

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

APR 23 2018

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

SC Court of Appeals

Aisha Taylor, Commissioner  
T. Scott Beck, Commissioner  
Avery B. Wilkerson, Jr., Commissioner

W.C.C. File No. 1102937  
SC Court of Appeals Case No. 2016-000514

Barry Adickes, Claimant,

Respondent,

v.

Philips Healthcare, Employer, and Fidelity and  
Guarantee Insurance Company, Carrier,

Appellants.

**APPELLANTS' MOTION TO SUSPEND BENEFITS**

Appellants, by and through its undersigned counsel, hereby respectfully move to suspend Respondent's benefits pursuant to S.C. Code Ann. § 42-17-60. This motion is based on the following grounds:

1. Respondent sought a wage loss award under S.C. Code §42-9-20. The Single Commissioner issued an Order on August 27, 2015 directing Appellants to pay Respondent weekly benefits for three hundred forty weeks commencing the date that he lost his job with the Employer. The Commission's Appellate Panel issued a Final Decision

and Order on February 8, 2016, affirming the Single Commissioner's findings of fact and conclusions of law in their entirety.

2. Appellants filed a Notice of Appeal to this Court on March 7, 2016, and properly commenced weekly benefits pursuant to the Appellate Panel Award. Appellants argued that the Appellate Division erred in not limiting the wage loss award to 340 weeks from the date of accident, pursuant to the language of S.C. Code Ann. § 42-9-20.

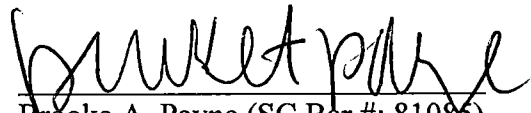
3. This Court issued an Opinion on January 17, 2018, noting that the applicable portion of S.C. Code Ann. § 42-9-20 reads: "In no case shall the period covered by such compensation be greater than three hundred forty weeks from the date of injury. We find this to be a liming clause that restricts the timeframe and amount of coverage and should be strictly interpreted." Adickes v. Philips Healthcare, Op. No. 2018-UP-027 (S.C.Ct.App. filed January 17, 2018). Further, this Court found that the "the plain language of the statute limits PPD benefits to 340 weeks from the date of injury, contrary to the Appellate Panel's interpretation and award. The statute explicitly mandates that in 'no case' will PPD benefits be available to a claimant beyond the term of 340 weeks 'from the date of injury.'" Id. This Court reversed the Appellate Panel's award of 340 weeks' compensation commencing January 17, 2014, and remanded for a new calculation of benefits consistent with the plain language of section 42-9-20. Id.

4. Respondent filed a Petition for Rehearing on February 1, 2018, which this Court denied on March 26, 2018.

5. As of the date of this Motion, it has been 369 weeks from the date of accident, and Appellants continue to pay Respondent weekly wage loss benefits.

WHEREFORE, Appellants respectfully request that the Court grant its Motion to Suspend Respondent's benefits. In support of this Motion, Appellants rely upon their Memorandum in Support.

April 20, 2018



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Attorney for Appellants

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**APPELLANTS' MEMORANDUM  
IN SUPPORT OF MOTION TO SUSPEND BENEFITS**

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Appellants, by and through their undersigned counsel, respectfully submit this Memorandum in support of their Motion to Suspend.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Respondent initiated these proceedings by filing a Form 50 on September 23, 2014, alleging a loss of earning capacity as a result of his work injury under S.C. Code Ann. § 42-9-20. (R. p. 36; R. p. 119, lines 17-19; R. p. 120, lines 3-6). The Single Commissioner's Decision and Order deemed the Respondent at MMI, found that Respondent sustained a permanent loss of wage earning capacity and awarded him "\$704.92 a week for three

hundred forty (340) weeks commencing January 17, 2014, the date that the Claimant's wage loss began." (R. p. 34). The Commission's Appellate Panel issued a Final Decision and Order on February 8, 2016, affirming the Single Commissioner's findings of fact and conclusions of law in their entirety. (R. pp. 1 - 16).

Appellants filed a Notice of Appeal to this Court on March 7, 2016 arguing, among other things, that the Appellate Division erred in not limiting the wage loss award to 340 weeks from the date of accident, pursuant to the language of S.C. Code Ann. § 42-9-20. (R. p. 113). Appellants properly initiated weekly benefits on March 10, 2016, when this appeal was commenced.

This Court issued an Opinion on January 17, 2018, noting that the applicable portion of S.C. Code Ann. § 42-9-20 reads: "In no case shall the period covered by such compensation be greater than three hundred forty weeks from the date of injury. We find this to be a liming clause that restricts the timeframe and amount of coverage and should be strictly interpreted." Adickes v. Philips Healthcare, Op. No. 2018-UP-027 (S.C.Ct.App. filed January 17, 2018). Within this Opinion, this Court found that "the plain language of the statute limits PPD benefits to 340 weeks from the date of injury, contrary to the Appellate Panel's interpretation and award. The statute explicitly mandates that in 'no case' will PPD benefits be available to a claimant beyond the term of 340 weeks 'from the date of injury.'" (Id.). Respondent filed a Petition for Rehearing on February 1, 2018, which this Court denied on March 26, 2018.

