employer or carrier is current with all payments due.

(G) Failure to comply with this section shall result in a twenty-five percent penalty imposed upon the carrier or employer computed on the amount of benefits withheld in violation of this section, and the amount of the penalty must be paid to the employee in addition to the amount of benefits withheld. However, the penalty does not apply if the employer or carrier has terminated or suspended benefits when the employee has returned to any employment at the same or similar wage.

S.C. Code Ann. § 42-9-440- Suspected false statements or misrepresentations to be reported to Insurance Fraud Division of Office of Attorney General. - The commission shall report all cases of suspected false statement or misrepresentation, as defined in Section 38-55-530(D), to the Insurance Fraud Division of the Office of the Attorney General for investigation and prosecution, if warranted, pursuant to the Omnibus Insurance Fraud and Reporting Immunity Act.

S.C. Code Ann. § 38-55-530 – Definitions - As used in this article: (A) "Authorized agency" means any duly constituted criminal investigative department or agency of the United States or of this State; the Department of Insurance; the Department of Revenue; the Department of Public Safety; the Department of Motor Vehicles; the Workers' Compensation Commission; the State Accident Fund; the Second Injury Fund; the Department of Employment and Workforce; the Department of Consumer Affairs; the Human Affairs Commission; the Department of Health and Environmental Control; the Department of Social Services; the Department of Health and Human Services; the Department of Labor, Licensing and Regulation; all other state boards, commissions, and agencies; the Office of the Attorney General of South Carolina; or the prosecuting attorney of any judicial circuit, county, municipality, or political subdivision of this State or of the United States, and their respective employees or personnel acting in their official capacity.

(B) "Insurer" shall have the meaning set forth in Section 38-1-20(25) and includes any authorized insurer, self-insurer, reinsurer, broker, producer, or any agent thereof.

(C) "Person" means any natural person, company, corporation, unincorporated association, partnership, professional corporation, or other legal entity and includes any applicant, policyholder, claimant, medical providers, vocational rehabilitation provider, attorney, agent, insurer, fund, or advisory organization.

(D) "False statement or misrepresentation" means a statement or representation made by a person that is false, material, made with the person's knowledge of the

falsity of the statement and made with the intent of obtaining or causing another to obtain or attempting to obtain or causing another to obtain an undeserved economic advantage or benefit or made with the intent to deny or cause another to deny any benefit or payment in connection with an insurance transaction, and such shall constitute fraud. "False statement or misrepresentation" specifically includes, but is not limited to, an intentional:

- (1) false report of business activities;
- (2) miscount or misclassification by an employer of its employees;
- (3) failure to timely reduce reserves;
- (4) failure to account for Second Injury Fund reimbursements or subrogation reimbursements; or
- (5) failure to provide verifiable information to public or private rating bureaus and the Department of Insurance.

An undeserved economic benefit or advantage includes, but is not limited to, a favorable insurance premium, payment schedule, insurance award, or insurance settlement.

(E) "Immune" means that neither a civil action nor a criminal prosecution may arise from any action taken pursuant to this article unless actual malice on the part of the reporting person or gross negligence or reckless disregard for the rights of the reported person is present.

S.C. Code Reg. § 67-202A(5)&(10) - Words and Phrases, Defined - (5) Compliance Division : A division of the Commission responsible for investigation and, if necessary, requests prosecution of an employer who refuses or neglects to comply with the insurance provisions of this Chapter and the Act. The division is authorized to request and, if necessary, assess a fine for failure to file reports required under this Chapter and the Act.

(10) **Judicial Department**: A department of the Commission which assigns the informal conference, contested case, and Commission review docket and issues the hearing notice. The department reviews the Commission's files and assures compliance with the provisions of this Chapter and the Act by requesting and, if necessary, assessing a fine for failure to file reports required by this Chapter and the Act.

S.C. Code Reg. § 67-506D&E- Terminating Temporary Compensation after the First One Hundred Fifty Days after the Employer's Notice of the Injury. - D. After

the one hundred fifty day period, when the claimant is receiving temporary compensation and the authorized health care provider assigns an impairment rating and reports the claimant is unable to return to work at the same or other suitable job, the employer's representative must continue payment of temporary compensation until the Commission finds the employer's representative may terminate temporary compensation.

E. To request a hearing for permission to terminate temporary compensation, the employer's representative shall file a Form 21 with the Judicial Department.

(1) The employer's representative shall serve a copy of the Form 21 on the claimant according to R.67-211.

(2) The employer's representative shall certify temporary compensation is current or no hearing will be set.

S.C. Code Reg. § 67-801E- Settlement of the Claim, General - E. An Agreement and Final Release (clincher) relieves the employer and its representative from any further responsibility for payment of compensation or medical expenses, unless the Agreement and Final Release specifically provides otherwise. When the claimant signs the Agreement and Final Release and it is approved, the claimant does not have the right to ask for additional payments in the future even if the claimant's medical condition worsens, unless otherwise specifically provided in the document.

S.C. Code Reg. § 67-803C - Settlement by Agreement and Final Release - C. The Commission shall not approve an Agreement and Final Release that is not fairly made and in accordance with the Act. An approved Agreement and Final Release is binding. The employer's representative shall pay compensation according to its terms.

RULES OF LAW

Rule 501, Code of Judicial Conduct (CJC), Rule 501, SCACR - APPLICATION OF THE CODE OF JUDICIAL CONDUCT - A. Anyone, whether or not a lawyer, who is an officer of the unified judicial system and who performs judicial functions, including an officer such as a magistrate, master-in-equity or special referee, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

Rule 1A, CJC, Rule 501, SCACR - A Judge Shall Uphold the Integrity and Independence of the Judiciary - A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally

observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Rule 2A, CJC, Rule 501, SCACR - A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES - A. A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Rule 3B(2), CJC, Rule 501, SCACR - A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY - Adjudicative Responsibilities. - (2) A judge shall be faithful to the law* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

Rule 3D(2), CJC, Rule 501, SCACR - A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY - Disciplinary Duties - (2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct contained in Rule 407, SCACR, should take appropriate action. A judge having knowledge* that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.*

Rule 1.1, Rules of Professional Conduct (RPC), Rule 407, SCACR - COMPETENCE A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.2(d), RPC, Rule 407, SCACR - SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER- (d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Rule 1.3, RPC, Rule 407, SCACR - DILIGENCE - A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4(a)&(b), RPC, Rule 407, SCACR - COMMUNICATION - (a) A lawyer shall (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(g), is required by these Rules;
(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about

the status of the matter;(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law. (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 3.4(a)&(c), RPC, Rule 407, SCACR - FAIRNESS TO OPPOSING PARTY AND COUNSEL- A lawyer shall not: (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act; (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

Rule 4.1(a)&(b), RPC, Rule 407, SCACR - TRUTHFULNESS IN STATEMENTS TO OTHERS- In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Rule 8.4(a)-(e), RPC, Rule 407, SCACR – MISCONDUCT- It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (c) commit a criminal act involving moral turpitude; (d) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (e) engage in conduct that is prejudicial to the administration of justice;

Rule 12(b)(1)&(6), SCRCRCP - DEFENSES AND OBJECTIONS - WHEN AND HOW PRESENTED - BY PLEADING OR MOTION - MOTION FOR JUDGMENT ON PLEADINGS - How Presented - Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (6) failure to state facts sufficient to constitute a cause of action.

