

THE STATE OF SOUTH CAROLINA
In The Supreme Court

CASE NUMBER 2017-002272

APPEAL FROM SOUTH CAROLINA
WORKER'S COMPENSATION COMMISSION

WCC FILE NO 1502120

Opinion No. 2016-002448 (S.C. Ct. App. filed October 6, 2017)

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

Respondent,

v.

Reginald Evans, Employee,
Claimant

Petitioner.

APPENDIX

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Pro Se Petitioner

Other Counsel of Record:
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Attorney for Respondent

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S.C. SUPREME COURT

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The South Carolina Court of Appeals

Reginald Evans, Employee, Claimant, Appellant,

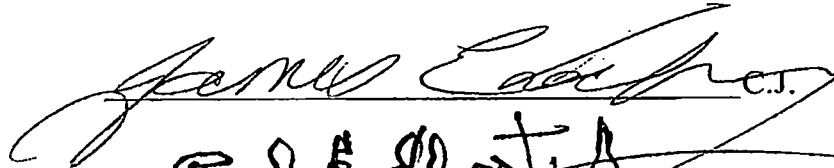
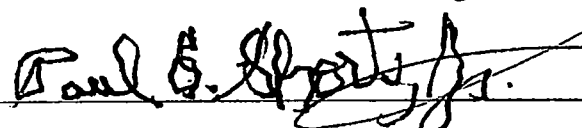
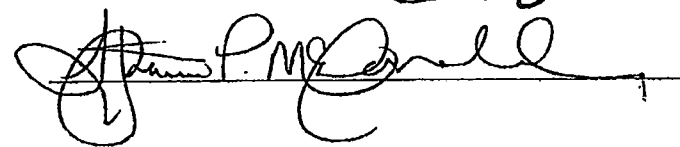
v.

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

Appellate Case No. 2016-002448

ORDER

After careful consideration of the petition to reinstate, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for reinstating. Accordingly, the petition is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:
Reginald Evans
Amanda Anderson Mellard, Esquire
Helen F Hiser, Esquire

FILED

October 6, 2017

The South Carolina Court of Appeals

Reginald Evans, Employee, Claimant, Appellant,

v.

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

Appellate Case No. 2016-002448

ORDER

This appeal was dismissed due to Appellant's failure to serve and file the record on appeal. Appellant filed a petition to reinstate, and on July 19, 2017, this court ordered Appellant to serve the record on appeal and file a proof of service. Appellant served a record on appeal; however, Respondents have filed a new motion to dismiss because the record did not include all matters designated by both parties. Respondents' new motion to dismiss is denied because this appeal is currently in dismissal status. Within twenty days of the date of this order, Appellant shall serve an amended record on appeal that includes all matters designated by both parties. Appellant shall file the proof of service with this court. This court will act on the petition to reinstate in twenty days or upon service of a proper record on appeal. No further extensions will be granted absent a showing of extraordinary circumstances.


FOR THE COURT

Columbia, South Carolina

cc:
Reginald Evans
Amanda Anderson Mellard, Esquire
Helen F Hiser, Esquire

FILED

August 5, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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AUG 28 2017

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No: 1502120

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

v.

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

OBJECTION TO MOTION TO DISMISS
APPEAL

Pursuant to Rule 12, 210, 240 of SCACR; Appellant hereby objects to Motion to dismiss. Appellant served a Record on Appeal on Respondent on August 8, 2017. South Carolina Supreme Court has ruled that insufficient Record on Appeal is not ground for dismissal. RULE 209 DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL which states:

b) **Content.** The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]. A party shall not include any matter in his Designation which is not relevant to the appeal.

The Key phrase is "what the party desires to have included in the Record on Appeal." The key word is desire.

