

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge.

Appellate Case No. 2016-001494

RECEIVED

AUG 08 2016

SC Court of Appeals

Theodore P. Polansky, Employee; Respondent,

v.

SC Office of the Attorney General,
Employer, and State Accident Fund, Carrier, Appellants.

RETURN TO APPELLANTS'
MOTION TO HOLD APPEAL IN ABEYANCE

By way of Reply to the Motion filed by the Appellants:

1. That a review of Appellants' Exhibits 1 and 2 which are the Form 4s and two copies of the actual Order filed only in the matter of Circuit Court No. 2015-CP-40-07380 will establish that the second Form 4 issued as to Docket # 07468 by the Clerk is simply a clerical oversight on behalf of the Clerk's office. Upon review the Court will find in the title of the Order issued in 2015-CP-40-07380, that Judge Manning specifically set out that that formal Order applied specifically and only to Docket #

07380, the appeal filed by the Appellants. If there is a remaining question that this Order applied only to Docket # 07380, the Court will further find set out in the second sentence of the Order, where the Circuit Court specifically noted in reference to this issue, quoting directly from the Order:

"This Order applies to the appeal (Docket No: 2015-CP-40-07380) filed by the Appellants . . .
"

The formal Order clearly and explicitly states that that Order applied simply and only to the appeal filed by the Appellants.

2. That as to the Cross-Appeal, Counsel for Respondent agrees with the Appellants that no Decision or formal Order has been issued on the Cross-Appeal. As Counsel for the Appellants knows, Counsel for the Respondent asked the Court to withhold any decision on the Cross-Appeal for a period of at least thirty (30) days after argument wherein the only issue raised by the Cross-Appeal is whether the applicable compensation rate should have been increased by the Commission.

3. That as to the issues set out in paragraph 5, there is no reason whatsoever that these issues need to be merged for appeal as they involve two totally and separate issues. As an Officer of the Court Respondent's Counsel would advise that he has requested that the cross-appeal be dismissed without prejudice by Consent.

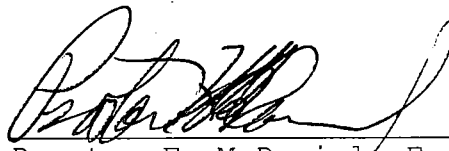
4. That as to paragraph 6 and as to Exhibits 3 and 4, this involves a totally and distinct issue and Order which is totally separate and apart from the appeal and cross-appeal in this matter. As the Court will note, prior to 2007 SC Code §42-17-60 specifically required payment of the Award as made by the Commission and that that payment is not stayed by an appeal of the Commission's Award. Assuming that the Appellants do appeal that Order ordering that the Appellants make immediate payment of the compensation benefits due to the Claimant, that is a totally separate appeal based on a totally separate pleading and action. The best, simplest and most succinct statement regarding this issue will be found by the Court in the Supreme Court decision, cited in the Order ordering payment: Case v. Hermitage Cotton Mills. In the Case decision, the Supreme Court reviewed four (4) different factual scenarios in reference to Awards by the Commission and/or made by the Circuit Court concerning the mandatory payment of benefits which are not stayed by an appeal in a workers' compensation matter. What the Court will find is that in Case and in all of the decisions reviewed in Case, that an appeal from the mandatory payment Order is a totally separate and distinct appeal apart from any other appeal of an Award on substantive issues in reference to the Award that had been made by the Workers' Compensation Commission. Most respectfully, the allegations, particularly contained in paragraphs 7 and 8, in

reference to the separate and distinct Order of the Court ordering payment of the Award as made by the Commission is inaccurate and does not properly reference the law in this area.

For all the foregoing reasons, there is absolutely no reason that these appeals need to be merged in the event that the Respondent decides to proceed with the Cross-Appeal and/or if the Appellants decide to proceed with an appeal on the compensation rate were Judge Manning to issue an Order in favor of the Respondent as the Movant; again, in the event that the Cross-Appeal is not withdrawn.

The payment of the Award by Order after Motion under the statute has absolutely nothing to do with the substantive Decision by the Commission awarding benefits and serves as no basis to stay this appeal. In fact, the Respondent knows of no Court Rule that allows for such a Stay versus the Rule that allows for an extension of time.

Respectfully submitted,



Preston F. McDaniel, Esquire
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(803) 771-7211

Attorney for Respondent

August 3, 2016

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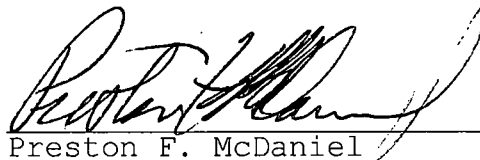
SC Office of the Attorney General,
Employer, and State Accident Fund, Carrier, Appellants.

PROOF OF SERVICE

I certify that I have served the **RETURN TO APPELLANTS' MOTION TO HOLD APPEAL IN ABEYANCE** by depositing a copy of it in the United States Mail, postage prepaid, on August 3, 2016 addressed to:

Temus C. Miles, Jr., Esquire
McKay, Cauthen, Settana & Stublely
PO Box 7217
Columbia, SC 29202-7217

Dated: August 3, 2016



Preston F. McDaniel
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Proudly representing injured workers
for over 30 years.

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August 3, 2016

Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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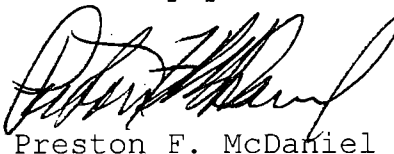
**RE: Theodore Polansky v. SC Attorney General
Appellate Case No. 2016-001494**

Dear Ms. Kitchings:

Please find enclosed the original and seven (7) copies of **RETURN TO APPELLANTS' MOTION TO HOLD APPEAL IN ABEYANCE** in the above-referenced matter. I would appreciate you returning the clocked-in copy to me in the self-addressed, stamped envelope which is enclosed.

By copy of this letter I am notifying and serving Counsel with a copy of same. As always, I appreciate all the courtesies and kindnesses shown to me by the Court.

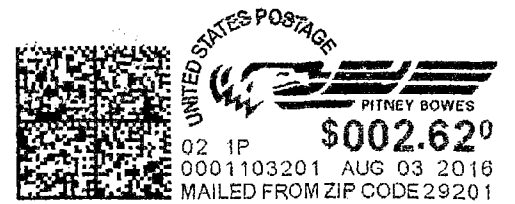
Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

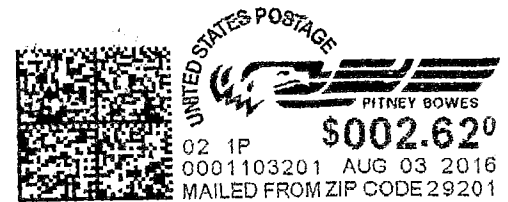
cc: Temus C. Miles, Jr., Esquire



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