

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

MAR 13 2017

L. Casey Manning, Circuit Court Judge

SC Court of Appeals

Appellate Case No.: 2016-001494

Theodore P. Polansky,.....Respondent.

v.

SC Office of Attorney General, employer,
and State Accident Fund, carrier.....Appellants.

APPELLANTS' RETURN TO RESPONDENT'S
MOTION TO DISMISS

Pursuant to Rules 240 (e) of the South Carolina Appellate Court Rules, Appellants hereby files this Return to the Respondent's Motion to Dismiss and requests an Order of the Court denying it for the reasons set forth herein.

1) This appeal arose from an Order of the South Carolina Worker's Compensation Commission, which was appealed by both the current Appellant's and Respondent to the Circuit Court before the Honorable L. Casey Manning.

2) The Circuit Court issued multiple Orders that resulted in the filing of multiple companion appeals (Appellate Case Numbers: 2016-001494; 2016-001890; and 2016-001892).

CM

3) Based on the differing times at which the multiple circuit court Orders became final for purposes of Appeal and uncertainty as to if additional related Orders would be issued by the Circuit Court, the Appellant sought an Order of the Court of Appeals holding “the above-captioned Appeal in abeyance until such time as the remaining Orders of the Circuit Court arising from the same Order of the South Carolina Workers Compensation Commission as the above-captioned Appeal are finalized and a determination as to if they will be appealed and, if so, consolidated with the above captioned Appeal is made.” One of the remaining matters before the Circuit Court at that time was a Motion to Dismiss the Appeal that had been filed by the Respondent and which, still to this day, has not been expressly ruled upon.

4) By Order of the Honorable James E. Lockemy, dated September 28, 2016, the above captioned Appeal was “held in abeyance pending the circuit court’s action on those remaining matters. Counsel for Appellants shall provide this court with a status update in thirty days and every thirty days thereafter.” (Attached as Exhibit A).

5) Counsel for the Appellant has provided status updates to the Court on the following dates: October 26, 2016 (Attached as Exhibit B); November 30, 2016 (Attached as Exhibit C); and February 10, 2017 Attached as Exhibit D).

6) Counsel for the Appellant did not provide the updates due on December 30, 2017 or January 30, 2017. Counsel for the Appellant has no excuse for this and begs the Court’s grace. Counsel for the Appellant believes, but is not sure, that the end of the Year 2016 resulted in his recurring electronic-calendar notification failing to prompt him to send the required Status Updates. Additionally, this issue should not reoccur in this case as Counsel for Appellant is, on the same day as filing this Motion, requesting that the Order of Abeyance be lifted and a briefing order be established. (See Exhibit E).

7) Counsel for the Appellant believes that if any sanction is appropriate, it would be removing the abeyance from this Appeal not the dismissal of the underlying Appeal.

8) Despite the claims of Respondent's Counsel that the Appellant's conduct has been dilatory in this case, Appellant's Counsel has worked to narrow the issues on Appeal in this matter as quickly as possible. Appellant's Counsel has dismissed the two companion Appeals (Appellate Case Numbers 2016-001890 & 2016-001892). Additionally, by separate letter on the same day as filing this Return, Appellant's Counsel has written the Court and requested that the court lift the abeyance and set a briefing order. The request for the abeyance being lifted is based upon the Respondent's Counsel for the first time unequivocally stating on Page 7 of his Memorandum In Support of Motion to Dismiss that Respondent's Counsel has "no intent to move forward with any further actions in Circuit Court".

9) Many of the grounds set forth in the current Motion to Dismiss are related to Appellate Case Number 2016-00-1890 which has been voluntarily dismissed by the Appellant (first request to dismiss submitted via letter dated November 30, 2016). Specifically, Respondent's Counsel has made mention of the Fact that the Appellant did not file a Motion after the Court's Letter dated November 9, 2016. (See Exhibit F). The Court's instruction in this letter was addressed to Appellate Case Number 2016-001890. Appellant's Counsel did not file a Motion in that matter but, instead, wrote the Court on November 30, 2016 requesting that it be dismissed. (See Exhibit G). This dismissal was intended addressed the action requested by the Court as the Motion would not be needed as the Appeal was dismissed. These issues are related solely to Appellate Case Number 2016-001890 and are of no consequence to Appellate Case Number 2016-001494 (the only matter currently before the Court of Appeals and the subject of the Motion to Dismiss).

