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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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NOV 30 2017

SC Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

WCC File No.: 1408826

Gennette Sowell, Employee,.....Petitioner,

v.

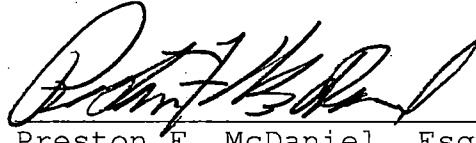
Piggly Wiggly, Employer, and
Auto Owners Insurance, Inc., Carrier,.....Respondents.

MOTION FOR AN ORDER REQUIRING
PAYMENT PURSUANT TO SOUTH CAROLINA
CODE §42-17-60 AND FOR PENALTIES,
FINES, INTEREST AND ATTORNEYS FEES
PURSUANT TO THE SOUTH CAROLINA
CODE OF LAWS

YOU WILL PLEASE TAKE NOTICE that pursuant to provisions of South Carolina Code §42-17-60, the Respondent hereby moves for and Order ordering the Appellants to comply with the Award of the South Carolina Workers' Compensation Commission and to make payments of both weekly compensation and for medical care in this matter. 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, SC 29201
(803) 771-7211

And

Gerald Malloy, Esquire
SC Bar No. 12033
Malloy Law Firm
108 Cargill Way
Hartsville, SC 29551
(843) 339-3000
Attorneys for Respondent

November 29, 2017

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

WCC File No.: 1408826

Gennette Sowell, Employee,.....Petitioner,

Piggly Wiggly, Employer, and
Auto Owners Insurance, Inc., Carrier,.....Respondents.

**MEMORANDUM IN SUPPORT OF
MOTION FOR AN ORDER REQUIRING
PAYMENT PURSUANT TO SOUTH CAROLINA
CODE S42-17-60 AND FOR PENALTIES,
FINES, INTEREST AND ATTORNEYS FEES
PURSUANT TO THE SOUTH CAROLINA
CODE OF LAWS**

The Respondent would respectfully show unto the Court:

1. That the South Carolina Workers' Compensation Commission filed an Award for total and permanent disability with accompanying lifetime medical benefits in the above-referenced matter on October 17, 2017. A Notice of Appeal was filed in that matter with this Court on November 16, 2017.

2. That the provisions of SC Code §42-17-60 require that 30-days after the Final Award is filed by the South Carolina Workers' Compensation Commission that the Defendants are required to make payment of weekly compensation benefits and all medical care as awarded is to be paid during the pendency of the Appeal. The Final Award of the South Carolina Workers' Compensation Commission was filed on October 17, 2017.

3. That the Respondent has requested payments of weekly compensation and medical care to begin pursuant to the provisions of the statute under the Award of the Commission and those payments were to begin on November 16, 2017 and such payments have not begun. Copy of the written request is attached hereto as Exhibit A. Further the Respondent has been notified by counsel for the Appellants that the Defendants/Appellants have been notified to begin payments but she has not been notified as to whether or not the Defendants will comply with the provisions of the Code. See Affidavit attached hereto and incorporated herein by reference.

4. That the Defendants/Appellants are now two weeks late in payment pursuant to the provisions of the SC Code

§42-17-60 and are thus in non-compliance with an Award of the Commission. Per counsel's Affidavit, the Respondent has received no notice of intent to comply.

5. That SC Code §42-9-90 provides that when there is an award of compensation that is due and payable under an Award of the Commission which is not paid within fourteen days of the date that it is due that a penalty for nonpayment is to be added to the Award.

6. That SC Code §42-9-240 provides that to such Award, the Claimant is entitled to judgment interest. Further, under SC Code §42-1-640, the Defendants having failed to perform this statutory duty of instituting payments under the Act, the Defendants/Appellants are subject to a monetary penalty in an amount as determined to be appropriate by the Court for such failure.

