

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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W.C.C. File No.: 1502120

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RECEIVED  
NOV 03 2017  
S.C. SUPREME COURT

Reginald Evans, Employee, Claimant ..... Petitioner,

v.

Exel Inc., Employer, and  
New Hampshire Insurance Company, Carrier, ..... Respondents.

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**RETURN IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI**

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Pursuant to Rules 242 and 260, SCACR, Respondents Exel Inc. and New Hampshire Insurance Company hereby oppose Petitioner Reginald Evans' Petition for a Writ of Certiorari ("Petition"). First, it is unclear whether Petitioner has submitted the required filing fee pursuant to Rule 242(c), SCACR, as the copy served on the undersigned did not include a cover letter or any other indication that the fee had been paid.

Second, the Petition is wholly improper, as the Court of Appeals has never reached the substance of Petitioner's appeal due to his repeated failure and refusal to file a proper Record on Appeal. Instead, after initial briefing, Petitioner filed his Final Brief. Attached to his Appellant's Final Brief was a copy of his previously-filed Designation of Matter retitled "Record on Appeal." (Exh. 1).

Respondents submitted a letter to the Court of Appeals indicating they had not been served with a Record on Appeal. (Exh. 2). The Court of Appeals sent Petitioner a deficiency letter, explaining the error and notifying Petitioner that the Record on Appeal was due by May 1, 2017. (Exh. 3).

In response, Petitioner sent a fax to Respondents with the same Designation of Matter retitled "Record on Appeal." (Exh. 4). Respondents sent another letter to the Court of Appeals advising that they still had not received a proper Record on Appeal. (Exh. 5). After Petitioner submitted the same Designation of Matter retitled "Record on Appeal" to the Court of Appeals on May 9, 2017, (Exh. 6), the Court of Appeals issued an Order dismissing his appeal for failing to serve and file a Record on Appeal as is required by Rule 210, SCACR. (Exh. 7).

Petitioner moved to reinstate his appeal, (Exh 8), which Respondents opposed. However, on July 19, 2017, the Court of Appeals issued an Order ordering Petitioner to serve and file a Record on Appeal that included all matters designated by both parties, and advising that it would act on his petition to reinstate the appeal upon receipt of the Record on Appeal or the expiration of 20 days. (Exh. 9).

In response, Petitioner filed a Record on Appeal that contained one item – the Order of the Single Commissioner. (Exh. 10). Respondents filed a Motion to Dismiss the appeal, pointing out that the parties, Petitioner included, had designated many more items to be included in the Record on Appeal. (Exh. 11). Instead of granting Respondents' Motion to Dismiss, on August 15, 2017, the Court of Appeals gave Petitioner another chance to file a proper Record on Appeal within 20 days of the Order. (Exh. 12).

Rather than file the Record on Appeal, Petitioner filed an Objection to Motion to Dismiss Appeal. (Exh. 13). In light of Petitioner's failure to file a proper Record on Appeal despite repeated opportunities to do so, the Court of Appeals finally dismissed his appeal on October 6, 2017. (Exh. 14).

As this Court is aware, the appellant bears the responsibility to produce a proper record on appeal. Rule 210, SCACR, is mandatory, stating that, "the appellant shall serve a copy of the Record on Appeal on each party who has served a brief." In addition, the Record on Appeal "shall include all matter designated to be included by any party under Rule 209 ...". Clearly, the Record on Appeal served and filed by Petitioner failed to meet the mandatory requirements of Rule 210. (*See* Exh. 10).

Petitioner has been provided multiple opportunities to comply with this Court's rules of appellate procedure and has willfully refused to do so. Pursuant to Rule 260(a), SCACR, "[w]henver it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court."

Petitioner cites two summary judgment cases, one of which is unpublished, Woodson v. DLI Props., LLC, 2011 S.C. App. Unpub. LEXIS 358 (Ct. App. 2011), and, therefore, cannot be cited as precedent. Rule (d)(2)268, SCACR. In Woodson, the Court of Appeals affirmed a grant of summary judgment on the ground that the circuit court might have articulated the basis for its decision during the summary judgment hearing and the appellant had failed to include the transcript of that hearing in the Record on Appeal. This Court reversed the Court of Appeals' unpublished opinion in Woodson v. DLI Props., LLC, 406 S.C. 517, 753 S.E.2d 428 (2014), but upheld the grant of summary

judgment, finding that the circuit court had adequately outlined its reasoning in its written decision. The Record on Appeal in Woodson contained all of the “memoranda, affidavits, and other evidence presented to the circuit court,” which the respondents conceded allowed for meaningful appellate review. 406 S.C. at 526 & n.7, 753 S.E.2d at 432-433 & n.7. Here, in contrast, the Record on Appeal filed and served by Petitioner does not even contain the final order of the Commission, which was designated by both parties, or any of the pleadings filed with the Commission. Despite Petitioner’s assertion otherwise, a Record on Appeal that contains only one intermediate decision is not sufficient to allow for meaningful appellate review. As was the case in Hamilton v. Greyhound Lines East, 281 S.C. 442, 316 S.E.2d 368 (1984), also cited by Petitioner, dismissal was the appropriate remedy because Petitioner failed to furnish an adequate Record on Appeal.

