

DECISION AND ORDER  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NUMBER: 1215107

RANDY FAULKENBERRY, EMPLOYEE, CLAIMANT,

VERSUS

CONBRACO INDUSTRIES, INC., EMPLOYER,

AND

GREAT AMERICAN INSURANCE COMPANY, CARRIER, DEFENDANTS.

**RECEIVED**

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SC Court of Appeals

HEARING: Held on August 16, 2016 in Columbia,  
South Carolina.

APPEARANCES: Claimant represented by Andrew N.  
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Columbia, South Carolina 29211.

Defendants represented by E. Ros Huff,  
Jr., Esquire, Huff & Hapeshis, LLC, Post  
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29063.

PURPOSE OF HEARING: Review of the May 24, 2016 Order of the  
Honorable Susan S. Barden.

DECISION AND ORDER OF THE APPELLATE PANEL

FILED:

November 1<sup>st</sup>, 2016

STATEMENT OF THE CASE

This is an appeal from the May 24, 2016 Order of The Honorable Susan S. Barden, which determined: (a) Claimant, Randy Faulkenberry, had sustained a compensable back injury on June 19, 2012 while performing his job duties for Defendant, Conbraco Industries, Inc.; (b) he had not yet reached maximum medical improvement and required further treatment for the consequences of this injury in accordance with the recommendations of Drs. Donald R. Johnson, II, Ezra B. Riber, and Brett C. Gunter; (c) the current circumstances, including the establishment of "good cause" per S.C. Code Ann. Section 42-15-60 (2007), warranted the Commission's designation of Dr. J. Kelby Hutcheson as Mr. Faulkenberry's authorized treater for the purposes of this claim; (d) Conbraco Industries, Inc. and its Carrier, Great American Insurance, Inc., were obliged to satisfy the causally related medical expenses incurred during the period they had denied liability for Mr. Faulkenberry's injuries; and (e) he was entitled to receive continued/ongoing temporary total disability compensation effective May 6, 2015.

Essentially, Defendants contend Commissioner Barden erred in: (a) determining Mr. Faulkenberry sustained a compensable back injury on the date in question; (b) designating Dr. Hutcheson as

Mr. Faulkenberry's authorized treater; and (c) issuing a legally insufficient order.

In response, Mr. Faulkenberry maintains: (a) the evidence, including the contemporaneous report of a fall, his consistent description of the essential elements of the June 19, 2012 trauma and repeated references to symptoms that no less than three spine specialists have attributed to the consequences of this accident, amply supports his finding this accident occurred in the manner he described; (b) he has established the requisite causal relationship between this well documented trauma and his resulting back injury through the unanimous opinions of Drs. Johnson, Riber and Gunter; (c) her designation of Dr. Hutcheson was likewise correct, especially in view of Defendants' demonstrated intention to circumvent the Order and recommence the assessment process by directing Mr. Faulkenberry, whose current medical needs involve nonsurgical treatment, to a neurosurgeon (d) given the presence of exhaustive factual findings analyzing all evidence and ample legal conclusions supporting her rulings, her Order complied with all applicable requirements; and (e) Commissioner Barden's factual findings and legal rulings should be affirmed in their entirety.

After reviewing all pertinent evidence, in light of the relevant legal authorities and arguments of counsel, We hereby

fully affirm Commissioner Barden's determinations based upon the following **FINDINGS OF FACT AND CONCLUSIONS OF LAW**:

**FINDINGS OF FACT**

1. On June 19, 2012, Mr. Faulkenberry sustained a compensable back injury while in the process of cleaning up a coolant spill in the water meter department located on the floor of Conbraco Industries, Inc's Chesterfield County, South Carolina facility. Specifically, he: (a) was informed of a coolant spill in this department by his supervisor, who instructed him "to get it cleaned up" (See, Hearing Transcript, p. 24); (b) then proceeded to the site of the spill, which was located in an area of the plant he referred to as "the floor" (See, Faulkenberry Deposition, p. 58); (c) discovered this "coolant was everywhere, all out in the isles, under the machines . . . [and] inside . . . a caged-in area around the machine" (See, Hearing Transcript, p. 25); and (d) began "sucking . . . up" the coolant with a "shop-vac" from a standing position (See, Hearing Transcript, pp. 26 - 27).

2. As some of the coolant had flowed to an inaccessible portion of the floor ("a caged-in area around the machine"; "inside the cage that's around the motors and stuff on the machine"), he "couldn't reach it . . . just standing on the ground" (See, Hearing Transcript, pp. 27 - 28, 34). In view of

this fact, Mr. Faulkenberry determined "the only logical way . . . to get it up was . . . [to take his] foot and set it up on the side of the machine, and pull . . . [him]self up there so [he] . . . could lean over and get down in there and get it out with the wand . . . ." (See, Hearing Transcript, p. 28). After placing his right foot on the side of the machine and using a nearby pipe to "pull . . . myself up . . . so I could get my body and my wand up to reach over, . . . [this] foot . . . [, which had previously] been in coolant[,] . . . shot out from under" him. (See, Hearing Transcript, pp. 28 and 32). Mr. Faulkenberry, who was positioned approximately four feet above the plant floor surface at the time of this slip, then fell, initially straddling a floor fan "between [his] . . . legs [making] . . . the fan shoot out from under [him] . . . , causing [his] . . . butt to hit the ground, and the back of [his] . . . head . . . [to strike] against the machine." (See, Hearing Transcript, pp. 28, 29, 31, 56 - 57).

4. At the time he sustained this compensable injury, Mr. Faulkenberry, a 63 year old high school graduate, was performing duties arising out of and within the course and scope of his employment as a general factory laborer for Conbraco Industries, Inc., where he had been employed for approximately 3.5 years. In this connection, We consider the fact he was not a three day, three week, or even a three month employee.

5. While this fall gave rise to feelings of "embarrassment" and "shock", it did not immediately produce pain. (See, Hearing Transcript, pp. 34 - 35). However, Mr. Faulkenberry nonetheless "went straight to [his] . . . fill-in supervisor" (Jeff Gleaton) and informed him of the accident. Inspection of a "summary of communications" form generated by Conbraco Industries, Inc. reflects a June 19, 2012 entry that states, "Randy told me he fell in the back hit his groin". (See, Claimant's APA Exhibit 1, p. 1).

