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THE STATE OF SOUTH CAROLINA
In the Supreme Court

FEB 23 2018

APPEAL FROM THE SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION **S.C. SUPREME COURT**

APPELLATE CASE NO. 2017-002251

Clarence B. Winfrey, Jr., Employee, Respondent,

v.

Archway Services, Inc., Employer,
And American Fire & Casualty Insurance Company,
Carrier, Petitioners.

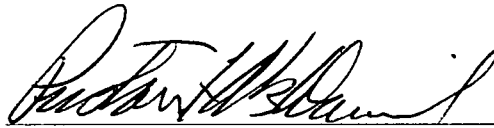
**NOTICE OF MOTION AND MOTION TO COMPEL
PAYMENT OF MEDICAL CARE AS ORDERED BY
THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION PURSUANT TO S.C. CODE §42-17-60**

TO: BRETT H. BAYNE, ESQUIRE, ATTORNEY FOR DEFENDANTS/
PETITIONERS:

YOU WILL PLEASE TAKE NOTICE that pursuant to SCACR Rule 240 and pursuant to the provisions of S.C. Code §42-17-60, the Respondent hereby moves for an Order of the Court ordering that the Defendants, Petitioners before this Court, provide medical care under the Award of the South Carolina Workers' Compensation Commission affirmed by the Full Commission, affirmed by the Court of Appeals, Rehearing denied and now pending before this Court wherein under the provisions of the S.C. Code §42-17-60 during the pendency of the Appeal and the Petition for a Writ of

Certiorari pending before this Court in this matter. The Petitioners are to provide all medical care as awarded by the Commission. Said Motion is based upon the Memorandum in Support of Motion as attached hereto and incorporated herein by reference.

I SO MOVE.



Preston F. McDaniel
SC BAR NO. 3770
MCDANIEL LAW FIRM
1315 Elmwood Avenue
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(803) 771-7211
Attorney for Movant/Respondent

February 23, 2018

Other Counsel of Record:

Brett H. Bayne, Esquire
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Attorney for Petitioners

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**MEMORANDUM IN SUPPORT OF
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In support of the Motion for payment of medical care pursuant to the Award of the South Carolina Workers' Compensation Commission and pursuant to the provisions of S.C. Code §42-17-60, the Movant would respectfully show unto the Court as follows:

1. That by Award of the Hearing Commissioner filed February 24, 2014, the Commissioner ordered the provision of causally related medical care and in this case specifically in reference to the Claimant's heart as follows:

"IT IS FURTHER ORDERED that the Claimant having been found to have sustained compensable injury specifically to include injury to his heart, the Claimant is to receive medical care for all injuries and conditions stemming from the accident that occurred in this matter and specifically to include all conditions related to the heart as found to be causally related by the authorized treating physicians which are hereby declared to be Dr. Jeffrey A. Travis and Dr. Lanneau D. Lide." (App. p. 48).

2. That the Petitioners before this Court and Defendants below appealed that decision which was affirmed by the Full Commission by Order filed on July 25, 2014.

3. That the Defendants below then filed an Appeal as to that decision with the South Carolina Court of Appeals. The decision of the South Carolina Workers' Compensation Commission was subsequently affirmed by Order of the Court of Appeals as Unpublished Opinion No. 2017-UP336 filed on August 2, 2017 (App. p. 652-668). A Petition for Rehearing was filed which was denied by Order of the South Carolina Court of Appeals filed September 28, 2017 (App. p. 651).

Of note, during the pendency of the Appeal before the South Carolina Court of Appeals, the Defendants/Petitioners failed to comply with the provisions of S.C. Code §42-17-60 concerning medical care which resulted in a Motion being filed in the Court of Appeals to order medical care be

provided in accordance with the provisions of §42-17-60 which Motion is attached hereto and incorporated herein by reference in reference to the provision of a heart valve replacement surgery at MUSC as Exhibit A. The Order of the Court of Appeals ordering that the Defendants provide the medical care immediately filed March 18, 2017 is attached hereto and incorporated herein by reference as Exhibit B.

4. That thereafter in contravention of the South Carolina Court of Appeals direction to provide the heart valve replacement surgery, attached as Exhibit C are pleadings filed with this Court wherein the Defendants failed to provide the heart valve replacement surgery and continued to attempt to schedule the deposition of the physician at MUSC through July, 2016 thus delaying the surgery until August of 2016 due to the doctor's office being given the impression that the surgery could not be performed until after the deposition.

