

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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IN THE ORIGINAL JURISDICTION  
OF THE SUPREME COURT  
PURSUANT TO RULE 245(a)(b), SCACR

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Appellate Case No: 2016-\_\_\_\_\_

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Clarence Winfrey, Employee, .....Petitioner,

v.

SC Workers' Compensation Commission  
and Form Administrative Order filed  
Without Hearing on November 8, 2016,  
and American Fire & Casualty Insurance  
Company c/o Liberty Mutual Group, ..... Respondents.

IN RE:

Clarence Winfrey, Claimant, v. Archway Services, Inc., Employer,  
and American Fire & Casualty Insurance Company,  
c/o Liberty Mutual Group, Insurance Carrier;  
SCWCC File No. 1306305

And Respondents' Appeal pending in the SC Court of  
Appeals; Appellate Case No.: 2014-001788

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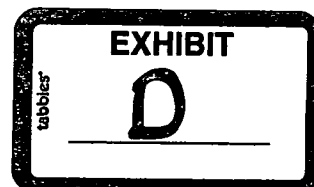
S.C. SUPREME COURT

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PETITION FOR WRITS OF PROHIBITION AND MANDAMUS  
AND FOR AN EX PARTE EMERGENCY ORDER  
STAYING THE ADMINISTRATIVE FORM ORDER  
ISSUED WITHOUT HEARING AND ORDERING  
THE REINSTATEMENT OF BENEFITS UNTIL THE  
WRITS OF MANDAMUS AND PROHIBITION CAN BE HEARD  
AND RULED UPON

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The Petitioner pursuant to Rule 240 and 245(a), (b), SCACR



hereby petitions the Court for extraordinary Writs of Prohibition and Mandamus and for an ex parte **emergency Order** based on the "special grounds of emergency" established by the facts set forth hereinafter staying the Administrative Form Order issued by the South Carolina Workers' Compensation Commissioner without hearing filed November 8, 2016, and enjoining the stoppage of benefits under that Form Order and ordering the reinstatement of benefits by Liberty Mutual Group pending a decision on the Writ of Mandamus and Writ of Prohibition. Said Petition is based upon the following:

1. That the SC Workers' Compensation Commission Awarded Mr. Winfrey temporary total disability benefits and all causally related medical care and specifically all causally related medical care for his heart, which Award was appealed to the SC Court of Appeals where it is currently pending under Appellate Case No. 2014-001788 and is set for oral argument on December 6, 2016. The Respondent Liberty Mutual Group pursuant to the mandatory provisions of SC Code §42-17-60 is paying for medical care and paying temporary total disability benefits during the pendency of the appeal. See Affidavit attached hereto and incorporated herein by reference.

2. That although the Respondent Liberty Mutual Group has denied the Petitioner's entitlement to any benefits under the Act and has appealed both the payment of any compensation and/or

medical benefits; and although under SC Appellate Court Rules, exclusive jurisdiction after appeal lies with the Appellate Courts in reference to all issues relevant to or pertaining to the issues on appeal; and while there is no action pending before the Commission, the Defendant Liberty Mutual Group filed a Motion with the Commission (attached hereto as Exhibit "A") for an Order allowing Liberty Mutual Group to stop Mr. Winfrey's temporary total disability benefits and all medical care. The Response to the Motion filed by the Petitioner with the SC Workers' Compensation Commission is attached hereto and incorporated herein as Exhibit "B". The SC Workers' Compensation Commission without hearing issued an Administrative Form Order on November 8, 2016 granting the Motion. (Exhibit "C"). In the late afternoon after 4:00 o'clock p.m. on November 10<sup>th</sup>, the assigned rehab nurse notified Mr. Winfrey and a call was received by Petitioner's Counsel from, "Betty" from Liberty Mutual notifying them that Liberty Mutual was immediately stopping Mr. Winfrey's temporary total disability benefits and all medical care.

3. That assuming for the sake of argument that the Commission has jurisdiction at this time, that the Commission statutory authority and regulatory authority contains no specific provision for any type of emergency relief. The only Regulation that applies to Motions is Regulation 67-215 and it

allows for a ten (10) day period to respond to any Motion filed. As set forth in the Affidavit, Counsel for the Defendant, the Respondent Liberty Mutual Group, has requested the full ten (10) days to respond to the Motion for Reconsideration.

4. That as is set forth in the Affidavit and as supported by the medical records and the Nurse Case Manager's Notes, Mr. Winfrey on August 26, 2016 underwent mitral valve replacement surgery at MUSC after which he sustained a stroke resulting in him being partially paralyzed on his entire left side and after inpatient rehabilitation is at home with a prescribed wheelchair, walker, and leg brace to allow him to walk at all, and is receiving home health care for all of the activities of daily living and is being provided transportation to and from all necessary medical care and functions related to his injuries. Mr. Winfrey is totally disabled and his only source of income to pay for the necessities of life including food and shelter, is his weekly workers' compensation checks.