6. In this connection, Mr. Kirchen's testimony verifies: (a) his understanding Mr. Faulkenberry's injury occurred when ". . . his foot slipped out from under him . . . [as] he stepped over the fan . . . [while] he was cleaning up the coolant"; and (b) Mr. Faulkenberry "fell on the fan, straddled the fan" after his foot slipped in this fashion. (See, Hearing Transcript, p. 107).

7. On the following morning, Mr. Faulkenberry "could barely go, and . . . was hurting in [his] . . . groin and around [his] . . . left - - up into the side of [his] back", but nonetheless went to work. (See, Hearing Transcript, p. 36). Upon arriving, he located his immediate supervisor, who he then advised of the prior day's fall, the subsequent onset of pain and his need to see a doctor. (See, Hearing Transcript, p. 36). In

response to this request for treatment, he was told, "ah, go on out there . . . [,] I'll get you some help." (Id.).

8. Although he continued to report for work, Mr. Faulkenberry remained symptomatic, to the extent he advised his family physician (Dr. Ifediora F. Afulukwe) of this fall and associated symptoms during a June 28, 2012 "90 day checkup". (See, Hearing Transcript, pp. 37, 39 - 40). A review of this physician's June 28, 2012 report not only references the routine nature of this appointment, but also confirms Mr. Faulkenberry: (a) informed Dr. Afulukwe as to the presence of "sharp", "worsening" back pain "radiating to the buttocks"; (b) informed him of a "fall on the job recently . . . [involving his doing] a split"; (c) indicated he was "very sore" in the "upper inner thigh . . . [areas] bilaterally . . . [,] more on the L side"; (d) exhibited musculoskeletal "tenderness", as well as an "irregular gait"; and (e) received "a muscle relaxer and an anti[i]nflammatory" in conjunction with a one week work excuse." (See, Claimant's APA Exhibit 1, p. 2 and Exhibit 5, p. 31 - 35; See also, Hearing Transcript, pp. 40 - 41).

9. When Mr. Faulkenberry resumed work activities on July 9, 2012, he was: (a) "informed . . . [by his] boss man . . . to take it easy"; (b) instructed "not to be shoveling out the machines"; and (c) provided with some assistance (from a summer employee). (See, Hearing Transcript, pp. 41 - 42). In this

regard, a July 9, 2012 entry on the "Summary of Communications" form reflects:

I talked to Steve Kirchen and he said that Randy needs to take it easy for a while and see if the hurt when he pulled his groin goes away - - If not he will be sent to the dr. (See, Claimant's Exhibit No. 1, p. 1).

10. When his symptoms persisted, Mr. Faulkenberry again approached his supervisor for assistance in obtaining treatment for the June 19, 2012 trauma. This request eventually prompted the August 29, 2012 completion of accident/injury report forms by both he and the plant manager. The "Report of Accident Investigation" form, which (by its terms) "is to be completed by the foreman or supervisor of the injured employee", specifically notes: (a) Mr. Faulkenberry was injured while "cleaning up coolant spill with shop-vac"; (b) "his foot slipped causing his legs to split and He straddle the fan" while in the process of "step[ping] . . . over [the] . . . fan"; and (c) the "fan turned over and both ended up on the floor". (See, Claimant's Exhibit 1, pp. 3 - 4). The employee injury report completed by Mr. Faulkenberry is not only consistent with this data, but also his hearing testimony. (See, Claimant's APA Exhibit 1, p. 5).

11. On September 4, 2012, Mr. Faulkenberry was directed by Defendants to CHC Urgent Care - Monroe, where he was assessed by a physician assistant, who: (a) was apprised of the material circumstances surrounding his June 19, 2012 injury ("pt states

coolant on floor he was cleaning it up. He attempted to put his right leg over a fan. And his right leg slipped. Patient landed on the fan and hit his groin and testicular area."); (b) focused the examination on these groin symptoms; and (c) recommended obtaining an ultrasound in conjunction with a urological referral.

12. Approximately three weeks later (September 24, 2012), Mr. Faulkenberry was directed by Defendants to Dr. Thomas H. Douglas of Carolina Urology Partners, who: (a) was apprised of persistent groin pain ("a toothache between my legs"), as well as "pain across beltline and into back, [l]eft . . . worse than right"; (b) learned this "pain started after a fall at work (did a split) in June, 2012"; (c) was also informed this pain was "worse bending over and lifting"; (d) felt the clinical examination was consistent with a left inguinal hernia and possible right inguinal hernia; and (e) recommended referral to a general surgeon for hernia repair.

13. Following this evaluation, Mr. Faulkenberry met with the carrier's adjuster, who informed him as to the denial of his workers' compensation claim. (See, Hearing Transcript, p. 48). In view of this fact, he was obliged to independently seek treatment from Dr. George David, a Lancaster, South Carolina general surgeon. Inspection of Dr. David's initial (December 6, 2012 report) confirms: (a) a history of injury consistent with

previously generated records (foot slipping while crossing a barrier, resulting in trauma to his scrotum); (b) the previously diagnosed hernias, as well as the pathology demonstrated by ultrasound testing performed at CMC-Union; (c) his development of "some pain in the left leg and back"; (d) the presence of not only hernia and urological pathology, but also "back pain and left hip pain" in response to straight leg raise testing on the left; and (e) he recommended surgical repair of the hernias which, along with epididynal cyst biopsy, was performed on December 26, 2012. (See, Claimant's APA Exhibit No. 7, pp. 39 - 40 and 43).

14. A December 21, 2012 office note further indicates: (a) the previously-referenced back symptoms had made it "somewhat difficult for him if . . . [not] impossible" to perform regular duty work activities for his employer; (b) Mr. Faulkenberry voiced "complain[ts] . . . of severe back pain"; (c) clinical examination elicited "pain on straight leg raising on the left leg for 45 degrees and flexion of the foot accentuates the pain"; (d) this physician's intention to refer Mr. Faulkenberry "to an orthopedic physician sometime in the near future"; and (e) Dr. David's determination to place him on out-of-work status. (See, Claimant's APA Exhibit No. 1, p. 8; Exhibit No. 7, p. 42).

