

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Workers Compensation Commission

Appellate Case # 2016-001257

RECEIVED

JAN 30 2017

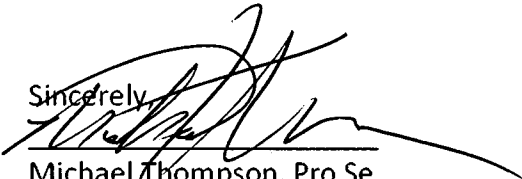
SC Court of Appeals

Michael Thompson, Employee, Claimant, Appellant,
V
KMS Inc., and Bridgefield Casualty Insurance Company
c/o Summit Holdings Inc., Carrier, Respondent

^{TO RETURN}
REPLY MOTION FOR FAILURE TO COMPLY
TO THE APPELLATE COURT RULES

January 29, 2017

Sincerely,



Michael Thompson, Pro Se
116 Schoolbus Road
West Columbia SC, 29172
(803) 318-1292

INTRODUCTION

Pursuant to Rule 240 of the Appellate Court Rules, Appellant, Michael Thompson, Pro Se, file this Reply to the Return Motion of KMS, Inc., Bridgefield Casualty Insurance Company c/o Summit Holdings Inc. The Motion should be affirmed because KMS didn't comply with Rule 208, or 209. Also the Council for KMS, made False statements of Fact which is also forbidden in the Appellate Court Rules.

ARGUMENTS

It states in Rule 208(b)(4): In the initial briefs, these references should be to the page and line number of the transcript prepared by the court reporter or by the page number to be referenced...(examples)... After the Record on Appeal is prepared, these references shall be revised as provided by Rule 211(b)(1). Page please find a copy of page of the Respondents initial brief where the non compliance is shown. The Appellant also feels that the Designation of Matter is without Specificity as they are Designating whole testimonies and transcripts.

As to the rules of Professional Conduct : 4.1 Truthfulness in statements to others, (A) make a false statement of material fact to a third person. 1) Misrepresentation and 3) Statements of Fact. The Council for the Respondent made the following statements of Fact in his brief:

1) Thompson admitted he was involved in several other motor vehicle accidents between 2003 and 2012, which resulted in injuries to his lower back. (R.) (these statements with line numbers are included with this reply) (pg 4, li. 7,8) With the council for the Respondent preparing to Order from the Full Commission he knows this statement to be false. [H.T.pg.59, li11-25](Pg. 5, li.11-25). There were no car accidents after the 2003 accident, and most importantly no back injuries sustained before or after that accident of any kind, except for the at work accident in

ARGUMENTS

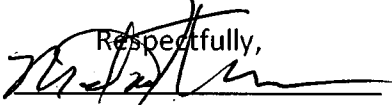
October of 2014.

2) in May of 2008 visited his primary care Physician, Dr. Kimberly Hicks complaining he was "frequently having serious back trouble"(R.; Hicks Depo pg.27).(pg.4,li.10,11) is a false and misleading statement of fact. (see pgs6,7[Hicks Depo. Pg. 27]& 8(noting the REVIEW OF SYMPTOMS: Check the appropriate box and circle the number of the ones you particularly want to discuss.), questions 43-45)

CONCLUSION

The motion for Failure to Comply to Appellate Court Rules should be affirmed because KMS didn't comply to Rules 208 & 209; and Council for KMS did present false statements of facts, and willingly tried to mislead the Appellate Courts of Appeals by misrepresenting and trickery of wording, pursuant to Rule 407: 4.1 Truthfulness in statements to others,(1) Misrepresentation, (3) Statements of facts. The Courts need to Reverse and Remand or Reverse totally due to the Misconduct of Council.

January 30, 2017

Respectfully,

Michael Thompson, Pro Se
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accident. (R.). Further, the medical records showed the physician who treated Thompson found
Thompson had lumbar strain symptomatology and that he would benefit from a spine rehabilitation
program to increase and regain the full motion of his neck and back. (R.). The physician also
restricted Thompson from lifting more than thirty-five pounds or bending frequently. (R.). When
confronted with the medical records, Thompson finally admitted he experienced a lower back
injury from the 2003 accident and the injury was serious enough to warrant his employer to refer
him to vocational rehabilitation. (R.). Thompson also admitted he was involved in several other
motor vehicle accidents between 2003 and 2012, which resulted in injuries to his lower back. (R.
).

