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SC Court of Appeals

DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1205647

O'Shea L. Brown, ..... Claimant,

vs.

Steel Technologies, Employer, and  
Twin City Fire Ins. Co., Carrier..... Defendants.

**HEARING:** Held in Columbia, South Carolina  
June 20, 2016

**APPEARANCES:** Claimant represented by:  
Joe Ann Calvy, Esquire  
Joe Ann Calvy, LLC  
Post Office Box 610  
Kingstree, SC 29556-0610

Defendants represented by:  
Matthew C. LaFave  
Crowe LaFave, LLC  
500 Taylor Street, Suite 401  
Post Office Box 1149  
Columbia, SC 29202

**PURPOSE OF HEARING:** To determine issues as set forth on Claimant's and  
Defendants' Form 30, Request for Commission Review.

**DECISION AND ORDER:** Commissioners Melody L. James, Chair, Aisha Taylor, and  
T. Scott Beck

**FILED:**

*September*  
~~August 20~~, 2016

## BACKGROUND

Pursuant to Forms 50 and 51, a hearing was held on February 6, 2015 before Commissioner Michael Campbell to determine compensability of Claimant's lymphedema as well as his alleged affect on his hip and lower back. Further, Commissioner Campbell was asked to render a conclusion as to Claimant's entitlement to an award of disability as well as his entitlement to future medical treatment. On November 9, 2015 the Single Commissioner issued and Order finding that the only injury causally related to this admitted claim was to Claimant's right knee, which necessitated surgical repair in the form of a partial medial meniscectomy. The Single Commissioner further found that Claimant failed to meet his burden of proving causal connection between the accident and the lymphedema, hip and lower back issues. As a result of the foregoing findings the Single Commissioner found Claimant was entitled to 12% permanent partial disability and no future medical treatment.

On February 3, 2016 Claimant filed a Form 30 alleging that the Single Commissioner erred in denying Claimant's claims for his lymphedema and associated right hip and lower back, finding that Claimant was not at permanent and total disability, at maximum medical improvement, entitled to 12% permanent partial disability to the right lower extremity, and not entitled to future medical treatment. On February 10, 2016 Defendants filed a Form 30 alleging the Single Commissioner erred in denying them a credit for compensation paid from the date of the Hearing, February 6, 2015 until the date of the ruling, November 9, 2015.

On June 20, 2016 oral arguments were heard by the Full Commission, which was comprised of Commissioners James, Taylor, and Beck.

## STATEMENT OF THE CASE

This case involves an accepted injury by accident to Claimant's right knee, which occurred on April 30, 2012 as he was climbing a ladder to get atop the bed of his trailer.

~~However, a dispute arose as to the question of causation with respect to a vascular condition~~  
present in Claimant's right lower extremity. Claimant sought a determination of compensability for the right lower extremity vascular condition, along with alleged issues to his hip and lower back, and a finding that he was permanently and totally disabled pursuant to S.C. Code Ann. § 42-9-10. Defendants' contend that the medical evidence, specifically the opinion espoused by Dr. Morrison in his deposition, contradict any assertion that the vascular condition is causally related to either the original injury of April 30, 2012 or treatment received as a result thereof. Moreover, the allegations of issues with his hip and lower back are solely as a result of an alteration to his gait attributable exclusively to the vascular issues. Defendants' submit that the evidence of the case support simply a finding of a compensable injury to the right knee, which necessitated a partial medial meniscectomy, and as such Claimant is only entitled to an award under S.C. Code Ann. § 42-9-30 for the right lower extremity. Alternatively, Defendants' argued that if the Commissioner was to find the vascular condition to be causally related he was not yet at maximum medical improvement for those issues.

## EVIDENCE OF THE CASE

### Claimant's Testimony

#### **Direct Examination**

Claimant testified that he was transporting a load of steel to a vendor in Charlotte North Carolina on April 30, 2012. During the process of making this delivery he testified that he went to get on the back of the trailer and bumped his right knee. Immediately after the incident

Claimant testified to calling his supervisor, Maurice Byrd, to report what happened. Despite the occurrence Claimant testified that he continued to process the delivery and also transported another load the following day in Greensboro, North Carolina.