5. That as is set forth in the response to the Motion, since this matter is pending on appeal and since the Respondents' have denied any benefits and since they are only paying pursuant to the mandatory, statutory requirements that they pay benefits during the appeal, there is nothing pending before the SC Workers' Compensation Commission; the Commission has no jurisdiction over this matter at this time; and further

this is a Motion on the merits which is improper under the Commission's own Regulations. Further, there is absolutely no statutory or regulatory authority set forth in the Motion nor does any exist to the knowledge of Counsel for the Petitioner that gives the Commission the authority at any time to stop payment of benefits based on pleadings being filed in a separate common law action in another Court. The Commission is a creation of statute and is limited to its statutory authority as specifically set forth under the SC Workers' Compensation Act. The only authority to stop benefits without a hearing is under SC Code §42-9-260 wherein during the first 150 days for certain enumerated reasons, six (6) exceptions, the Respondents may stop payment without a hearing.

6. That further the appeal is currently pending in the SC Court of Appeals and the basis for the Motion which is the civil lawsuit that the Petitioner has brought against Liberty Mutual Group under multiple causes of action is pending in the United State District Court, Columbia Division, under C/A No. 3:16-cv-03275-MBS.

7. That Petitioner verily believes that any such Motion, if proper at all, should be brought either before the SC Court of Appeals, this Court, and/or before the United States District Court. The SC Workers' Compensation Commission has no jurisdiction over a pending lawsuit in the United States

District Court or the issues on appeal. As set forth in the Memorandum, its jurisdiction is limited strictly to that provided by statute.

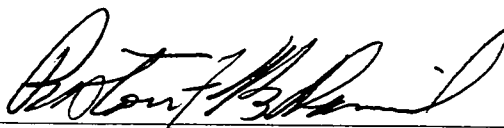
WHEREFORE, for all of the foregoing reasons and all the reasons set forth in the original Response to the Motion filed with the SC Workers' Compensation Commission, and as set forth in the Memorandum of Law attached hereto and incorporated herein by reference, the Petitioner would respectfully request a Writ of Mandamus be issued to the SC Workers' Compensation Commission ordering the Commission to perform the ministerial act of dismissing the Motion. In reference to the Writ of Mandamus, the Petitioner would cite to the case of: In The Interest of Lyde, 284 S.C. 419, 327 S.E.2d 70 (1985). The Petitioner has a clear right to the relief sought as he is entitled to benefits under the Commission Award and SC Code §42-17-60 since the Award is pending appeal and there is nothing pending before the Commission; the Respondent Liberty Mutual Group has a legal duty to pay under the Award and statute; and the Petitioner has no other adequate remedy of law. The Commission has no statutory and/or regulatory authority and lacks any specific jurisdiction at this time to entertain such Motion.

Further, the Petitioner would respectfully request a Writ of Prohibition being issued prohibiting the SC Workers' Compensation Commission from enforcing its Order and vacating

the Administrative Form Order issued by the Commission on November 8, 2016 granting the Motion for a Protective Order in that the Order was void ad initio since the Commission improperly assumed jurisdiction to entertain the Motion during the pendency of the appeal; and when no claim was pending; and issuing an Order in excess of its statutory authority and its own Regulation not to address the merits by Motion and where the Petitioner has no adequate remedy to address this improper assumption or to address this great outrage on settled principles of law or procedure. As to the Writ of Prohibition, the Petitioner would cite to the case of Berry v. Lindsay, 256 S.C. 282, 182 S.E.2d 78 (1971) (a Writ of Prohibition may issue in a proper case to restrain a judicial act).

In reference to the Protective Order, due to the Petitioner's situation, it goes without saying that without medical care and without money to buy food during the pendency of the consideration of the Petition for a Writ of Mandamus and a Writ of Prohibition that the failure of the Respondent Liberty Mutual Group to provide and/or to be ordered to continue to provide medical care and temporary total disability benefits could result in dire consequences to the Petitioner up to and including his death.

Respectfully submitted,



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

Attorney for Petitioner

November 15, 2016

**RECEIVED**  
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S.C. SUPREME COURT

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

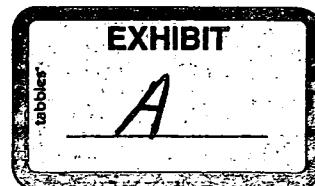
CLARENCE WINFREY,  
Employee,  
Claimant,  
vs.  
ARCHWAY SERVICES INC,  
Employer,  
AND  
AMERICAN FIRE & CASUALTY  
INSURANCE COMPANY C/O LIBERTY  
MUTUAL GROUP  
Carrier,  
Defendants.

DEFENDANTS' MOTION FOR  
PROTECTIVE ORDER

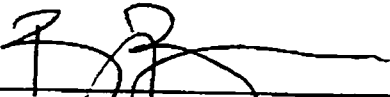
TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND PRESTON  
F. MCDANIEL, ESQUIRE:

Upon proper notice, Defendants, by and through the undersigned, hereby request a hearing and Order granting Defendant the right to indefinitely suspend all adjusting and handling of the above titled claim—to include payment of medical and compensation benefits—pending the outcome of the lawsuit filed by Plaintiff against Defendant(s) attached hereto as Exhibit A. The positions of Defendants will be further addressed in a hearing on this matter.