The other Key phase is “the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]. The key words, “is propose to include”. In *Woodson v. DLI Property* No. 27344 the S.C. Supreme Court Ruled that:

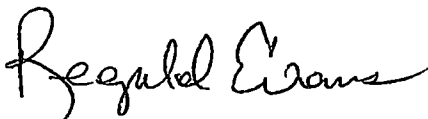
‘Further, a decision on a motion for summary judgment is based on depositions, interrogatories, affidavits, other evidentiary material provided by the parties. See Rule 56(c), SCRCP; see also *Quail Hill, L.L.C. v. Cnty. of Richland*, 387 S.C. 223, 234, 692 S.E.2d 499, 505 (2010) (stating appellate courts apply the same standard as the trial court under Rule 56(c), SCRCP). Here, Petitioners provided the requisite evidentiary material to the court of appeals. Therefore, we find the court of appeals did have a sufficient record before it to permit meaningful appellate review and make a decision on the merits. See *Quail Hill*, 387 S.C. at 234, 692 S.E.2d at 505; *Hamilton v. Greyhound Lines E.*, 281 S.C. 442, 444, 316 S.E.2d 368, 369 (1984) (stating the appealing party has the burden of providing a sufficient record such that the appellate court can make an intelligent review).

The Appellant believes court of appeals have a sufficient record before it to permit meaningful appellate review and make a decision on the merits. The issue before court is:

1. Did the Commissioner erred in not awarding disfigurement when the Appellant has a Kilod visible when wearing short pants?
2. Did the Commissioner erred in not awarding attorney fees? Because claims were not settled but by an Order of the Commission.
3. Did the Commissioner erred in it formula of multiplying 35% of weeks rather than 35% pay time 192 weeks?
4. Did the Commissioner erred in not awarding 35% for 500 weeks when Appellant was given a permanent disability rating?

WHEREFORE the Appellant request this Court to review issue based on the Record on Appeal and the Appellant final brief on the above issues.

Respectfully submitted,

A handwritten signature in black ink that reads "Reginald Evans". The signature is written in a cursive style with a large initial "R" and a distinct "E".

Reginald Evans
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No: 1502120

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

V

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

RECORD ON APPEAL

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AUG 07 2017
SC Court of Appeals

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For the Respondent

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STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Reginald Evans, Employee,)
Claimant,)
-vs-)
Exel Inc.,)
Employer,)
New Hampshire Insurance)
Company,)
Carrier,)
Defendants.)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1502120

ORDER

HEARING: ROCK HILL, SOUTH CAROLINA
DATE: March 27, 2016
APPEARANCES: ANDREW W. CREECH OF ELROD POPE LAW FIRM FOR CLAIMANT
KATIE GROVE OF MGC
PURPOSE OF HEARING: TO DETERMINE ALL ISSUES RAISED BY FORM 21
COMMISSIONER: HONORABLE AISHA TAYLOR

STIPULATIONS

Prior to the commencement of the hearing the following stipulations were entered into between the parties:

1. The purpose of the hearing is to determine the issues as set forth in the Form 21.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. South Carolina Workers' Compensation Commission has jurisdiction of this proceeding and venue in Richland County is proper.
4. The Industrial Commission's file are made part of the record.
5. Parties stipulate that Claimant's AWW is \$714.24 and his CR is \$476.18.

6. The Parties stipulate that Claimant sustained a compensable injury to his right leg in the Course and scope of his employment

7. The parties stipulate that Claimant is at maximum medical improvement as of January 8, 2016 and is entitled to a determination of permanent partial disability.

MEDICAL EVIDENCE SUBMITTED BY CLAIMANT:

Exhibit 1. Job description containing four (4) pages.

APA 1. The medical records of Shiland Family Medicine, dated 7-15-14 - 11-24-14, containing fourteen (14) pages.

APA 2. The medical records of Piedmont Medical Center, dated 2-21-15 - 6-2-15, containing twenty-six (26) pages.

APA 3. The medical records of Carolina Orthopaedic Surgery Associates, dated 2-24-15 - 1-8-16, containing ninety-one (91) pages.

APA 4. The medical records of Benchmark Rehab Partners, dated 3-25-15 - 7-26-15, containing one hundred twenty (120) pages.

APA 5. The medical records of Shiland Family Medicine, dated 4-7-15, containing one (1) page.