In May 2008, Thompson visited his primary care physician, Dr. Kimberly Hicks,
complaining he was "frequently having serious back trouble." (R. ; Hicks Depo p.27). Dr. Hicks
understood Thompson's back issues were related to his prior motor vehicle accidents and weight
fluctuations. (Hicks Depo). However, Thompson contended the back pain was due to his anxiety
and sleep issues and was unrelated to the 2003 accident. (R.).

Thompson began working as a Press Brake Operator for KMS in September 2012. (R.).
Shortly after his hire date, Thompson completed KMS's post-hire medical questionnaire. (R.).
The questionnaire included the following disclaimer: "*All statements and information provided
are true to the best of my knowledge and belief. Misrepresentations, as to preexisting physical or
mental conditions, may void your workers' compensation benefits.*" (R.) (emphasis added).
Thompson admitted he read the disclaimer at the time he completed the questionnaire, he
"understood every word of it," and that he authenticated his signature beneath the disclaimer. (R.
). Thompson also admitted that after he read the disclaimer, he answered "no" to the question
inquiring if Thompson had ever sustained a back injury. (R.).

1 Commissioner Wilkerson: He wouldn't be
2 aware.

3 Mr. Haigler: well --

4 A. She does not -- I've never talked to her --

5 Mr. Haigler: -- fair enough.

6 A. -- about a car wreck --

7 Commissioner Wilkerson: No, that's
8 fair.

9 A. -- or nothing.

10 Mr. Haigler: Fair enough.

11 Q. Just to be clear, Mr. Thompson, you injured your
12 -- just like in 2003, you injured -- and I'm not -- I'm
13 not saying this is the same severity; I'm not here to
14 represent that but both injuries -- the injury you
15 sustained in 2003, and the injury you sustained while
16 you were working for my client in 2014, both involved
17 your low back; did they not, yes or no?

18 A. One involved my spinal cord --

19 Q. Okay.

20 A. -- the spinal column.

21 Q. They both involved your -- your lumbar spine,
22 correct?

23 A. Yes. I didn't know what a lumbar thing was until
24 this accident.

25 Q. Okay. From a layman's perspective, both of these

THOMPSON, MICHAEL

73414

HICKS/pjs

05/02/2008

CC: Anxiety.

S: The patient presents having trouble with anxiety. He has been seeing a counselor at Crossroads who thought it would be best if he saw a physician and got placed on some medications to help him with his anxiety. He states he just seems to over think everything. It is causing problems with his relationship with his girlfriend. He has a lot of trouble falling asleep. He is not getting out and doing the things he used to enjoy doing. He has had a decrease in appetite with some weight loss. This has been going on for at least 6-7 months now but it has gotten significantly worse over the past 3 months.

O: VITAL SIGNS: TEMP 97.8, pulse 72, respirations 20, blood pressure 140/98, weight 257. GENERAL: Alert, nontoxic. HEENT: Normocephalic, atraumatic. Pupils equal, round, and reactive to light. NECK: Supple. CARDIOVASCULAR: Regular rate and rhythm, no murmur. LUNGS: Clear. NEUROLOGIC: Intact with no focal deficits.

THOMPSON, MICHAEL (CONT.)

A: Anxiety.

P: Rx Lexapro 10 mg daily x1 week then increase to 20 mg daily (samples), Xanax 0.5 mg b.i.d. p.r.n. (#20, no refill). Follow up in 3 weeks.

THOMPSON, MICHAEL

73414

HICKS/pjs

05/30/2008

CC: Here for physical.

S: The patient presents for a full physical exam. Also is here to follow up for anxiety. He was started on Lexapro at the beginning of May. He states he has been doing well with that, thinks it has calmed him down a lot. He actually never got his prescription for Xanax filled, has not needed it. He states he also has not gone back to his counselor, feels like he is doing much better and is tolerating it well. He has not had a lot of side effects from the Lexapro. No other complaints today other than wanting some advice about how to increase his weight loss. SH: Works as a metal fabricator, smokes 1 pack of cigarettes daily, occasional alcohol. PSH: Jaw repair, tonsillectomy, adenoidectomy. CURRENT

FROM: MEDICATIONS: Lexapro. DRUG ALLERGIES: PENICILLIN.