By way of background, this matter arises out of an alleged electrical shock resulting in an alleged heart injury. Pursuant to the laws of the State of South Carolina, Defendants have adjusted/handled this claim from the first report of injury and continuing. This Commission has conducted several hearings on this matter including Single Commissioner and Full Commission



hearings. Some of these Orders are currently on appeal. This Commission has repeatedly ruled that Defendants acted properly and in accordance with established South Carolina law. The Orders of the Full Commission currently on appeal require Defendants to provide ongoing medical care and compensation benefits. However, on September 8, 2016, Plaintiff filed a lawsuit against Defendant in the Fifth Circuit Court of Common Pleas. This Complaint is without merit and is clearly frivolous. However, for purposes of the case—and this motion—before the Commission, we must accept the allegations as true. If the allegations are determined to be true, the mere continued handling of this claim exposes Defendants to ongoing and unlimited civil liability. It would be inequitable to require Defendants to continue to provide benefits and compensation and to require Defendants to continue handling and adjusting this claim while simultaneously exposing Defendants to ever increasing civil liability. The Commission cannot require Defendants to violate the law—which Claimant has alleged Defendants are doing in their handling of this claim. Therefore, this Commission should issue an Order permitting Defendants to cease all activity on this claim pending the resolution of the Complaint filed by Claimant in the Fifth Circuit. To hold otherwise would be to order Defendants to violate the law and subject Defendants to further civil liability.

  
BRETT W. BAYNE  
MCANGUS GOUDELOCK & COURIE, L.L.C.  
Post Office Box 12519, Capitol Station  
Meridian, 1320 Main Street, 10<sup>th</sup> Floor  
Columbia, South Carolina 29211-2519  
(803) 779-2300  
Attorneys for the Employer/Carrier

Columbia, South Carolina  
October 18, 2016

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

CLARENCE B. WINFREY, JR., )

C/A No. 2016-CP-40-\_\_\_\_\_

Plaintiff, )

v. )

AMERICAN FIRE AND CASUALTY )  
INSURANCE COMPANY )  
c/o LIBERTY MUTUAL GROUP, )

Defendant. )

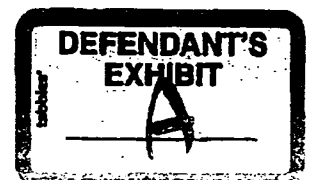
COMPLAINT  
(Jury Trial Demanded)

2016 SEP - 8 PM 4:27  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.

RICHLAND COUNTY  
FILED

The Plaintiff above-named, complaining of the Defendant  
above named, would respectfully allege and show unto this  
honorable Court:

1. That the Plaintiff, Clarence B. Winfrey, Jr., is a resident of Lexington County, South Carolina and that at the time of the work-related injury that gave rise to this cause of action, the Plaintiff was an employee of Archway Services, Inc.
2. That the Defendant American Fire and Casualty Insurance Company is a corporation chartered under the laws of the one of the states of the United States and is licensed to do and does business in South Carolina, specifically writing workers' compensation insurance policies for employers to cover their employees in the State of South Carolina.
3. That at the time of the work-related injury giving rise to this Complaint, the American Fire and Casualty Insurance Company c/o Liberty Mutual Group was the insurance carrier for



the employer, Archway Services, Inc., pursuant to the provisions of the SC Workers' Compensation Act and had an active policy in place to cover all work-related injuries for the employer and pursuant to the Workers' Compensation Act is subrogated to the rights and benefits of the employer under the Workers' Compensation Act. At the time of the filing of this Complaint and at all times relevant hereto the Defendant American Fire and Casualty Insurance Company has employed as the Attorney of Record before the SC Workers' Compensation Commission in the claim for benefits filed by the Plaintiff under the Workers' Compensation Act which is designated as SC Workers' Compensation Commission claim #1306305, Clarence B. Winfrey, Jr., employee/claimant v. Archway Services, Inc., employer; and American Fire and Casualty Insurance Co. c/o Liberty Mutual Group, insurance carrier/defendants. Mr. Brett H. Bayne who has his principle place of business at the time of the filing of this Complaint and at all times relevant hereto at Meridian Building, 1320 Main Street, 10<sup>th</sup> Floor, Columbia, South Carolina.

4. That as is set forth hereinabove, the Defendant American Fire and Casualty Insurance Company is in the business of providing and has issued and at the time of injury occurring on May 22, 2013, had issued and was the insurance carrier for workers' compensation purposes under an insurance policy issued to the Plaintiff's employer, Archway Services, Inc.

5. That on May 22, 2013 while performing his duties as an employee of his employer, the Plaintiff incurred a work-related electrocution injury while performing work on a rotisserie grill at the Publix Supermarket located on Rosewood Drive, Richland County, South Carolina; which injury was thereafter properly and timely reported to his employer, Archway Services, Inc., who in turn reported the work-related accident to its insurance carrier, the Defendant American Fire and Casualty Insurance Company.

6. That subsequent to the reporting of the injury, workers' compensation weekly benefits were started to the Plaintiff and medical care and treatment for injuries arising out of the work-related accident was authorized by Defendant American Fire and Casualty Insurance Company; and specifically with Lexington Medical Center and Dr. Jeffrey A. Travis, respectfully as the attending/authorized cardiovascular surgeon and Dr. Lanneau D. Lide as the "attending"/treating cardiologist, were authorized to treat the Plaintiff.

7. That as a result of the electrocution injury and as part of that authorized care, the Plaintiff underwent "urgent" open heart surgery involving repair of a ventricular septal defect and coronary artery by-pass surgery.