10) Respondent's Counsel's claims that Appellant's Counsel failed "to notify the Court that all matters that gave rise to the Stay have been resolved and that this matter could proceed with a Briefing Schedule" are simply false. Respondent's Counsel relies upon a December 1, 2016 Letter he wrote to Appellant's Counsel which included the following:

I just thought of this as a way that we can get moving forward on the appeal. Since Judge Manning Judge Manning did not rule on the Motion but the Motion was filed and heard, what I propose is that we can include the Motion as part of the Designation of Matter and then I will submit an argument that the appeal should have been dismissed as an additional sustaining Ground....

(See Exhibit H).

11) Council for the Respondent has failed to mention the correspondence that he sent Appellant's Counsel expressly saying he intended to seek further Orders from the Circuit Court. (Please see Letters dated November 21, 2016 (Attached as Exhibit I) (with attached proposed Letter to Judge Manning and Justice Toal dated November 14, 2016 (Attached as Exhibits J and K) and November 22, 2016 (Attached as Exhibit L)).

12) In response to these letters, Appellant's Counsel emailed Respondent's Counsel on November 22, 2016 and explained, in part,:

As for the Motion to Dismiss the Appeal, the court issued (at your request) an Order on the Appeal. This is a de facto denial of your Motion to Dismiss. We appealed the ruling on the Appeal to the Court of Appeals, where it is now pending. This divested the Circuit Court of Jurisdiction. I had intended to write the S.C. Court of Appeals today and inform them that all matters in the Circuit had been resolved, request that the abeyance be lifted, and that a Briefing Schedule be established. Given that you are once again bringing proceedings before the Circuit Court, I will not be able to do so.

(See Exhibit M).

13) Based upon these correspondences, Counsel for the Appellant believed Respondent's Counsel to be still considering all available options on his previously filed Motion to Dismiss the Appeal in Circuit Court, including possibly seeking an additional Order of the Circuit Court. It was with this understanding that Appellant's Counsel wrote the Court on February 10, 2017, and requested the Appeal continue to be held in abeyance based on the "the possibility of an additional Order of the Circuit Court...." (See Exhibit D)

14) At no time prior to Appellant Counsel's February 10, 2017 letter had Respondent Counsel ever stated he would not seek further Orders of the Circuit Court in relation to this Appeal. The first such statement of the Respondent's Counsel was set forth in Page 7 of his Memorandum In Support of Motion to Dismiss, which unequivocally states Respondent's Counsel has "no intent to move forward with any further actions in Circuit Court". Based upon this statement, by separate letter to the Court, Appellant's Counsel has requested that the Order of abeyance be lifted and a briefing schedule be established.

15) Had Respondent's Counsel simply made this statement at any prior point, Appellant Counsel would have requested the Order of abeyance be lifted without subjecting the parties or the Court to the costs and delay of addressing this Motion. Prior to filing this Return, Counsel for Appellant explained to Counsel for Respondent the matters set forth in this Return and that a request was being made to lift the Order of Abeyance. Counsel for Appellant's requested that the Motion to Dismiss be dropped. Counsel for the Respondent refused to drop the Motion to Dismiss, which required the filing of this Return.

For the reasons set forth above, Appellant's Counsel request that the Motion to Dismiss be denied. Additional, Appellant requests an award of costs and attorney's fees in relation to having to respond to this Motion.

Respectfully submitted,

TC Miles

Temus C. Miles, Jr.
Post Office Box 7212
Columbia, South Carolina 29201
(803) 256-4645
Attorney for Appellants

March 13, 2017

Other Counsel of Record copied:

Preston F. McDaniel, Esquire
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No: 2016-001494

RECEIVED

MAR 13 2017

SC Court of Appeals

Theodore P. Polansky,.....Respondent.

v.

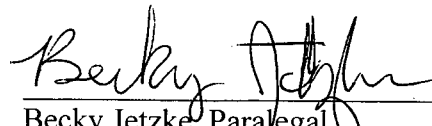
SC Office of Attorney General, employer,
and State Accident Fund, carrier.....Appellants.

PROOF OF SERVICE

I certify that I have served the Return to the Respondent's Motion to Dismiss on the attorney of record for Theodore Polansky by depositing a copy of it in the United States Mail, postage prepaid, on March 13, 2017, addressed as follows:

Preston F. McDaniel, Esquire
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201

March 13, 2017


Becky Jetzke, Paralegal
The McKay Firm, P.A.
Post Office Box 7217
Columbia, South Carolina 29202
(803) 256-4645

The South Carolina Court of Appeals

Theodore P. Polansky, Employee, Respondent,

v.

SC Office of the Attorney General, Employer, and State
Accident Fund, Carrier, Appellants.