ARGUMENT

I

The Court Order Violated the Order of the Court of Appeals Dated April 24th, 2014

On April 24th, 2014 the Court of Appeals issued an Order in the matter of Alexander Guice v. US Foodservice, Inc., Appellate Case No.: 2014-002491 (hereafter "related matter"), a copy of which is incorporated and enclosed herein as Exhibit "B". In particular, the aforementioned Appellate Court Order states, ("This case is remanded to the circuit court which shall consider the merits of this appeal in conjunction with Appellant's appeal from the commission's final order.") (Exhibit "B"). The June 16th, 2014 hearing was convened without the Court considering the related matter. Furthermore, Appellant duly informed the Court of the Order of the Court of Appeals on June 27th, 2014, more than 21 days prior to the Court ratifying the Order in question. In fact, in correspondence received by the parties from the Honorable Brian M. Gibbons ("Judge Gibbons") on Saturday, June 28th, 2014, Judge Gibbons stated, ("Apparently everyone has seen the proposed order except for me. All I received was Mr. Guice's stuff. please send it again to me Ms. Hantske. Thank you") (Exhibit "C").

However, for reasons unknown, the Court ratified the proposed order prepared by Attorney Hantske on July 21st, 2014 in willful and deliberate violation of the Order of the Court of Appeals. Judge Gibbons did not submit and correspondence or instructions to the parties with respect to the Appellate Court Order prior to ratifying the Order in question. Appellant asserts the failure of Judge Gibbons to immediately set aside the June 16th, 2014 hearing and reschedule a hearing in the instant appeal to comply with the Order of the Court

of Appeals dated April 14th, 2014, with respect to considering the related matter “in conjunction” with the appeal of the commission’s final order; (1) prejudiced the substantial rights afforded to the Appellant, in violation of *Rule 2A, CJC, Rule 501, SCACR*; (2) constituted “fraud upon the court”; and (3) reflects a lack of integrity and the ability to adjudicate the instant case fairly and impartially.

Based on the failure of the Court to comply with the Order of the Court of Appeals dated April 24th, 2014, Appellant moves the Court to issue an Order setting aside the July 30th, 2014 Order in this matter and grant a rehearing to correct a miscarriage of justice.

II

Fraud upon the Court committed by Judge Gibbons In the Instant Appeal

A. Failure of Judge Gibbons to adjudicate the unlawful discharge

Notwithstanding the deliberate failure of Judge Gibbons to comply with the aforementioned Order of the Court of Appeals, a review of the Order in question, and in particular, the *defacto* “Statement of the Case” proposed by Attorney Hantske and accepted by Judge Gibbons, His Honor continues to intentionally further perpetrate the unlawful discharge by the employer which occurred on November 2nd, 2005 – more than two (2) months prior to the commission approving the clincher – by intentionally disregarding Appellant’s argument (Appeal Brief, p. 26), to include disregarding the submission of a true copy of the discharge notice, which is uncontested by the Respondents, and failing to perform the required “fair” and “impartial” *de novo* review of the record.

Instead, Judge Gibbons concealed the unlawful discharge by the Respondents by accepting the fraudulent statement of the case as presented by Attorney Hantske, which intentionally omits all actions which occurred in the case between October 27th, 2005, when the treating physician opined MMI, to January 5th, 2006, when the commission approved the clincher.

B. Failure of Judge Gibbons to adjudicate the unlawful termination of temporary total compensation payments

In the Appeal Brief, Appellant duly asserted that; (1) Appellant received temporary total compensation payments for approximately 213 days, including the first 150 days – without objection from Attorney Hantske; (2) Respondents unlawfully reduced compensation payments from \$1,161.00 to \$592.00 (Appeal Brief, p. 23); (3) Respondents terminated entitled compensation payments in violation of S.C. Code Ann. § 42-9-260 (F) and S.C. Code Reg. § 67-506(D); and (4) provided irrefutable evidence, namely, the Form 18 filed with the Commission – by the Respondents – in support of Appellant’s argument that entitled compensation payments had been unlawfully terminated.

However, Judge Gibbons made no reference to Appellant’s argument, instead stating that His Honor reviewed all submissions of the parties, and again concealing the unlawful termination of temporary total compensation payments by failing to state how many days Appellant received compensation payments and omitting all relevant factors related to temporary total compensation in the same manner Judge Gibbons concealed the unlawful discharge.

C. Failure of Judge Gibbons to Perform his Disciplinary Responsibilities

As contained in the Appeal Brief, Appellant alleged and provided evidence

to adequately prove negligent misrepresentation afforded to Appellant by Attorney Bacon (Appeal Brief, p.); however, a review of the Court Order in questions confirms Judge Gibbons made no reference to the extrinsic fraud Appellant continues to be subjected to by Attorney Bacon. The actions of Attorney Bacon with respect to: (1) concealing from the Appellant that the employer unlawfully terminated the same; (2) concealing from the Appellant that the employer's representative unlawfully reduced, suspended and terminated entitled temporary total compensation payments; (3) taking no action to protect Appellant's entitled and legal rights to both employment and compensation payments; and (4) continuing to willfully violated a duly served subpoena constitutes willful violations of (a) *Rule 1.1, RPC, Rule 407, SCACR* ; (b) *Rule 1.2(d), RPC, Rule 407, SCACR*; (c) *Rule 1.3, RPC, Rule 407, SCACR*; (d) *Rule 4.1(a)&(b), RPC, Rule 407, SCACR*; (e) *Rule 8.4(a)-(e), RPC, Rule 407, SCACR*; S.C. Code Ann. § 38-55-530; (f) Extrinsic Fraud; and (g) Fraud upon the Court.