8. That subsequent to the authorization of medical care and the provision of weekly compensation benefits to the

Plaintiff, the Defendant American Fire and Casualty Insurance Company also assigned a local rehabilitation nurse to coordinate Plaintiff's care who in July and at all times prior to September 13, 2013 in all reports made to the adjuster(s) as Managing Agent reported that she was providing rehabilitation services and coordinating the medical care due to the Plaintiff's work-related electrocution injury as being the cause of the Plaintiff's need for medical care and disability.

9. That from the date of the accident and the acceptance and payment of medical care and weekly compensation benefits to the Plaintiff and before September 12, 2013, that upon information and belief, multiple adjusters were involved as Managing Agents for the Defendant American Fire and Casualty Insurance Company for the Plaintiff's workers' compensation claim, that had been accepted and for which benefits were being paid.

10. That the SC Workers' Compensation Act provides that after acceptance of a claim and within one-hundred and fifty (150) days of the reported work-related accident that the insurance carrier may investigate and based on a, "good faith investigation" may stop benefits without a hearing prior to stopping benefits.

11. That without any prior notice, by letter dated September 12, 2013 with one (1) copy of a required workers'

compensation form, the adjuster as the Managing Agent for the insurance claim at that time notified the Plaintiff that effective as of that date they were stopping all medical benefits and weekly compensation benefits payable to the Plaintiff on the alleged basis that they had conducted a good faith investigation and were denying the claim. The Form served on the Plaintiff and the procedure used were not in compliance with the procedures and requirements of the Workers' Compensation Act and the Rules of the SC Workers' Compensation Commission.

12. That subsequent to notification that the Defendant American Fire and Casualty Insurance Company was stopping benefits based on an alleged good faith investigation and upon contact and inquiry with all of the Plaintiff's attending, authorized treating physicians, those physicians all immediately issued opinions that his disabling problems and need for medical care and specifically those in reference to his severe heart condition and problems stemmed directly from the work-related electrocution injury. Upon information and belief, the Defendant had not contacted their authorized attending physicians as to their opinions.

13. That subsequent thereto, the Plaintiff requested a hearing before the SC Workers' Compensation Commission to reinstate benefits and the only evidence sought to be admitted

at that reinstatement hearing (which was not timely submitted) by the Defendant American Fire and Casualty Insurance Company as a basis for stopping benefits were the written hospital medical treatment records of the Plaintiff. No medical testimony, no testimony to support submission, nor any Opinion Statements, nor any evidence of any kind other than the hospital records were submitted to the Commission prior to September 13, 2013 as a basis for and/or as part of or as the basis for an alleged good faith investigation upon which basis the Defendant had asserted to the Commission was the basis for the stopping of benefits.

14. That as a result of the stoppage of medical care and weekly workers' compensation benefits, the Plaintiff's treating physician Dr. Lanneau D. Lide, M.D. also stated the opinion that the failure or refusal to provide the Plaintiff full and complete medical care could have a devastating effect on his condition up to and including his death.

15. That further as a result of the stopping of weekly compensation benefits during the Plaintiff's total disability from work, the Plaintiff had to seek any assistance he could to eat and pay his bills including obtaining high interest loans to provide income during the denial.

16. That subsequent to the denial of benefits the Plaintiff also instituted an action before the SC Workers' Compensation Commission for a determination that he had

sustained compensable injury. After hearing, his injury was found to be compensable and he was awarded compensation and medical benefits by the SC Workers' Compensation Commission Hearing Commissioner.

17. That subsequent to the Award by the Hearing Commissioner, the Defendant American Fire and Casualty Insurance Company appealed that decision to the Full Commission which after hearing and review affirmed the Commissioner's decision.

18. That the Defendant American Fire and Casualty Insurance Company then filed an appeal to the SC Court of Appeals denying the compensability of the work-related injury and asking that the Decision of the SC Workers' Compensation Commission be overturned.

19. That SC law provides that during the pendency of the appeal before the Appellate Courts of our state, including the SC Court of Appeals and the SC Supreme Court, that the Defendant American Fire and Casualty Insurance Company is required to make payments of compensation and medical care as awarded by the SC Workers' Compensation Commission. That provision requiring the payment of compensation and medical care takes effect thirty (30) days after the decision of the Full Commission Decision affirming the Decision of the Hearing Commissioner in the workers' compensation matter. The failure to pay for medical

care under that provision serves as the second basis for the filing of this Complaint.

20. That subsequent to the appeal and after demand by the Plaintiff for the provision of medical care and the reinstatement of weekly compensation benefits, medical care was initially reinstated as were weekly compensation benefits and a Rehab Nurse, Mr. Howard Altman, RN, was assigned to coordinate the Plaintiff's medical benefits.

21. That subsequently Dr. Lanneau D. Lide, M.D. and Dr. Jeffrey Travis, M.D., the Plaintiff's designated "attending" and authorized treating medical providers, who pursuant to the Award were authorized to treat all heart-related problems in conjunction with any other medical providers that they deemed appropriate to fully and completely treat the Plaintiff's disabling symptoms stemming from the work-related accident, referred the Plaintiff to the Medical University of South Carolina (hereinafter "MUSC") in Charleston, SC for the specific purpose of the Plaintiff being placed upon the heart transplant list and for such other procedures and treatment including heart valve replacement or heart valve repair that the doctors at MUSC deemed necessary. As stated to the rehab nurse and as set out in their medical records, it was and is in the opinion of the Plaintiff's authorized "attending" physicians, Dr. Jeffrey Travis, M.D. and Dr. Lanneau D. Lide, M.D., that the heart valve

repair or replacement and possible heart transplant were all necessary medical treatment stemming from the Plaintiff's work-related electrocution injury as Awarded by the Commission.