Appellate Case No. 2016-001494

ORDER

After careful consideration, Appellants' motion to hold this appeal in abeyance is granted. It appears the circuit court is currently considering matters arising from the same Workers' Compensation Commission order that is on appeal here. Accordingly, this appeal shall be held in abeyance pending the circuit court's action on those remaining matters. Counsel for Appellants shall provide this court with a status update in thirty days and every thirty days thereafter.


FOR THE COURT

Columbia, South Carolina

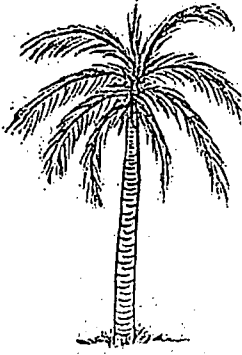
cc:

Temus C. Miles, Jr., Esquire
Preston F. McDaniel, Esquire

FILED

September 28, 2016





The McKay Firm, P.A.

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Post Office Box 7217 (29202)
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(803) 765-1839 Fax

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Temus C. Miles, Jr.

(803) 705-2149 Direct
TMiles@McKayFirm.com

October 26, 2016

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
1220 Senate St.
Columbia, South Carolina 29211

RECEIVED

OCT 27 2016

SC Court of Appeals

RE: Theodore Polansky v. SC Attorney General
Appeal Case No: 2016-1494 & 2016-1890
Case No. 2015-CP-4007380
WCC No.: 9922954 & 0024408
Our File No.: 1200-0073 & 1200-0074

Dear Mrs. Kitchings:

As you are aware, the Court held Appeal # 2016-1494 in abeyance pending the circuit court's action on remaining issues arising from the same Workers' Compensation Commission's Order. One of those remaining issues (the immediate payment of accrued benefits) gave rise to Appeal # 2016-1890.

I have enclosed a copy of a October 10, 2016 Order of the Honorable Jean H. Toal granting an Order of Supersedeas over the Orders that gave rise to Appeal # 2016-1890. I am currently waiting to see if the Claimant will appeal the Order of Supersedeas. I request that all deadlines in Appeal # 2016-1890 be held in abeyance until the issue of Supersedeas is finally determined, after which Appeal # 2016-1890 will likely be dismissed or consolidated in to Appeal # 2016-1494

Should anything in this letter require further discussion, please call me on my direct dial: 803-705-2149.

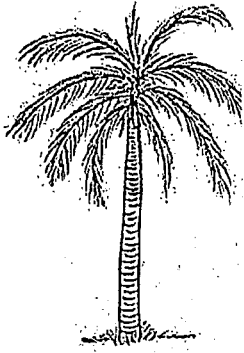
Sincerely,

Temus C. Miles, Jr.

Enclosures

cc: Preston McDaniel





The McKay Firm, P.A.

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November 30, 2016

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
1220 Senate St.
Columbia, South Carolina 29211

RECEIVED

DEC 01 2016

SC Court of Appeals

RE: Theodore Polansky v. SC Attorney General
Appeal Case No: 2016-1494 & 2016-1890
Case No. 2015-CP-4007380
WCC No.: 9922954 & 0024408
Our File No.: 1200-0073 & 1200-0074

Dear Mrs. Kitchings:

As you are aware, the Court held Appeal # 2016-1494 in abeyance pending the circuit court's action on remaining issues arising from the same Workers' Compensation Commission's Order. I recently received correspondence from the Claimant Attorney indicating that he intends to seek further Orders of the Circuit Court in regards to the matters that gave rise to Appeal # 2016-1494. Accordingly, I request that the Court continue to hold Appeal # 2016-1494 in abeyance.

Additionally, as time to appeal the circuit Court's Order of Supersedeas over the Orders that gave rise to Appeal # 2016-1890 has passed with no appeal being initiated, futher action on Appeal # 2016-1890 will not be needed. Accordingly, I request that Appeal # 2016-1890 be dismissed at this time.

Should anything in this letter require further discussion, please call me on my direct dial: 803-705-2149.

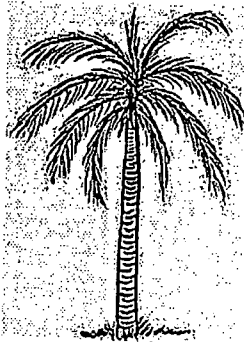
Sincerely,

Temus C. Miles, Jr.

Enclosures

cc: Preston McDaniel





The McKay Firm, P.A.

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February 10, 2017

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
1220 Senate St.
Columbia, South Carolina 29211

RECEIVED

FEB 10 2017

SC Court of Appeals

RE: *Theodore Polansky v. SC Attorney General*
Appeal No.: 2016-001494 & 2016-001890
Claim No.: 1999-003671 & 2000-3303
DOA: 10/19/1999 & 5/30/2000
Our File No.: 1200-0073 & 1200-0074

Dear Mrs. Kitchings:

Thank you for the Court's patience in these matters. These cases, and the resulting appeals, have had a long and complex procedural history which has slowed their progress.

