

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Honorable William P. Keesley

Case No. 2013-CP-32-01272
Case No. 2014-CP-32-00399

RECEIVED

FEB 27 2017

SC Court of Appeals

Alexander Guice,Appellant,

v.

US Food Service, Inc., Employer, and
ACE American Insurance Company
c/o Gallagher Bassett Services, Inc., Respondents.

**RETURN TO APPELLANT'S
DECLARATION AND MOTION**

Pursuant to Rule 240, SCACR, Respondents file this return in opposition to Appellant's: 1) Declaration of Alexander Guice Voiding "Settlement Agreement and Release" dated 12/22/2015 and Notice of Demand for Entitled Temporary Total Disability Benefits and Payments, ("Declaration"), and 2) Motion to Dismiss Appeal for Want of Subject Matter Jurisdiction ("Motion"). Both the Declaration and Motion are improper, lack merit and fail to comply with this Court's January 25, 2017 Order instructing Appellant to file the Record on Appeal within 30 days.

Respondents are not responding point-by-point to the 89 pages of legal argument set forth in Appellant's Declaration and Motion other than to deny that he is entitled to

any of the relief he seeks and to deny that this Court lacks subject matter jurisdiction to hear this case. “Subject matter jurisdiction is ‘the power to hear and determine cases of the general class to which the proceedings in question belong.’” Skinner v. Westinghouse Elec. Corp., 380 S.C. 91, 93, 668 S.E.2d 795, 796 (2008).

It appears that, rather than perfecting his appeal and allowing this Court to decide his case on the merits, Appellant intends to file repetitive meritless motions in his attempt to “force” either the Court to rule in his favor or the Respondents to concede to his baseless demands. In doing so, he continues to unnecessarily inflate the cost to Respondents to defend this case which, at its core, is completely meritless. At the same time, Appellant continues to waste valuable judicial time and resources. Although Appellant has tweaked a few of his arguments and cites additional case law, he continues to ask this Court to grant him all of the substantive relief he sought before the Commission.

His Declaration is a novel attempt simply to declare he has won his case. His unilateral attempt to undo the Settlement Agreement that he signed and from which he accepted the benefit is perhaps novel but completely misguided. He signed a full and final settlement and release of his workers’ compensation claim, cashed the check, and said nothing for almost six years. He cannot disavow or declare the settlement agreement void now. As noted in Respondents’ Initial Brief, South Carolina courts have a long history of upholding Commission-approved settlements. McCreery v. Covenant Presbyterian Church, 303 S.C. 271, 273, 400 S.E.2d 130, 131 (1990) (rejecting a collateral attack on a Commission-approved settlement alleging lack of subject matter jurisdiction, because “[o]nce the Commission approves a compensation agreement, the

agreement becomes a[s] binding as a judicial decree and the facts contained therein are as definitely settled as factual findings incorporated in a decree”); Singleton v. Young Lumber Co., 236 S.C. 454, 463, 114 S.E.2d 837, 841 (1960) (holding that an agreement between a claimant and employer to pay compensation “when approved by the Commission, was as binding on the parties as an order, decision or award of the Commission unappealed from, or an award of the Commission affirmed upon appeal”); Atkins v. Charleston Shipbuilding & Drydock Co., 206 S.C. 63, 67-68, 33 S.E.2d 46, 47-48 (1945) (holding that the Commission has the power to approve “a lump sum settlement to once and for all time settle the rights of the parties ...” and that “a settlement fairly entered into and approved by the Commission, including a release of future claims and demands, ... [is] valid and enforceable”); Lloyd v. AT&T Nassau Metals Corp., 299 S.C. 207, 209, 383 S.E.2d 257, 259 (Ct. App. 1989) (rejecting attempt to correct error in approved settlement agreement where the party failed to timely appeal the error, in order to prevent parties “from reopening the amount of compensation long after the initial agreement has been settled”).

