

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA WORKER'S COMPENSATION  
COMMISSION

APPELLATE CASE NO. 2017-002251

RECEIVED

MAR 08 2018

S.C. SUPREME COURT

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

v.

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

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REPLY TO RETURN TO RESPONDENT'S  
MOTION TO COMPEL MEDICAL CARE

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By way of brief Reply to the Return:

1. The Return starts out stating that, "Respondents Motion unfortunately reflects a common refrain in this case—a pattern of willful and intentional ignorance of the rules, laws and regulations governing workers' compensation claims..." The Return also alleges that the,

"Medical care sought in this new Motion is for a new injury which is not related to the underlying workers compensation claim - a fact which Appellants conveniently omit from his Motion. Respondent's treating physicians have given expert opinions that this new condition is not casually related to the underlying workers compensation claim ..." (emp. added).

There is no reference to the Appendix and no Affidavit or supporting documents filed with the Return to support these factual allegations. SCACR Rule 40(c)(3) provides that, "where the facts relied upon in support of the Motion are not contained in the Record on Appeal or in the Appendix the parties shall file Affidavits or other documents in support of their position." (emp. added). Subsection(e) provides that the provisions of SCACR Rule 40(C) shall apply to the Return.

2. Prior to 2007, S.C. Code §42-17-60 provided that Appeals from the Workers Compensation Commission were first taken to the Circuit Court as the Court of First Appellate Jurisdiction and then to the Court of Appeals and Supreme Court. Also, prior to 2007, that Code Section only provided for the payment of compensation under the Commission Award during the Appeal and motions/actions ordering payment of compensation under the Award during the Appeal almost always came about while the appeal was pending in the Circuit Court, the first Appellate level at that time. See for an excellent review of the Circuit Court decisions awarding compensation during the pendency of the appeal this Court's decision in Case v Hermitage Cotton Mills, 236

S.C. 515, 115 S.E.2d 157 (1960). Subsequent to July 1, 2007 under the 2007 amendments, appeals are taken directly to the Court of Appeals thus making the Court of Appeals the first level of appellate jurisdiction, and the Statute was further Amended to provide that the Defendants had to pay not only weekly compensation under the Commission Award during the pendency of the Appeal but also had to,

“provide medical treatment ordered by the Commission involved in the Appeal...” (emp. added).

Just as the Act has provided since the inception of the Act and as provided in the Appellate Court Rules, the Court before whom the case is pending has jurisdiction over all matters involved in the appeal and specifically in reference to ordering compliance with the provisions of S.C. Code §42-17-60. At the time this Motion was filed, this matter was pending a Writ Certiorari in this Honorable Court on whether this claim is compensable thus involving entitlement in any benefits under the Award and this Court is the Court that has jurisdiction over this matter and mandating compliance with the Award of the Commission.

Finally, one of the cardinal rules of statutory construction is to fulfill the purpose and intent of the Legislature's action. The purpose and intent of the

Legislature's action in this statute is to insure the prompt and swift provision of medical care as ordered by the Commission. Not only is this a logical interpretation of the Legislature's intent but also it is logical if the purpose is to insure prompt and swift medical care under the Award to the injured worker. Assuming that the intent of the Legislature is to insure prompt medical care as awarded by the Commission and irrespective whether a remand is needed to the Commission on a jurisdictional basis, the delay in the provision of medical care under the Commission procedures is definite. A Form 50 Request for Hearing has to be filed and the Defendants have thirty (30) days to respond after which a hearing is scheduled which requires thirty (30) days' notice; so, at a minimum, one is talking about two (2) months, again at the absolute minimum, to get a hearing. After hearing, an order would have to be drafted and issued and then that order is subject to appeal to the Full Commission. Obviously, this is illogical and would result in the Claimant not receiving the medical care for even years.


3. The Movant and Respondent before this Court will leave to the Court's reading of the factual opinion of the

authorized treating physician in reference to the procedure for which the Movant requests that this Court order the defendants to immediately pay (see one page attached) and will leave it to the Court as to the reading of the Award of the Commission as to the medical for which they are responsible during the pendency of the Appeal. The Movant would point out that the documentation and opinion expressed by the authorized treating heart specialist, Dr. Lide was submitted into the Record with supporting Affidavit in accordance with S.C. Rule 240(C). Please see Exhibit F, p. 20/23. A copy of which is attached for convenience of the Court. .

4. Finally, Movant's counsel would specifically ask to appear before a Justice of this Court on the Motion and Return based on the Attorney's Oath that he took and then which he re-took in reference an oath of civility and that as a lawyer, he will demonstrate a respect for the legal system and those who serve it in, including other lawyers, Movant's counsel would respectfully welcome appearing before the Justices of this Court and being told whether in the opinion of the Court he has shown a, "pattern of willful and intentional ignorance of the rules, laws, and regulations." Whether and he has attempted to "try to get a

Court without jurisdiction to weigh in ..." and/or whether  
in the opinion of this Court he has filed, "knowingly  
frivolous Motions ..."

Respectfully Submitted,



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SC BAR NO. 3770  
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**Attorney for Movant/Respondent**

March 8, 2018

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Liberty Mutual Insurance

Workers' Compensation Claims  
PO 49000  
Charlotte, NC 28277  
(866) 539-6449, ex 48974  
(715) 870-6974, direct  
(603) 430-1953, fax

January 4, 2018

Dr Lanneau D. Lide  
Sent via email to [Brenda.Kelley@providencehospitals.com](mailto:Brenda.Kelley@providencehospitals.com)

RE: 22-209963  
INSURED: Archway Services Inc.  
CLAIMANT: Clarence Winfrey  
DATE OF LOSS: 5/22/2013

Dear Dr. Lide,

Based on your examination of Mr. Winfrey at the end of December, you have recommended that he undergo a left subclavian stent and further workup of his left upper lobe where abnormalities were identified by the recent CTA.

- 1.) Is the need for the stent related to the work injury/electrocution of May 22, 2013? Yes  No
- 2.) Is the need for further work up on the left upper lobe related to the work injury/electrocution of May 22, 2013? Yes  No

Thank you for your anticipated cooperation in this matter.

Beth Wrinkle  
Technical Claims Specialist II

Cc: Preston McDaniel  
Attorney at Law  
Sent via email to [sabrina@pfmcdlaw.com](mailto:sabrina@pfmcdlaw.com)

Liberty Mutual Insurance / Commercial Insurance Claims  
P.O. Box 49000  
Charlotte, NC 28277  
866-539-6449, ex 48974, 715-870-6974  
603-430-1953 Fax  
[Elizabeth.Wrinkle@LibertyMutual.com](mailto:Elizabeth.Wrinkle@LibertyMutual.com)

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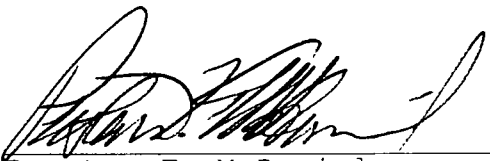
**PROOF OF SERVICE**

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I certify that I have served the **Reply to the Return to Respondent's Motion to Compel Medical Care** on the Petitioners 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: 3/8/2018

  
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1315 Elmwood Avenue  
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(803) 771-7211  
Attorney for Respondent