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AUG 29 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

WCC File No.: 1605900

George C. Leggette, Jr., ..... Respondent,

vs.

Three D Machinery Installers, LLC, and  
Amerisure Mutual Insurance Company, Carrier, ..... Appellants.

**RESPONDENTS' MOTION TO DISMISS APPEAL**

TO THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF  
APPEALS:

Respondent George Leggette respectfully moves this Court for an Order dismissing the appeal pursuant to Rule 240 SCACR. Appellant has failed, pursuant to S.C. Code §42-17-60, to invoke the jurisdiction of the Court of Appeals.

PROCEDURAL BACKGROUND

By Order dated July 24, 2017, served on the parties on July 24, 2017, the South Carolina Workers' Compensation Commission awarded the Claimant worker's compensation benefits. By letter dated August 14, 2017 the Appellants served a document captioned "Notice of Appeal"

upon the Claimant and the Workers' Compensation Commission and filed it with this Court.

That document read:

#### NOTICE OF APPEAL

Three D Machinery Installers, LLC and Amerisure Mutual Insurance Company hereby appeal the Order of the Appellant Panel of the South Carolina Workers' Compensation Commission filed July 24, 2017. Appellants received written notice of entry of this Order on July 24, 2017.

The document filed and served by the Appellant captioned "Notice of Appeal" failed to invoke the jurisdiction of the South Carolina Court of Appeals as a matter of law pursuant to S.C. Code §42-17-60.

#### LAW AND ANALYSIS

S.C. Code §42-17-60 establishes the jurisdiction of the Court of Appeals to review decisions of the South Carolina Workers' Compensation Commission. It provides:

The award of the commission, as provided in Section 42-17-40, if not reviewed in due time, or an award of the commission upon the review, as provided in Section 42-17-50, is conclusive and binding as to all questions of fact. However, either party to the dispute, within thirty days from the date of the award or within thirty days after receipt of notice to be sent by registered mail of the award, but not after, whichever is the longest, may appeal from the decision of the commission to the court of appeals. **Notice of appeal must state the grounds of the appeal or the alleged errors of law.**

S.C. Code §42-17-60 (2015) (Emphasis added).

Thus, in order to invoke the jurisdiction of this Court, by August 23, 2017, thirty days after the Appellants received notice of the Order (which occurred on July 24, 2017), the Appellants were required to file a Notice of Appeal with the Court of Appeals and serve it upon the Respondent and the Commission. The statute provides that the "Notice of appeal must state the grounds of the appeal or the alleged errors of law." S.C. Code §42-17-60. While Rule 203 (e) SCACR does not require a statement of the grounds of appeal to invoke jurisdiction of the

Court of Appeals for appeals from the Circuit Court and certain administrative tribunals, appeals from the Workers' Compensation Commission do require such a statement.

In 2007, the Legislature amended S.C. Code §1-23-600 to provide that appeals from the Workers' Compensation Commission, previously taken to the Circuit Court, were thereafter taken directly to the Court of Appeals "as provided in Section 42-17-60." See S.C. Code §1-23-600 (D). The Legislature retained the requirement that had existed before 2007 with regard to appeals to the Circuit Court that the Notice of Appeal must state the grounds of the appeal. See S.C. Code §42-17-60.

Thus, unlike in Appeals from the Circuit Court or from certain other administrative tribunals, appeals from the Workers' Compensation Commission to the Court of Appeals must state the grounds of the appeal or the alleged errors of law.

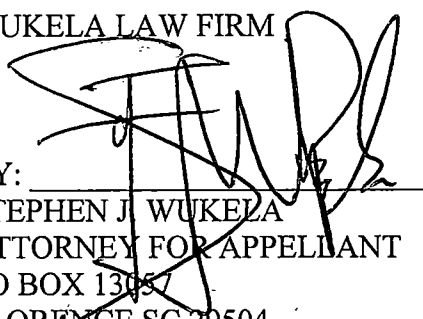
A Notice of Appeal that lacks such a statement is insufficient, fails to invoke jurisdiction of the Court, and must be dismissed as a matter of law. See, E.G. Solomon v. W. B. Easton Inc., 307 S.C. 518, 522 (S.C. App. 1992) (finding that the Circuit Court lacked jurisdiction over an appeal from the Workers' Compensation Commission where the notice of appeal was so vague that it did not adequately specify the grounds for the appeal); Compare, White v. Medical University of South Carolina, 355 S.C. 560 (S.C. App. 2003) (finding Workers' Compensation Claimant's Notice of Appeal, which stated that the Commission erred in finding as a fact and concluding as a matter of law that the Claimant was not entitled to benefits, was sufficient to comply with the statutory requirement that the notice of appeal to circuit court state grounds of appeal, since the Commission's findings only addressed the statute of limitations.)

CONCLUSION

Based on the foregoing argument, Respondent respectfully requests the Court dismiss the appeal as insufficient to invoke the jurisdiction of this Court.

Respectfully submitted,

WUKELA LAW FIRM

  
BY: \_\_\_\_\_  
STEPHEN J. WUKELA  
ATTORNEY FOR APPELLANT  
PO BOX 13057  
FLORENCE SC 29504  
843-669-5634

August 28<sup>th</sup>, 2017

THE STATE OF SOUTH CAROLINA  
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APPEAL FROM THE SOUTH CAROLINA  
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WCC File No. 1605900

George C. Leggette, Jr., ..... Appellant,

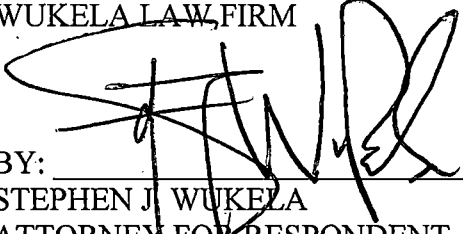
vs.

Three D Machinery Installers, LLC, and  
Amerisure Mutual Insurance Company, Carrier, ..... Respondents.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss on Respondents, by depositing a copy of it in the United States Mail, postage prepaid, on August 28<sup>th</sup>, 2017, addressed to their attorney of record, Helen F. Hiser, McAngus, Goudelock & Courie, 2411 North Oak Street, Suite 401, Myrtle Beach, SC 29577-3173.

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SC Court of Appeals

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
PO Box 11629  
Columbia SC 29211

Re: George C. Leggette, Jr. v. Three D Machinery Installers, LLC  
Workers' Compensation File No. 1605900

Dear Ms. Kitchings:

Enclosed for filing please find Respondent's Motion to Dismiss Appeal in the above case. By copy of this letter, I am serving the Attorney for Defendants with a copy of Respondent's Motion to Dismiss Appeal.

Also, please find enclosed my office check in the amount of \$25.00 for filing.

With kind regards, I am

Yours truly,

WUKELA LAW FIRM

STEPHEN J. WUKELA

SJW:bjm

Enclosures

cc: Helen F. Hiser  
Attorney at Law  
McAngus, Goudelock & Courie  
2411 North Oak Street, Suite 401  
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