APA 6. The medical records of Metrolina Neurological Associates, dated 5-27-15 - 7-31-15, containing fourteen (14) pages.

APA 7. The medical records of Steele Creek Physical Therapy, dated 12-16-15, containing nine (9) pages.

APA 8. The medical records of Metrolina Neurological Associates, dated 7-27-15, containing one (1) page.

MEDICAL EVIDENCE SUBMITTED BY DEFENDANTS:

APA 1. The medical records of Carolina Orthopaedic Surgery Associates, dated 2-24-15 - 1-8-16, containing twenty-one (21) pages.

APA 2. The medical records of Piedmont Medical Center, dated 4-21-15 - 6-2-15, containing twenty-one (21) pages.

APA 3. The medical records of Metrolina Neurological Associates, dated 6-12-15, containing five (5) pages.

APA 4. The medical records of Steele Creek Physical Therapy & Balance Center Inc., dated 12-16-15, containing nine (9) pages.

POSITION OF THE PARTIES

Defendants filed a Form 21 seeking termination of temporary total benefits and a determination of permanent partial disability pursuant to 42-9-30. Defendants maintain that Claimant reached maximum medical improvement on January 8, 2016 and seek a credit of any temporary benefits paid since the date of MMI.

Claimant agrees he is a maximum medical improvement as of January 8, 2016. Claimant states that a 15% impairment was assigned to Claimant's right leg and permanent light duty restrictions were assigned. As a result of Claimant's permanent work restrictions he is no longer able to perform his job as fork lift driver and states that a proper disability award would be in far excess of his impairment rating.

Testimony of Claimant

Claimant is 53 years old, single, and has no children. Claimant graduated high school and later got a 4-year degree in business from Claflin University. Claimant served almost 20 years in the military. He was first in the United States Marine Corp. and then later in Army National Guard from which he was honorably discharged around 2001. Following his service in the military, Mr. Evans did consulting work - putting together various contracts for the federal government. Mr. Evans did the consulting work

until 2011 at which point all the work dried up. He then went to work with Excel Inc. in 2012 in Allentown, Pennsylvania. He later transferred to an Excel site in York County, SC. Excel is a warehouse distribution facility for Energizer batteries. Mr. Evans worked as a Fork Lift operator and was tasked with picking orders. He described his job as heavy in nature - requiring the lifting of 75 lbs. to 100 lbs. The job also required him to be on his feet all day.

On February 21, 2015, Mr. Evans was working at Excel driving a forklift when a fellow fork lift driver accidentally crashed his fork lift into Mr. Evans' with metal fork lift prongs crushing into Mr. Evan's right leg. Following the injury, Mr. Evans' sought treatment at the emergency room. In the emergency room it was noted that Mr. Evans had a sizeable open wound, which they decided to let heal before proceeding further with additional treatment. During the healing the process the wound became infected and Mr. Evans had to seek treatment at a wound center which include debridement of the infected area.

On the record, Mr. Evans showed Commissioner Taylor his scar from the injury and subsequent infection. Commissioner Taylor noted that the scar was on the inside of his right leg, and was approximately 6 or 7 inches in length, and approximately 2 inches in width.

Mr. Evans testified that once the wound healed, he then sought treatment with orthopedic doctor, Dr. James. Dr. James prescribed physical therapy which Mr. Evans did twice a week for approximately 6 to 8 months. Dr. James also prescribed him nerve pain and ordered an EMG - which confirmed Mr. Evans had permanent nerve damage. Eventually, on January 8, 2016 Dr. James released Mr. Evans at maximum medical improvement. Dr. James assigned a 15% impairment to the right leg, and gave permanent work restrictions of light duty. Those restrictions prevent Mr. Evans from.

returning to work as a fork lift driver.