In regards to your letter dated February 1, 2017 requesting an update on the status of Appellate Case No. 2016-001890, I request that you please dismiss that appeal at this time. I intended to dismiss that matter previously when I dismissed Appellate Case No. 2016-001892. The failure to do so at that time was an oversight on my part.

As for Appellate Case No. 2016-001494, I request that the Court continue to hold it in abeyance pursuant to the stay entered by Judge Lockemy on September 28, 2016. The attorney for the claimant/respondent has expressed the desire to possibly seek an additional Order from the Circuit Court challenging the appeal on grounds that it was untimely. Accordingly, the possibility of an additional Order of the Circuit Court in this matter still exists.

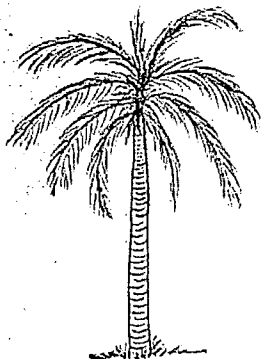
Should you have any questions or concerns regarding this matter, please contact me at my direct dial: (803) 705-2149.

Sincerely,

Temus C. Miles, Jr.
Temus C. Miles, Jr.

cc: Preston F. McDaniel, Esquire





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March 13, 2017

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
1220 Senate St.
Columbia, South Carolina 29211


RE: *Theodore Polansky v. SC Attorney General*
Appeal No.: 2016-001494
Claim No.: 1999-003671 & 2000-3303
DOA: 10/19/1999 & 5/30/2000
Our File No.: 1200-0073 & 1200-0074

Dear Mrs. Kitchings:

As you are aware, the above-referenced matter was stayed by Order of the Honorable James E. Lockemy on September 9, 2016. This Order was entered due to the fact that the Circuit Court was "considering matters arising from the same workers' compensation commission Order that is on appeal here." In page 7 of the Respondent's Memorandum in Support of Motion to Dismiss, Counsel for the Respondent unequivocally states there is "no intent to move forward with further actions in the Circuit Court." Accordingly, I request the stay in this matter be lifted and a briefing schedule be established.

Should you have any questions or concerns regarding this matter, please contact me at my direct dial: (803) 705-2149.

Sincerely,


Temus C. Miles, Jr.

cc: Preston F. McDaniel, Esquire





The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 09, 2016

Mr. Temus C. Miles, Jr., Esquire
PO Box 7217
Columbia SC 29202

Re: Theodore Polansky v. SC Office of the Attorney General (2)
Appellate Case No. 2016-001890

Dear Counsel:

We have received your letter dated October 26, 2016.

Please file a motion pursuant to Rule 240 of the South Carolina Appellate Court Rules, SCACR.

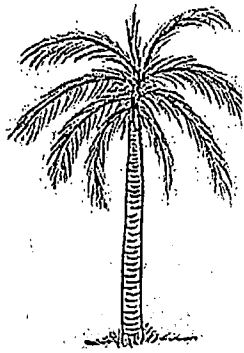
Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Preston F. McDaniel, Esquire





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November 30, 2016

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
1220 Senate St.
Columbia, South Carolina 29211

RE: *Theodore Polansky v. SC Attorney General*
Appeal Case No.: 2016-1494 & 2016-1890
Case No. 2015-CP-4007380
WCC No.: 9922954 & 0024408
Our File No.: 1200-0073 & 1200-0074

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DEC 01 2016

SC Court of Appeals

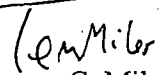
Dear Mrs. Kitchings:

As you are aware, the Court held Appeal # 2016-1494 in abeyance pending the circuit court's action on remaining issues arising from the same Workers' Compensation Commission's Order. I recently received correspondence from the Claimant Attorney indicating that he intends to seek further Orders of the Circuit Court in regards to the matters that gave rise to Appeal # 2016-1494. Accordingly, I request that the Court continue to hold Appeal # 2016-1494 in abeyance.

Additionally, as time to appeal the circuit Court's Order of Supersedeas over the Orders that gave rise to Appeal # 2016-1890 has passed with no appeal being initiated, further action on Appeal # 2016-1890 will not be needed. Accordingly, I request that Appeal # 2016-1890 be dismissed at this time.

Should anything in this letter require further discussion, please call me on my direct dial: 803-705-2149.

Sincerely,


Temus C. Miles, Jr.

