

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

Appellate Panel, S.C. Workers' Compensation Commission

WCC FILE NO. 1408826

Gennette Sowell,

Claimant/Respondent,

v.

Piggly Wiggly,

Employer,

And

Auto Owners Insurance Inc.,

Carrier/Appellants.

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DEC 14 2017
SC Court of Appeals

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

Respondent filed a Motion requesting the Court of Appeals order the Appellants to pay an award pursuant to S.C. Code Ann. §42-17-60 on November 30, 2017. Appellants hereby respond to the Respondent's Motion as follows:

- 1) The South Carolina Workers' Compensation Commission filed an Order awarding the Claimant permanent and total disability benefits on October 17, 2017.
- 2) Appellants timely filed a Notice of Appeal to the South Carolina

Court of Appeals on November 16, 2017.

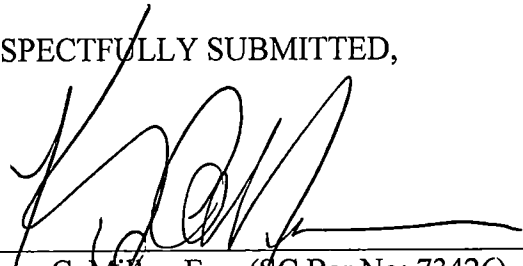
3) Rule 205 of the South Carolina Appellate Court Rules provides that “[u]pon service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.”

4) Similarly, South Carolina Appellate Court Rule 241 establishes the general rule that filing a notice of appeal automatically stays matters decided in the order, judgment, decree or decision on appeal and automatically stays the relief ordered in the appealed order, judgment, decree or decision on appeal. Moreover the general rule establishes “the lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal *including the authority to enforce any matters not stayed by the appeal.*” (Emphasis added). Rule 241 further details that Worker’s compensation awards, as referenced in S.C. Code Ann. §42-17-60, are a specific exception to the general rule, and therefore, the South Carolina Worker’s Compensation Commission retains jurisdiction over such matters.

5) Based on Rule 205 and Rule 241 of the South Carolina Appellate Court Rules, the South Carolina Worker’s Compensation Commission has jurisdiction over the subject matter of Respondent’s Motion.

Based on the above, the Court of Appeals does not have jurisdiction to hear the Motion filed by the Respondent. As such, Appellants respectfully request the Court deny and/or dismiss the Motion in its entirety.

RESPECTFULLY SUBMITTED,



Kenya C. Miller, Esq. (SC Bar No: 73426)
Kristian C. Bell, Esq. (SC Bar No: 76578)
DICKIE, McCAMEY & CHILCOTE, P.C.
P.O. Box 2046
Lancaster, South Carolina 29721
(803)285-0004
kmiller@dmclaw.com
kbell@dmclaw.com
Attorneys for Appellants

December 11, 2017

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And

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CERTIFICATE OF SERVICE

The undersigned certifies that she is an employee Dickie, McCamey & Chilcote, P.C. and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, as well as Rule 203 and Rule 262 of the SCACR, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO:

VIA REGULAR U.S. MAIL
Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

VIA REGULAR U.S. MAIL
Preston F. McDaniel, Esquire
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201

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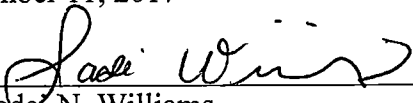
SC Court of Appeals

VIA REGULAR U.S. MAIL

Gerald Malloy, Esquire
Malloy Law Firm
108 Cargill Way
Hartsville, SC 29551

DOCUMENT: Appellants' Response to Respondent's Motion for an
Order Requiring Payment Pursuant to Section 42-17-60
and for Penalties, Fines, Interest and Attorneys Fees

DATE OF MAILING: December 11, 2017



Sade N. Williams
Legal Assistant to Kenya C. Miller, Esquire

6434923.1

Kenya C. Miller
Attorney at Law
Admitted in SC

803-285-0034
Fax: 888-811-7144
kmiller@dmclaw.com

December 11, 2017

VIA REGULAR U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Gennette Sowell v. Piggly Wiggly
Date of Accident: 01/06/2014
WCC File No.: 1408826
Appellate Case No.: 2017-002396
Our File No.: 0056461.0349337
Claim No.: 36-1835-2014

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Dear Ms. Kitchings:

Enclosed for filing please find one (1) original and six (6) copies of Appellants' Response to Respondent's Motion for an Order Requiring Payment Pursuant to South Carolina Code Section 42-17-60 and For Penalties, Fines, Interest and Attorneys Fees in the above-referenced matter. By copy of this letter, we are serving the our response on Respondent via regular U.S. mail to her attorneys, Preston McDaniel, Esquire and Gerald Malloy, Esquire. Enclosed please find a certificate of service verifying same. Please feel free to contact me should you have any questions or concerns regarding this submission.

Very truly yours,


Kenya C. Miller, Esquire

KCM/snw
Enclosures

cc: Ryan Hall, Auto Owners Insurance	(via email)
Stephanie Wilson, Auto Owners Insurance	(via email)
Preston McDaniel, Esquire	(via regular mail)
Gerald Malloy, Esquire	(via regular mail)

Dickie McCamey

DICKIE, McCAMEY & CHILCOTE, P.C.
P.O. BOX 2046 | LANCASTER, SOUTH CAROLINA 29721

FIRST CLASS MAIL

Dickie McCamey

DICKIE, McCAMEY & CHILCOTE, P.C.
P.O. BOX 2046 | LANCASTER, SOUTH CAROLINA 29721

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

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