His other new theory is that this Court lacks jurisdiction to hear this appeal, which he argues should be dismissed. Yet, at the same time, insists that this Court must order the relief he seeks. It is facially apparent that Appellant’s choice to call his Motion a “motion to dismiss” based on an alleged lack of subject matter jurisdiction is little more than a back-handed way of attempting to stay this appeal, once again. (*See* Memorandum pp. 3-4, 77-78). His latest effort to further delay this appeal should be denied. First, the substance of his Motion, which clearly seeks a substantive ruling from this Court instead of a straight dismissal of his appeal, should control. *E.g.*, Fields v. Regional Med. Ctr.,

363 S.C. 19, 609 S.E.2d 506 (2005) (the substance of relief sought in a pleading, rather than its form or caption, is controlling). Second, while Respondents do not agree or concede that this Court lacks jurisdiction to hear this appeal, they agree that, if Appellant does not file the Record by February 24, 2017, as was ordered by this Court, this appeal should be dismissed with prejudice pursuant to Rules 260(a) & 269, SCACR. Such an outcome would be appropriate due to Appellant's continued attempts to delay and circumvent the appellate briefing process as set forth in Rules 208-211, SCACR.

Appellant attacks Respondent's former counsel of, among other things, engaging in the unauthorized practice of law and other "erroneous, unlawful and unethical" actions. (*See* Memorandum pp. 37-44). He also accuses Respondent's former counsel, his own prior counsel, and Commissioner Huffstetler of a host of unethical and illegal behavior, (Memorandum pp. 50-60), all of which is unwarranted and unproven: Appellant even has gone so far as to suggest that this Court may be guilty of "treason and lawless violence" if it rules on the merits of his appeal, all the while acknowledging that his prior filings with the Supreme Court concerning this matter were "patently erroneous." (*See* Memorandum pp. 78-79 & n.2).

Finally, Appellant's continued attempts to add material to the Record should be rejected. Appellant's affidavit was never presented to the Commission, is improper,¹ and is no more than his own self-serving rendition of events that occurred in 2004-2006 that

¹ By way of example, Appellant alleges for the very first time in his affidavit that, when he appeared at his attorney Robert Bacon's office to sign the Settlement Agreement, Mr. Bacon "intentionally covered" portions of the agreement "except for the area for [Appellant] to sign. (Affidavit ¶ 65). Furthermore, the affidavit improperly contains legal argument, (*see* Affidavit ¶¶ 82-84, 86), and unfairly alleges insurance fraud against his prior counsel, Respondents and their counsel, and former Commissioner Huffstetler. (Affidavit ¶ 85). As a result, this Court should strike Appellant's affidavit.

he believes supports his claim, and should be rejected by this Court. In addition, a number of the attachments to his memorandum in support of his Motion were never submitted to the Commission and should be stricken, including but not limited to Att. E, F, N, O, P, R, S, and portions of Att. J.

CONCLUSION

For the reasons stated herein, Respondents request that this Court deny Appellant's Declaration and Motion and order him to file the Record as previously ordered, or, in the alternative, dismiss this appeal with prejudice pursuant to Rules 260(a) & 269, SCACR.

Respectfully submitted,



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Attorneys for Respondents

February 23, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Honorable William P. Keesley, Circuit Court Judge

Case No. 2013-CP-32-01272
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SC Court of Appeals

Alexander Guice, Appellant,

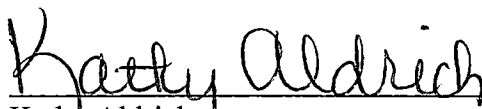
v.

US Food Service, Inc., Employer, and
ACE American Insurance Company
c/o Gallagher Bassett Services, Inc., Respondents.

PROOF OF SERVICE

I certify that I have served the Respondents' **Return to Appellant's Declaration and Motion** on Alexander Guice, pro se, by depositing a copy of it in the United States Mail, postage prepaid, on February 23, 2017, addressed as follows:

Alexander Guice
P.O. Box 13281
Tampa, Florida 33681



Kathy Aldrich
Legal Assistant to Helen F. Hiser & Erin L. Hantske
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Reply To

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February 23, 2017

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SC Court of Appeals

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Alexander Guice v. U.S. Food Service, Inc. and ACE American Insurance
Company c/o Gallagher Bassett Services, Inc.
Date of Accident: May 5, 2005
WCC File No.: 0506205
Our File No.: 2098.12550
Claim No.: 004063-032175-wc-01
Appeal No.: 2015-001821

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Return to Appellant's Declaration and Motion, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the self-addressed, stamped envelope.

If you have any questions, please do not hesitate to contact me.

Yours truly,
McAngus Goudelock & Courie, LLC



Helen F. Hiser

Enclosures

cc: Alexander Guice, *pro se*



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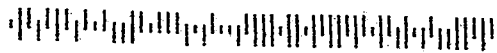
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The Honorable Jenny Abbott Kitchings

South Carolina Court of Appeals

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