5. That in addition thereto and as attached hereto as Exhibit D, during the pendency of the Appeal and after the provision of the medical care in reference to the heart valve replacement surgery while this matter was still pending in the South Carolina Court of Appeals, Defendants/

Petitioners filed a Motion with the South Carolina Workers' Compensation Commission seeking an Order denying the Claimant further workers' compensation benefits and further medical care on the basis of a totally separate unrelated action involving the filing of a complaint by the Claimant as a Plaintiff in the Circuit Court alleging bad faith failure to pay benefits, fraud and other causes of action again filed with our Court of general jurisdiction, the South Carolina Circuit Court. That action of filing a Motion resulted in the stoppage of benefits and then an Order of the South Carolina Court of Appeals, finding that the Commission had no jurisdiction, vacating the decision of the Commission and ordering the reinstatement of benefits during the pendency of the Appeal. Said Order of the South Carolina Court of Appeals is attached hereto and incorporated herein by reference as Exhibit E.

6. That subsequent to the Court of Appeals Reinstatement Order and during the pendency of the Appeal and up until approximately December, 2017, the Defendants basically, while requiring detailed, exhaustive documentation requests, and confirmations not normal to a workers' compensation claim processing which resulted in

long delays in treatment and bordered on harassment, [ex. stroke rehabilitation authorized/stopped due to surgery; after surgery no authorization without new written orders.], provided medical care pursuant to S.C. Code §42-17-60 under the care of the authorized treating cardiologist, Dr. Lanneau D. Lide, M.D. as well as other authorized and designated medical providers.

7. That as attached hereto and incorporated herein by reference, on or about January 2, 2018, the Movant/ Respondent the injured worker through his counsel notified Liberty Mutual Insurance Company through its defense counsel and through its adjuster (managing agent) that the authorized treating cardiologist after examination on December 26, 2017 had ordered heart-related tests and medical procedures to be performed.

As set forth in the records of Claimant's counsel, emails, documents and correspondence, between January 2, 2018 and February 21, 2018, attached hereto and incorporated herein by reference as Exhibit F, and referred to by date, establish that constant, communications (beginning on January 2nd/Orders sent Exhibit F, p. 1-5 and 6-8) were had with the adjuster and defense counsel in reference to the testing, authorization for the testing and then authorization for the procedure that the authorized

treating physician determined to be necessary in reference to the Claimant's heart and heart condition; and post-testing and procedure requesting confirmation that authorization was given. For instance, pre-procedure:

1. Email 1/4/18 2:38 p.m. - request for authorization for stent and to reinstate rehabilitation and home care after procedure. (Exhibit F, p. 9-12).

2. Email 1/5/18 3:15 p.m. - notification to adjuster t/c with client that hospital informed him of refusal of authorization and requesting basis for denial. (Exhibit F, p. 13).

3. Email 1/5/18 4:45 p.m. - attaching copy of statement from authorized treating physician that all procedures and testing are related unless otherwise stated. (Exhibit F, p. 14-15).

Claimant's counsel and staff when authorization was not forthcoming and because of the immediacy and urgency of the need for the procedure due to a 90% blockage, advised the Claimant to file this with Medicare to prevent delay in the procedure being performed. On and after January 11, 2018 as set forth in the emails and communications, the Claimant notified the Defendant, Liberty Mutual Insurance Company and its assigned attorney and adjuster who is charged with handling all claims administration that the

Claimant had proceeded in this fashion to prevent delay in the procedure being performed. (Exhibit F, p. 16-18).

As set forth in the Questionnaire Letter sent by Ms. Elizabeth Wrinkle, adjuster and managing agent for Liberty, to Dr. Lanneau Lide, M.D. (authorized physician in the Award), with a copy to Claimant's counsel, the adjuster had forwarded the letter seeking a determination before authorization would be given as to whether or not this procedure and the medical treatment were causally related to the original work-related injury. The treating cardiologist, Dr. Lide, completed and signed the letter responding that the care/procedure was causally related to the original work-related injury and upon information and belief, a copy was forwarded to the adjuster. Counsel for the Claimant after obtaining the doctor's records forwarded another copy of the signed Opinion statement via letter and email to the adjuster and defense counsel. (Exhibit F, p. 19-21). Thereafter, counsel sought confirmation that with this Opinion Letter that authorization for the procedure and medical care had been provided to the providers. (Exhibit F - letter emails 1/11/18; 1/19/18; and email 1/24/18; p. 16-22).

Subsequently with no response, counsel for the Claimant, after the Claimant received billing statements

wanting balances paid and noting that Medicare had been billed for the procedure, again wrote defense counsel with a copy to the adjuster on Monday, February 19, 2018 (Exhibit F, p. 23) asking for confirmation that authorization had been provided. That email was sent on February 19, 2018 at 2:34 p.m. and at 2:42 p.m. (presumably after consultation with his client), defense counsel replied denying this as being causally related and refusing to make payment as attached hereto and incorporated herein as Exhibit G, p. 1.

