

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED

OCT 30 2017

L. Casey Manning, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2016-001494

Theodore P. Polansky, Employee, Respondent,

v.

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

MOTION TO CORRECT, AMEND OR SUPPLEMENT
THE RECORD ON APPEAL AND FOR AN EXTENSION
OF THE TIME TO FILE RESPONDENT'S FINAL BRIEF
UNTIL CORRECTED, AMENDED OR SUPPLEMENT
RECORD ON APPEAL IS SERVED ON RESPONDENT

TO: TEMUS C. MILES JR., ESQUIRE, COUNSEL FOR THE APPELLANTS:


YOU WILL PLEASE TAKE NOTICE pursuant to SCACR Rule 240, 209
and 210, the Respondent hereby moves for an Order of the Court
ordering the Appellants to review the Designation of Matter of
the Respondent and to correct, amend and/or supplement the
Record on Appeal to include those portions of the Designation of
Matter as designated by the Respondent to be included and

✓

specifically including the 711 pages of written evidence submitted as APA Submissions before the South Carolina Workers' Compensation Commission but not included; for an extension to file Respondents' Final Brief after correction and for the costs of this Motion. Said Motion is based upon the Memorandum attached hereto and incorporated herein by reference.

I SO MOVE.

Respectfully submitted,



Preston F. McDaniel, Esquire
SC Bar No. 3770
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

Attorney for Respondent

October 30, 2017

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MEMORANDUM IN SUPPORT OF
MOTION TO CORRECT, AMEND OR SUPPLEMENTED
THE RECORD ON APPEAL AND FOR AN EXTENSION
OF THE TIME TO FILE RESPONDENT'S FINAL BRIEF
UNTIL CORRECTED, AMENDED OR SUPPLEMENT
RECORD ON APPEAL IS SERVED ON RESPONDENT

The Respondent would respectfully show unto the Court:

1. That this is an Appeal from the South Carolina Workers' Compensation Commission and from the Decision of Circuit Court affirming the Award due to this being a pre-2007 appeal from a Decision of the Commission.
2. That as part of his Designation of Matter for

inclusion in the Record, the Respondent designated the Claimant's Pre-Hearing Briefs, Supplemental or Amended Pre-Hearing Briefs including his APA Submissions served and filed with the Commission on August 26, 2014, February 19, 2015, February 27, 2015 and the final and Amended APA Submissions that were filed with the Commission on March 4, 2015 consisting of seven hundred and eleven (711) pages of written documentary evidence which served as the basis in part for the Commission's decision. Based upon a review of the Record as served upon the Respondent in this matter, that specific Designation of Matter was not included with the Record on Appeal as served. The Amended and Supplemental APA Submissions consisting of seven hundred and eleven (711) pages of APA Submissions were specifically admitted into the Record by the Hearing Commissioner at the hearing held at the March 6, 2015 hearing. Transcript of Record, p. 4, l. 6-p. 18 and specifically p. 18, l. 2-4.

3. That all of the Appellants similarly summarized and designated APA Submissions as set forth in its Designation of Matter were included in the Record. In reference to the Respondents' APA Submissions that were designated for submission, the very first sentence of the Appellants' first Argument in its Initial Brief reads, "the Record of the parties and APA Submissions include medical reports spanning over 15

years ..., See Generally the APA Submission No. 4 of the Claimant at P. 20-30, ...". (emp. added).

Thus, it is clear both parties intended that the Claimant's APAs were being made a part of the Record.

WHEREFORE the Respondent cannot complete the submission of his Final Brief until the Record is corrected and therefore the Respondent as the Movant would respectfully request that the Appellants be ordered to review the Record and to correct, amend and/or supplement the Record to include all of the Designation of Matter as designated by the parties pursuant to the Court Rules specifically including the seven hundred and eleven (711) pages of Claimant's written evidence made a part of the Record as APA Submissions, for the costs of this Motion and for an extension of time for 20 days after the amended, corrected or supplemented Record is filed for the filing of his Final Respondent's Brief.

Respectfully submitted,



Preston F. McDaniel, Esquire
SC Bar No. 3770
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1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

Attorney for Respondent/Movant

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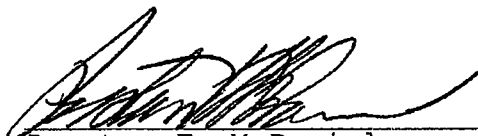
SC Office of the Attorney General,
Employer, and State Accident Fund, Carrier, Appellants.

PROOF OF SERVICE

I certify that I have served the **MOTION TO CORRECT, AMEND OR SUPPLEMENT THE RECORD ON APPEAL** and **MEMORANDUM IN SUPPORT OF** by depositing a copy of it in the United States Mail, postage prepaid, on October 30, 2017 addressed to:

Temus C. Miles, Jr., Esquire
McKay, Cauthen, Settana & Stubley
PO Box 7217
Columbia, SC 29202-7217

Dated: October 30, 2017



Preston F. McDaniel
SC Bar No. 3770
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

Attorney for Movant/Respondent

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

PRESTON F. McDANIEL
McDANIEL LAW FIRM
COST ACCOUNT
1315 ELMWOOD AVENUE
COLUMBIA, SC 29201
(803) 771-7211

FIRST CITIZENS BANK
COLUMBIA, SC

67-604/539

10149

10/30/2017

PAY TO THE ORDER OF SC Court of Appeals

\$ **25.00

Twenty-Five and 00/100 ***** DOLLARS

SC Court of Appeals
PO Box 11629
Columbia, SC 29211



MEMO Filing Fee: Ted Polansky

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

PRESTON F. McDANIEL / McDANIEL LAW FIRM / COST ACCOUNT

SC Court of Appeals

10/30/2017

10149

scoa: filing fee: :Polansky, Ted

25.00

FC - Cost Acct. Filing Fee: Ted Polansky

25.00

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

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

October 30, 2017

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OCT 30 2017

SC Court of Appeals

VIA FAX - 734-1839

AND US MAIL

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

**RE: Theodore Polansky v. SC Attorney General
Appellate Case No. 2016-001494**

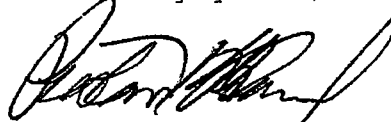
Dear Ms. Kitchings:

Pursuant to my conversation with the Court, please find attached my Motion for the Respondents to correct, amend or supplement the Record on Appeal to include the Designation of Matter not included in the Record on Appeal as served upon the Respondent in this matter, for the costs of this Motion and for a 20-day extension of time after the filing of the corrected Record for the filing of the Final Brief of the Respondent in this matter.

The required filing fee of \$25.00 and Affidavit of Service on Appellants' counsel is also included.

As always, I appreciate all the courtesies and kindnesses shown to me by the Court.

Sincerely yours,



Preston F. McDaniel

PFM/abh
Enclosures

cc: Temus C. Miles, Jr., Esquire (via email tmiles@mckayfirm.com and US Mail)

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Telephone (803) 771-7211
Facsimile (803) 252-0709
SC Court of Appeals

FAX TRANSMISSION COVER SHEET

Date: October 30, 2017
From: McDaniel Law Firm
To: Hon. Jerry Abbott Kitchings / Clerk of Court
Fax Number Called: 734-1839
Regarding: Polansky App. Case No. 2016-001494
Comments:

Please see attached.

Thank you.

We are transmitting 9 pages, including face sheet.

If you have any problems with this transmission, please call me at 803-771-7211.

Transmitted from Fax Number 803-252-0709

Transmitted by:

Andree Han

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICKLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA U.S. POSTAL SERVICE. THANK YOU.