Furthermore, Attorney Hantske continues to willfully submit false statements on behalf of Respondents with respect to using the clearly erroneous argument that Respondents lawfully terminated entitled temporary total compensation payments by of the clincher, when Attorney Hantske is both informed and aware that pursuant to the first 213 days Appellant received compensation payments that permission to suspend or terminate compensation required the filing of the required Form 21, certification that payments were current with the commission, the scheduling and convening of a hearing, and an Order from the commission granting permission to terminate compensation.

Appellant asserts Attorney Hantske's conduct in the instant case as counsel for the Respondents constitutes; (1) a violation of *Rule 1.2(d), RPC, Rule 407, SCACR*; (2) a violation of *Rule 3.4(a)&(c), RPC, Rule 407, SCACR*; (3) a violation of *Rule 4.1(a)&(b), RPC, Rule 407, SCACR*; (4) *Rule 8.4(a)-(e), RPC, Rule 407, SCACR*; (5) a violation of S.C. Code Ann. § 42-9-260(F); (6) a violation of S.C. Code Reg. § 67-506(D); Insurance Fraud; (7) Extrinsic Fraud; and (8) Fraud upon the Court.

However, Judge Gibbons has failed to report any of the egregious conduct of either Attorney Hantske or Attorney Bacon to the appropriate authority and instead issued a clearly erroneous and fraudulent Order with intent to conceal, shield, and protect the unlawful and criminal acts of the same. The failure of Judge Gibbons to perform his required disciplinary duties not only stands to further prejudice Appellant, but constitutes a violation of *Rule 3D(2), CJC, Rule 501, SCACR*.

The above referenced allegations with respect to the performance, or gross lack thereof, by Judge Gibbons, constitutes fraud upon the court, and as such, Appellant moves the Court for an Order granting this motion for rehearing.

III

Unlawful Granting of Respondents Motion to Dismiss By Judge Gibbons

Respondents filed a motion to dismiss seeking to dismiss Appellant's appeal pursuant to *Rule 12(b)(1)* (lack of jurisdiction over the subject matter and *Rue 12(b)(6)* (failure to state facts sufficient to constitute a cause of action). As Appellant duly asserted in Appellant's "Answer to Motion to Dismiss", it was

Attorney Hantske, on behalf of Respondents, who argued to the Court of Appeals that this appeal should be filed with the Court of Common Pleas (See Answer to Motion to Dismiss, p. 4-6). Additionally, this action is an appeal from a final order from the Commission, which certainly is appealable per Rule 201 SCACR. The assertion by Attorney Hantske that the Court lacked jurisdiction was legally insufficient.

Additionally, a review of the Appeal Brief confirms Appellant certainly submitted arguments and facts sufficient to constitute a cause of action. However, Judge Gibbons granted the motion to dismiss. A review of the Order confirms that in granting the motion to dismiss, Judge Gibbons provides no rationale or commentary in support granting the motion to dismiss. Judge Gibbons also failed to provide a rationale in support of overruling the arguments submitted by Appellant.

Per the scope of review standard as it directly relates to what actions a reviewing authority can take with respect to an appeal from the workers compensation commission, a reviewing court may affirm, reverse or modify a decision. Dismissal of the appeal is not an option. Bursey v. South Carolina Dep't of Health & Env'tl. Control, 360 S.C. 135, 141, 600 S.E.2d 80, 84 (Ct. App. 2004). The dismissal of the appeal by Judge Gibbons constitutes "abuse of discretion" based on the fact the act of Judge Gibbons dismissing the instant appeal is controlled by an error of law. The act of erroneously dismissing the appeal prejudiced the substantial rights afforded to Appellant, and also constitutes "fraud upon the court"; and violation of *Rule 3B(2), CJC, Rule 501*,

SCACR by Judge Gibbons. Based on the clear arbitrary and capricious conduct by Judge Gibbons, the Order dated July 30th, 2014 in the instant appeal must be set aside and a new hearing granted.

IV

Violation of Appellant's Constitutional Right To be heard

As contained in the Order in question, Judge Gibbons alleges to have reviewed and considered the submissions of all parties; however, Judge Gibbons granted the Respondents motion to dismiss and fully affirmed final order of the commission without stating or providing a rationale in support overruling Appellants arguments on appeal clearly contained in the complaint or stating and providing a rationale in support of overruling the arguments contained in Appellant's Answer to Motion to Dismiss (See Appeal Brief and Answer to Motion to Dismiss, previously submitted).

Appellant asserts Judge Gibbons has intentionally violated the Appellant's protected constitutional right to be heard, a violation of S.C. Const. art. I, 22. Based on the deliberate and abuse of discretion by Judge Gibbons, with respect to failing to clearly state and provide rationales in support of overruling Appellant's arguments as contained in the Appeal Brief (Complaint) and the Answer to Motion to Dismiss, the Order dated July 30th, 2014 must be set aside and a new hearing granted.

V

Interpretation of S.C. Code Ann. § 42-1-610 & 620; S.C. Code Ann. § 42-9-260(F) and S.C. Code Reg. § 67- 506(D) in Contrast to

S.C. Code Reg. § 67-801

The cardinal rule of statutory interpretation is to determine the intent of the legislature. Miller v. Aiken, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005). The intent of the legislature should be ascertained primarily from the plain language of the statute. State v. Landis, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004). “The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose.” Mun. Ass’n of South Carolina v. AT&T Communications of S. States, Inc., 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004). A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. Liberty Mut. Ins. Co. v. South Carolina Second Injury Fund, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005). The court will reject a statutory interpretation that would “lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention.” Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000).

A *de novo* review of the record with respect to the instant appeal confirms that on October 27th, 2005 the treating physician, Dr. Alan Tamadon, opined MMI; assigned a 5% impairment rating to the whole person of the Appellant; assigned “permanent lifting restrictions”; and reported to the Respondents that Appellant could no longer perform the duties of a delivery driver (Exhibit “D” resubmitted). On October 27th, 2005 when Dr. Tamadon opined MMI and the like, Appellant had received temporary compensation payments for approximately 175 days,

including the first 150 days (Exhibit "E" resubmitted). The Respondents did not challenge the medical findings of the treating physician.

On November 2nd, 2005, without offering or affording suitable employment to accommodate Appellant's incapacity, the employer terminated Appellant on the grounds of "permanent lifting restrictions" and "no position available". Additionally, in section 2 of the discharge notice, the employer states "Termination of Employment – Released from Doctor with permanent lifting restrictions not comparable with job duties" (Exhibit "F" resubmitted). S.C. Code 42-9-260(F) and S.C. Code Reg. § 67-506(D) as stated above provides clear and expressed statutory procedural requirements, which must be complied with, as it relates to the duties of the employer's representative paying temporary total compensation payments, and the requirements which must be met to suspend or terminate compensation payments to an injured worker after the injured worker has received compensation payments for more than 150 days.