15. A review of Dr. David's post-operative (January 4, 2013 and January 18, 2013) reports reflects: (a) the continued

presence of back pain; (b) reiteration of the need for focused assessment of Mr. Faulkenberry's lumbar symptoms; and (c) his continued inability to resume pre-injury work activities. (See, Claimant's APA Exhibit No. 7, pp. 45 - 47).

16. Approximately one month later (February 20, 2013), Mr. Faulkenberry was independently evaluated by Dr. Donald R. Johnson, II of Southeastern Spine Institute, who noted: (a) his work accident involved "stepping over a standing fan, his foot slipped, resulting in a split which mashed his groin and turned the fan over"; (b) "past back history [was] . . . negative"; (c) he was "tender particularly at the 5-1 level", while range of motion was "somewhat limited secondary to pain"; (d) ". . . [g]iven his history and diagnosis of back problems with Dr. David, . . . a lumbar MRI scan" was warranted; (e) he had not reached maximum medical improvement; and (f) it was "most probable to a reasonable degree of medical certainty that his current back and radiating leg symptoms are related to his 6/1[9]/12 . . . work injury." (See, Claimant's APA Exhibit No. 2, pp. 10 - 11).

17. Upon reviewing the results of this March 7, 2013 imaging study, Dr. Johnson verified: (a) the presence of "foraminal stenosis at multiple levels particularly bad at 4-5 on the left with some central stenosis at 2-3, 3-4 and 4-5"; (b) his belief surgical intervention was not required at that point; (c)

Mr. Faulkenberry "would be a good candidate for a selective injection at 3-4 or 4-5 . . . [through] a pain management physician"; and (d) maximum medical improvement had not been attained. (See, Claimant's APA Exhibit No. 2, p. 12).

18. After undergoing this evaluation by Dr. Johnson, Dr. David initiated a limited course of treatment of Mr. Faulkenberry's lumbar symptoms through referral to Dr. Brian A. Blue of Lancaster Orthopaedics & Sports Medicine, who: (a) was informed of "constant sharp low back pain . . . [in the context of] a previous low back injury on 06/19/12"; (b) observed "discomfort to palpation" in conjunction with decreased lumbar range of motion; and (c) eventually referred him to Dr. Sanjay Nandurkar for injections. (See, Claimant's APA Exhibit No. 8, pp. 89 - 49).

19. As confirmed by his June 20, 2013 report, Dr. Nandurkar: (a) indicated Mr. Faulkenberry continued to experience low back pain that radiated to his thigh; (b) identified "painful restriction of lumbar ROM where extension is more painful than flexion", as well as a mildly positive straight leg raise response and left groin tenderness; (c) attributed these lumbar symptoms to a "work related fall" through aggravation of preexisting pathology; and (d) performed several lumbar epidural steroid injections, which "did not help . . . much." (See, Claimant's APA Exhibit No. 9, pp. 50 - 51).

20. Mr. Faulkenberry was next evaluated (March 14, 2014) by Dr. Ezra B. Riber of Palmetto Pain Management, LLC, who: (a) was apprised his symptoms had commenced in June, 2012 while "working in his usual capacity in maintenance for the Conbraco Machine Company when he fell awkwardly while cleaning up coolant from the floor with a shop vac [SIC]"; (b) further noted ". . . [he] describes doing a split and struck his private"; (c) referenced chief complaint of low back and testicular pain; (d) identified limited lumbar range of motion with "flexion as well as returning upright and extension" and painful straight leg raise response ("back, gluteal and hamstring discomfort") as prominent clinical findings; (e) offered several diagnoses, including both lumbar radicular and facet syndromes; and (f) felt he was "not at MMI from an interventional pain management standpoint". (See, Claimant's APA Exhibit No. 4, pp. 18 - 20). Inspection of two additional reports (April 17, 2014 and December 18, 2014) generated by Dr. Riber's practice during 2014 similarly reveals: (a) the presence of persistent lumbar symptoms with associated clinical abnormalities; and (b) his receipt of prescription pain medication. (See, Claimant's APA Exhibit No. 4, pp. 21 - 27).

21. Several months after his final visit with Dr. Riber, Mr. Faulkenberry was reevaluated (May 12, 2015) by Dr. Johnson, who: (a) noted he "continued to be symptomatic, despite receipt of the epidural steroid injections"; (b) detected not only the

previously documented motion deficits, but also lumbar tenderness and buttocks pain in response to straight leg raise testing; (c) perceived he was walking in a slightly flexed position ("forward at 20 degrees"), "has more pain on extension than flexion" and developed "pain that radiates through the buttocks and down both legs posteriorly . . . [w]ith forced extension"; and (d) recommended obtaining an updated lumbar MRI scan, while reiterating maximum medical improvement had not been achieved. (See, Claimant's APA Exhibit No. 2, pp. 13 - 14).

22. In conjunction with undergoing this updated MRI scan, Mr. Faulkenberry was evaluated by Dr. Brett C. Gunter of Columbia Neurosurgical Associates, P.A. (May 27, 2015), who: (a) obtained a history of pain following "an on the job injury 6/19/2012"; (b) learned the injury occurred while he was in the process of "cleaning . . . a coolant spill"; (c) described the injury mechanism as falling "4 - 6 feet landing on a large fan that was running and landed on the cover of the fan . . . centered on his scrotum and testicles . . . [, eventually] landing directly on his tailbone onto the concrete floor . . . [when] the fan slipped out of the way"; (d) referenced the fact symptoms of scrotum, back and leg pain, which Mr. Faulkenberry attributed to the groin trauma, did not begin until the following morning; (e) noted pre-injury "intermittent back pain that occurred generally as a result of heavy physical labor"; (f) observed the presence of "

. . [d]ecreased range of motion in all planes", as well as tenderness over the SI joint; (g) interpreted the updated MRI scan to reveal "moderately severe lumbar spinal stenosis at L4-5 and less so at L3-4"; and (h) did not believe these MRI findings were reflective of an acute injury. (See, Claimant's APA Exhibit No. 3, pp. 15 - 17).

23. Based upon Mr. Faulkenberry's medical history, this physical examination and his imaging study review, Dr. Gunter determined: (a) "his back and leg pain occurred at the same time of his injury", but was believed to be "all part of his groin injury"; (b) assuming "his back and leg pain syndrome were not present prior to his injury, and . . . the injury and development of back and leg pain are temporally related, than his current syndrome represents a . . . worsening of his pre-existing condition of lumbar spinal stenosis"; and (c) further treatment was warranted. (Id.)