~~Claimant testified that approximately two (2) to three (3) days after the incident he went to see a doctor at the direction of his employer. At this initial evaluation he stated that he was simply provided some medications though after some time, approximately five (5) or six (6) months, he was sent to an orthopedist. Claimant was referred to Dr. Rudolph for his surgery, which eventually occurred in the form of a partial medial meniscectomy. Claimant testified that approximately an hour and a half to two hours later he began to experience swelling, which he was told was a result of his having surgery. Claimant's testimony was that prior to this incident and his surgery he had never experienced any swelling and following the surgery, despite assurances it would improve, his swelling worsened.~~

Claimant was eventually referred to Dr. Morrison who treated him for a vascular problem. Upon being seen by Dr. Morrison Claimant testified that he was recommended to undergo a vein closure, which was done. However, Plaintiff testified that the vascular surgery that he underwent has not helped with his swelling so he was eventually referred to Dr. Tavel for pain management. Dr. Tavel has been treating him from issues relative to his having developed hip and back pain as well, which were attributed to changes in his gait from the swelling of his lower extremity.

#### **Cross Examination**

On cross, Claimant admitted that he was present for the deposition of Dr. Morrison when he concluded the vascular condition was not related to the work injury but rather was attributable

to his obesity. Claimant further testified that the issues he is experiencing with his back has been attributed to his altered gait on account of the swelling in his leg.

#### **Redirect Examination**

~~On redirect, Claimant addressed his employment status contending that he was unable to~~  
work in any capacity on account of the limitations established by Drs. Rudolph and Tavel. Claimant testified that he was not supposed to lift or squat and that he could work in a position where he was sitting or standing, but this was for limited periods of time. Claimant also testified that he was supposed to be permitted a ten (1) minute break for every one (1) hour of work. To this extent Claimant testified that his employment prior to Steel Technologies provided "very minimum" sitting while serving as an assembler.

#### **Recross Examination**

Claimant testified that his previous employment, which included jobs as an assembler for Steel Related Technologies and Petting House, afforded him only about one (1) hour per shift to complete his duties in a seated fashion. However, when presented with his deposition transcript Plaintiff acknowledged he previously testified to spending half of his time seated with the other half standing over a twelve (12) hour shift as an assembler, which also required no lifting.

#### **Summary of the Medical Evidence**

Dr. Byron Williams initially saw claimant on May 2, 2012 at Coastal Occupational Medicine with complaints of right knee pain. Following multiple visits to Dr. Williams Claimant was eventually referred to Dr. Harry Rudolph on account of continued complaints of pain. Claimant was eventually seen, on July 24 2012, by Dr. Rudolph who ordered an MRI, which eventually confirmed the presence of a meniscus tear. On account of the findings of the MRI Claimant underwent a partial medial meniscectomy on October 2, 2012. Following the

prescribed course of treatment established by Dr. Rudolph Claimant was found to have reached maximum medical improvement on February 19, 2014 for the knee issue.

During the course of his treatment Dr. Rudolph had referred Claimant to a vascular specialist, Dr. Edward Morrison, for evaluation of Claimant's lower extremity swelling. Upon examining the Claimant Dr. Morrison recommended he undergo the closure of his right greater saphenous vein, which was completed on February 14, 2013. Despite the procedure Claimant continued to experience swelling and his treatment was eventually transitioned to Dr. Tavel for ongoing pain management. Eventually, Dr. Tavel opined that Claimant had, from a pain management perspective, achieved maximum medical improvement as well.

Claimant submitted, medical questionnaires, as completed by Drs. Rudolph and Morrison with the focus largely on that of Dr. Morrison. It is noted in the medical questionnaire completed by Dr. Morrison the vascular condition was likely an underlying condition aggravated by his work related injury. However, Dr. Morrison was later deposed and upon extensive questioning by both parties under direct and cross-examination he retracted his previous conclusion and opined that the vascular condition, within a reasonable degree of medical certainty, was not created, activated or exacerbated either by Claimant's original knee injury or his surgery. In an attempt to counteract the opinion of Dr. Morrison Claimant presented a report from Dr. Gabor Winkler who concluded the work related accident did aggravate Claimant's pre-existing vascular condition.