Appellant asserts the intent of the lawmakers in establishing 42-9-260(F) and 67-506(D) was to protect the injured worker's right to continued compensation payments and benefits and to ensure a fair and impartial hearing be convened by the commission, and only after a review of the record, and permission by the commission, by order (not agreement), would the employer's representative be permitted to suspend or terminate entitled compensation.

Additionally, a review of S.C. Code Ann. § 42-1-610 & 620 must be interpreted based on its clear language, which would certainly lead a reasonable mind to conclude that the intent of the lawmakers was to protect an injured

worker from being forced into entering into an unfair and illegal agreement to waive, resolve, or settle the injured workers' entitled right to continued employment and entitled compensation benefits by way of clincher. Furthermore, 42-1-610 and 620 have been in place since 1962 – more than FIFTY YEARS, unchanged, to again protect the rights of the injured worker.

The Respondents would have the Court believe, in the instant case, asserting S.C. Reg. § 67-801, that the sum of \$20,000.00, of which Appellant received approximately \$13,333.33, as 33% was paid to Attorney Bacon in attorney fees, by way of the clincher, would LEGALLY serve the TRILATTERAL purposes as; (1) Final Severance Pay for Appellant's entitled employment with the employer, when in 2004 Appellant earned an annual salary of around \$60,372.00 (based on mutually agreed average weekly wage of \$1,161.00 times 52 weeks in a year); (2) Final payment of entitled temporary total compensation payments (which as stated, is \$1,161.00 per week); and (3) serve as a schedule award for the 5% impairment rating to the whole person of the Appellant. Appellant asserts the Court must reject the Respondents rationale and application with respect to the statutory interpretation of R. 67-801 by the Commission in the instant appeal as the interpretation "lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention." Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000).

Finally, the court must consider the intentional "checks and balances" mechanism placed within Act, by lawmakers, with respect to S.C. Code Reg. § 67-

202(5)&(10). In particular, the Claims and Judicial Departments of the Commission, respectively, has a regulatory function to inspect the commission's files and ensure compliance with the Act, to include the issuance of notices, fines, and if necessary, reporting unlawful actions by the employer, carrier, employer's representative, or claimant, to the Insurance Fraud Division of the Office of the Attorney General for prosecution.

Whether or not Attorney Bacon duly apprised the Appellant of the Appellant's legal right to continued employment and entitled temporary total compensation payments, the Commission, through both the Claims and Judicial Departments, had a regulatory duty and responsibility, upon reviewing the Form 18 filed by the RESPONDENTS, which confirmed the Appellant had received temporary compensation payments AFTER and INCLUDING the first 150 days, to issue the appropriate notices and fines, to the Respondents, and in particular, the employer's representative, with respect to enforcing compliance with 42-9-260(F)&(G) and R. 67-506(D)&(E) of the Act, but failed to do so. The breakdown of control within the Commission lies at the heart of the instant appeal.

It would be 'absurd' to assume that the Full Commission would act in a fair and impartial manner with respect to the instant appeal, given the Commission's own lack of control and egregious conduct in *de novo* review of the record. Appellant reminds the court that no hearing, conference, or informal conference was ever convened by the commission prior to approving the clincher on January 5th, 2006. The parties acknowledged that the commission relied upon the "representation of counsel for the Claimant", not the Claimant himself, to ensure

the Claimant was fully apprised of his rights under the Act (See Exhibit "G", p. 4 resubmitted).

It is more likely that the Commission would attempt to further perpetrate the fraud committed in the instant case, by attempting to conceal the breakdown of control within the Commission with respect to ensuring that the Respondents were in compliance with the law, by intentionally misapplying a regulation and fraudulently ignoring relevant facts and evidence, so the Respondents can prevail, and the commission and its former and current officers can be shielded from exposure to potential liability and/or prosecution.

As such, Appellant would move the Court to immediately set aside the July 30th, 2014 Order and Order the immediate setting aside of all decisions rendered in the instant case, and immediately enforcing compliance of S.C. Code 42-9-260(F)&(G) and S.C. Code Reg. § 67-506(D) by ordering Respondents to reinstate entitled employment and release illegally withheld temporary total compensation payments, to include the release of the twenty five percent penalty as a matter of law.

VI

DEMAND FOR INVESTIGATION

As of August 4th, 2014, the Appellant has been unlawfully deprived of entitled employment and entitled temporary total compensation payments for approximately 450.7 weeks, from December 4th, 2005 to August 4th, 2014. To date, Appellant has been unlawfully deprived of approximately \$523,262.70 (450.7 weeks x \$1,161.00 average weekly wage) in entitled worker's compensation

insurance benefits, which includes the 33.3% required payment of Appellant's average weekly wage by the employer. Further, the assessed penalty of twenty five percent (25%), per S.C. Code 42-9-260(G), which amounts to \$130,815.68, brings the total amount owed to Appellant, to date, to approximately \$654,078.38.

Given the large amount of benefit payments owed to Appellant in insurance compensation benefits and interests, by the Respondents, Appellant asserts the Court must consider the possibility that Judge Gibbon's intentional acts of abuse of discretionary authority, fraud upon the court, and failure to perform his required disciplinary duties, may be the result of subornation. Additionally, the Court must also consider that the extrinsic fraud, fraud upon the court, and intentional misrepresentation afforded to Appellant by Attorney Bacon may also be the result of subornation. Further, the Court must consider the failure of the Commission to perform the required regulatory functions as well as the clearly erroneous final order issued by the commission to be possibly due to subornation.

The Appellant is not an attorney; however, a reasonable person would certainly agree to pay small payments, for example, of \$25,000.00, \$10,000.00, \$50,000.00, or provide special favors to individuals in positions of authority, in exchange for the issuance of decisions which would serve to "legally" prevent the payment of hundreds of thousands of dollars in withheld and entitled benefits to a litigant. Appellant respectfully demands that the Court refer this matter to the Insurance Fraud Division of the Office of the Attorney General, pursuant to S.C. Code Ann. § 42-9-440 so that a proper review and investigation into the

finances of; (1) Judge Gibbons; (2) Attorney Bacon; and (3) previous and current officers within the Commission can be investigated, to ensure the clear abusive conduct in the instant appeal was not effectuated by way of subornation, as well as taking the potential prosecutorial actions against the named individuals regarding the instant appeal, and Attorney Hantske, and the clear insurance fraud, which continues to be committed in this matter.