7. That under the provisions of SC Code §42-3-175 a claimant may bring an action before the Commission to enforce an Order and Award authorizing medical care and the payment of compensation benefits under the Act and should the Commission determine that the Defendants, without good cause, have failed to authorize medical care and/or the payment of compensation when ordered. to do so by the Commission, the

Commission "must" order payment of the Claimant's attorneys fees and costs of enforcing the Order or Award. The Commission may also impose for willful disobedience of an Order including but not limited to a fine of up to \$500.00 for each day of the violation. That having been placed on notice by both their own defense counsel and by the Claimant/Respondent of the mandatory provisions of the Act is evidence of a willful intent to not comply with the Act.

WHEREFORE, the Respondent would move for an Order of the Court:

A. Finding the Appellants to be in violation of the provisions of SC Code §42-17-60, ordering immediate payment pursuant to the statute and allowing them a period of ten days to notify the Court of their intent to comply and barring notice of payment to the Claimant and notice to all medical providers of authorization for payment; setting a date for the Appellants to appear before the Court to show just cause or excuse, if any they have, for failure to comply with the provisions of the Act.

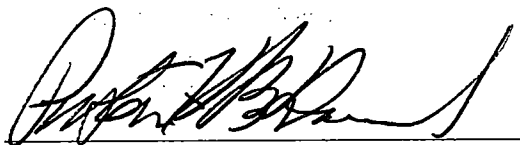
B. Ordering the payment of the penalties and interest as set forth under SC Code §42-9-90 and §42-9-240.

C. Notifying the Defendants/Appellants of intent of the Court at the Show Cause hearing if the Appellants have failed to comply with the provisions of §42-17-60 that a penalty will be assessed under §42-1-640 barring a showing of just cause and excuse.

D. Finding that the Appellants are in noncompliance with the Commission Award under the provisions of SC Code §42-17-60 and confirming that the Commission has jurisdiction over an action and allowing the Claimant has a statutory right to bring an enforcement action at the Commission under the provisions of SC Code §42-3-175 for attorneys fees and costs and for the imposition of sanctions for willful disobedience of an Order and Award of the Commission and remanding that issue to the Commission for a hearing under SC Code §42-3-175.

E. For the costs of this action and such other and further relief as the Court deems appropriate.

Respectfully submitted;



Preston F. McDaniel Esquire

SC Bar No. 3770
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201
(803)771-7211

And

Gerald Malloy, Esquire
SC Bar No. 12033
Malloy Law Firm
108 Cargill Way
Hartsville, SC 29551
(843) 339-3000
Attorneys for Respondent

November 29, 2017

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

November 21, 2017

VIA EMAIL ONLY- KMILLER@DMLAW.COM

Kenya C. Miller, Attorney
Dickie, McCamey & Chilcote, PC
P.O. Box 2046
Lancaster, SC 29721

RE: Gennette Sowell v. Piggly Wiggly
WCC File: 1408826

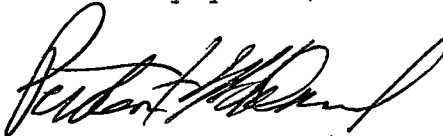
Dear Kenya:

I received your Notice of Appeal to the Court of Appeals to the Court of Appeals in the above referenced matter. Please provide written confirmation pursuant to SC Code Section 42-17-60 confirming that your client began making payment of compensation beginning on November 16, 2017, which is 30 days after the decision of the Commission and that they have notified all of the authorized medical providers to start forwarding all bills and that they will make payment for all treatment on or after November 16, 2017. If I have not received written confirmation confirming compliance with the provisions of 42-17-60 in reference to medical care and compensation during the Appeal, I will file with the Court of Appeals for a substantial fine all penalties under the Act including \$500.00 per day for noncompliance and attorney's fees and costs in reference to the provisions of benefits during appeal and enforcement of the Award.

I am sure that will not be necessary but I wanted to make sure there is compliance so Ms. Sowell at long last will receive benefits.