Based on the stipulations of the parties, the testimony and evidence received and produced at the hearing, as well as my personal observation of the witnesses, the undersigned Commissioner finds the following facts based upon the preponderance of the evidence:

**FINDINGS OF FACT**  
**(Single Commissioner)**

1. The parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Steel Technologies, as the Employer, and Twin City Fire Insurance Company as the Carrier.

2. Counsel for both parties received order instructions on November 9, 2015.

3. Claimant sustained an admitted injury to his right knee arising out of and in the course and scope of his employment on April 30, 2012.

4. Claimant's knee injury was specifically a torn medial meniscus for which he required a partial medial meniscectomy on October 2, 2012.

5. Claimant's need for a partial medial meniscectomy was causally related to the admitted injury occurring on April 30, 2012.

6. Claimant alleged additional injuries, which included a vascular condition of the right lower extremity, the right hip, and lower back.

7. Claimant's alleged additional injuries for the vascular condition and associated right hip and lower back are not supported by the greater weight of the evidence and thus are not casually related to the admitted injury of April 30, 2012 or treatment occurring as a result therefrom.

8. Claimant underwent various treatments and evaluations with multiple physicians for his work related and alleged causally related injuries, including surgery.

9. Dr. Rudolph found Claimant to be at maximum medical improvement for his knee injury on February 19, 2014 with a noted 13% impairment of the right lower extremity.

10. Dr. Rudolph's impairment rating was noted to include an increase for the Claimant's swelling.

11. I find that Claimant has satisfied his burden of proof relative to the causal connection between his work related accident and the resulting knee injury, which required a partial medial meniscectomy.

~~12. The medical records support my determination that Claimant sustained an injury by accident arising out of and in the course of his employment to his right knee.~~

13. I give the greatest weight to the findings of the authorized treating physicians, which included Dr. Rudolph, Dr. Morrison and Dr. Tavel as well as the deposition testimony proffered by Drs. Morison and Dr. Tavel.

14. Based on the greater weight of the evidence, I find that the Claimant's vascular condition was not caused, activated, or aggravated by the compensable right knee injury or the treatment received as a result of said injury.

15. Based on the greater weight of the evidence, I find that the additional injuries alleged by Claimant as to the right hip and lower back, are attributable to his altered gait, which was the direct result of his lymphedema, which I have already found to be unrelated to the admitted injury of April 30, 2012.

16. Based on the greater weight of the evidence, I find that Claimant reached maximum medical improvement for his admitted injury to his right knee on February 19, 2014.

17. Claimant is entitled to an award of 12% permanent partial disability to his right leg for this admitted injury.

18. Lacking a definitive opinion from Dr. Rudolph relative to future medical treatment for Claimant's admitted injury; I find that Claimant is not entitled to future medical care.

19. I find that Defendants are entitled, as of the date of this hearing, to terminate temporary total disability compensation on account of my having found Claimant to be at maximum medical improvement on February 19, 2014.

~~20. I find that Defendants are not entitled to any credit for overpayment for compensation paid from the date of maximum medical improvement until the date of this hearing as Defendant's did not at any time raise S.C. Code Ann. § 42-9-210.~~

21. I find that Defendants are also not entitled to any credit for overpayment for compensation paid between the date of this hearing and the date the Order Instructions were issued as Defendant's did not at any time raise S.C. Code Ann. § 42-9-210.

**CONCLUSIONS OF LAW**  
**(Single Commissioner)**

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann. § 42-1-120 defines disability.
2. S.C. Code Ann. § 42-1-160 defines injury. Pursuant to this statute, Claimant suffered an injury by accident arising out of and in the course of his employment to his right knee.
3. S.C. Code Ann. § 42-9-200 provides for temporary disability benefits. Pursuant to this section, Claimant is entitled to temporary total disability benefits from the period of May 2, 2012, to February 19, 2014.
4. S.C. Code Ann. § 42-9-210 affords Defendants a deduction from the amount of compensation to be paid when disability payments were made when they were not due

and payable. Pursuant to this statute Defendants are not entitled to a deduction from compensation payable as this section was not pled and Defendants did not proceed with a Form 21, Request for Hearing to Stop Compensation.

