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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2014-001788

RECEIVED

NOV 22 2016

SC Court of Appeals

Clarence Winfrey, Employee, Claimant, Respondent.

v.

Archway Services, Inc., Employer, and American Fire
& Casualty Insurance Company c/o Liberty Mutual Group,
Carrier, Appellants.

MOTION FOR AN EX PARTE ORDER
AND ORDER AFTER NOTICE REQUIRING
THE REINSTATEMENT OF BENEFITS
PURSUANT TO STATUTE AND THE ORDER OF
THIS COURT FILED NOVEMBER 18, 2016

TO: MR. BRETT BAYNE, ESQUIRE, COUNSEL FOR THE APPELLANTS:

YOU WILL PLEASE TAKE NOTICE that the Respondent/Petitioner on the Writs of Mandamus and Prohibition resulting in the Court's Order of November 18, 2016 hereby moves for an ex parte Order and an Order after Notice ordering the reinstatement of benefits pursuant to the Court's Order of November 18, 2016. Said Motion is based upon the following:

1. That the SC Supreme Court remanded the Writs of

Mandamus and Prohibition and Request for an Emergency Order to this Court for decision and this Court on November 18, 2016 held that the SC Workers' Compensation Commission had no jurisdiction and that its Order previously issued was void. In its Order this Court stated in reference to payment of benefits during appeal that:

"The appeal has not stayed Respondent's right to receive compensation and medical benefits under the Workers' Compensation Act. See Rule 241(b)(7), SCACR; see also SC Code Ann. §42-17-60 (2015)."

2. That as is set forth in the filing made with the Court on November 21st, the Appellants have refused to reinstate compensation and medical benefits pending a decision as to whether or not to file a Writ of Certiorari. See Court filing attached hereto and incorporated herein as Exhibit "A" with supporting Affidavit and factual basis.

3. That as is set forth in the filing of November 21, 2016, and as is set forth in the Order of the Court, the Defendants are to make payment of compensation and medical care during the pendency of an appeal. Further, the Order of the Court issued on November 18th is in reference to a Petition for Writs of Mandamus and Prohibition and there is no Stay to the Order of the Court under any of the applicable Appellate Court Rules. In fact, as set forth by the Court, again, there is no Stay in the payment of benefits during the pendency of the

appeal.

Wherefore, based upon the refusal of the Appellants to reinstate benefits under the inherent authority of the Court to enforce its Order; under the statutory authority requiring the payment of benefits during the pendency of an appeal; and under the Appellate Court Rules and under Rule 245, the Movant would respectfully request an ex parte Order of the Court ordering the immediate reinstatement of benefits and after such notice as the Court deems appropriate, for an Order ordering reinstatement of benefits during the pendency of the appeal.

I SO MOVE.

Respectfully submitted,



Preston F. McDaniel, Esquire
SC Bar No. 3770
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211
Attorney for Respondent

November 22, 2016

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Proudly representing injured workers
for over 30 years

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

November 21, 2016

~~URGENT! IMMEDIATE
ATTENTION REQUESTED!~~

VIA EMAIL - jkitchings@sccourts.org

VIA FACSIMILE - 734-1839

AND VIA HAND DELIVERY

Honorable H. Bruce Williams
Honorable Paula H. Thomas
Honorable John D. Geathers
SC COURT OF APPEALS
1220 Senate Street
Columbia, South Carolina 29211

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NOV 21 2016
SC Court of Appeals

RE: Clarence Winfrey v. Archway Services, Inc.
Appellate Case No: 2014-001788

Order filed November 18, 2016



Dear Judge Williams, Judge Thomas and Judge Geathers:

I have just been advised via email by Counsel for the Appellants/Defendants, Mr. Brett Bayne, that they will not reinstate temporary compensation benefits and medical care to my client under the Order of the Court issued November 18, 2016, while his clients make the decision of whether or not they will seek a Petition for a Writ of Certiorari to the Supreme Court. A copy of that email is attached hereto and incorporated herein by reference, along with my Affidavit since this is a factual allegation.