O: VITAL SIGNS: TEMP 98, pulse 72, respirations 18, blood pressure 122/84, weight 248 down from 257 on 05/2/2008. GENERAL: Alert, nontoxic. HEENT: Normocephalic, atraumatic. Well healed vertical scar on forehead. TMs clear, OP clear. NECK: Supple, no bruits or thyromegaly. CARDIOVASCULAR: Regular rate and rhythm, no murmur. LUNGS: Clear. ABDOMEN: Obese, soft, nontender, nondistended, normoactive bowel sounds. No masses appreciated. EXTREMITIES: No clubbing, cyanosis or edema. NEUROLOGIC: Intact with no focal deficits. DIAGNOSTIC STUDIES: Discussed lab data, everything normal other than a low HDL. Encouraged increased physical activity.

A: Physical exam.

P: Continue Lexapro for anxiety. Follow up in a month for that. Given low fat diet, instructed on better ways to increase physical activity.

THOMPSON, MICHAEL

73414

HICKS/bas

08/20/2010

J411018

S: The patient comes in to discuss anxiety. He states that he just has not felt motivated over the last couple months. He feels stressed out at work. He can not leave his work at work. Even talks in his sleep about work. His wife is here and confirms that. He used to be on Lexapro, which really helped and I have not seen him since 2008 so he has been off of it and is requesting to restart that. He states it really seemed to help him. Also, through this time after coming off the Lexapro he overeats. He has actually gained almost 70 pounds since I saw him last in May 2008. He has been going to Doctor's Care off and on just if he gets sick. SH: He works as a metal fabricator. He does smoke.

O: VITAL SIGNS: TEMP 97.8, BP 130/86, weight 311 pounds, up from 248 pounds at his last visit, which is a little over 2 years ago. HEENT: Unremarkable. CARDIOVASCULAR: Regular rate and rhythm. LUNGS: Clear. ABDOMEN: Morbidly obese.

A/P: ANXIETY. Restart Lexapro 10 mg x1 week and then increase to 20 mg. Get some fasting pre-CPE labs today and he is to schedule a full physical.

KIMBERLY HICKS, MD 7-8-15

1 coping well with stressors, feel depressed or down,
2 things like that. Is it fair to say as of May 2nd of
3 2008 he was not coping well with stress, and he was
4 often feeling depressed or down for more than a few
5 days, no apparent cause?

6 A. Yes.

7 Q. Okay. Now, on the second page I have Review
8 of Systems. Check the appropriate box and circle the
9 number of the ones that you particularly want to
10 discuss with your physician. Is that -- is that -- do
11 you have that?

12 A. Yes, I do.

13 Q. The second page. All right. Down where it
14 says J: bones, joint and muscles, would you agree that
15 on number 44 where it says, Have you ever had serious
16 back trouble, that he said -- he checked yes to
17 frequently?

18 A. Yes.

19 Q. Were you aware that Mr. Thompson had back
20 problems back --

21 A. Yes.

22 Q. -- back in 2008?

23 A. Yes.

24 Q. Did you talk to him about them?

25 A. A little here and there.

REVIEW OF SYSTEMS: CHECK THE APPROPRIATE BOX AND CIRCLE THE NUMBER OF THE ONES THAT YOU PARTICULARLY WANT TO DISCUSS WITH YOUR PHYSICIAN

OCCASIONALLY
FREQUENTLY

(A) SKIN

- 1. Have you ever had any serious skin trouble - rashes, eczema, acne, skin cancer?
- yes 2. Have any skin growths or "moles" increased in size or changed color?

(B) HEAD

- 3. Do you have severe headaches?
- 4. How often do they occur? _____
- 5. Do you have episodes of dizziness or numbness, tingling or weakness in any part of your body?
- yes 6. Have you had fits, spells, seizures, or convulsions?
- 7. List any other "head" problems: _____

(C) EYES - EARS

- 8. Do you wear glasses or contacts?
- 9. Do you ever see double or does your eyesight ever black out?
- 0007 10. When was the last time you had your eyes examined by an optometrist/ophthalmologist? _____
- 11. Do you have any trouble hearing?
- 12. List any other ear or eye problems: _____

(D) NOSE

- 13. Do you have problems with allergy, sneezing, or sinus trouble?
- 14. List any other nose problems: _____

(E) MOUTH

- 15. Do you have any "mouth" problems? If so, what? _____

(F) CHEST

- 16. Do you have asthma?
- 17. Do you cough a lot?
- 18. Do you cough up sputum or phlegm?
- 19. Have you ever coughed up blood?
- yes 20. Have you had tuberculosis or lived with someone who had tuberculosis?
- 21. Do you get unusually short of breath with activity? Give an example _____
- 22. List any other chest problems: _____