Enclosures

cc: Preston McDaniel



McDANIEL LAW FIRM
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Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew C. Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

December 1, 2016

VIA EMAIL - tmiles@mckayfirm.com
AND US MAIL

Temus C. Miles, Jr., Esquire
McKay Law Firm
1303 Blanding Street
Columbia, SC 29201

RE: Ted Polansky vs. SC Attorney General's Office
WCC File Nos: 9922954 & 0024408
C/A Nos: 2015-CP-40-07380 & 2015-CP-40-07468

Dear Tem:

I just thought of this as a way that we can get moving forward on the appeal. Since Judge Manning did not rule on the motion but the motion was filed and heard, what I propose is that we can include the Motion as part of the Designation of Matter and then I will submit an argument that the Appeal should have been dismissed as an additional sustaining ground as to the Award of the Commission awarding benefits.

Next, in reference to the conflict issue, I will not keep beating a dead horse and since Harry is committed to appealing this action over advice of counsel, at the appropriate time I guess we will all have to deal with: his failure to actively pursue a SIF claim, what the employer and insurance carrier SAF knew in reference to that claim and my reliance on the representations made to me, in another appropriate forum.

Next, on a side note, I understood everything in your letter and understand your position except for the statement that I was to blame for the long and convoluted procedural history that developed over the summer. That really bothered me. The only thing I know that I did was to file a Motion to Dismiss the Appeal, file for an expedited hearing requesting the payment of temporary total, (which, by the way State Accident Fund did not start up voluntarily) and then at the request for the payment of back due temporary total to give Pete a chance to get the case accepted by SIF and then resolve the claim. Judge Manning knew all of this and had "basically" told us that he was going to grant the back due payment and would deny my Motion to Dismiss



Temus C. Miles, Jr., Esquire

December 1, 2016

Page 2

simply because he hates kicking people out of Court. Then right in the middle of all of this, Pete leaves your firm, leaving you with an eight banker box file and you requested an extension of time to come up to snuff even though the records and briefs and everything were already in.

In all of the orders I prepared, you will note that I clearly notified the clerk as to which file the order applied to and actually used only the appropriate filing number and/or underlined filing numbers for them which apparently the clerk's office ignored.

I am not the one who filed for extensions, re-hearings and for supersedes and I am not the one that refused to pay my client so, would you please tell me how I am to blame for the convoluted process and the delay in this case? Again, that just bothers me. Of course my ABC store thanks the SAF for all of this as it has increased their profits.

I look forward to the appeal and moving forward

with you.

Sincerely yours,



Preston F. McDaniel

PFM/abh/rmt

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Matthew Robertson

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November 21, 2016

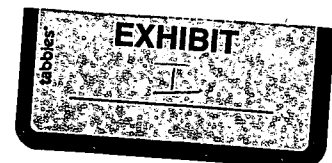
VIA EMAIL - tmiles@mckayfirm.com
Temus C. Miles, Jr., Esquire
McKay Law Firm
1303 Blanding Street
Columbia, SC 29201

RE: Ted Polansky vs. SC Attorney General's Office
C/A Nos: 2015-CP-40-07468 & 2015-CP-40-07380

Dear Temus:

Please find attached a proposed letter (which I will file Wednesday) to Judge Manning and to Justice Toal, requesting a Hearing on the Motion to dismiss, that was never finally decided, and also as to whether or not there is a conflict of interest between the best interest of your one client, that being the State Accident Fund and the best interest of the employer, the Attorney General's Office. I understand your position on the conflict, but also it is incumbent upon the State Accident Fund as the insurer to aggressively prosecute the Second Injury Fund Claim on behalf of the employer, particularly in this case, where we were talking about obtaining reimbursement of public funds on behalf of a public agency. I was, to be quite honest with you, incensed when I received the reply from the Executive Director that he wanted me to proceed with the Second Injury Fund claim, where I absolutely have no right to do so, and in addition, where this could mean a substantial savings on behalf of the employer.

I look to hear from you and will send this out on Wednesday, if I haven't heard from you. I will glad to consider any modifications you deem appropriate, but I want a Hearing on these issues and I anticipate filing the documents that I have in my file and will go over those with you as to whether or not we can submit those without objection. Also I anticipate calling as a witness your former associate, Peter Leventis, to confirm our discussions in reference to what I was being told in reference to the State Accident Fund processing of the claim for Second Injury Fund Recovery in reference to delaying decisions on the Motion and the request for a lump sum.

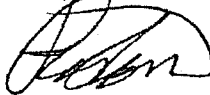


Temus C. Miles, Jr., Esquire
November 21, 2016
Page 2

Also, I would be glad to have a discussion with you about your Appeal in this matter to the South Carolina Court of Appeals, and what issues you intend to present on behalf of the Fund at the Court of Appeals. If you want to have that discussion, I would welcome it, but if not I understand.