At present, Mr. Evans continues to have pain and problems with his leg. The pain comes and goes, but occurs every day. He states the pain starts if he stands or walks for a period of time. Mr. Evans approximates he could walk for approximately a half mile before having to sit down due to the pain. When the pain occurs he rates it a 6 or 7 on a scale of 0 to 10. Mr. Evan's testified that he can no longer play basketball or do other physical activities. He no longer coaches baseball - as it hurts for him to stand up for that long of time. Mr. Evan's testified he often uses a cane - as it help him keep weight off the right leg. Mr. Evans testified that as a result of this injury - he has lost 50 % to 60% use of his leg.

FINDINGS OF FACT

1. I find Claimant sustained an admitted right leg crush injury on February 21, 2016.
2. As a result of the injury, Claimant suffered an open wound which became infected. Claimant now has a 6 to 7 inch scar on the right leg which is approximately 2 inches in width.
3. Claimant underwent an EMG study on July 8, 2015 which confirmed permanent nerve damage in the right leg. (APA pg. 270).
4. Dr. James released Claimant at MMI on January 8, 2016 and issued a 15% impairment rating. Pursuant to Claimant's FCE - Dr. James opined Claimant has permanent light duty restrictions, which also include restrictions of no lifting over 20 lbs., no sitting for more than 2 hours, and no standing for more than 2 hours.
5. Claimant testified credibly at the hearing. Although Claimant has a college degree, he has worked heavy duty work since 2011, which required him to lift 75 to 100 lbs. daily. Claimant states he currently takes Gabapentin as prescribed by his neurologist; however, he still has pain off and on all day long.
6. Claimant has looked for work online and even began an application with Chester Tire Company, but has been unable to find work within his restrictions.
7. I find Claimant is at maximum medical improvement as January 8, 2016 per Dr. James. See Gadson v. Mikasa Corp. 368 S.C. 214, 628 S.E.2d 262 (Ct. App. 2006).

8. This claim is governed by Section 42-9-30.

9. Based on the evidence as a whole, I find Claimant sustained a 35% permanent partial disability to his right leg as a result of his work injury. This finding is based on the medical evidence including Claimant's impairment rating and permanent work restrictions, which I find severely limits his ability to return to work given his work history. I did consider Claimant's educational achievements and prior self-employment in making this finding. I find Claimant's physical condition and current prescriptions outweigh his educational and business history.

10. Claimant was seen by a neurologist in July 2015. Claimant was referred to a neurologist by Dr. James. Claimant initially saw the neurologist on his own without authorization for the carrier; however, the carrier later paid for his appointment. The neurologist prescribed Gabapentin and Claimant has been taking Gabapentin daily.

11. I find Claimant is entitled to causally related future medical treatment in the form of Gabapentin or any other equivalent nerve pain medication as prescribed by his neurologist at Metrolina Neurology, or any authorized physician. This medical treatment is to be provided at the direction of Defendants pursuant to S.C. Code Ann. Section 42-15-60.

12. Claimant is entitled to a lump sum award.

13. Defendants are entitled to a stop payment of benefits as of May 13, 2016.

14. Defendants are entitled to a credit of overpayment of TTD benefits paid after January 8, 2016 - date of MMI - through May 16, 2016.

15. Claimant has an AWW of \$714.21 and a CR \$476.18.

16. Claimant is entitled to James v. Anne proration language.

RULINGS OF LAW

Accordingly, as provided in the South Carolina Code of Laws, 1976, Section 42-17-40 it is the determination of the Commissioner that:

1. Under Section 42-1-130 the Claimant is a covered employee at all times stated above.

2. Under Section 42-1-140 the Defendant employer was a covered employer under the Act.

3. Under Section 42-1-160, the Claimant did sustain a compensable injury in the course and scope of his employment to the right leg.

4. Under Section 42-15-60, carrier will authorize all ongoing

prescription meds prescribed for Claimant's permanent nerve damage to specifically include Gabapentin.

5. Under Section 42-9-30, Carrier will pay Claimant 35% permanent partial disability to the leg, minus credit of overpayment of TTD.