CONCLUSION

Based on the clear abuse of discretion, fraud upon the court, and the clear departure from the essential requirements of law by Judge Gibbons, in the interest of justice, Judge Gibbons should immediately recuse himself. If the termination of the Appellant's employment and entitled temporary total compensation payments were legally effectuated by way of the clincher and R. 67-801, the Court would not have intentionally omitted the factual events which occurred in instant case between October 27th, 2005 and January 5th, 2006 in the July 30th, 2014 Order, with respect to the discharge of Appellant's employment on November 2nd, 2005 and the unlawful termination of entitled temporary total compensation payments by the employer's representative on December 4th, 2005.


It is "absurd" for the Court to accept the Commission and Respondents application of R. 67-801 and the \$20,000.00 clincher to serve as final payment of Appellant's entitled right to employment, a schedule award payment for the 5% impairment rating, and final payment for entitled temporary total compensation payments. The July 30th, 2014 Order is in direct violation of the April 24th, 2014 Order from the Court of Appeals. Attorney Hantske and the Respondents

continue to commit Insurance Fraud.

Based on the foregoing, Appellant moves the Court to grant this motion by immediately setting aside the July 30th, 2014 Order and granting a new hearing in the instant case, or in the alternative, immediately issuing on appropriate order setting aside all decisions in the instant case, to include ordering the Respondents to comply with R. 67-506(D) and reinstate Appellant's employment and release the unlawfully withheld temporary total compensation payments, as well as 25% interest penalty assessed, and referring this matter to the Insurance Fraud Division of the Office of the Attorney General for investigation.

I, Alexander Guice, do swear, under penalty of perjury, that the information contained herein is true and correct to the best of my knowledge and ability.

Respectfully submitted,



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Appellant, Pro Se

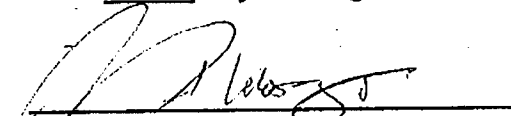


MIGUEL VELASQUEZ
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE141636
Expires 10/26/2015

August 4, 2014

Sworn to and Subscribed before me

This 4th Day of August, 2014


Notary Public

My commission expires 10/26/2015

Comm# EE141636

Attachment C

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Alexander Guice,)
Employee, Claimant,)

Appellant,)

vs.)

US Foodservice, Inc., and Ace)
American Insurance Company, c/o)
Gallagher Bassett Services, Inc.,)
Employer and Carrier,)

Respondents.)

IN THE CIRCUIT COURT FOR
THE ELEVENTH JUDICIAL CIRCUIT

C.A. #: 2014-CP-32-399

2013-CP-32-1272

ORIGINAL

**ORDER GRANTING APPELLANT/
CLAIMANT'S MOTION FOR
NEW TRIAL AND ORDER
FOR RECUSAL**

FILED
JUN 23 2014 11:50
BETH A. CARRICO
CLERK OF COURT
LEXINGTON, SC

This matter has a convoluted and detailed procedural history. It originates from a Workers Compensation action that was purportedly resolved in 2005. Mr. Guice, hereinafter "Appellant/Claimant", seeks to overturn the decision of the Workers Compensation Commission which among other things upheld the validity of a settlement, clincher agreement, and release he signed back in 2005. This matter has been in litigation for quite some time and the Court heard this matter back on June 16, 2014 in Lexington County.

Prior to the hearing, Appellant/Claimant had emailed the Court several times providing the Court with various briefs and memoranda in support of his position. Appellant/Claimant resides in Florida and has participated in this litigation via email and mail without making an actual appearance in Court during hearings. Appellant/Claimant was not present in Court at the hearing on June 16, 2014. Respondent/Carrier appeared though its counsel who made an oral



argument to the Court in support of its position to dismiss this matter. The Court took the matter under advisement.

ORIGINAL

Soon after the Court took the matter under advisement, Appellant/Claimant commenced with more numerous email submissions with voluminous attachments to the Court regarding any proposed Order that the Court may issue. The Court reviewed these submissions but ultimately decided against Appellant/Claimant's position and ruled in favor of Respondent/Carrier. This Order was signed on July 21, 2014 and entered on July 30, 2014. The Order was prepared by counsel for Respondent/Carrier at the direction of the Court.

FILED
2014 SEP 29 AM 11:50
ETHA A. CHRISS
CLERK OF COURT
WASHINGTON, DC

Appellant/Claimant timely filed a motion for new trial pursuant to Rule 59 of the SCRPC along with an incorporated motion for recusal dealing with numerous matters where he felt the Court had either not ruled on, or where he disagreed with the Court. Appellant/Claimant has also "served" the Court with an inappropriate pleading entitled "Verified Notice to Court" which seems to insert the Court into the litigation process as a party. In addition, Appellant/Claimant in more disparaging filings has falsely suggested that the Court was unethical, fraudulent, partial, and dishonest in reaching its decision. Respondent/Carrier timely filed a return requesting the Court to uphold its decision in the July 30th Order and deny the motion for new trial and incorporated motion for recusal.

Among other arguments which need not be addressed, Appellant/Claimant contends that the Court ignored the remand decision of the SC Court of Appeals which in its remand order instructed the Circuit Court to "consider the merits of this appeal in conjunction with Appellant's appeal from

the commission's final order." (emphasis added). It appears that the intent of the remand order was for the Circuit Court to meticulously consider each and every argument Appellant/Claimant has presented both in front of the Workers Compensation Commission and Circuit Court to preserve the record on Appeal for the Appellate Court to reconsider in the future, if necessary, for either party.

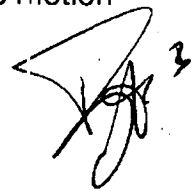
ORIGINAL

The Court does not recall all of these arguments and matters coming up at the June 16, 2014 hearing, specifically the allegations contained in Case No. 13-CP-32-1272. The Court does not recall reviewing the file in Case No. 13-CP-32-1272 when presiding in Lexington County. Both parties have substantially briefed this issue, and each was afforded an additional opportunity to brief it as well. Based upon the Court's review of the record, to comply with the remand instructions for the Court of Appeals, and in the interest of justice, the Court must grant Appellant/Claimant's motion for new trial to allow everything that has developed, on the record, for the Court of Appeals to consider if these matters continue to move on through that appellate process.

FILED
21 SEP 29 A 11:50
CIRCUIT COURT
LEXINGTON, SC

Since my written Order of July 30, 2014 does not appear to set forth the Court's decision in detail and since it does not specifically address matters contained in 2013-CP-32-1272 as instructed by the SC Court of Appeals, the Court agrees with Appellant/Claimant that he should be granted a new trial or hearing in Circuit Court. This Court of course could have reopened this matter for further consideration, but declines to do as explained more fully below.