Appellants have continued to pay weekly benefits to the Respondent in the amount of \$704.92 per week.

## II. ARGUMENT AND CITATION OF AUTHORITY

Pursuant to S.C. Code Ann §42-17-60,

“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 this title.”

As detailed above, Appellants have fully complied with S.C Code Ann. Section 42-17-60 and Rule 241(b)(7), SCACR, in commencing weekly indemnity benefits during the pendency of the appeal to this Court. Although this case has been remanded to the Full Commission to calculate the exact amount of wage loss benefits owed, the Court of Appeals has ruled on the question of law which was at issue in this case – whether the statutory language of S.C Code Ann. §42-9-20 limits wage loss benefits to 340 weeks from the date of accident.

In so ruling, this Court has unequivocally held that the Respondent is not entitled to receive wage loss benefits beyond 340 weeks from the date of accident. The Appellate Division has been directed to issue an order in compliance with this Court’s holding that a §42-9-20 award is limited to 340 weeks from the date of accident, further indicating that this issue has been fully determined. Thus, the question of law at issue has been decided, which is now the governing law of the case, and Appellants seek to suspend benefits as a result of same.

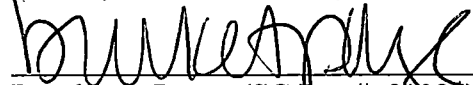
September 27, 2017 marked 340 weeks from the date of Respondent’s accident. As of today, we are 369 weeks from the date of accident and Appellants continue to pay weekly benefits to the Respondent. Thus, Appellants have already paid 29 weeks of wage loss benefits beyond what this Court has determined to be the designated weeks applicable

for wage loss benefits. Appellants are concerned that continued weekly payments of benefits during the time that the parties await a decision on the exact calculation of wage loss benefits owed will lead to a situation where Appellants have paid significantly more than will be deemed required. Appellants have no guarantee of recouping any overpayments made to Respondent in that situation, which is the basis for this motion.

In the interest of proceeding with caution and avoiding potential penalties under S.C. Code Ann. § 42-17-60, Appellants are requesting this Court's permission to suspend benefits for the reasons above.

Respectfully submitted:

Lueder, Larkin & Hunter, LLC



Brooke A. Payne (SC Bar #: 81085)

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Attorney for Appellants

Mt. Pleasant, South Carolina

Dated: 4.20.18

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**PROOF OF SERVICE**

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I, Tanya Fuller, do hereby certify that a copy of *Appellants' Motion to Suspend Benefits* submitted by the Appellants was sent to all counsel for the Respondent via United States Mail, postage pre-paid and addressed as follows on April 20, 2018:

William L. Smith, II (SC Bar# 5226)  
Chappell, Smith & Arden  
P.O. Box 12330  
Columbia, SC 29211

Blake A. Hewitt (SC Bar #73674)  
John S. Nichols (SC Bar #4210)  
Bluestein Nichols Thompson & Delgado  
P.O. Box 7965  
Columbia, SC 29202

Attorneys for Respondent

By:   
Tanya Fuller Paralegal

Mt. Pleasant, South Carolina

Dated: April 20, 2018

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# LUEDER, LARKIN & HUNTER, LLC

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ATTORNEYS AT LAW

April 20, 2018

VIA US MAIL

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

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SC Court of Appeals

RE: Barry Adickes v. Phillips Healthcare and Fidelity & Guaranty Ins.  
Co. c/o Gallagher Bassett Services, Inc.  
SCWCC No. : 1102937  
DOI : 03/22/2011  
GBS Clm No. : 002380-009116-WC-01  
LLH File No. : WC-109-0001  
SC Court of Appeals File No.: 2016-000514

Dear Ms. Kitchings:

Enclosed for filing in the above referenced matter, please find the following:

1. The original and six copies of Appellants' Motion to Suspend Benefits;
2. The original and six copies of a Proof of Service pertaining to Appellants' Motion to Suspend Benefits; and
3. Our firm check in the amount of \$25.00 to cover the cost of filing same.

Kindly return one clocked copy to me in the self-addressed stamped envelope provided. If you have any questions, please do not hesitate to contact me.

Thank you, in advance, for your assistance with this matter.

Sincerely,



Brooke A. Payne

BAP/ttf


Encl: As Stated

cc: William L. Smith, II, Esquire  
Blake A. Hewitt, Esquire  
Grady L. Beard, Esquire  
Nicolas L. Haigler, Esquire

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PO Box 11629  
Columbia, SC 29221

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