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THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Appeal No: 2015-001350

Henton T. Clemmons, Jr., Employee,.....Petitioner,

v.

Lowes Home Centers, Inc.-Harbison, Employer,
and Sedgwick Claims Management Services,
Inc., Carrier,.....Respondents.

PETITION TO STAY THE REMITTITUR
AND FOR A HEARING BEFORE THE COURT TO
DETERMINE WHETHER OR NOT THE PETITIONER IS
ENTITLED TO RELIEF UNDER THE REVERSE AND
REMAND OPINION OF THE COURT AND
FOR THE REASONS SET FORTH IN THE PETITION

The Petitioner respectfully requests and petitions the Court for a Stay of the Remittitur until after a hearing before the Court and/or a decision by the Court on the issues as set forth in this Petition:

1. That this Court initially entered its Opinion on March 8, 2017 reversing the Decision of the SC Workers' Compensation Commission and the SC Court of Appeals.

2. That subsequent thereto, the Respondents petitioned for Rehearing which was granted and a substituted Opinion was entered and refiled by the Court on June 28, 2017. In that substituted Opinion, the Court reversed and remanded the case to the Commission, "for a new hearing to determine his percentage of impairment and whether the presumption of permanent and total disability under §42-9-30(21) has been rebutted". The Petitioner filed a Petition for Rehearing as to the substituted Opinion on which the Court entered a decision denying the Petition for Rehearing on September 5, 2017.

3. That as set forth in the Affidavit and Exhibit as attached hereto, during the week of August 28th and on or about August 29th, Petitioner's Counsel was made aware of public comments and the discussion involving the SC Workers' Compensation Commission at a convention during the pendency of his Petition for Rehearing as to the substituted Opinion that was filed by this Court on June 28th. Petitioner's Counsel, as is set forth in the Affidavit, subsequently received written confirmation concerning the public comments made by and discussions with the Commission. A copy of an Article written by an attendee at that conference setting forth the alleged public comments and position and discussions, and recommendations of the SC Workers' Compensation Commission is attached as Exhibit "A".

4. That according to the representations made in the Article, the Commission made statements that the Commission did not like the, "Clemmons" Decision, nor do they like the position they have been put in with this recent remand Order. It does not make sense for a claimant to be permanently and totally disabled while they are still working, "especially to the group of people charged with overseeing the compensation paid to injured workers." The Article goes on and further attributes to the Commission comments that certain issues were not brought up until, "the oral argument before the Supreme Court". The Article then goes on and states that, "but necessity being the mother of invention, the Commission gave some tips on how to comply with (or circumvent) the Clemmons Decision".

The Article then goes on to provide three (3) different tips from the Commission as to how to circumvent the Clemmons decision issued by this Court. See Affidavit and Exhibit "A" attached hereto and incorporated herein by reference.

5. That in addition to a general principle of law as to an entitlement of a litigant to a hearing before a fair and impartial judicial officer, SC Code §42-3-250 provides that the Commissioners are bound by the Code of Judicial Conduct as contained in Rule 501 of the SC Appellate Court Rules and that the SC State Ethics Commission is responsible for the enforcement of the administration of that Rule.

Rule 501, Canon 1, provides that an independent judiciary is the cornerstone to our society.

Canon 2 provides specifically that a Judge shall respect and comply with the law and shall act at all times in a matter that promotes public confidence and the integrity and impartiality of the judiciary.

Canon 3, in pertinent part, provides that a Judge shall perform the duties of the office to which he is elected or appointed and shall conduct his judicial functions in a fair and impartial manner which instills confidence in the judicial system, that the Judge shall be faithful to the law and that the Judge shall not be swayed by partisan interest, public clamor, or fear of criticism. In the Comments to Canon 3, the Judge must perform judicial duties impartially and fairly, and a judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrespect.

6. That after review of the briefs, oral arguments of the parties, and the positions of the parties, and based on its review of the substantive law, this honorable Court in its Opinion reversed and remanded this matter to the SC Workers' Compensation Commission for a de novo hearing before that Commission on the enumerated specific issues. The Petitioner is entitled as a general principle of law without citation to a

fair and impartial hearing based on the law as directed to the Commission by this Court and before a fair and impartial Commissioner that is committed without personal bias, prejudice, or being subject to public clamor, or influenced for any other reason, and before a Commissioner that will faithfully apply the law as given to it by this Court. Based on the comments and statements attributed to the Commission, the Petitioner would respectfully submit to the Court that the Petitioner cannot obtain and will not be subject to a fair and impartial hearing before the Commission.

7. That further as stated in the preamble to Rule 501,

"our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law."

Under Canon 3(B), Adjudicative Functions (9),

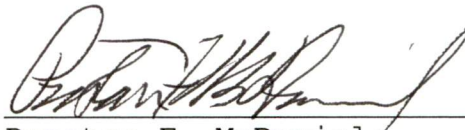
"a Judge shall not, while a proceeding is pending or impending in any Court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness, or make any non-public comment that might substantially interfere with a fair trial or hearing."

(E) Disqualification (1) of that same Canon, Canon 3, a Judge shall disqualify himself or herself in any proceeding in which the Judge's impartiality might, "reasonably be questioned".

Again, the Petitioner would submit that under these standards, the Petitioner cannot be assured of a fair and impartial hearing and that the Decision will be based upon the law as is established by this Court.

Wherefore, for all the foregoing reasons, the Petitioner would respectfully request a hearing before the Court to determine whether or not the Petitioner is entitled to relief, and as to what relief the Petitioner is entitled based on the Decision and Opinion of this Court, reversing and remanding this case to the SC Workers' Compensation Commission for a de novo on these specified issues.

Respectfully submitted:



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