Finally, I noticed there was no service of my co-counsel on your notification to the Court. Please notify the Court that with Gerald Malloy, Attorney at Law is co-counsel for the Respondent.

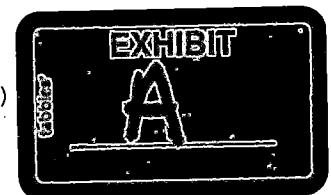
Sincerely yours,



Preston F. McDaniel

PFM/smk

cc: Gerald Malloy, Esquire (via email: gmalloy@bellsouth.net-3)



Sabrina Kelley

From: Sabrina Kelley <sabrina@pfmcdlaw.com>
Sent: Tuesday, November 21, 2017 4:02 PM
To: 'kmiller@dmlaw.com'
Subject: FW: Genette Sowell Appeal
Attachments: SCAN17112115360.pdf

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201
Telephone : (803) 771-7211
Fax : (803) 252-0709

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From: Sabrina Kelley [mailto:sabrina@pfmcdlaw.com]
Sent: Tuesday, November 21, 2017 3:37 PM
To: 'kmiller@dmlaw.com' <kmiller@dmlaw.com>
Cc: Gerald Malloy (gmalloy@bellsouth.net) <gmalloy@bellsouth.net>; gelliotte@bellsouth.net; Denise (cdenisec@bellsouth.net) <cdenisec@bellsouth.net>
Subject: Genette Sowell Appeal

Please see attached letter from Preston. Thanks & Happy Thanksgiving

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201
Telephone : (803) 771-7211
Fax : (803) 252-0709

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Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

November 27, 2017

VIA EMAIL ONLY- KMILLER@DMLAW.COM

Kenya C. Miller, Attorney
Dickie, McCamey & Chilcote, PC
P.O. Box 2046
Lancaster, SC 29721

RE: Gennette Sowell v. Piggly Wiggly
WCC File: 1408826

Dear Kenya:

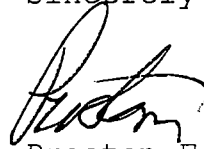
It is my understanding that you are going to be sending another formal letter to your clients about starting up benefits.

It is also my understanding that you have previously communicated with them about starting benefits but do not know whether or not they are going to do that at this time.

As we discussed, I will hold off until Wednesday filing a formal Motion, but also, you are going to send a quickie email noting to them that I really do not want to do that and that all I am really trying to accomplish is to get benefits started.

Again, per our discussion, I will hold off until Wednesday on filing the Motion. Hopefully, looking forward to hearing from you.

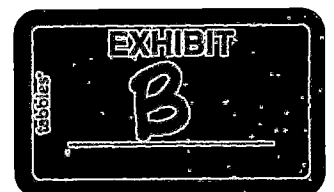
Sincerely yours,



Preston F. McDaniel

PFM/abh/rmt

cc: Gerald Malloy, Esquire (via email: gmalloy@bellsouth.net-3)



Rose Thielke

From: Rose Thielke <rose@pfmcdlaw.com>
Sent: Monday, November 27, 2017 5:15 PM
To: kmiller@dmclaw.com
Cc: gmalloy@bellsouth.net; gelliotte@bellsouth.net; 'Denise Chavis'
Subject: Gennette Sowell v Piggly Wiggly
Attachments: SCAN17112717140.pdf

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

Rose Thielke
McDaniel Law Firm

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APPEAL FROM THE WORKER'S COMPENSATION COMMISSION

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Gennette Sowell, Employee, Petitioner,

v.