22. That upon information and belief initially medical care was authorized and paid for by the Defendant American Fire and Casualty Insurance Company according to the records with the Medical University of SC; however, upon information and belief and although responsible, some of the medical services may have been paid for by the Social Security Administration under Medicare and not by the Defendant American Fire and Casualty Insurance Company.

23. That subsequently the attending and authorized medical providers at MUSC determined that the Plaintiff was in urgent need of a heart valve replacement and the Plaintiff was referred to Dr. John Ikonomidis, M.D. for the provision of that surgery and such surgery was to be immediately scheduled.

24. That the Defendant American Fire and Casualty Insurance Company did not authorize this surgery but held a conference call between the Managing Agent for American Fire and Casualty Insurance Company, their Attorney Brett H. Bayne and the Rehab Nurse after which Defendant American Fire and Casualty Insurance Company refused to provide the medical care until after they conducted the depositions of the doctors at MUSC. Upon information and belief that before the time of and at the

time of the request for the heart valve surgery replacement and at the time of the telephone conference there was no medical or medical opinion evidence that the need for the valve replacement surgery did not stem from the Plaintiff's work-related and Awarded electrocution injury.

25. That the Plaintiff instituted an action before the SC Court of Appeals which rendered a decision on March 18, 2016 denying the Defendant American Fire and Casualty Insurance Company the right to take depositions before the medical care was provided as ordered by the Medical University of SC and ordering the Defendant American Fire and Casualty Insurance Company to provide that medical care and holding that the Defendant could only challenge the causal relationship until "after" the Defendant American Fire and Casualty Insurance Company had provided the medical care.

26. That under South Carolina Law, after appeal to the SC Court of Appeals, jurisdiction over the appeal and all matters relevant thereto resides in the SC Court of Appeals. Thus after the Award was made to the Plaintiff based on his claim (action) for benefits under the Act by the SC Workers' Compensation Commission and that final Decision of the SC Workers' Compensation Full Commission was appealed there was simply nothing pending nor was there any "action"/claim before the SC Workers' Compensation Commission at the time that Defendant

American Fire and Casualty Insurance Company began to deny this medical care.

27. That subsequent to the Order of the SC Court of Appeals on March 18, 2016 ordering the Defendant American Fire and Casualty Insurance Company to provide this medical care, and at a time no action was pending before the SC Workers' Compensation Commission, the Defendant American Fire and Casualty Insurance Company's Defense Counsel, the Defendant Brett H Bayne, issued a letter and a Workers' Compensation Commission Subpoena to Palmetto Health Baptist Parkridge for medical records in reference to the Plaintiff in this action. There was nothing in the Subpoena to indicate that the medical records sought were not related to the Plaintiff's workers' compensation claim. Again, at the time that this Subpoena was issued, there was no pending action before the SC Workers' Compensation Commission and the final Award of the Commission had been issued and was on appeal before the SC Court of Appeals.

28. That subsequent to the March 18, 2016 Order, the Defendant's Counsel obtained unrelated medical records and who first requested the assigned rehab nurse to deliver and then after refused Defendant's Counsel over objection and without the Plaintiff's permission, submitted those unrelated medical records to the Plaintiff's doctors with what the Plaintiff

believes to be the clear intent and purpose of trying to deny the Plaintiff the heart valve replacement as ordered by the treating physicians at the Medical University of SC and as awarded by the Commission and as ordered by the SC Court of Appeals.

29. That in addition thereto after March 18, 2016 the Defendant's Counsel presumably at the direction of his client, continued to communicate with and attempted to schedule the deposition of Dr. John Ikonmidis and in fact requested as to whether or not the surgery could be, "put off until May 2016" to conduct a deposition. In addition, Defendant's Counsel without the knowledge or prior consent and in violation of the SC Workers' Compensation Act communicated with the Plaintiff's doctor in reference to the setting of a deposition and in reference to the Plaintiff's care so as to delay the Plaintiff's needed surgery.

30. That the Plaintiff would submit under law that a Subpoena is legal process that is issued and used in reference to a pending action and that there must be a pending action before the Tribunal under whose authority it is issued for such process to be proper. There was no pending action before the SC Workers' Compensation Commission at the time that the Subpoena issued in March of 2016 was issued by the Defendant's Counsel.

31. That SC law provides that there is to be no contact with a patient's physician and that it is a violation of his right of privacy and the doctor/patient privilege to communicate with a patient's physician without his consent or agreement. There is an exception to that general principle under the SC Workers' Compensation Act that has been created which provides that with the prior knowledge of and having been given notice of the specific reason as to the purpose of the communication that the defendants may communicate with an injured workers' physician, in this case the Plaintiff's doctors. Again such communication can only be had under that exception where the Plaintiff is placed on prior notice that such communication will take place and as to the specific purpose of that communication.

32. That as of August 2016 the surgery that was requested to be performed within seven (7) days of the time that it was felt to be necessary in January 2016 had still not been performed.