The remaining grounds for a new trial argued by the Appellant/Claimant do not need to be addressed, since Appellant/Claimant prevailed on his motion for new trial.



ORIGINAL

Further, for this Court to continue to be the presiding judge, after receiving numerous pages of meritless and spurious allegations of unethical, incompetent, and impartial behavior from the Appellant/Claimant would put the Court in a precarious ethical posture. This Court, while categorically denying any unethical behavior in how this matter was heard and decided, simply cannot, in the future avoid an appearance of impropriety to this litigant on any rehearing in this matter. While the Court is mindful of the disdain of allowing disgruntled litigants to seek recusal for adverse rulings, the integrity of the Court simply must be upheld in this instance. The Court is also mindful of the additional cost and delay this decision means for both parties, however, the Court sees no other way to resolve this matter on this level to allow for a complete record for further appellate review if either party desires. As such, in the interest of justice, and to avoid a future appearance of impropriety, this Court must recuse itself from its own motion from anything further in this matter, and hereby does so.

FILED
JAN SEP 28 AM 11:50
BETH COVINGS
CLERK OF COURT
WINSTON SALEM NC

THEREFORE, IT IS ORDERED:

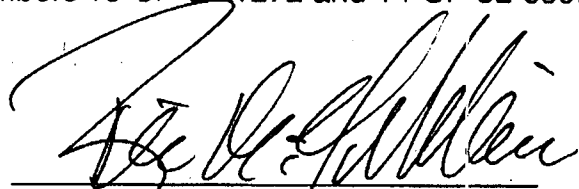
1. The Appellant/Claimant's motion for new trial or hearing is GRANTED as to all particulars set forth in his motion and that my Order of July 30, 2014 be and hereby is VACATED;
2. That Appellant/Claimant's motion for recusal is DENIED as it is baseless and meritless;
3. That the Court sua sponte RECUSES itself from any further action in this matter for the reasons above stated; and
4. That this matter be reassigned in the discretion of the Chief Administrative Judge of the Eleventh Judicial Circuit for a de novo

hearing on all matters instructed by the SC Court of Appeals in
both pending Case Numbers 13-CP-32-1272 and 14-CP-32-399.

AND IT IS SO ORDERED.

Chester, SC

September 25, 2014



Brian M. Gibbons
Circuit Court Judge

ORIGINAL

BETH A. CARRING
CLERK OF COURT
L. KINGTON, SC

2014 SEP 29 A 11: 50

FILED

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP3200399

Alexander Guice	US Foodservice Inc Gallagher Bassett Services Inc	Ace American Insurance Company
-----------------	--	--------------------------------

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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. See Page 2 for additional information.
- 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 (List amount(s) below)

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.**

10/2/2014

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **2nd October 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **2nd October 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Alexander Guice P O Box 13281 Tampa, FL 33681

Erin Leigh Hantske PO Box 650007 Mt. Pleasant, SC 29465

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Attachment D

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS OF
) THE ELEVENTH JUDICIAL CIRCUIT
) CASE NUMBERS: 2013-CP-32-01272/
) 2014-CP-32-00399

ALEXANDER GUICE,

Employee,

Appellant,

v.

US FOODSERVICE, INC.,

Employer,

and

ACE AMERICAN INSURANCE
COMPANY, c/o GALLAGHER
BASSETT SERVICES, INC.,

Carrier,

Respondents.

**VERIFIED
MOTION TO DISQUALIFY**

(No Oral Arguments Requested)

YOU WILL PLEASE TAKE NOTICE that **ALEXANDER GUICE** (hereafter

“Claimant” or “Employee” or “Injured Worker” or “Appellant”), the undersigned Appellant and Affiant in the above styled caption, PROCLAIMS the pleadings in this matter are being filed by Appellant in *propria persona*, wherein pleadings are to be considered without regard to technicalities. In *propria*, pleadings are not held to the same high standards of perfection and expertise as practicing lawyers. See Haines v. Kerner, 92 Sct 594, also See Power 914 F2d 1459 (11th Cir 1990), also See Hulsey v. Ownes, 63 F3d 354 (5th Cir 1995). Pursuant to Canon 3E(1), Code of Judicial Conduct, Rule 501, South Carolina Appellate Court Rule (SCACR), and other applicable laws, Appellant presents this “Verified Motion to Disqualify”, seeking the Court to disqualify the Honorable William P. Keesley (“Judge Keesley”), as the assigned successor judge

in the instant appeal, and would further state as follows:

AUTHORITY OF A PARTY TO SEEK DISQUALIFICATION OF A JUDGE

Canon 3E(1), CJC, Rule 501, SCACR, provides in pertinent part, “A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned...”

In the instant appeal, Appellant questions the impartiality of Judge Keesley as the assigned successor judge, based on Appellant's allegations that Judge Keesley has abused his discretionary authority, by (1) issuing untimely *sua sponte* administrative orders, in violation of Rule 59(d), SCRCP,; (2) failing to timely conduct a de novo hearing regarding remanded Case No. 2013-CP-32-1272, pursuant to the September 25, 2014 “Order Granting Appellant/Claimant's Motion for New Trial and Order of Recusal” (“Sept. 25 Order” previously filed), issued by the Honorable Brian M. Gibbons, former presiding judicial officer, and pursuant to the April 24, 2014 Order issued from the South Carolina Court of Appeals; (3) issuing untimely and improper *sua sponte* administrative orders unlawfully altering, modifying and reversing the aforementioned September 25, 2014 Circuit Court Order issued by Judge Gibbons; and (5) abusing his office, as the assigned successor Circuit Judge, to deprive the Appellant from reinstatement of employment and unlawfully withheld temporary total compensation payments, which the Appellant secured by law.

ARGUMENT

1. **Judge Keesley abused his discretionary authority as the assigned successor judge in the instant appeal by rendering untimely *sua sponte* administrative orders.**

An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. See State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011). In the instant appeal, Judge Gibbons issued the aforementioned

"Order Granting Appellant/Claimant's Motion for New Trial and Order of Recusal" on September 25, 2014. Pursuant to Rule 59(d), SCRCPP, the court, on its own initiative, or *sua sponte*, may raise issues which were not raise by either party, "not later than 10 days" after entry of the judgment or order.