I look forward to hearing from you.

Sincerely yours,



Preston F. McDaniel

PFM/rmt
Enclosures

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Matthew C. Robertson

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November 14, 2016

VIA EMAIL - cmanningj@sccourts.org & cmanninglc@sccourts.org
L. Casey Manning
Fifth Judicial Circuit
Post Office Box 192
Columbia, SC 29202-0192

VIA EMAIL ONLY - jtoalj@sccourts.org
Honorable Jean H. Toal
Fifth Judicial Circuit
Post Office Box 192
Columbia, SC 29202-0192

**RE: Theodore P. Polansky v. SC Office of Attorney General and
State Accident Fund
C/A No.: 2015-CP-40-07380**

Dear Judge Manning & Justice Toal:

I am writing this to both of you because you have both held Hearings on this case. New defense counsel (5th counsel of this case), Mr. Temus Miles requested and was granted a stay by the Court of Appeals on his Appeal in order to consolidate all issues and Appeals for Appeal.

As we have wanted since last November, we want no further delay and did not file for reconsideration and are not and will not appeal the granting of the Supersedeas. However, while we want no further delay because of misrepresentations made to me upon which I relied after their Appeal in November 2015, which delayed specifically various decisions on those issues for over (9) months, there are still two issues upon which we need a hearing and a final resolution.

First, Judge Manning you heard a Motion to dismiss along with our back payment request back in February. Then subsequently at the Hearing in May on their Appeal, I again asked you not to make a decision on either issue until after a decision on the underlining appeal of the defendants from the Workers' Compensation Commission. You issued an Order in June affirming that decision and based on further discussions, I then requested a Ruling on the lump sum request and there has been no decision on my Motion to dismiss the Appeal.

Justice Toal, at the Supersedeas Hearing and as part of my reply to the Motion for a Supersedeas, I requested that the Court address whether or not there was conflict of interest, of which I had recently been made aware by Mr. Miles, between and in



The Honorable L. Casey Manning
& Honorable Jean H. Toal
November 21, 2016
Page 2

reference to the best interest of his two clients, that being the employer in this Workers' Compensation matter and the insurance carrier, the State Accident Fund.

Because there has been no decision on my Motion to dismiss, we need to have a decision entered and I would prefer at this late date to reargue that Motion to dismiss. In addition, because of the prior representations, prior to Mr. Miles involvement, made to me and upon which I detrimentally relied, I deferred and requested a delay in a decision beginning in January (note, I had requested and filed for an expedited Hearing of all issues in December, granted by Judge Lee), both on the request for payment of the past due Workers' Compensation benefits under the Award of the Commission in a lump sum and I requested a delay in a decision on the Motion to dismiss.

As part of the Hearing I would request a Hearing on the issue as to whether or not there is a conflict of interest and if so as to whether or not separate counsel needs to be appointed or retained to handle the Appeal in reference to and in the best interest of the South Carolina State Accident Fund and Mr. Miles other client, that being the employer, the Attorney General's Office.

Because of your past involvement in these issues, I believe it is appropriate to request that either one of you hear this matter and would request that it be heard, of course, as soon as possible so that we can move forward all independent counsel involved at that point.

By copy of this letter I am notifying Temus Miles of this communication and request for a Hearing on the Motion to dismiss and on the conflict of interest, of which I have been made aware by Temus but upon which material misrepresentation of fact, I detrimentally relied and contrary to the best interest of my client.

Sincerely yours,

Preston F. McDaniel

PFM/rmt

Cc: Temus C. Miles, Jr., Esquire (via email: tmiles@mckayfirm.com)

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel
Matthew C. Robertson

Telephone (803) 771-7211
Facsimile (803) 252-0709

November 22, 2016

VIA EMAIL ONLY - tmiles@mckayfirm.com

Temus C. Miles, Jr., Esquire
McKay Law Firm
1303 Blanding Street
Columbia, SC 29201

RE: Ted Polansky vs. SC Attorney General's Office

Dear Tem:

We have had a very cordial relationship since your involvement and I am going to hold up on the letter, and I know you didn't mean it as a threat in your discussion about sanctions and costs. With that said, I want to address the two issues in my letter hereinafter and let's move forward.

First, in reference to the conflict and really what is an ethics dilemma, I have been involved in a similar situation myself on the other side wherein I represented an employer in his workers' compensation claim and I represented one of his employee's in his workers' compensation claim. They came in at two different times and I did not catch the fact (corporate name) but after I did, I discussed it with the defense attorney and then we actually got an informal ethics opinion and then I discussed my continued representation with both of my clients and after written notification, they agreed to allow me to proceed to representing both clients in their individual cases as did Defense Counsel.