24. In this regard, Mr. Faulkenberry candidly explained/confirmed: (a) Dr. Gunter sought/obtained a greater level of detail relative to the mechanics of his compensable accident than previous physicians (See, Hearing Transcript, pp. 54 - 55); (b) not only his consistent estimate of an approximately four foot drop onto the fan and ultimate landing on his buttocks, but also the absence of pre-accident lumbar symptoms of a nature that had led to his prior receipt of focused

treatment (See, Hearing Transcript, pp. 56 - 57, 68 - 69, 70, 81, 83 - 86, and 93); and (c) an initial belief his back and leg symptoms, which began the morning following his fall, emanated from his groin area (See, Hearing Transcript, pp. 36, 43 and 49).

25. Subsequently, per questionnaire responses dated July 13, 2015, Dr. Riber verified: (a) "Mr. Faulkenberry's mechanism of injury was sufficient to aggravate a preexisting, asymptomatic spinal stenosis condition"; (b) ". . . [b]ased on Mr. Faulkenberry's medical history, the temporal onset of symptoms (involving the groin, inner thighs/legs and back) and MRI findings, the lumbar symptoms he has experienced in the aftermath of his June 19, 2012 trauma most probably result from the aggravation of preexisting spinal stenosis by the reported fall"; (c) "the symptoms attributable to Mr. Faulkenberry's June 19, 2012 work related fall warrant further treatment, including both interventional and medical pain management modalities"; (d) "his receipt of these pain management modalities is reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by the consequences of Mr. Faulkenberry's June 19, 2012 compensable accident"; and (e) the consequences of this "work related accident most probably prevent him from currently engaging in unrestricted employment activities . . . ."

26. When questioned as to the contents of his initial (February 20, 2013) report, Dr. Johnson testified: (a) his notation of a "negative" past medical history referred to pre-accident treatment of the back involving "a level of sophisticated medical care, including such things as having MRIs, recommendations to have [spinal] . . . injections . . . , maybe an evaluation with a spine surgeon . . . or with a pain management physician" (See, Dr. Johnson Deposition, pp. 17 and 46); (b) through "hands on" examination, he discovered tenderness of the lumbar spine (See, Dr. Johnson Deposition, p. 19); (c) his reference to "neurologically intact" related to the absence of paralysis or "muscle atrophy because the nerves have [been] . . . damaged" (Id.); (d) he had not only reviewed the radiologist's report stemming from Mr. Faulkenberry's March 7, 2013 MRI scan, but also "the films themselves" (See, Dr. Johnson Deposition, p. 22); (e) a patient information form completed by Mr. Faulkenberry identified an accident date of June 19, 2012 (as opposed to somewhat different dates appearing in his report) (See, Dr. Johnson Deposition, p. 23); (f) this scan revealed stenosis (narrowing of the tunnel through which the nerve passes) at several lumbar disc levels (See, Dr. Johnson Deposition, pp. 25 - 26); (g) at that point, he did not believe Mr. Faulkenberry had reached maximum medical improvement (See, Dr. Johnson Deposition, p. 27); and (h) his treatment recommendation in 2013 included

"selective injections between L3-L4 and L4-L5" and physical therapy. (See, Dr. Johnson Deposition, p. 25).

27. Dr. Johnson further explained: (a) following his May 12, 2015 reexamination of Mr. Faulkenberry, he obtained an updated MRI scan that did not significantly differ from the prior imaging study (See, Dr. Johnson Deposition, pp. 28, 34 - 35 and 38 - 39); (b) during this reexamination, he observed not only persistent motion deficits, but also Mr. Faulkenberry walking at 20 degrees of forward flexion (See, Dr. Johnson Deposition, pp. 32 - 33); (c) walking in this fashion was an unconscious reaction to the lumbar stenosis, as "it's your body's way of taking the pressure off the spinal cord by opening up the tunnel" that has become narrowed (See, Dr. Johnson Deposition, p. 34); (d) Mr. Faulkenberry's level of stenosis was "severe" (See, Dr. Johnson Deposition, p. 34); (e) as Mr. Faulkenberry's stenosis was "worse in some areas than others, . . . [he had purposely recommended selective injections] to make sure the medicine gets to the areas that are most severely affected by the stenosis" (See, Dr. Johnson Deposition, pp. 40 - 41); (f) in view of Mr. Faulkenberry's particular pathology, the selective injections needed to be directed at the L3-4 and L4-5 levels (See, Dr. Johnson Deposition, p. 41); (g) the epidural steroid injections performed by Dr. Nandurkar constituted "generic, nonspecific injection[s . . . that conveyed] a shotgun blast . . . [of]

medicine" (See, Dr. Johnson Deposition, p. 40); and (h) Mr. Faulkenberry needed to undergo the previously recommended selective injections prior to achieving maximum medical improvement. (See, Dr. Johnson Deposition, p. 43).

28. Inspection of Dr. Johnson's deposition testimony also verifies: (a) the mere presence of preexisting lumbar stenosis was not indicative of any level of symptoms prior to the June 19, 2012 trauma (See, Dr. Johnson Deposition, p. 44); (b) Mr. Faulkenberry's acknowledgement of pre-injury "intermittent back pain/ache" was not a significant factor, particularly in the context of an individual who performed relatively strenuous work, when determining the most likely source of his current lumbar symptoms (See, Dr. Johnson Deposition, pp. 45 - 46); (c) after consideration of Mr. Faulkenberry's medical history, in light of the June 19, 2012 mechanism of injury, "there is . . . , to a reasonable degree of medical certainty, . . . a causal relationship between [this] . . . trauma and the current symptoms through aggravation of [his] . . . preexisting condition" (See, Dr. Johnson Deposition, pp. 47 - 49); (d) absent a prior medical history of "similar symptoms, i.e. constant back pain, unremitting, that has just not gone away since the trauma, going into the buttocks . . . [he] would not change . . . [this] opinion" (See, Dr. Johnson Deposition, pp. 48 - 49); (e) his reference to Mr. Faulkenberry's being "neurologically intact . . .