However, on or around October 23, 2014, approximately 28 days after Judge Gibbons issued the aforementioned September 25, 2014 Order, Judge Keesley issued five (5) *sua sponte* administrative orders, in the instant appeal, raising issues, *sua sponte*, which were not previously raised by either of the parties, or Judge Gibbons in the aforementioned Sept. 25 Order, which violated the time limits set forth in Rule 59(d), SCRCPP. Additionally, a review of the September 25, 2014 Order confirms that Judge Gibbons did not reserve the right, to Judge Keesley, to exercise his discretionary authority in this manner.

Appellant would assert unto the Court that if Judge Keesley would have issued the aforementioned *sua sponte* administrative orders prior to expiration of 10 days, subsequent the Sept. 25 Order being issued by Judge Gibbons, the *sua sponte* issues raised by Judge Keesley in his October 23, 2014; December 9, 2014 and March 3, 2015 *sua sponte* administrative orders, respectively, may have been warranted; however, because said *sua sponte* administrative orders were issued untimely, said administrative orders must be set aside, as said orders are controlled by an error of law, in particular, Rule 59(d), SCRCPP.

- 2. Judge Keesley abused his discretionary authority as the assigned successor judge in the instant appeal by failing to timely conduct a de novo hearing regarding remanded Case No. 2013-CP-32-1272.**

As contained in the aforementioned September 25, 2014 Order, Judge Gibbons, upon recusal, immediately reassigned the instant appeal to the Chief Administrative Judge for the Eleventh Judicial Circuit, namely, Judge Keesley, for a de novo hearing on the remanded Case

No. 2013-CP-32-1272 (See Sept. 25 Order). However, to date, Judge Keesley has not only failed to timely convene or schedule the aforementioned remanded case for a hearing, Judge Keesley, via his *sua sponte* administrative order dated March 3, 2015, has scheduled a de novo hearing to re-consider the Motion to Dismiss, previously filed by Erin L. Hantske, Esq. (“Attorney Hantske”), the counsel of record for the Employer/Carrier, which was previously granted in the July 30, 2014 Order issued by Judge Gibbons, and later VACATED, by Judge Gibbons, in the aforementioned Sept. 25, 2014 Order.

Furthermore, it should be noted that although the Appellant filed an “Emergency Petition for Writ of Mandamus” with the Supreme Court, on around December 8, 2014, which was accepted by the Supreme Court under Appellate Case No. 2014-002625, and finally ruled upon and denied on February 25, 2015, that neither the Supreme Court nor Judge Keesley ever issued *sua sponte* Orders staying the pendency of the instant appeal pending the adjudication of the petition for the Writ.

Additionally, neither party filed a motion to stay the proceedings in the instant appeal pending the adjudication of the petition for the Writ. Rule 74, SCRCF, provides in pertinent part that “...priority shall be given to the hearing and disposition of such appeals in accordance with law”; however, more than 158 days have passed since the issuance of the Sept. 25, 2014 Order from Judge Gibbons, and Judge Keesley has yet to perform the required functions of his office, as the assigned successor judge, to convene a hearing regarding the aforementioned remanded case, in violation of Rule 74, SCRCF.

- 3. Judge Keesley abused his discretionary authority as the assigned successor judge in the instant appeal by rendering untimely *sua sponte* administrative orders which have unlawfully altered, modified and reversed the September 25, 2014 Order issued by Judge Gibbons, the former presiding judicial officer, within the same circuit.**

A review of the March 3, 2015 *sua sponte* Administrative Order, the 7th *sua sponte* administrative order issued in the instant appeal by Judge Keesley, after providing a *sua sponte* rationale and analysis, Judge Keesley opined that a *de novo* hearing be convened on the Respondents' original Motion to Dismiss, which was initially granted in the July 30, 2014 Order of Judge Gibbons, and then VACATED by Judge Gibbons, pursuant to the Sept. 25 Order. As such, the March 3, 2015 *sua sponte* administrative order, issued by Judge Keesley, as the successor judge in the instant appeal, has substantially altered, modified, and reversed the Sept. 25, 2014 Order of Circuit Judge Gibbons, within the same Circuit (See Mar. 3, 2015 Administrative Order, contained within the record).

As it directly relates to Judge Keesley rendering an order, as the successor judge, which has substantially modified, altered and reversed the prior order issued by Judge Gibbons being unlawful, in *Tisdale v. American Life Ins. Co.*, 216 S.C. 10, 13, 56 S.E.2d 580, 581 (1949), the court opined, "...it is "axiomatic" that a Circuit Judge does not have the power to reverse the ruling of another Circuit Judge..." *Id.* Additionally, in *Dinkins v. Robbins*, 203 S.C. 199, 202, 26 S.E.2d 689, 690 (1943), the Court opined, "The rule is well settled that the prior order of one Circuit Judge may not be modified by the subsequent order of another Circuit Judge, except in cases when the right to do so has been reserved to the succeeding Judge, when it is allowed by rule of court or statute, or when the subsequent order does not alter or substantially affect the ruling or decision represented by the previous order". *Id.*

A review of the September 25, 2014 Order confirms that Judge Gibbons did not reserve the right, to Judge Keesley, to reconsider the September 25, 2014 Order which granted "all particulars" set forth in Appellant's Motion for New Trial, particularly related to the timely appeal of the July 17, 2013 final order from the Workers' Compensation Commission, under

Case No. 2014-CP-32-00399, which also vacated the prior July 30, 2014 Order previously granting the Respondents Motion to Dismiss.

4. Judge Keesley has abused his discretionary authority, and his office, as the assigned successor judge in the instant appeal, to deprive the Appellant of entitled reinstatement of employment and access to unlawfully terminated temporary total compensation payments, which the Appellant secured by law.

Appellant would allege unto the Court that in granting “all particulars” set forth in the Appellant’s Motion for New Trial as contained in the September 25 Order, Judge Gibbons, on behalf of the Court, accepted the Appellant’s meritorious particulars THAT:

- A. The Employer unlawfully discharged the Appellant on November 2, 2005 and intentionally misled and deceived the Appellant in support of the unlawful discharge, in violation of S.C. Code Ann. § 41-1-80(1986), which waived the 1 year statute of limitations (*See e.g. Case v. Hermitage Cotton Mills*, 236 S.C. 285, 113 S.E.3d 794 (1980));
- B. The Employer’s Representative unlawfully terminated entitled temporary total compensation payments to the Appellant on December 4, 2005 in violation of S.C. Code Ann. § 42-9-260(F)(1996) and corresponding S.C. Code Reg. § 67-506D & E of the South Carolina Workers Compensation Act;
- C. The “Settlement Agreement and Release” entered into by the parties on or around December 22, 2005 and validated by the Commission on January 5, 2006 violated S.C. Code Ann. § 42-1-620(1962)(“No agreement by an employee to waive his rights to compensation under this title shall be valid”);
- D. The Appellant was afforded intentional misrepresentation and ineffective assistance of counsel, pursuant to the two-prong test establishing ineffective assistance of

counsel, as contained in *Martinez v. State*, 403 S.E.(2d) 113, 114 (1991), from May 2005 to December 2012 by Robert G. Bacon, Esquire; and

