

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from South Carolina
Workers Compensation Commission

WCC File No.: 1203664
Ct. App. Appellate No.: 2013-001778
S.C. Ct. App. Op. No. 2015-UP-041, filed January 21, 2015
S.C. Supreme Court Op. No. 27673, filed October 26, 2016
Appellate Case No.: 2015-001218

Nathalie I. Davaut, Employee, Claimant, Petitioner,

v.

University of South Carolina
and State Accident Fund, Defendants, Respondents.

RESPONDENTS' PETITION FOR REHEARING

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STATEMENT OF ISSUES FOR REHEARING

ISSUE I.

DID THE COURT OVERLOOK THE LEGAL PRECEDENT OF THE NORTH CAROLINA SUPREME COURT WHICH PREVIOUSLY FOUND THAT A CLAIMANT DID NOT SUSTAIN AN INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE AND SCOPE OF HIS EMPLOYMENT UNDER THE SAME FACT PATTERN PRESENTED IN THIS CASE?

STATEMENT OF THE CASE

The Single Commissioner of the South Carolina Workers' Compensation Commission found that the Appellant failed to prove an injury by accident arising out of and in the course and scope of her employment and denied this claim in an Order dated November 6, 2012. (R. pp. 8-19, Single Commissioner Order). Following oral arguments in the claim, the Appellate Panel unanimously found that the Claimant had not sustained an injury by accident within the meaning of the Workers Compensation Act and denied the claim by Order dated July 22, 2013. (R. pp. 1-7, Appellate Panel Order). Following oral arguments in the case, the Court of Appeals issued an opinion affirming the findings of the South Carolina Workers' Compensation Commission. Thereafter, the Appellant filed a Petition for Rehearing which was denied by the Court of Appeals by Order dated May 8, 2015. Appellant thereafter filed a Petition for Writ of Certiorari with this Court and the Appellant's Petition was granted. On May 18, 2016, oral arguments were held, and on October 26, 2016, this Court reversed the Decision of the South Carolina Workers' Compensation Commission and the Court of Appeals and found the Claimant's claim compensable under the South Carolina Workers' Compensation Act and in doing so adopted what has been termed the "divided premises rule." The Defendant now seek reconsideration of this Opinion based on the argument set forth below.

ARGUMENT

I. THE PRACTICE OF GIVING GREAT WEIGHT TO DECISIONS OF THE NORTH CAROLINA COURTS IN CASES INVOLVING APPLICATION OF THE WORKERS' COMPENSATION ACT WAS OVERLOOKED.

The North Carolina Supreme Court has previously addressed the identical factual scenario presented in this case and held that the Claimant did not sustain an injury by accident arising out of and in the course and scope of employment.

In Royster v. Culp, Incorporated, 343 N.C. 279, 470 S.E.2d 30 (1996), the North Carolina Supreme Court was presented with a case involving a claimant/employee that was injured when he was struck by a car while attempting to walk across a public highway that separated his place of employment from a parking lot that was owned and operated by the employer. This is the exact fact pattern presented in this case. In holding that the claimant had not sustained an injury by accident within the course and scope of his employment the North Carolina Supreme Court applied the coming and going rule. In doing so, the Court specifically noted that, like in the case before this Court, the employer did not own or control the public street where the accident occurred. The Court in Royster went on to note that the employee was not performing any duties for the employer at the time of the injury and was not exposed to any greater danger than that of the public generally. As in Royster, the appellant herein was not performing any duties for the employer at the time of the injury and was not exposed to any greater danger than that of the public generally, namely students and members of the general public for which the parking lot in question was intended for.

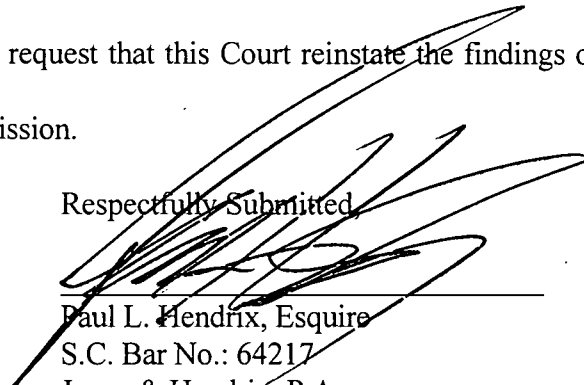
This Court has long held that decisions of the North Carolina courts interpreting the North Carolina Workers' Compensation Act are entitled to great weight because the South Carolina Act was fashioned after North Carolina's Workers' Compensation Act. See, Anderson v. Baptist Medical Center, 343 S.C. 487, 541 S.E.2d 526 (2001); Adams v. Texfi Industries, 320 S.C. 213, 464 S.E.2d 109 (1995). The Opinion of this Court did not address the Royster decision and the Respondents respectfully ask the Court to reconsider the Opinion filed in this case in light of the North Carolina Supreme Court decision deciding a case involving the identical facts presented herein and the practice of this Court to give said decisions great weight.

CONCLUSION

The Respondents respectfully ask this Court to reassess the Opinion filed in this case and give great weight to the Decision of the North Carolina Supreme Court in the case of Royster v. Culp, Incorporated, 343 N.C. 279; 470 S.E.2d 30 (1996) wherein the Court held that the Claimant did not sustain an injury by accident arising out of and in the course of his employment under the exact fact pattern presented herein.

WHEREFORE, the Respondents request that this Court reinstate the findings of the South Carolina Workers' Compensation Commission.

Respectfully Submitted,



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November 10, 2016

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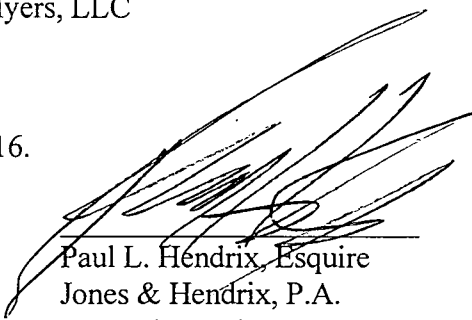
University of South Carolina
and State Accident Fund, Defendants, Respondents.

CERTIFICATE OF SERVICE

I, Paul L. Hendrix, do hereby certify that I have this day served a copy of the Respondent's Petition for Rehearing upon the following person by placing a copy of same in the United States Mail, First Class Mail, properly addressed and with the correct amount of postage affixed thereto:

Paul L. Reeves, Esq.
Blackwell, Trimnal, Reeves, & Myers, LLC
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Columbia, S.C. 29211

Dated this the 10th day of November, 2016.



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