I've tried to avoid framing this in reference to ethics and have referred to it in terms of how it affected me and my client. Please understand you had nothing to do with this and I am not asserting anything against anyone. I am just trying to protect my client, me and all of us. Therefore, I am going to put this in writing. Your former associate, Pete Leventis, who was handling this case when I filed the Motion to Dismiss and also the Motion for the payment of the back due temporary total and also when I filed for an expedited hearing which was set in January, discussed with me the fact that he thought that if we could get the Second Injury Fund claim applied to the brain claim, that there would be no incentive to continue with the appeal. The



Temus C. Miles, Jr., Esquire

November 22, 2016

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State Accident Fund had not instituted paying temporary total disability benefits at that time and was not complying with the statute.

We agreed that I would put off a decision on the Motion to Dismiss and they would institute the payment of temporary total disability benefits back dated to the date of the Award. I would hold off on pushing for the past due Award and he would continue to check on Second Injury Fund recovery and once they made temporary total payments, follow-up and see if the Second Injury Fund started reimbursing the State Accident Fund for the renewed temporary total, he would let me know. If they did, they would have accepted the brain claim as part of the Second Injury Fund claim and he was going to recommend dismissal of the appeal.

As you are aware, it was during this period of time when he left the firm. You then asked for a thirty (30) day extension so you could review the file. The end result was that we did not get a decision on the appeal actually until June.

Right after your involvement and I checked on the status of the Second Injury Fund reimbursement is when you advised me that your firm had a conflict. As I see it, and correct me if I am wrong, I was lead to believe by your former associate that he was working with the State Accident Fund and following up on the status of the Second Injury Fund request and I relied on that to the detriment of my client.

Like every defense attorney in a workers' compensation case, you have two clients. There is no question that if the Second Injury Fund case is prosecuted to its fullest and Second Injury Fund recovery is obtained for the brain injury, it will be in the best interest of your one client, the employer, as it will have a tremendous effect on their experience modifier for setting their premium. It is in my client's best interest we resolve the appeal.

I believe it is incumbent upon the State Accident Fund to fully prosecute that claim. However, that is my opinion.

Subsequent to all this, we have been advised by the Executive Director that it appears that they are not aggressively prosecuting that claim and that you, because of your conflict, cannot be actively involved in the prosecution of that claim and I have no way of knowing what attorney, if any, is actually involved in prosecuting that claim.

I am sure that you have contacted both of your clients and have discussed the conflict that you have and have probably obtained similar releases like I did in reference to the situation I found myself in.

Temus C. Miles, Jr., Esquire

November 22, 2016

Page 3

So with all of that said, in reference to what occurred prior to your involvement, please let me know what you think is the appropriate forum for me to address that where I was relying on the representations being made to me by Defense Counsel on behalf of his clients then only to find out after new Defense Counsel became involved that your firm has a conflict and that nothing was going on that I was told was going on.

Quite frankly, I thought that by having a hearing it would provide all of us with a Decision, that the conflict was appropriately addressed moving forward if the appeal moved forward on behalf of either the State Accident Fund or the Attorney General's office, or they both agreed that they wanted to appeal and whatever decision they made in reference to prosecution of the Second Injury Fund request. Since you disagree with that and don't want that to happen, and because I don't want any more trouble, we simply will not address that further in this forum. Let me say in conclusion on that issue that I have unfortunately delayed the processing of this case for over a year on behalf of my client. I hope you know how that makes me feel.

As to the Motion to Dismiss, I am not sure whether or not I agree with you or disagree with you but I think the cleanest way to handle this would be to have a final decision on the Motion to Dismiss. In that regard, I would propose that we write a letter and see if we can get this matter heard next week and if I lose, I can promise you that I will immediately notify the Court that we will not be filing a Motion for Reconsideration and I will not appeal the Decision. If I prevail, then you can simply merge that appeal with the affirmation of the Award.

I look forward to your thoughts and if I don't hear from you before Thanksgiving, I hope you have a wonderful Thanksgiving. My cell phone number is 606-2107 if you want to call me.

Sincerely yours,



Preston F. McDaniel

PFM/kth

Tem Miles

From: Tem Miles
Sent: Tuesday, November 22, 2016 10:59 AM
To: 'Preston McDaniel'
Cc: 'Rose Thielke'
Subject: RE: Ted Polansky v SC Attorney General's Office

Preston,

You and I have discussed the issue that you believe create a conflict of interest in regards to my representation at length. I do not agree with you and do not think is appropriate for you raise this issue with the Court seeing as you are not my client and, are in fact, are my clients' adversary in this proceeding.