E. That S.C. Code Reg. § 67-801, as opined by the Appellate Panel of the Full Commission, as contained in the July 17, 2013 Final Order affirming the February 22, 2013 Order from single jurisdictional commissioner Susan S. Barden, is overruled and controlled by S.C. Code Ann. § 42-1-620(1962). See *Society of Professional Journalists v. Sexton*, 283 S.C. 563, 324 S.E. 2d 313 (S.C. 1984), where the Court noted “a regulation... must fall when it alters or adds to a statute.” *Id* (See Motion for New Trial, previously submitted).

However, based on unlawful and untimely *sua sponte* administrative orders rendered in the instant appeal, by Judge Keesley, the Appellant continues to be deprived entitled reinstatement of employment and access to unlawfully terminated temporary total compensation payments, which continues to force the Appellant to experience incongruous and harsh results, based on the fact, as also accepted by Judge Gibbons in the Sept. 25 Order, the Appellant has been unemployed and unable to obtain gainful employment, since the Appellant was unlawfully discharged by the employer on November 2, 2005.

CERTIFICATION

Appellant certifies that the statements contained herein are submitted by the Appellant in good faith. Appellant asserts the aforementioned allegations and citations of authority, in support of the same, meets the criteria, wherein the Appellant, or a person of a reasonable mind, would question the fairness and impartiality of Judge Keesley as the assigned successor judge in the instant appeal.

CONCLUSION

Accordingly, based on the foregoing reasons, Appellant moves this Honorable Court to grant this Motion to Disqualify, and issue an appropriate Order disqualifying the Honorable William P. Keesley as the assigned successor judge in the instant appeal, and reassigning the instant appeal as a matter of law.

I, Alexander Guice, do swear, under penalty of perjury, that the information contained herein is true and correct to the best of my knowledge and ability.

March 7, 2015

Sworn to and Subscribed before me

This 7th Day of March, 2015

Seanneka White
Notary Public
My Commission expires 10/7/2018

Respectfully submitted,

Alexander Guice

Alexander Guice
Post Office Box 13281
Tampa, FL 33681
(813) 562-0547
alguice@hotmail.com
Appellant, Pro Se

cc: James B. Comey, Director



SEANNEKA WHITE
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF166763
Expires 10/7/2018

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 ALEXANDER GUICE)
 _____)
 Plaintiff,)
 vs.)
)
 US FOODSERVICE, INC., et al)
 _____)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

Case No.: 2014-CP-32 00399
 2013 CP-32-01272

RECEIVED
 AUG 01 2016
 SC Court of Appeals

I certify that on this date, I served a copy of a cover letter; A SCCA 233; an Appellant's Memorandum in Response to SUPPLEMENTAL ADMINISTRATIVE ORDER REGARDING RULE 63, SCRCR, AND DETERMINATION TO HOLD A DE NOVO HEARING ON THE PENDING RULE 59 MOTION OF THE EMPLOYER/CARRIER, AND SETTING THE DATE FOR HEARING THE RULE 59 MOTION AND ALL PENDING MOTIONS; a SCCA 233; a Notice of Cancellation of Hearing; a SCCA 233; a Verified Motion to Disqualify; a SCCA 233; a Motion to Vacate; a SCCA 233; a Motion to Stay; and a certificate of service in this action, dated

03/07/2015, On Erin L. Hantske, Esq. the Counsel of Record for Defendants AND a true copy of the Verified Motion to Disqualify to Circuit Judge William P. Keesley by

- Delivering it to him/her personally;
- Mailing it to him/her, at his/her last known address, by depositing it in the U.S.

Mail, in an envelope with sufficient postage affixed, addressed as follows:

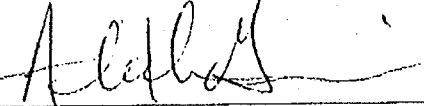
Erin L. Hantske, Esquire Post Office Box 650007 Mt. Pleasant, SC 29465 (via Priority Mail) AND William P. Keesley, Circuit Judge Post Office Box 10 Edgfield, SC 29824-0010 (via certified mail)

- Delivering it by commercial delivery service in accordance with Rule 4(d)(9),

SCRCR, addressed as follows: ; or,

- Other:

03/07/2015
 Date


 Signature

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Honorable William P. Keesley, Circuit Court Judge

RECEIVED

AUG 01 2016

SC Court of Appeals

Case No. 2013-CP-32-01272
Case No. 2014-CP-32-00399

Alexander Guice, Appellant,

v.

US Food Service, Inc., Employer, and
ACE American Insurance Company
c/o Gallagher Bassett Services, Inc., Respondents.

PROOF OF SERVICE

I certify that I have served the **Respondents' Return in Opposition to Appellant's Motion to Recuse and/or Disqualify the Honorable James E. Lockemy** on Alexander Guice, pro se, by depositing a copy of it in the United States Mail, postage prepaid, on July 28, 2016, addressed as follows:

Alexander Guice
P.O. Box 13281
Tampa, Florida 33681



Michaela Shepherd
Legal Assistant to Erin L. Hantske
McANGUS GOUDELOCK & COURIE LLC
735 Johnnie Dodds Blvd., Suite 200 (29464)
PO Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900
Attorneys for Respondents

mgc

Reply To

ERIN L. HANTSKE
Direct Dial: (843) 576-2946
erin.hantske@mgclaw.com

July 28, 2016

RECEIVED

AUG 01 2016

SC Court of Appeals

Via U.S. Mail

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

RE: Alexander Guice v. U.S. Food Service, Inc. and ACE American Insurance
Company c/o Gallagher Bassett Services, Inc.
Date of Accident: May 5, 2005
WCC File No.: 0506205
Our File No.: 2098.12550
Claim No.: 004063-032175-wc-01
Appeal No.: 2015-001821

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Return in Opposition to Appellant's Motion to Recuse and/or Disqualify the Honorable James E. Lockemy, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the self-addressed, stamped envelope.

If you have any questions, please do not hesitate to contact me.

Yours truly,
McAngus Goudelock & Courie, LLC


Erin L. Hantske

Enclosures

cc: Alexander Guice, *pro se*