. [did not] exclude pain that would be coming from nerve root irritation", actually indicating the presence of symptoms involving Mr. Faulkenberry's "buttocks and legs . . . is not inconsistent with [being] . . . neurologically intact" (See, Dr. Johnson Deposition, p. 50); and (f) given Mr. Faulkenberry's clinical and MRI findings, the most likely source of his buttock and leg symptoms, as well as those involving the groin area, was the traumatically aggravated spinal stenosis (See, Dr. Johnson Deposition, pp. 50 - 51 and 54 - 56).

29. Additionally, when questioned as to the contents of records generated by several other physicians who had examined Mr. Faulkenberry following the June 19, 2012 trauma, Dr. Johnson confirmed/explained: (a) the mechanism of injury referenced in Dr. Afulukwe's June 28, 2012 report was "essentially the same as" the one he had been provided (See, Dr. Johnson Deposition, p. 52); (b) this report similarly identified the "work accident as being the source of his pain" (Id.); (c) the symptoms documented by Dr. Afulukwe were consistent with those he had "personally identified during" his February 20, 2013 evaluation (See, Dr. Johnson Deposition, pp. 52 - 53); (d) the contents of this report "ma[d]e . . . [him] feel more strongly that [his] . . . opinion in regards to the causal relationship between the accident and . . . [Mr. Faulkenberry's] symptoms is the correct one" (See, Dr. Johnson Deposition, p. 53); (e) the description of back pain

noted by Dr. Douglas on September 24, 2012 was likewise "consistent with what . . . [he was told and also] observed during his assessments of Mr. Faulkenberry" (See, Dr. Johnson Deposition, p. 54); (f) the contents of Dr. David's initial report (history of injury, source of pain and clinical examination) were consistent with what he "ultimately diagnosed, discovered and . . . related to [the June 19, 2012] . . . work accident" (See, Dr. Johnson Deposition, pp. 56 - 57); (g) each of these previous physicians had "documented symptoms and clinical findings that are consistent with [his] . . . diagnosis and . . . the consequences [he had] attributed to" the June 19, 2012 accidental fall (See, Dr. Johnson Deposition, p. 57); (h) Mr. Faulkenberry's description of his fall (ultimately landing on the floor/hitting the floor itself) "was consistent with trauma to the back . . . [and] to a reasonable degree of medical certainty would . . . have produced some degree of trauma to the back" (See, Dr. Johnson Deposition, p. 58); (i) he was "comfortable with [his] . . . opinion as to causation" (See, Dr. Johnson Deposition, p. 57); and (j) the nature/severity of Mr. Faulkenberry's causally related symptoms/pathology warranted his remaining "out of work while he is undergoing treatment" (See, Dr. Johnson Deposition, p. 60).

30. Finally, in response to questions relating to the impact of a prior lumbar CT scan on his opinions relative to

causal relationship in this instance, Dr. Johnson testified: (a) CT scans are not typically utilized by spine surgeons, but instead "done in emergency rooms, if someone has a trauma," to identify fractures that cannot be seen on x-ray; (b) the pre-accident performance of a CT scan, in and of itself, would not change his expressed opinions; and (c) his definition of relevant pre-accident factors remained "seeing a specialist, spine specialist, pain management specialist [or] . . . somebody who is doing focused treatment on [the] . . . lumbar spine for similar symptoms . . . of" back pain radiating to the buttocks and legs. (See, Dr. Johnson Deposition, pp. 62 - 63).

31. Review of Dr. Riber's October 19, 2015 deposition reveals: (a) he was likewise informed of pain involving the low back, buttocks, legs and groin area (testicular pain) (See, Dr. Riber Deposition, pp. 7 - 8); (b) notable clinical findings included limited lumbar range of motion, positive straight leg raise response and tenderness over the paralumbar region (See, Dr. Riber Deposition, pp. 9 - 10); (c) this constellation of symptoms was consistent with spinal stenosis (See, Dr. Riber Deposition, p. 14); (d) the general epidural injections performed by Dr. Nandurkar were "significantly different" from the selective procedures recommended by Dr. Johnson (See, Dr. Riber Deposition, pp. 15 - 17); (e) Mr. Faulkenberry's relevant medical history included preexisting lumbar stenosis, as well as the

absence of any "focused treatment for similar symptoms in the past, things like pain management, MRI scanning, . . . and effectively a treatment regimen for the same type of problem" (See, Dr. Riber Deposition, pp. 18 - 19); and (f) his belief that, in view of Mr. Faulkenberry's relevant medical history and mechanism of injury, "to a reasonable degree of medical certainty, . . . [the June 19, 2012 work related fall] is . . . [most probably] what aggravated . . . [the preexisting lumbar stenosis] to the extent these symptoms have commenced and remained since" sustainment of this trauma (See, Dr. Riber Deposition, pp. 20 - 21).

32. When asked to inspect/comment on several medical records contained in the parties' respective APA Submissions, Dr. Riber verified: (a) a July 6, 2006 lumbar CT scan performed at Carolinas Medical Center was part of a general protocol to address a reported fall through global scanning (See, Dr. Riber Deposition, pp. 21 - 22); (b) the records from this facility contained no reference to "specific complaints of low back or leg pain" (See, Dr. Riber Deposition, pp. 22 - 23); (c) while this CT scan was interpreted to reveal lumbar stenosis, the records generated during this emergency room visit did not attribute any symptoms to this stenosis, to the extent "he was asymptomatic from that stenosis at that time" (See, Dr. Riber Deposition, p. 23); (d) the symptoms and injury mechanism documented by Dr.

Afulukwe on June 28, 2012 were consistent with the information he subsequently received from Mr. Faulkenberry (See, Dr. Riber Deposition, pp. 24 - 25); (e) Dr. Douglas' references to lumbar symptoms commencing after a work related fall involving "a split" were also consistent with what he "ultimately learned from" Mr. Faulkenberry (See, Dr. Riber Deposition, pp. 26 - 27); and (f) the contents of Dr. David's records were likewise consistent with the information he received from Mr. Faulkenberry (See, Dr. Riber Deposition, pp. 27 - 28).