First, as part of my Petition, I had requested an Order of the Court due to the emergency situation ordering the Appellants/Defendants to reinstate benefits pending a final decision in this matter. I would renew that request due to their position.

Further, I have read and re-read the Appellate Court Rules and particularly in reference to Rule 241 and Rule 242, and Rule 245, and as to the general requirements of Rule 240. Based on my reading of the Rules there is no stay of the Order of the Court issued November 18, 2016 at least until they actually file for a Writ of Certiorari. Further and more importantly, under Rule

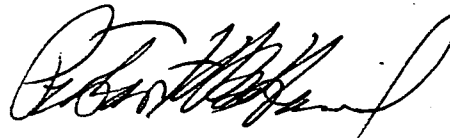
Honorable H. Bruce Williams
Honorable Paula H. Thomas
Honorable John D. Geathers
November 21, 2016
Page 2

241(b)(7), since this Court's Order vacated the Order of the Commission that allowed the Defendants to stop payment of benefits that would please the payment of benefits by statute back in effect and the Defendants would be required pursuant to the Rule and statute to pay benefits.

Based on this, this is to request an Order of the Court directed to the Defendants ordering immediate payment under one and/or both of those bases. If I need to file anything else in the form of a Motion or a Petition on an emergency basis, please let me know. Again, I know of no legal authority for the position being taken by the Appellants/Defendants.

I am filing this letter and request with the Court and if there is any required filing fee, I will file that as well, along with six (6) copies of the request and my Proof of Service, and my Affidavit. By copy of this email, I am notifying Ms. Kitchings and Mr. Bayne of this filing and request for an Order of the Court.

Respectfully submitted,



Preston F. McDaniel
Attorney for Respondent

PFM/kth
Enclosures

cc: Honorable Jenny Abbott Kitchings
(Via Email Only - jkitchings@secourts.org)
Brett H. Bayne, Esquire
(Via Email Only - brett.bayne@mgclaw.com)

Kim Hinkle

From: Brett Bayne <brett.bayne@mgclaw.com>
Sent: Monday, November 21, 2016 2:35 PM
To: Kim Hinkle
Cc: elizabeth.wrinkle@libertymutual.com; Altman, Howard
Subject: RE: Clarence Winfrey v. Archway Services, Inc.; WCC File No.: 1306305

Preston,

I will be discussing this with Liberty when the adjuster returns tomorrow. As I understand it, they will have 30 days to petition for cert from the date of the Order (so they will have until approximately December 18). I am not sure what they will want to do but that discussion will need to be had before anything further can happen. Obviously, if they decline to appeal then benefits would be reinstated. In the interim, Mr. Winfrey has other avenues available to speed up the process—which you are fully aware of.

Brett

From: Kim Hinkle [mailto:kim@pfmcdlaw.com]
Sent: Monday, November 21, 2016 2:04 PM
To: Brett Bayne
Cc: elizabeth.wrinkle@libertymutual.com; Altman, Howard
Subject: Clarence Winfrey v. Archway Services, Inc.; WCC File No.: 1306305
Importance: High

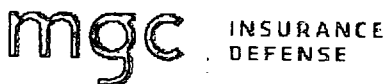
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SC Court of Appeals

The attached is being sent to you at the request of Preston F. McDaniel, Esquire.

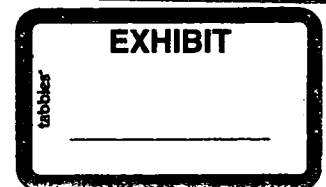
Kimberley T. Hinkle, Senior Paralegal
to Preston F. McDaniel, Esquire
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201
T: 803-771-7211
F: 803-252-0709

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Brett Bayne, Attorney
brett.bayne@mgclaw.com
1320 Main Street, 10th Floor
Columbia, SC 29201