Piggly Wiggly, Employer, and
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AFFIDAVIT OF PRESTON F. McDANIEL

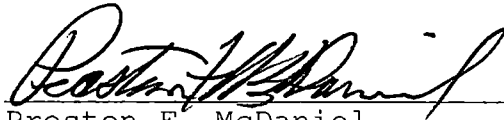
I, Preston F. McDaniel, having been duly and properly sworn do depose and state that I am co-counsel along with Gerald Malloy representing the Respondent in the above-referenced matter in which a Notice of Appeal was filed with the Court on November 21, 2017. Upon receipt of the Notice of Appeal, I contacted via letter, which is attached to the Motion as Exhibit A, a letter to defense counsel concerning the starting of weekly compensation benefits and the provision of medical care pursuant to SC Code §42-17-60. Subsequent to that letter, I heard nothing from defense counsel in reference to the intent of the Defendants to comply with the provisions of the Act and making payment of weekly compensation benefits and medical care to the

Claimant.

That subsequent thereto, having heard nothing, on November 27, 2017, I contacted defense counsel via telephone and after our conversation, confirmed our discussion in another letter which is attached hereto as Exhibit B confirming that she had previously advised her clients to comply with the statute; that she had received nothing from clients indicating any intent to comply with the statute and make payments and that she would again write them and request compliance with the Act. As of the filing of this Motion, I have heard nothing further from defense counsel concerning any intent on behalf of the Defendants/Appellants to comply with the Act.

That both Exhibit A and Exhibit B which are attached to this Motion and which are incorporated herein by reference are part of the business records of my office and were transmitted to defense counsel via electronic mail or by mail as indicated on the correspondence as to the method of transmission. These records were also copied to my co-counsel, Gerald Malloy, Esquire and are maintained as part of his business records in this matter as well.

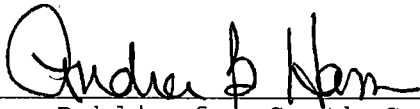
FURTHER THE AFFIANT SAYETH NOT.



Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211
Attorney for Petitioner

SWORN before me this

30th day of November, 2017.



Notary Public for South Carolina.

My Commission Expires: 2-27-24

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PROOF OF SERVICE

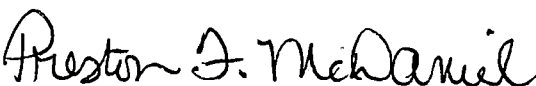
I certify that I have served the MOTION FOR AN ORDER
REQUIRING PAYMENT PURSUANT TO SOUTH CAROLINA CODE §42-17-60 AND
FOR THE PENALTIES, FINES, INTEREST AND ATTORNEYS PURSUANT TO THE
SOUTH CAROLINA CODE OF LAWS by depositing a copy of it in the
United States Mail, postage prepaid, on November 30, 2017
addressed to:

Kenya C. Miller, Attorney
Dickie, McCamey & Chilcote, PC
P. O. Box 2046
Lancaster, SC 29721

And Via Hand-Delivery to:

Honorable Jenny Abbott Kitchings
S.C. Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Dated: November 30, 2017


Preston F. McDaniel (aleh)
SC Bar #3770
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211
Counsel for Appellant

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
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South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

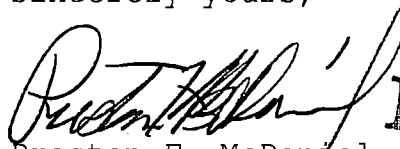
**RE: Gennette Sowell, Claimant/Respondent v.
Piggly Wiggly, Employer and Auto Owners Insurance
Inc., Carrier/Appellants
WCC File: 1408826**

Dear Ms. Kitchings:

Please find attached the original and required number of copies of a Motion for an Order Requiring Payment under SC Code §42-17-60. Also, enclosed is a copy to be clocked to me. Also, enclosed is the required \$25.00 filing fee and the Affidavit of Service of the Motion on defense counsel.

I hope this is sufficient for filing with the Court and as always, I appreciate all the courtesies and kindnesses shown to me by the Court in this and all matters.

Sincerely yours,


Preston F. McDaniel

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NOV 30 2017

SC Court of Appeals

PFM/abh
Enclosed

cc: Kenya Miller (via US Mail)
Gerald Malloy, Esquire (via email: gmalloy@bellsouth.net-3)

McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201

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