~~5. S.C. Code Ann. § 42-15-60 provides for the provision of medical treatment to injured workers. Claimant is not entitled to continuing medical treatment with regards to the compensable injury to his right knee.~~

6. S.C. Code Ann. § 42-1-40 and Reg. 67-1603 set forth appropriate methods for calculating the average weekly wage and compensation rate. On this basis, Claimant's average weekly wage is \$856.52, with a compensation rate of \$571.04.

Based on the above Statement of the Case, Evidence of the Case, Findings of Fact, and Conclusions of Law, the following Order is made:

**AWARD**

Based on the foregoing, it is hereby:

ORDERED that Claimant's average weekly wage is \$856.52, with a corresponding compensation rate of \$571.04; it is further

ORDERED that Claimant suffered a compensable injury by accident to his right knee necessitating a partial medial meniscectomy; and it is further

ORDERED that Defendants shall pay for any previously authorized and causally related medical treatment incurred by Claimant relative solely to his right knee; and it is further

ORDERED that Defendants are relieved of any further responsibility for payment of temporary total disability benefits; and it is further

ORDERED that Defendants are hereby relieved of any further responsibility for any of Claimant's ongoing medical treatment; and it is further

ORDERED that Defendants shall pay an award to Claimant of Thirteen Thousand

~~Three Hundred Sixty-Two and 34/100 (\$13,362.34) Dollars as a result of his 12% disability to the right lower extremity.~~

### DISCUSSION

The Claimant sustained an injury to his right knee while climbing atop the trailer of his truck, which eventually led to his requiring a partial medial meniscectomy on October 2, 2012. The Defendants accepted the claim to Claimant's knee and provided him all of the related medical treatment. Claimant contends that following, and as a result of the injury/surgery, he began experiencing significant swelling in the right lower extremity, which was eventually determined to be lymphedema by Dr. Edward Morrison. Dr. Morrison concluded, in his deposition, that the lymphedema was not causally related to either the original injury or the resulting surgery.

Claimant, by and through his counsel, argued the Single Commissioner erred in finding the Claimant's lymphedema and associated back and hip problems as unrelated to the injury occurring on April 30, 2012. Specifically, Claimant argued the evidence supported a finding of compensability despite the existence of Dr. Morrison's deposition transcript where he, as the treating physician, clearly and conclusively testified that the lymphedema was unrelated to the original injury or the surgery. In opposition of Dr. Morrison's conclusions Claimant relied upon an independent medical examination conducted by Dr. Gabor Winkler at the behest of his counsel. Defendants submitted the greater weight should be afforded to Dr. Morrison as the one most familiar with Claimant's care and treatment and based upon the fact he proffered testimony,

under oath, that found the vascular condition as unrelated. Defendants further contended the overwhelming evidence indicated the lymphedema has led to Claimant having an altered gait, which was the proximate cause of the hip and low back issues as indicated by Dr. Morrison and

~~Dr. Edward Favel. Given the evidence supported denying compensability of the lymphedema so~~

to must the hip and low back be found as unrelated. Based upon the denial of the lymphedema and all other purportedly affected body parts Claimant is left with only an injury to his right knee and as such an award must be confined to S.C. Code Ann. § 42-9-30 as required by law thus Claimant cannot maintain a claim for permanent and total disability.

By virtue of the foregoing conclusions that the substantial evidence submitted in this case clearly supports a finding that the compensable injury resulted in only an injury to his right knee. Therefore, the case must be evaluated based exclusively on an injury to the right lower extremity necessitating a partial medial meniscectomy, which affords Claimant 2% impairment. While noting Dr. Rudolph assigned Claimant a much higher impairment it was clear from the evidence that his impairment was increased exponentially to account for the condition later concluded to be unrelated by Dr. Morrison. Based upon the exclusion of the lymphedema the claim clearly, as supported by substantial evidence, was one for the right knee only that led to a partial meniscectomy. Under the same theories as previously set forth Defendants argued that Claimant was found to be at maximum medical improvement by Dr. Rudolph on February 19, 2014, which was uncontroverted as to his knee injury. The additional issues for which Claimant has continued to seek treatment are for either lymphedema directly or issues stemming therefrom and as such Claimant was at maximum medical improvement as determined by the treating physician. Finally, there was simply no evidence to support a finding that Claimant was entitlement to any future medical treatment as it related to the compensable right knee injury.