33. That the Plaintiff verily believes that the law has been violated by the Defendant in reference to these communications, the Subpoena and the actions taken by the Defendant American Fire and Casualty Insurance Company through and by its attorney.

34. That the medical bills incurred by the Plaintiff which were authorized by the Defendant American Fire and Casualty

Insurance Company for payment of the medical services at Lexington Medical Center and with Dr. Jeffrey Travis, M.D. and Dr. Lanneau D. Lide, M.D. remain unpaid as of the date of the filing of this Complaint although specifically authorized at the time that those medical services were provided between May and September 12, 2013.

35. That as a result of the acceptance of the claim between May 22, 2013 and September 12, 2013 and the authorization of medical care during that time, the Plaintiff has been subjected to extreme emotional and physical pressure and has been exposed to continual harassment by collection agencies and providers over the non-payment of the medical bills. Although authorized and entered into a contract between the Defendant and the medical providers, the Defendant's actions in breaching that contract has exposed the Plaintiff, upon information and belief, to potential liability for over three hundred thousand (\$300,000.00) dollars in medical bills incurred between May 22, 2013 and September 12, 2013. In addition, the Defendant's improper denial of benefits within the first one hundred fifty (150) days has exposed the Plaintiff to potential liability, upon information and belief, for well over one million (\$1,000,000.00) dollars in medical expenses.

FOR A FIRST CAUSE OF ACTION  
(Fraud)

36. That all the allegations contained in paragraphs 1-35 are hereby incorporated herein as if they had been set forth fully hereinafter.

37. That as set forth hereinabove, the Defendant American Fire and Casualty Insurance Company had specifically accepted the claim and authorized medical care and had been paying weekly workers' compensation benefits for a period of over one hundred fifteen (115) days at the time they stopped benefits without a hearing on the alleged basis of having conducted a good faith investigation. The Plaintiff upon information and belief would submit that there is absolutely no evidence that the Defendant American Fire and Casualty Insurance Company contacted the Plaintiff's doctors prior to stopping benefits to determine their opinion as to whether or not his injuries for which he was receiving treatment were causally related to the work-related accident. There is no evidence that the employer or any of its employees had stated anything or provided any information that would cause the Defendant American Fire and Casualty Insurance Company to deny or to establish a basis for a good faith denial. There is nothing in the medical records and no testimony or evidence was submitted at the hearing which would establish their right to stop benefits based on a good faith investigation or that any good faith investigation was conducted whatsoever.

38. That upon information and belief the Defendant American Fire and Casualty Insurance Company only took the action of stopping benefits over one hundred fifteen (115) days after having agreed to and having paid benefits to the Plaintiff and after having authorized medical care only after and with the full knowledge that the Plaintiff had incurred hundreds of thousands of dollars in medical costs related to his work-related accident which had been previously authorized by them.

39. That in their letter and in the workers' compensation form served on the Plaintiff at that time, the Defendant American Fire and Casualty Insurance Company made the representation that they had conducted a good faith investigation and upon information and belief knew at the time they made that representation that that representation was false.

40. That the representation made by the Managing Agent for the Defendant American Fire and Casualty Insurance Company was material, that they knew of its falsity or had a careless disregard for the truth and materiality of that statement and made the representation with the intent that it would be acted upon by the Plaintiff and the SC Workers' Compensation Commission allowing them to stop benefits without a hearing and to deny benefits to the Plaintiff which had previously been accepted and paid; and with specific knowledge that they could

not deny the previously accepted claim except on the basis that the Defendant American Fire and Casualty Insurance Company had conducted a good faith investigation.

41. That the Plaintiff was ignorant of the fact of false representations made at the time that the representations were made on September 12<sup>th</sup> and 13<sup>th</sup>, 2013.

42. That the plaintiff in a SC workers' compensation action has a right to rely upon the law that the Defendant has the burden of proof at a hearing to reinstate benefits and that representation made by the Defendant American Fire and Casualty Insurance Company that it had conducted a good faith investigation and that it would present evidence at a hearing if a hearing was requested by the Plaintiff to establish that a good faith investigation was conducted, thus allowing them by the misrepresentation to in fact stop benefits without a hearing to the injured worker. The Defendant made these misrepresentations with the full knowledge that under the law the Defendant could not challenge the acceptance of the Plaintiff's after the one hundred fifty (150) days period had expired. That all of these actions were taken with the specific intent of defrauding the Plaintiff of the benefits to which he was entitled.

43. That the consequences of the material misrepresentations of fact by the Defendant American Fire and

Casualty Insurance Company were made with the specific intent to stop the Plaintiff's compensation and medical benefits without a hearing which resulted in extreme consequences; damages actual, consequential and punitive; and injury to the Plaintiff in that his medical care was curtailed; he was left without funds on which to exist during the time that he was totally disabled from gainful employment; which resulted in bills, bill collection and extreme mental and physical stress and strain, he was deprived of the weekly compensation to which he was entitled; he suffered untold physical and psychological injury and pain and suffering due to the lack of medical care; and which resulted in additional damages to him having to seek out and his medical care having to be paid for to the extent possible and to the extent available under Indigent Care as provided by the medical providers and untold damage due to his lack of medical care and quality of care during the time of the refusal, subjecting him to mental anguish, humiliation and extreme physical and emotional stress and strain.