33. Dr. Riber further explained: (a) as Mr. Faulkenberry's updated MRI scan did not reflect progression of his lumbar stenosis since the 2013 study, it is "most probabl[e] . . . , to a reasonable degree of medical certainty, that the continued symptoms . . . [he had] documented . . . in 2014 come from the aggravation that occurred" as a result of the June 19, 2012 accident (See, Dr. Riber Deposition, p. 30); (b) "given the absence of similar symptoms prior to this work related trauma, his current syndrome represents worsening of his preexisting condition of lumbar stenosis" (Id.); (c) his opinion remained "to a reasonable degree of medical certainty that this accident most probably aggravated the preexisting stenosis and has produced symptoms that have been present since" (See, Dr. Riber Deposition, p. 32); (d) Mr. Faulkenberry's history of prior intermittent back aches, especially in the context of a manual

laborer, was not a significant factor (See, Dr. Riber Deposition, p. 33); (e) the failure of Mr. Faulkenberry's back and radiating symptoms to respond to prior groin area surgery constituted "validation of the fact" these symptoms had a different source (See, Dr. Riber Deposition, pp. 34 - 35); (f) his previous encounters with similar situations where the true source of symptoms was not initially identified by other specialists (See, Dr. Riber Deposition, p. 35); and (g) ". . . [i]t would be very unusual" for the medical (non-spine) specialists who evaluated Mr. Faulkenberry prior to Dr. Johnson to engage in "the type of differential diagnoses that a spine surgeon or a pain management specialist would have in evaluating somebody with those symptoms." (Id.).

34. Finally, Dr. Riber endorsed: (a) Dr. Johnson's correlation between Mr. Faulkenberry's somewhat forward flexed gait and the symptoms stemming from his aggravated spinal stenosis condition (See, Dr. Riber Deposition, p. 36); (b) the fact Mr. Faulkenberry had not yet reached maximum medical improvement as to the consequences of his compensable injury (See, Dr. Riber Deposition, pp. 36 - 37); (c) the June 19, 2012 mechanism of injury had actually created this aggravation (See, Dr. Riber Deposition, p. 37); (d) the continued viability of his July 13, 2015 questionnaire responses (See, Dr. Riber Deposition, p. 38); and (e) Dr. Johnson's opinion Mr. Faulkenberry's causally

related symptoms/pathology currently prohibited him from working (See, Dr. Riber Deposition, p. 33).

35. Review of the rather voluminous pre-accident medical records introduced by Defendants reveals: (a) a fall producing bilateral arm fractures necessitated a July, 1999 hospitalization, during which he specifically "[d]enie[d] . . . any pain in his . . . back" (See, Defendants' APA Evidence, p. 64); (b) Mr. Faulkenberry underwent renal, gallbladder and scrotal ultrasound in January, 2003; (c) the performance of similar diagnostic testing in June, 2004; (d) his receipt of treatment for an apparent pulmonary condition through Springs Memorial Hospital in December, 2005; (e) a reference to "some back pain, arthritis, morning stiffness [and] . . . muscle aches" in conjunction with this December, 2005 hospitalization; (f) denial of back pain in conjunction with January 4, 2006 and March 21, 2006 examinations for headache and dizziness in the aftermath of a fall (See, Defendants' APA Evidence, pp. 324 - 325); (g) disclosure of chronic hearing loss, but no indication of lumbar symptoms, during an April 27, 2006 neurological examination; (h) completion of essentially global CT scanning at Carolinas Medical Center on July 6, 2006 after another fall; and (i) 2011 references to osteoarthritis of his hands, as well as bone/joint pain, by Dr. Afulukwe.

36. As confirmed by Mr. Faulkenberry's undisputed/ uncontradicted testimony, he had: (a) worked with Springs Mill for 32 years before commencing his employment with Conbraco Industries, Inc. (See, Hearing Transcript, p. 17; See also, Claimant's APA Exhibit No. 7, p. 40); (b) also previously sustained injuries to his head and neck in a 1973 motor vehicle accident, as well as a gunshot wound to his right leg resulting from a 1972 from a hunting accident (See, Hearing Transcript, p. 18); (c) neither experienced any pre-accident back symptoms other than intermittent pain/aching occasioned by heavy physical labor nor received focused treatment of his back prior to the June 19, 2012 accidental fall (See, Hearing Transcript, pp. 85 - 86); and (d) longstanding hearing difficulties (which became obvious to the undersigned during the delivery of his testimony) (See, Hearing Transcript, pp. 20 - 22).

37. Additionally, the relevant evidence unequivocally confirms: (a) Mr. Faulkenberry's job duties with Conbraco Industries, Inc. included mopping floors, cleaning out machinery, removing trash, disposing of chips and general cleanup (See, Hearing Transcript, p. 15); (b) these work activities involved lifting, bending and stooping (See, Hearing Transcript, p. 16); (c) they similarly required use of his back (See, Hearing Transcript, p. 17); and (d) notwithstanding other unrelated physical conditions, he was performing these heavy duties without

restriction prior to sustaining the June 19, 2012 accident (See, Hearing Transcript, pp. 22 - 23).

38. At this juncture, Mr. Faulkenberry remains materially symptomatic, to the extent he: (a) continues to experience pain ". . . all the way across my belt and down both legs, all the way to my knees"; (b) finds his back becomes "locked up" after standing or sitting for a period of time; (c) has difficulty bending; (d) requires assistance from his wife in connection with household chores; (e) was unable to resume his pre-injury work activities (noting he was never offered duties consistent with his medical restrictions); and (f) was not only willing to pursue the recommended injections, but also any necessary surgery (See, Hearing Transcript, pp. 55 - 61).

39. After thoroughly reviewing all evidence of record and acknowledging Commissioner Barden's observations of the witnesses during the course of the hearing, We specifically find: (a) while Mr. Faulkenberry is hard of hearing, a chronic problem he has developed from working in a textile mill, she and counsel for the respective parties believed that (despite the need for some measure of repetition) he heard all posed questions; (b) although Defendants submitted a voluminous documentary package chronicling Mr. Faulkenberry's receipt of treatment for several medical conditions since at least 1999, the hearing record is devoid of any evidence he had previously developed/experienced lumbar

symptoms or pathology that required treatment, much less to the level Drs. Johnson and Riber indicated was necessary to be relevant in the current context; (c) it is undisputed his job duties for Conbraco Industries, Inc. were physical in nature; and (d) despite collateral medical issues referenced in various medical records, Mr. Faulkenberry was physically capable of performing/sustaining these heavy work activities, without limitation, up to the time of his June 19, 2012 compensable accident.