The final issue presented to the Full Commission stemmed from the holding by the Single Commissioner that Defendants were not entitled to any credit for overpayment of temporary total disability compensation on account of S.C. Code Ann. § 42-9-210 not having been pled in the ~~Pre-Hearing Brief nor had Defendants filed a Form 21, Request for Hearing to stop~~ compensation wherein a request for credit would have been made. Defendants conceded that there was uncertainty surrounding the issue of maximum medical improvement and as such no Form 21 was filed but the issue of a credit for overpayment is one of equity. The prevailing case law is well settled that a credit for overpayment should be issued when the delay in termination of benefits was not occasioned by any fault of Defendants. In this case neither party caused or otherwise contributed, directly or indirectly, to the delay in the issuance of the Single Commissioner's ruling, which spanned some nine (9) months. Therefore, Defendants argued that under the theory of equity they are, at a minimum, entitled to a credit for compensation paid from the date of the hearing until benefits terminated, on November 9, 2015, with the issuance of the order instructions by the Single Commissioner.

**FINDINGS OF FACT**  
**(Full Commission)**

1. The parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Steel Technologies, as the Employer, and Twin City Fire Insurance Company as the Carrier.
2. The hearing before the Single Commissioner occurred on February 6, 2015.
3. Counsel for both parties received order instructions on November 9, 2015.
4. Claimant's sustained a compensable knee injury, which required a partial medial meniscectomy that occurred on October 2, 2012.

5. Claimant's need for a partial medial meniscectomy was causally related to the admitted injury occurring on April 30, 2012.

6. Claimant's alleged additional injuries for the vascular condition and ~~associated right hip and lower back are not supported by the greater weight of the evidence and~~ thus are not casually related to the admitted injury of April 30, 2012 or treatment occurring as a result therefrom.

7. Dr. Rudolph found Claimant to be at maximum medical improvement for his knee injury on February 19, 2014 with a noted 13% impairment of the right lower extremity.

8. Dr. Rudolph's impairment rating was noted to include an increase for the Claimant's swelling, which was attributed to a vascular condition known as lymphedema, which Dr. Morrison concluded to be unrelated to the accident or resulting treatment.

9. We find that Claimant has satisfied his burden of proof relative to the causal connection between his work related accident and the resulting knee injury, which required a partial medial meniscectomy.

10. We give the greatest weight to the findings of the authorized treating physicians, which included Dr. Rudolph, Dr. Morrison and Dr. Tavel as well as the deposition testimony proffered by Drs. Morrison and Dr. Tavel.

11. Based on the greater weight of the evidence, we find that the Claimant's vascular condition, lymphedema, was not caused, activated, or aggravated by the compensable injury to Claimant's right knee or the treatment received as a result of said injury.

12. Based on the greater weight of the evidence, we find that the additional injuries alleged by Claimant as to the right hip and lower back, are attributable to his altered gait,

which are the direct result of his lymphedema, which has already found to be unrelated to the admitted injury of April 30, 2012.

13. Based on the greater weight of the evidence, we find that Claimant ~~reached maximum medical improvement for his admitted injury to his right knee on February 19, 2014.~~

14. We find Claimant is entitled to an award of 12% permanent partial disability to his right lower extremity for this admitted injury.

15. We find there is insufficient evidence to order any recommended future treatment that would lessen the period or extent of Plaintiff's disability as it pertains exclusively to the compensable injury to his right lower extremity; therefore, we find that Claimant is not entitled to future medical care.

16. We find that Defendants are entitled, as of the date of this hearing, to terminate temporary total disability compensation on account of my having found Claimant to be at maximum medical improvement on February 19, 2014.

17. We find that the Defendants continued to pay temporary total disability compensation from February 6, 2015 through November 9, 2015, while the parties awaited the order instructions of the Single Commissioner.

18. We find that neither party nor their respective counsel contributed to the delay in issuance of the order instructions between February 6, 2015 and November 9, 2015.