FOR A SECOND CAUSE OF ACTION  
(Breach of Contract with Fraudulent Intent)

44. That all the allegations contained in paragraphs 1-43 are hereby incorporated herein as if they had been set forth fully hereinafter.

45. That the Defendant American Fire and Casualty Insurance Company had entered into an insurance contract with

the Plaintiff's employer to provide workers' compensation benefits pursuant to the Workers' Compensation Act and had assumed responsibility for payment of such benefits to the injured worker, the Plaintiff in this action, and under which Act the Act specifically provides that the provisions of that insurance contract are specifically enforceable by the injured worker in his own right. In addition, the Defendant entered into contracts with Plaintiff's designated "attending" physicians and medical providers between May 22, 2016 and September 12, 2013 and authorized their medical care.

46. That the Plaintiff upon information and belief would allege that the Defendant American Fire and Casualty Insurance Company after having accepted the Plaintiff's injury breached that contract and the contract with the authorized medical providers by making fraudulent misrepresentations with the specific intent of breaching the contracts with intent to defraud the Plaintiff of benefits to which he was entitled pursuant to the provisions of that contract with the employer and the contracts with the authorized medical providers.

FOR A THIRD CAUSE OF ACTION  
(Bad Faith Failure to Pay Benefits)

47. That all the allegations contained in paragraphs 1-46 are hereby incorporated herein as if they had been set forth fully hereinafter.

48. That under statute the Defendant American Fire and Casualty Insurance Company has a duty not to make, and it is a violation of SC law for an insurance carrier and/or a Designated Agent of the carrier and/or an Agent thereof to make, any false statement or misrepresentation that is false, material and made with the person's knowledge of the falsity of the statement with the intent to deny or cause another to deny any benefit or payment in the connection with an insurance transaction.

49. That the SC Workers' Compensation Act specifically provides and requires a good faith investigation in order to be able to stop benefits once a claim has been accepted as in this case.

50. That under existing law the Plaintiff upon information and belief would respectfully allege that the actions of the Defendant American Fire and Casualty Insurance Company in authorizing medical care and by their refusing to pay and by further stopping benefits without having performed a good faith investigation constitutes the bad faith failure to pay benefits under the insurance contract entered into by and between the Defendant American Fire and Casualty Insurance Company and the Plaintiff's employer, Archway Services, Inc., and that the Plaintiff is a first party beneficiary to that contract under the provisions of the Workers' Compensation Act enforceable in his own right as such.

51. That the Plaintiff is entitled to actual, consequential and on punitive damages as a result of the Defendant's actions.

FOR A FOURTH CAUSE OF ACTION  
(Intentional Infliction of Emotional Distress)

52. That all the allegations contained in paragraphs 1-51 are hereby incorporated herein as if they had been set forth fully hereinafter.

53. That the Defendant American Fire and Casualty Insurance Company by having its Counsel issue a Subpoena while no action was pending before the SC Workers' Compensation Commission and by obtaining records unrelated to the Plaintiff's treatment at MUSC under the guise of a pending action under the Workers' Compensation Act and by then presenting those medical records to the Plaintiff's doctors at MUSC without the Plaintiff's express consent exposed the Plaintiff to the intentional infliction of emotional distress.

54. That the Defendant's actions in failing to conduct a good faith investigation but filing forms alleging that they had conducted such investigation allowing them to stop benefits under the Workers' Compensation Act without a hearing, intentionally or recklessly inflicted severe emotional distress which the Defendant knew or should have known would result from their actions and that their actions in failing to conduct a good faith investigation and stopping the Plaintiff's benefits

after having authorized medical care and having paid benefits during his extreme disability were so extreme and outrageous that it exceeded all possible bounds of decency and were furthermore atrocious and utterly intolerable in a civilized community and the Defendant American Fire and Casualty Insurance Company thereby caused the Plaintiff's emotional distress and such emotional stress suffered by the Plaintiff was so severe that no reasonable person could be expected to endure it.

FOR A FIFTH CAUSE OF ACTION  
(Abuse of Process)

55. That all the allegations contained in paragraphs 1-54 are hereby incorporated herein as if they had been set forth fully hereinafter.

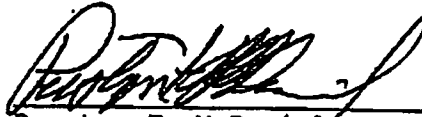
56. That the Defendant American Fire and Casualty Insurance Company upon information and belief directed its legal counsel to use process, that being the Subpoena issued for records from Palmetto Health Baptist Parkridge, which the Plaintiff would allege upon information and belief was issued for and with the malicious intent of obtaining records and information to present to the Plaintiff's doctors with the intent to deprive or deny the Plaintiff the surgery which had been ordered by the SC Court of Appeals by Order of March 18, 2016 under the Award of the SC Workers' Compensation Commission. The process was used specifically for the purpose of obtaining information with the unlawful intent and in contravention of the

Award of the Commission and Order of the SC Court of Appeals to avoid payment of the medical care as so awarded and ordered.

57. That the Plaintiff is entitled to damages against the Defendant American Fire and Casualty Insurance Company for actual, consequential and punitive damages to include recompense for physical and mental injury, expenses, loss of time, injury as to financial standing and to the Plaintiff's reputation, standing and credit.