40. We further find: (a) on June 19, 2012, he was instructed to clean up a coolant spill in the water meter department of the Conbraco Industries, Inc. facility with a shop-vac; (b) as a portion of the floor area was not accessible from a standing position, Mr. Faulkenberry put his right foot on a machine and pulled on a pipe with his right hand in order to lean/reach down with the shop-vac to remove the spilled coolant; (c) while in the process of performing this task, his right foot (which had been exposed to the coolant) slipped, resulting in his falling an approximately four foot distance; (d) this fall initially caused him to straddle a floor fan between his legs, creating trauma to his groin area; and (e) he then continued his fall, striking/landing on the floor with this buttocks.

41. In this regard, We find: (a) Mr. Faulkenberry's testimony regarding the circumstances of the accident is

consistent with the "Report of Accident Investigation", which "is to be completed by the foreman or supervisor"; (b) inspection of the contents of this form, which were not personally entered by Mr. Faulkenberry, reveals a correct spelling of the word "straddle"; (c) conversely, the injury report that Mr. Faulkenberry admittedly filled out incorrectly spells this word ("strattle"); (d) absent some unknown basis for denying this claim, it appears that semantics have caused some confusion/concern, in that Defendants may or may not interpret "stepping over a fan" as beginning with two feet on the floor and then lifting one foot to "step over" a fan; (e) however, Mr. Faulkenberry's testimony described an attempt to clear or cross over the fan when he put his foot up on the machine to "step over" this obstacle in order to clean the floor; (f) the descriptions of this accident contained in various records are actually largely consistent in that they mention the fan, the climbing or stepping onto the machine, the coolant, slipping and falling (eg., "He fell on his job recently . . . he did a split and his upper inner thigh bilaterally"; "coolant on floor he was cleaning up . . . He attempted to put his right leg over a fan . . . and his right leg slipped . . . patient landed on the fan and hit his groin and testicular area"; "pain started after a fall at work (did a split) in June, 2012"; "attempting to cross a barrier . . . he slipped . . . He had one foot across the barrier but

then he slipped and whenever he did he hit himself in the scrotum"; "stepping over a standing a fan, his foot slipped, resulting in a split which mashed his groin and turned the fan over"; "fell awkwardly while cleaning up coolant with a shop-vac . . . describes doing a split and struck his private"; "cleaning . . . a coolant spill . . . landing on a large fan that was running and landed on the cover of the fan . . . centered on his scrotum and testicles"); and (g) while some of the medical history synopses generated by Mr. Faulkenberry's examiners are more detailed than others, their aggregate contents, coupled with his testimony, more than satisfy the governing preponderance of the evidence standard.

42. We similarly find: (a) Mr. Faulkenberry reported the accident on the same day it occurred, advised his supervisor (Gleaton) that he was not hurt or did not think he was hurt and finished the shift; (b) if he were attempting to "manufacture" or fabricate a claim, it would have been far more expedient for him to tell his supervisor that he felt immediate pain and to similarly testify to this effect at the hearing; (c) notwithstanding these facts, Mr. Faulkenberry adhered to his prior statements that he did not develop pain until the following morning, which is reflective of candor, rather than expediency; (d) he likewise made statements which were against his own self-interest (acknowledging a 2/10 pain level at the time of his

evaluation by Dr. Gunter; volunteering during his hearing testimony that he was a very heavy alcohol user for 30 years) and neither embellished his symptoms (consistent with the medical evidence) nor attempted to hide unflattering aspects of his past life experience; and (e) this forthright behavior certainly validates his testimony relative to the contested issues.

43. We also give great weight to the facts: (a) Mr. Faulkenberry honestly assumed his full constellation of symptoms, including those affecting/involving his back and leg, emanated from his groin, as opposed to his back, until the implications of his aggravated spinal stenosis were identified; (b) Drs. Johnson and Riber each indicated the nature of Mr. Faulkenberry's spinal stenosis was consistent with the development of groin pain; and (c) it would be "very unusual" for the physicians who evaluated Mr. Faulkenberry prior to Dr. Johnson to formulate differential diagnoses that encompassed conditions outside their realm of specialization or identify the types of differential diagnoses which are regularly considered by a spine surgeon or pain management specialist.

44. We further find: (a) although the temporal evidence (hearing testimony, personnel records and medical reports generated in 2012) supporting the causal connection of Mr. Faulkenberry's symptoms to the consequences of his June 19, 2012 accident is quite compelling, the opinions expressed by Drs.

Johnson, Gunter and Riber likewise convincingly support his contention this compensable fall aggravated preexisting spinal stenosis to an extent that has required and continues to need treatment; (b) as the record contains no medical evidence that suggests Mr. Faulkenberry had either sustained any pre-accident back injuries or previously received focused treatment for any low back conditions, these expert opinions remain viable; (c) none of these medical specialists believed Mr. Faulkenberry's intermittent exertional back pain was relevant to the current inquiry (confirmed by the testimony of Drs. Johnson and Riber; also recalling Dr. Gunter confirmed current causal relationship with awareness of this intermittent back pain); and (d) the 2006 lumbar CT scan can only be construed as a precautionary measure, particularly in view of the absence of any low back symptoms or complaints at the time this procedure was completed.

45. We consequently find: (a) Mr. Faulkenberry's compensable accident resulted in the aggravation of preexisting lumbar spine stenosis, which has created the symptoms documented by Drs. Johnson, Gunter and Riber; and (b) the nature/degree of these causally related lumbar symptoms prohibit Mr. Faulkenberry from engaging in work activities per Drs. Johnson and Riber.

46. We also find: (a) Mr. Faulkenberry has not yet reached maximum medical improvement relative to the consequences of his June 19, 2012 compensable accident; (b) the causally related

medical modalities which he has heretofore received/undergone relative to his back from the various medical providers outlined herein have been reasonable, medically necessary and tended to lessen his period of disability; (c) Mr. Faulkenberry requires further treatment of the nature identified by Drs. Johnson, Riber and Gunter; (d) the current circumstances, including, but not limited to, Defendants' denial of any liability for treatment of Mr. Faulkenberry's back injury and their request for designation of a surgeon in the context of a Commissioner Barden's ruling the medical evidence identified a need for nonsurgical care, warrant Commission designation of a treating physician; (e) his receipt of additional treatment modalities is reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by the consequences of his compensable accident; and (f) Mr. Faulkenberry has been temporarily totally disabled since May 6, 2015 and remains so at this time.