19. We find that Defendants are entitled to a credit for overpayment of temporary total disability compensation paid between the date of this hearing, February 6, 2015 and the date the Order Instructions were issued, November 9, 2015 though no credit shall be awarded for any temporary total disability compensation paid prior to the date of the hearing.

20. Defendants are entitled to a credit for compensation paid from February 6, 2015 and ending November 9, 2015, which totals Twenty-Two Thousand Five Hundred Ninety-Six and 85/100 (\$22,596.85) Dollars.

~~21. Defendants credit is in excess of Claimant's permanent partial disability award, thus no payment is due to the Claimant.~~

22. After Claimant's permanent partial disability award is applied to the aforementioned credit, Defendants have a resulting net credit of Nine Thousand Two Hundred Thirty-Four and 51/100 (\$9,234.51) Dollars.

23. The net credit owed to Defendant may be applied toward any future payments of permanency as ordered by this Commission or a higher court, if any; however, in no way shall this finding be construed to award Defendants reimbursement directly from the Claimant.

**CONCLUSIONS OF LAW**  
**(Full Commission)**

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann. § 42-1-120 defines disability.
2. S.C. Code Ann. § 42-1-160 defines injury. Pursuant to this statute, Claimant suffered an injury by accident arising out of and in the course of his employment to his right knee.

3. S.C. Code Ann. § 42-9-200 provides for temporary disability benefits. Pursuant to this section, Claimant is entitled to temporary total disability benefits from the period of May 2, 2012, to February 19, 2014.

~~4. S.C. Code Ann. § 42-9-210 affords Defendants a deduction from the amount of compensation to be paid when disability payments were made when they were not due and payable. Pursuant to this statute Defendants are entitled to a deduction from compensation payable as Defendants continued to pay temporary total disability compensation when it was not due and payable from February 6, 2015 through November 9, 2015.~~

5. S.C. Code Ann. § 42-15-60 provides for the provision of medical treatment to injured workers. Claimant is not entitled to continuing medical treatment with regards to the compensable injury to his right knee.

6. S.C. Code Ann. § 42-9-35 provides for benefits relating to the aggravation of pre-existing conditions. There was substantial evidence presented in the record to support a conclusion that Claimant's pre-existing condition(s) were not aggravated by the compensable injury or the treatment relating thereto.

7. S.C. Code Ann. § 42-1-40 and Reg. 67-1603 set forth appropriate methods for calculating the average weekly wage and compensation rate. On this basis, Claimant's average weekly wage is \$856.52, with a compensation rate of \$571.04.

#### ORDER OF THE FULL COMMISSION

Pursuant to S.C Code Ann. § 42-17-50, we, the Appellate Panel, have reviewed the Decision and Order of the Single Commissioner and weighed the evidence as presented at the initial hearing and considered all issues raised in the briefs of the Parties, as well as

those issues raised at the Full Commission Review hearing.


After careful review, The Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, AFFIRM IN PART and REVERSE

~~IN PART the Single Commissioner's order consistent with our Findings of Fact and~~

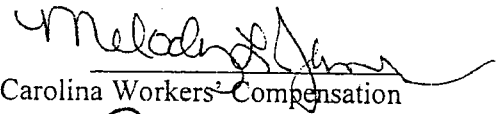
Conclusions of Law as above.

IT IS THEREFORE ORDERED that, the findings of fact and conclusions of law of the Single Commissioner are incorporated herein as if set forth verbatim unless specifically reversed in the Order of the Full Commission.

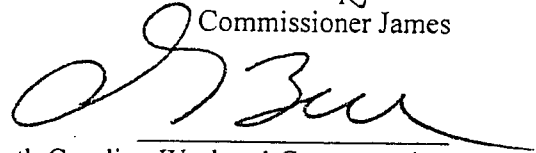
AND IT IS SO ORDERED.



South Carolina Workers' Compensation  
Commissioner Taylor



South Carolina Workers' Compensation  
Commissioner James



South Carolina Workers' Compensation  
Commissioner Beck

Columbia, South Carolina

#### CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

***By Kim Falls on September 20, 2016***