As for the Motion to Dismiss the Appeal, the court issued (at your request) an Order on the Appeal. This is a de facto denial of your Motion to Dismiss. We appealed the ruling on the Appeal to the Court of Appeals, where it is now pending. This divested the Circuit Court of Jurisdiction. I had intended to write the S.C. Court of Appeals today and inform them that all matters in the Circuit had been resolved, request that the abeyance be lifted, and that a Briefing Schedule be established. Given that you are once again bringing proceedings before the Circuit Court, I will not be able to do so.

I can't speak on issues prior to my involvement in this case. However, since my involvement, the excessive procedural complexity and associated delay and costs in this matter has been caused by you alone. I will oppose any additional proceeding, hearing, or order that you request in the circuit court regarding these cases until after a final determination is made on the Appeals by the higher courts. Please be aware, I will also seek all available sanctions and costs reimbursements for having to respond to such matters.

Thank you,

Tem

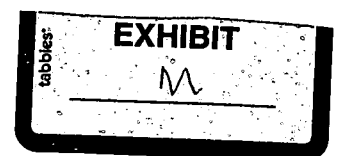
From: Rose Thielke [<mailto:rose@pfmcdlaw.com>]
Sent: Monday, November 21, 2016 5:42 PM
To: Tem Miles
Subject: Ted Polansky v SC Attorney General's Office

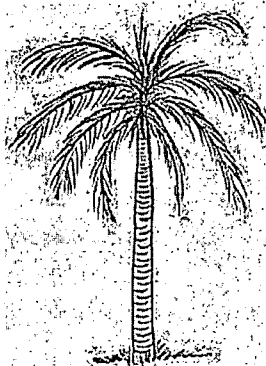
The attached letter is being sent at the request of Preston McDaniel.

Rose Thielke
McDaniel Law Firm



This email has been checked for viruses by Avast antivirus software.
www.avast.com





The McKay Firm, P.A.

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Temus C. Miles, Jr.

(803) 705-2149 Direct
TMiles@McKayFirm.com

March 13, 2017

RECEIVED

MAR 13 2017

SC Court of Appeals

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
1220 Senate St.
Columbia, South Carolina 29211

RE: *Theodore Polansky v. SC Attorney General*
Appeal No.: 2016-001494
Claim No.: 1999-003671 & 2000-3303
DOA: 10/19/1999 & 5/30/2000
Our File No.: 1200-0073 & 1200-0074

Dear Mrs. Kitchings:

As you are aware, the above-referenced matter was stayed by Order of the Honorable James E. Lockemy on September 9, 2016. This Order was entered due to the fact that the Circuit Court was "considering matters arising from the same workers' compensation commission Order that is on appeal here." In page 7 of the Respondent's Memorandum in Support of Motion to Dismiss, Counsel for the Respondent unequivocally states there is "no intent to move forward with further actions in the Circuit Court." Accordingly, I request the stay in this matter be lifted and a briefing schedule be established.

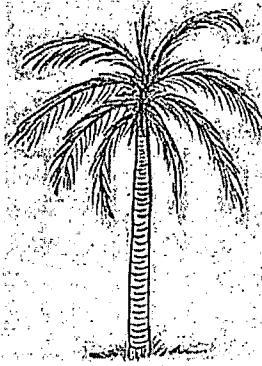
Should you have any questions or concerns regarding this matter, please contact me at my direct dial: (803) 705-2149.

Sincerely,



Temus C. Miles, Jr.

cc: Preston F. McDaniel, Esquire



The McKay Firm, P.A.

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March 13, 2017

RECEIVED

MAR 13 2017

SC Court of Appeals

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
1220 Senate St.
Columbia, South Carolina 29211

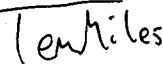
RE: *Theodore Polansky v. SC Attorney General*
Appeal No.: 2016-001494
Claim No.: 1999-003671 & 2000-3303
DOA: 10/19/1999 & 5/30/2000
Our File No.: 1200-0073 & 1200-0074

Dear Mrs. Kitchings:

Enclosed herewith for filing, please the original and (7) seven copies of the Appellant's Return to the Respondent's Motion to Dismiss. I ask that you please return one copy of the return to my courier after it has been stamped as received. By copy of this letter, I am serving opposing counsel.

Should you have any questions or concerns regarding this matter, please contact me at my direct dial: (803) 705-2149.

Sincerely,



Temus C. Miles, Jr.

cc: Preston F. McDaniel, Esquire