ORDER

IT IS ORDERED as follows:

1. That as of May 13, 2015 - Defendants shall terminate temporary total benefits.
2. Defendants shall be given a credit of overpayment of TTD benefits paid from January 8, 2016 through May 13, 2016 equaling 18 weeks totaling \$8,571.25.
3. Defendants shall pay Claimant a lump sum award made payable to Reginald Evans, by and through his attorney Andrew W. Creech at PO Box 11091 Rock Hill, SC 29732 in the amount of **\$23,928.05**: (.35% x 195 = 68.25 weeks x \$476.18 = \$32,499.28 - \$8,571.24 in overpayment = \$23,928.05). The award will be distributed as follows: Seven Thousand One Hundred Seventy-eight and 42/100 (\$7,178.42) Dollars to Andrew W. Creech, attorney at law, as attorney's fees of 30%; Six Hundred Five and 94/100 (\$605.94) Dollars to Andrew W. Creech, attorney at law, as reimbursement of costs and expenses; and Sixteen Thousand One Hundred Forty-three and 69/100 (\$16,143.69) Dollars to Reginald D. Evans in compromise settlement of future disability benefits commencing as of May 1, 2016 for a period of 1,379.04 weeks, the life expectancy of claimant (26.52 years - DOB: 4/19/63) at the rate of \$11.71 Dollars per week, pursuant to Social Security Act, 42 U.S.C. §424a and Section 42-9-10 and 42-9-20 of the S.C. Code of Laws and as interpreted by the South Carolina Supreme Court in the decision of Allie James v. Anne's, Inc., 390 S.C. 188, 701 S.E.2d 730 (2010).

4. Defendants shall pay for causally related future medical treatment in the form of Gabapentin or any other equivalent nerve pain medication as prescribed by his neurologist, or any authorized physician.

AND IT IS SO ORDERED

May 12, 2016



Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).
May 16, 2016

By: Renee Smith, Administrative Assistant to Commissioner Taylor

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No: 1502120

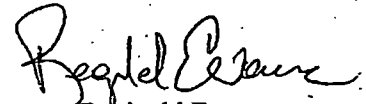
Reginald D. Evans, Employee, Claimant.....Appellant,

V

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

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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AUG 07 2017

SC Court of Appeals

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Pro Se for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No: 1502120

Appellate Case No. 2016-002448.

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MAY 11 2017

SC Court of Appeals

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

v.

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

FINAL BRIEF

May 9, 2017

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

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STATEMENT OF ISSUES ON APPEAL

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

STATEMENT OF THE CASE

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

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

FACTS

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

ARGUMENTS

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

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

CONCLUSION

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

Respectfully submitted,

May 9, 2017

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

Reginald Evans
1200 Broad Street #123
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Reply To
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May 17, 2017

RECEIVED

MAY 19 2017

SC Court of Appeals

Via U.S. Mail

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

RE: Reginald Evans v. Exel Inc. and New Hampshire Insurance
Company/Chartis Claims, Inc. c/o Sedgwick CMS
Date of Accident: February 21, 2015
WCC File No.: 1502120
Our File No.: 20194.15257
Claim No.: 12101772800-01 (SC)
Appeal No.: 2016-002448

Dear Ms. Kitchings:

We are in receipt of Appellant Reginald Evans' letter dated May 9, 2017 concerning the Record on Appeal in the above-referenced matter. Respondents have not been served with the Record on Appeal but, instead, another copy of Appellant's Designation of Matter. Respondents are unable to prepare their Final Brief until Appellant files and serves a proper Record on Appeal that includes all of the materials designated by any party, pursuant to Rule 210, SCACR.

Very truly yours,



Helen F. Hiser

cc: Reginald Evans, *pro se*

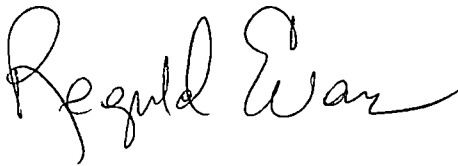
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Respectfully Submitted

November 17, 2017

A handwritten signature in black ink that reads "Reginald Evans". The signature is written in a cursive style with a large initial 'R' and a long, sweeping tail.

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