8. That as set forth hereinabove, this matter is still on Appeal and is pending a determination on the Writ of Certiorari as filed by the Petitioners, the Defendants below, in this Court challenging the Award of benefits to this injured worker. Therefore, at this time, this Court has jurisdiction over this matter during the pendency of the Appeal and Petition before this Court. S.C. Code §42-17-60 provides in pertinent part that during the pendency of the Appeal that,

"In case of an appeal from the decision of the Commission on questions of law, the appeal does not operate as a supersedeas and, after that time, the employer is required to make weekly payments of compensation and to provide medical treatment ordered by the Commission involved in the appeal or certification until the questions

at issue have been fully determined in accordance with the provisions of this title". (Emp. Added).

Wherefore the injured worker and Respondent before this Court and Movant in this Motion would respectfully move and pray for an Order of this High Court, pursuant to the Award of the Commission and the provisions of S.C. Code §42-17-60 and in accordance with the written opinion, which had been specifically requested by the Defendants, Liberty Mutual Insurance Company, from the authorized treating physician (cardiologist) that being Dr. Lanneau Lide, M.D. stating unequivocally that the denied treatment was directly related to the work-related accident, providing/addressing the following requests for relief and ordering Liberty Mutual to:

1. Immediately make payment for the denied medical care for the heart/related problems as ordered by his doctor.
2. Because of the course and pattern of conduct, the Claimant would request that a Rule to Show Cause be issued to the Defendant, Liberty Mutual Insurance Company and its attorney to appear before a Member of the Court or, barring an appearance before a current Member of the Court due to the pendency of the Petition before the Court, that this matter be referred by the Court to a retired Member of the

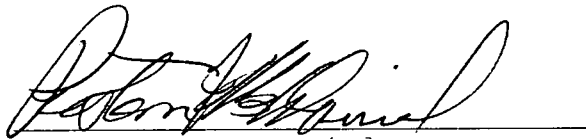
Court or such other Judge or Justice as the Court deems appropriate to hold a hearing on the Rule to Show Cause for the Petitioners and Petitioner's counsel to show just cause or excuse for the repeated failure to comply with the Award and the provisions of S.C. Code §42-17-60.

3. For attorneys fees and costs for the enforcement of the Award.

4. For such penalties and fines under S.C. Code §42-1-640; §42-3-175 and §42-17-80.

5. For such other and further relief as in the Opinion of the Court is just and proper concerning this willful violation of the provisions of S.C. Code §42-17-60.

Respectfully submitted by:



Preston F. McDaniel
SC BAR NO. 3770
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1315 Elmwood Avenue
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(803) 771-7211

Attorney for Respondent/Movant

February 23, 2018

Other Counsel of Record:

Brett H. Bayne, Esquire
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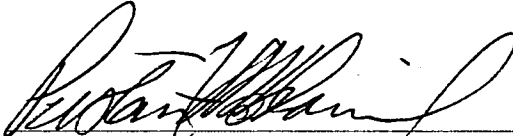
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**AFFIDAVIT OF COUNSEL IN RE:
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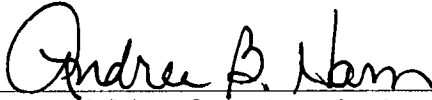
I, PRESTON F. MCDANIEL, having being duly and properly sworn, do depose and state that I am counsel for the Movant and the Respondent before this Court in the above-referenced matter. The Exhibits A-G as attached to the Motion are all documents and Exhibits contained within my file and all documents in Exhibits A-E are on Record with either the South Carolina Court of Appeals and/or the South Carolina Supreme Court. In reference to Exhibits F and G, all documents within those Exhibits are part of business records maintained by my office as part of the file of

Clarence Winfrey and concerning which I am one of the custodians in the normal course of business along with the other employees of my office in the representation of Mr. Winfrey.

FURTHER THE AFFIANT SAYETH NOT.


Preston F. McDaniel, Affiant

SWORN TO BEFORE ME this
23rd day of February, 2018.



Notary Public for South Carolina (L.S.)
My Commission Expires: 2-27-24

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PROOF OF SERVICE

I certify that I have served the NOTICE OF MOTION AND
MOTION TO COMPEL PAYMENT OF MEDICAL CARE AS ORDERED BY THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION PURSUANT TO
S.C. CODE §42-17-60 on the Respondents by depositing a copy
of it in the United States Mail, postage prepaid to their
attorney of record:

Brett H. Bayne, Esquire
McAngus, Goudelock & Courie
Post Office Box 12519
Columbia, SC 29211

Dated: 2/23/2018



Preston F. McDaniel
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Attorney for Petitioner