#### CONCLUSIONS OF LAW

**IN VIEW OF THESE FINDINGS OF FACT, WE CONCLUDE AS MATTERS OF**

**LAW:**

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. On June 19, 2012, Mr. Faulkenberry, an employee within the meaning of S.C. Code Ann. Section 42-1-130 (1976, as amended), sustained a compensable injury to his back within the meaning of S.C. Code Ann. Section 42-1-160 (2007), while performing duties arising out of and within the course and scope of his employment with Conbraco Industries, Inc., an employer within the meaning of S.C. Code Ann. Section 42-1-140 (1976).

3. As previously noted, the evidence of record (including, but not limited to, the temporal evidence, as well as opinions expressed, to a reasonable degree of medical certainty, by Drs. Johnson, Riber and Gunter) reliably establishes Mr. Faulkenberry's lumbar symptoms proximately result from the consequences of his June 19, 2012 compensable accident. This evidence also verifies Mr. Faulkenberry has not yet reached the point of maximum medical improvement as to the consequences of this accident.

4. Defendants are financially responsible for the medical treatment, medications, evaluations, physical therapy, evaluative procedures, diagnostic testing, injections, etc. which Mr. Faulkenberry has heretofore received/undergone as a result of his compensable back injury, including, but not limited to, those modalities provided/prescribed by all medical providers referenced herein, as these modalities were reasonable, medically necessary and tended to lessen his period of disability within

the meaning of S.C. Code Ann. Section 42-15-60 (2007). We similarly conclude: (a) Mr. Faulkenberry requires further medical treatment modalities of the nature identified by Drs. Johnson and Riber; (b) receipt of these medical treatment modalities is reasonable, medically necessary and geared toward lessening Mr. Faulkenberry's ultimate period of disability per Section 42-15-60; (c) the current circumstances, which We conclude establish "good cause" within the meaning of Section 42-15-60, warrant designation of Dr. J. Kelby Hutcheson as Mr. Faulkenberry's authorized treater for the purposes of this claim; (d) given her underlying ruling that the evidence established Mr. Faulkenberry's need for nonoperative treatment, in light of Defendants' obvious attempt to circumvent this determination by seeking designation of a neurosurgeon as the authorized treater, Commissioner Barden justifiably/properly rejected their proposed treating physicians; and (e) Defendants shall accept financial responsibility for the additional causally related treatment modalities provided/prescribed by Dr. Hutcheson per Section 42-15-60. See also generally, Gattis v. Murrell's Inlet VFW, 353 S.C. 100, 576 S.E. 2d 191 (Ct. App. 2003); Hall v. United Rentals, Inc., 371 S.C. 69, 636 S.E. 2d 876 (Ct. App. 2006).

5. We further conclude that as Mr. Faulkenberry: (a) has not reached maximum medical improvement, his degree of residual disability is not currently ripe for assessment; and (b) is

incapable of working per Drs. Johnson and Riber, he has been temporarily totally disabled per S.C. Code Ann. Section 42-9-10 (2007) since May 6, 2015 and remains so at this time.

6. It is axiomatic that the provisions of S.C. Code Ann. Section 42-17-40 (1976, as amended) simply oblige this Commission to make "findings of fact . . . upon the essential factual issues. . . ." Hill v. Jones, 255 S.C. 219, 178 S.E. 2d 142, 144 (1970); Airco, Inc. v. Hollington, 269 S.C. 152, 236 S.E. 2d 804, 808 (1977). While these findings must "be sufficiently definite and detailed to enable the appellate court to properly determine whether the findings of fact are supported by the evidence and whether the law has been correctly applied to those findings . . . [, n]o particular format is required." Brayboy v. Clark Heating Company, Inc., 306 S.C. 56, 409 S.E. 2d 767, 768 (1991).

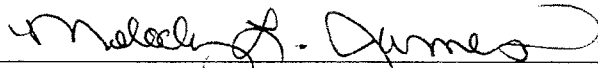
7. Inspection of Commissioner Barden's Order clearly verifies: (a) the presence of voluminous findings which address all factual issues through exhaustive analysis of the evidence; (b) identification of the evidentiary basis for her ultimate factual determinations; (c) proper application of the law governing the disputed issues; and (d) it unquestionably satisfies all applicable criteria.

**AWARD**

**ACCORDINGLY, IT IS HEREBY ORDERED** that Defendants shall: (a) accept financial responsibility for all medical treatment,

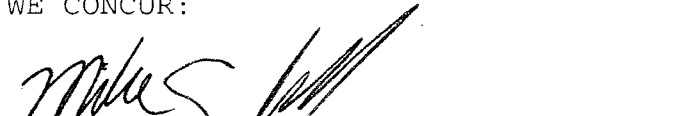
evaluations, medications, physical therapy, evaluative procedures, injections, etc. which Mr. Faulkenberry has heretofore received/undergone for his compensable back injury, including, but not limited to, the modalities provided/prescribed by the medical specialists, facilities, etc. referenced herein; (b) likewise accept financial responsibility for the additional causally related medical modalities provided/prescribed by Dr. Hutcheson, who is hereby designated as his authorized treating physician for the purposes of this claim; and (c) pay Mr. Faulkenberry temporary total disability compensation effective May 6, 2015 until this obligation is relieved by further agreement of the parties or Order of this Commission.

**IT IS SO ORDERED.**



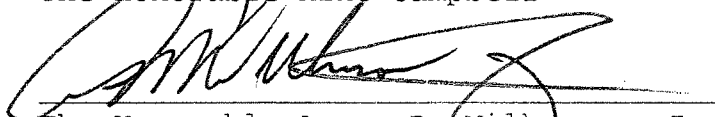
The Honorable Melody L. James  
Commissioner  
South Carolina Workers' Compensation  
Commission

WE CONCUR:



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The Honorable Mike Campbell



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The Honorable Avery B. Wilkerson, Jr.

**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 November 1, 2016**