(G) CARDIOVASCULAR (HEART)

- yes 23. Have you had high blood pressure?
- yes 24. Have you had a heart attack?
- 25. Do you have pains in your chest (angina) when walking, working or climbing stairs?
- 26. Does your heart beat peculiarly or rapidly?
- 27. Do you ever have to prop up in bed at night to breathe?
- 28. Are your ankles swollen?
- 29. Do you have cramping in your calves or thighs after walking?
- 30. List any other cardiovascular concerns: _____

(H) GASTROINTESTINAL (STOMACH)

- yes 31. Have you had stomach ulcers?
- yes 32. Have you had gallstones or gallbladder trouble?

NEVER
OCCASIONALLY
FREQUENTLY

(H) GASTROINTESTINAL (STOMACH) CONT'D

- 33. Do you experience:
 - a) rectal bleeding
 - b) constipation
 - c) indigestion
- NO YES 34. Have you had jaundice (yellow eyes) or hepatitis?
- NO YES 35. Have you had rectal hemorrhoids?
- 36. List any other gastrointestinal problems: _____

(I) GENITO-URINARY (KIDNEY)

- 37. Have you ever had blood in your urine?
- 38. Do you have trouble starting or stopping your stream?
- NO YES 39. Do you use "birth control"? Which type? _____
- 40. Do you have to get up more than once during the night to urinate?
- 41. Do you sometimes lose control of your bladder?
- 42. List any other genito-urinary (kidney) problems: _____

(J) BONES - JOINT - MUSCLES

- 43. Are your joints often painfully swollen or stiff?
- 44. Have you ever had serious back trouble?
- NO YES 45. Do you have arthritis?

(K) ENDOCRINE (GLANDS)

- NO YES 46. Have you gained or lost weight recently without trying? If so, how much? _____
- 47. Are you usually hungry or thirsty at all times?
- NO YES 48. Do you urinate more than you think you should?
- NO YES 49. Have you had any thyroid trouble?
- NO YES 50. Have you had gout?
- NO YES 51. Do you have diabetes?

(L) GENERAL

- NO YES 52. Have you noticed any swelling or a lump in your neck, armpits, or groin?
- NO YES 53. Do you have trouble falling or staying asleep?
- NO YES 54. Have you had a "nervous breakdown"?
- NO YES 55. Are there any sexual problems you want to discuss?

(M) ADDITIONAL QUESTIONS FOR MEN ONLY

- NO YES 56. Have you had any prostate gland trouble?
- NO YES 57. Do you have trouble with erections?
- NO YES 58. Do you have any other "male" problems?

(N) ADDITIONAL QUESTIONS FOR WOMEN ONLY

- 59. When was the first day of your last period? _____
- 60. When was your last pap smear? _____
- 61. Are your periods irregular? _____
- NO YES 62. Do you have a lot of cramping with your period?
- NO YES 63. Have you, within the past year, had vaginal bleeding other than at the time of a period?
- NO YES 64. Have you ever been pregnant? If yes, how many times? _____

- 65. Number of living children: _____
- NO YES 68. Have you had a lump in your breast?
- NO YES 67. Do you have any other "female" problems?

(O) DENTAL

- 68. Have you ever had any pain in your jaw joints (pain in front of your ear)?
- 69. When was your last dental exam? 2005

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Appellate Case # 2016-001257

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S.C. Court of Appeals
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Columbia S.C. 29211

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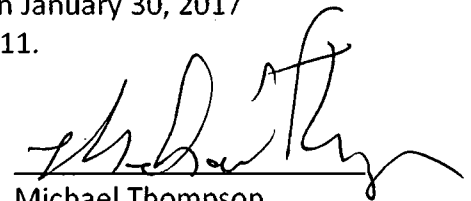
v.

KMS, Inc., Employer, and Bridgefield Casualty Insurance
Company c/o Summit Holdings, Inc., Carrier, Respondent

PROOF OF SERVICE

I certify that I have served a copy of Reply Motion For Failure to Comply to The Appellate Court Rules, by depositing it in the United States Mail, postage prepaid, on January 30, 2017 addressed to Nicolas L. Haigler, P.O. Box 11449, Columbia S.C., 29211.

January 30, 2017



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