Main:803-779-2300 | Direct:803-227-2281 | Fax:803-748-0526
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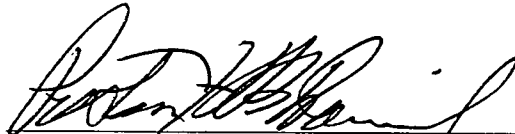
AFFIDAVIT OF PRESTON F. MCDANIEL

I, Preston F. McDaniel, having been duly and properly
sworn, do depose and state:

1. That I am Counsel for the Employee/Claimant/
Respondent, Clarence Winfrey, as set forth in the Order of the
Court dated November 18, 2016. The email referred to in the
Request for an Order that I am filing with this Affidavit was
received from Mr. Brett Bayne and is attached hereto and
incorporated herein by reference and is a record that is
maintained and kept by my office as part of the normal business

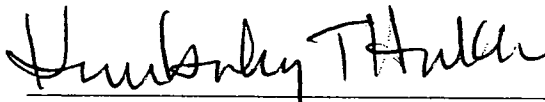
in the handling of this matter.

FURTHER THE AFFIANT SAYETH NOT.



Preston F. McDaniel

SWORN TO BEFORE ME this
21st day of November 2016.



Notary Public For South Carolina (L.S.)
My Commission Expires: 4-26-20

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and American Fire & Casualty Insurance
Company c/o Liberty Mutual Group, Carrier, Appellants.

PROOF OF SERVICE

I certify that I have served the **LETTER TO HONORABLE H. BRUCE WILLIAMS, HONORABLE PAULA H. THOMAS, AND HONORABLE JOHN D. GEATHERS DATED NOVEMBER 21, 2016** on November 21, 2016 addressed as follows:

VIA EMAIL - jkitchings@sccourts.org

VIA FACSIMILE - 734-1839

AND VIA HAND DELIVERY

Honorable H. Bruce Williams

Honorable Paula H. Thomas

Honorable John D. Geathers

SC COURT OF APPEALS

1220 Senate Street

Columbia, South Carolina 29211

VIA EMAIL - brett.bayne@mgclaw.com

AND HAND DELIVERY

Brett H. Bayne, Esquire

McAngus, Goudelock & Courie

1320 Main Street, 10th Floor

Columbia, SC 29211

Dated: November 21, 2016



Preston F. McDaniel

MCDANIEL LAW FIRM

1315 Elmwood Avenue

Columbia, South Carolina 29201

(803) 771-7211

Attorney for Respondent

McDANIEL LAW FIRM
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Clerk of Court, SC Court of Appeals
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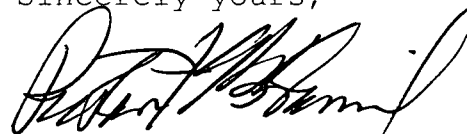
SC Court of Appeals

RE: Clarence Winfrey v. Archway Services, Inc.
Appellate Case No. 2014-001788

Dear Ms. Kitchings:

Please find attached which I am filing with the Court today a request for an Ex Parte Emergency Order enforcing the Court's Order of November 18th and requiring the Appellants to immediately reinstate compensation and medical benefits pursuant to Order, Rule and statute. The required \$25.00 filing fee is attached hereto along with a Proof of Service on the Appellants. As always, I appreciate all the courtesies and kindnesses shown to me by the Court.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Brett H. Bayne, Esquire (Via Hand Delivery)

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PROOF OF SERVICE

I certify that I have served the MOTION FOR AN EX PARTE ORDER AND ORDER AFTER NOTICE REQUIRING THE REINSTATEMENT OF BENEFITS PURSUANT TO STATUTE AND THE ORDER OF THIS COURT FILED NOVEMBER 18, 2016 on November 22, 2016 addressed as follows:

VIA HAND DELIVERY

Honorable Jenny Abbott Kitchings
SC COURT OF APPEALS
1220 Senate Street
Columbia, South Carolina 29211

VIA HAND DELIVERY

Brett H. Bayne, Esquire
McAngus, Goudelock & Courie
1320 Main Street, 10th Floor
Columbia, SC 29211

Dated: November 22, 2016



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Columbia, South Carolina 29201
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Attorney for Respondent