WHEREFORE, the Plaintiff prays for judgment against the Defendant for the following relief: 1) judgment for actual, incidental and consequential damages as determined by the Trier of Fact; 2) for punitive damages; and 3) for such other and further relief as the Court deems equitable and proper, including the costs of this action.

Respectfully submitted,



Preston F. McDaniel  
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(803) 771-7211  
Attorney for the Plaintiff

September 8, 2016

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY  
INSURANCE COMPANY C/O LIBERTY  
MUTUAL GROUP

Carrier,

Defendants.

CERTIFICATE OF SERVICE

I certify that on this date, I have served a copy of Defendant's Motion for Protective Order in this action on counsel of record by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Preston F. McDaniel  
The McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, South Carolina 29201

October 18, 2016

Date

  
Mona R. Reed

Legal Assistant to Brett H. Bayne



specific issue raised by the Defendants in their appeal is whether or not the Claimant is entitled to any benefits under the Act under the Award of the Commission. Therefore, the Commission at this time has no jurisdiction over and jurisdiction lies with the South Carolina Court of Appeals pursuant to South Carolina Appellate Court Rules, Rule 205.

2. That the insurance carrier is paying compensation and medical care pursuant the requirements of South Carolina Code §42-17-60, the appeal section and under their responsibility as the insurance carrier for the employer. There is no provision under law for the suspension of those benefits for any reason under that Code Section.

3. That the insurance carrier in filing this Motion confuses the Commission with a Court of general jurisdiction. The Commission is a statutorily created entity and its authority and jurisdiction extends only to that granted by statute. The insurance carrier sites no statutory authority for an Order of Protection and/or for the suspension of benefits in general nor any statute or law authorizing such an order or for suspension for the specific reason listed in the Motion, i.e. based on a totally separate and distinct cause of action filed in a totally separate and distinct Court of Law.

From our Court of Appeals and Supreme Court Decisions:

Only disputes ancillary to an employee's right to compensation arise under the workers' compensation Act.

Claims not affecting the employee's right to compensation are within the purview of the Circuit Court, not of the Workers' Compensation Commission. Price vs. Peachtree Electrical Services, Inc., 396 SC 403, 721 SE2d, 461 (SC app. 2011).

Where there exists no pending employee claim for compensation, the Commission lacks jurisdiction over any issues. Laboureur vs. Harleysville Mut. Ins. Co., 302 SC 540, 397 SE2d 526 (1990).

A medical provider's common law claim for payment of an employee's medical bills do not fall within the purview of the Act and such claims would properly be litigated in the Circuit Court. Roper Hospital vs. Clemons, 326 SC 534, 484 SE2d 598 (SC app. 1997)

Where the claim is a common law or equitable claim, such claims are within the purview of the Circuit Court, not the Commission. Price vs. Peachtree Electrical Services, supra.

4. That the Motion should be returned to the Defendants because the Commission does not have subject matter jurisdiction but also because it is fatally, procedurally and substantively defective. The Full Commission has previously ruled that a, "Motion" is an "ancillary" action to a "pending" action. There is no pending action before the Commission at this time as to the decision of the Commission awarding benefits which is currently in on appeal before the Court of Appeals.

Next, Rule 67-215 - first, under (B) the Commission will not entertain a Motion which involves, "the merits of the claim". The

suspension of benefits, which is the request made in the Motion, involves the merits of the claim.

Under (D), the body of the Motion is to contain "numbered" paragraphs and more importantly, specifically and substantively, "if the grounds on which the motion depends is based upon the existence of facts not in the Commission's file, the moving party **shall file an Affidavit or Affidavits evidencing those facts**".

The Motion is based on facts, the documents attached to it, that are not in the Commission file.

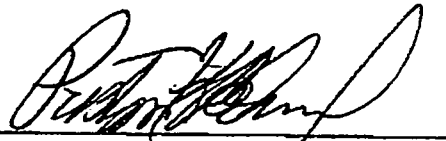
Subsection (F), specifically requires that, "the moving party **shall file** the Motion and Proof of Service with **the Judicial Department**."

5. That in addition to all of the above, the document attached to the Motion is not in evidence and is not a proper evidentiary item for submission under either the Commission's Regulations for the submission of documentary evidence nor is it properly admissible under the Administrative Procedures Act. For this document to even be contained within the Workers' Compensation file where it may be reviewed at some point in the future by a Commissioner charged with hearing and making a decision on further matters; assuming that the Award is affirmed on Appeal and jurisdiction is returned to the Commission is highly prejudicial. This document is hearsay and is irrelevant,

immaterial and is inflammatory and is highly prejudicial to the rights of the Claimant to benefits under the Workers' Compensation Act. It is not in any way and the Claimant would repeat, in any way relevant to any entitlement or any right to benefits under the Act..

For all of the foregoing reasons, the Claimant would request that the Motion be returned as being outside the jurisdiction of the Commission and that the Motion and attached documents be ordered to be removed from the Commission file to prevent any future prejudice that this filing may have upon the Claimant. The basis for the Motion involves a common law right of action, filed in the appropriate Circuit Court which has nothing to do with the Claimant's entitlement to benefits under the Act and Motion should be denied.

Respectfully submitted,



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(803) 771-7211

Attorney for Employee/Claimant/  
Respondent

October 27, 2016