Therefore, because the Court of Appeals has not reached the merits of this case and has dismissed his appeal due to Petitioner’s repeated failure to produce an even arguably proper Record on Appeal, his Petition to this Court is entirely improper and should be denied.

**CONCLUSION**

For all the reasons stated herein, this Court should deny Appellant's Petition.

McANGUS GOUDELOCK & COURIE, LLC

November 1, 2017..



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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

W.C.C. File No: 1502120

Reginald D. Evans, Employee, Claimant.....Appellant,

v.

Exel Inc. Employer and New Hampshire Insurance Company Carrier.....Respondents,

APPELLANTS' FINAL BRIEF

April 18, 2017

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STATEMENT OF ISSUES ON APPEAL

1. Did the Commission err in, Appellant did not seek an award of disfigurement at initial hearing and is therefore is barred from doing so on appeal?
2. Did the Commission err in, only awarding the Appellant 35% permanent partial disability to leg minus credit of overpayment of TTD
3. Did the Commission err in, not requiring Respondent to pay Appellant legal fees and Long-Term Disability?

## STATEMENT OF THE CASE

On February 21, 2015 Appellant sustained right leg crush injury while working for the Respondent. As result of the injury, Appellant suffered an open wound which became infected. The Appellant now has a 6 to 7 inch scar on the right leg which is about 2 inches in width which became a Keloid. On July 8, 2015 an EMG study confirmed permanent nerve damage in the right leg.

On January 8, 2016 Appellant doctor released the Appellant was at maximum medical improvement. Appellant doctor opined the Appellant has permanent light duty restrictions, which also include of no lifting over 20 lbs, no sitting for more than 2 hours and no standing for more than 2 hours. The hearing Commissioner Aisha Taylor issued an order and finding which stated " based on the medical evidence including Claimant's impairment rating and permanent work restrictions, which we find severely limits his ability to return to work given his work history."

## FACTS

1. The Appellant was covered employee at all times stated.
2. The Appellant was employer was a covered under the Act.
3. The Appellant did sustain a compensable injury in the course and scope of his employment to the right leg.

## ARGUMENTS

- I. Appellant did not seek an award of disfigurement at initial hearing and is therefore is barred from doing so on appeal. The Commission Erred not awarding disfigurement due to ineffective counsel of the Appellant attorney. The Appellant clearly have a keloid.
- II. Respondent will pay the Appellant 35% permanent partial disability to leg minus credit of overpayment of TTD. The Commission found Appellant doctor opined the Appellant has permanent light duty restrictions, which also include of no lifting over 20 lbs, no sitting for more than 2 hours and no standing for more than 2 hours. The hearing Commissioner Aisha Taylor issued an order and finding which stated " based on the medical evidence including Claimant's impairment rating and permanent work restrictions, which we find severely limits his ability to return to work given his work history." The Commission should have found the Appellant at least or more than 60% permanent partial disable. The Respondent did not offer the Appellant another job. At no time did the Appellant refuse to return to work therefore the Respondent should not be entitled to overpayment.

- III. Respondent was not required to pay Appellant legal fees. Due to ineffective counsel of the Appellant attorney, the Appellant attorney did not request refund of attorney fees. The Respondent told Liberty Mutual Insurance that the Appellant was not entitled to Long-Term Disability.

### CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Workers' Compensation Commission and Remand the Case to the Commission to follow the opinion of this Honorable Court.

Respectfully submitted,

April 18, 2017

A handwritten signature in cursive script, appearing to read "Reginald Evans".

Reginald Evans  
1200 Broad Street #123  
Sumter, SC 29150  
484-725-0621

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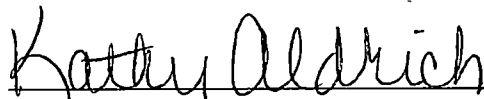
Exel Inc., Employer, and  
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**PROOF OF SERVICE**

I certify that I have served the Respondents' **Return in Opposition to Petition for Writ of Certiorari** on Reginald Evans, by depositing a copy of it in the United States Mail, postage prepaid, addressed to him as follows:

Reginald Evans  
1200 Broad Street, #123  
Sumter, South Carolina 29150

November 1, 2017

  
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