

DECISION AND ORDER  
OF THE APPELLATE PANEL OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NO: 1522045

RANDY DAVIS,

Claimant,

vs.

SENN FREIGHT LINES, INC.

Employer,

and

GUARANTEE INSURANCE COMPANY,

Carrier.

Defendants.

**RECEIVED**  
MAY 31 2018  
SC Court of Appeals

**STATEMENT OF THE CASE**

This case was originally heard before Commissioner R. Michael Campbell, II ("Single Commissioner") on December 8, 2016. The claim at issue arises out of an October 23, 2015 accident that occurred while the claimant, Randy Davis ("Claimant"), was working in the course and scope of his employment for the defendant, Senn Freight Lines, Inc. ("Senn").

Claimant contended that he sustained compensable injuries to his right upper extremity, wrist and hand as a result of an accident occurring on October 23, 2015 while working for Senn. Claimant sought temporary total disability benefits from November 2, 2015 thru April 15, 2016, with credit given to Defendants for \$500.00 salary continuation paid in lieu of compensation. Claimant further sought an order requiring the carrier to pay for all past and future causally-related medical treatment, surgical, hospital, nursing, physical therapy, diagnostic testing, or

other treatment as well as medically related travel and mileage expenses incurred by claimant as it relates to treatment of his right upper extremity, wrist and hand.

The defendant carrier, Guarantee Insurance Company ("GIC"), denied that it was responsible for the claim on the basis that it did not provide coverage for Senn at the time of the accident. Senn's worker's compensation coverage had previously been provided in accordance with an administrative services contract between Senn and GIC's insured, Entera Holdings, LLC ("Entera"). Entera is an administrative services organization ("ASO") providing outsourced employment related services, including workers compensation administration, to its clients. Prior to the date of injury, Entera had terminated Senn's contract and, thus, Senn was no longer covered by Entera's policy. The South Carolina Uninsured Employers Fund ("UEF") was made a party defendant on that basis that it would be responsible for Claimant's workers compensation benefits if Senn was found not to have coverage for this claim. Claimant, Senn, and the UEF contend that the GIC policy was responsible for this claim because the policy had not been cancelled in accordance with S.C. Code Regs, 67-405. GIC contends that this regulation does not apply because Entera's policy was never cancelled, that its contract with Senn was not a policy of insurance, and S.C. Code Regs, 67-405 does not apply in this situation.

In an order entered on April 14, 2017, the Single Commissioner found that GIC was the responsible carrier for Claimant's claim. The Single Commissioner found, among other things, that GIC did not provide notice to the Commission of the cancellation of coverage, that Entera's termination notice was not an effective termination of its contract with Senn and, even if the termination was proper, GIC would still be responsible under the thirty (30) day "grace" period set forth in S.C. Code Regs, 67-405. GIC/Entera timely filed a Form 30, *Application for Commission Review*, assigning error to the Single Commissioner order based, primarily, on an

erroneous application of S.C. Code Regs, 67-405.

A hearing before the Appellate Panel of the Full Commission was held on October 16, 2017. The determinative issue raised in GIC's appeal is whether the Single Commissioner erred in applying S.C. Code Regs, 67-405 and the resulting findings that GIC is the responsible carrier for Claimant's claim. As set forth below, the Commission finds that Regulation 67-405 does not apply to the facts of this case. The agreement between Entera and Senn is a contract for service as an ASO statutory employer and is not an insurance policy. The contractual relationship between Entera and Senn ended prior to the date of injury and, therefore, Entera and GIC are not responsible for the workers compensation benefits to which Claimant is otherwise entitled. As such, the decision and order of the Single Commissioner is **AFFIRMED IN PART** and **REVERSED IN PART**.

#### **STATEMENT OF THE FACTS**

On June 21, 2013, Senn entered into a Workers' Compensation Service and Leasing Agreement (the "Contract") with Entera. See Defendants' APA, p. 36. As set forth in the Contract, Entera is "an administrative services organization providing management, administrative, workers' compensation services and offering other programs . . ." The Contract provided that Senn would "contract with Entera to access the services offered through Entera." Pursuant to the Contract, Entera agreed to, among other things, "provide workers' compensation coverage for Covered Employees and shall be considered the statutory employer of Covered Employees for workers compensation purposes." Moreover, the contract specifies that "[t]his Agreement is a contract and not an insurance policy; therefore, laws specifically governing the issuance of insurance policies, pricing of insurance services, and termination of coverage do not apply." Under the terms of the Contract, the agreement could be terminated in a number of

ways, including “By Entera, upon a ten (10) day written notice for nonpayment.” Defendants APA, p. 36-38.

At some point in 2015, a dispute arose between Senn and Entera regarding Senn’s monthly payments. In March 2015, Entera provided written notice to Senn that it was two months behind on its payments. Defendants’ APA, p. 41. This dispute was not resolved and on September 28, 2015, Clark Fain, owner of Entera, notified Senn that “We will allow until Wednesday, September 30 at 5:00 pm EST to have received the \$122,502 balance, or we will on October 1, send a 10-day notice of cancellation for non-payment of premium.” Defendants’ APA, p. 42. On October 6, 2015, Entera provided Senn with a “10-Day Notice of Cancellation for Non-Payment.” This notice provided:

Dear Mr. Senn:

This is your 10-day fax notice of cancellation of your workers compensation coverage per our e-mail and fax on September 28, 2015 for non-payment. As of 12:01 am on October 17, 2015, Entera Work Comp Solutions, LLC will be under no further obligation to provide workers’ compensation coverage. Should you fail to secure coverage elsewhere, you could be in violation of the rules and regulations of the South Carolina Workers’ Compensation Commission (SCWCC).

The record reflects that Senn did not secure replacement coverage and was uninsured at the time of Claimant’s accident.

Claimant was injured on October 23, 2015, when a bungee cord he was using to secure a load snapped back and struck him on the right wrist.

Testimony of Randy Davis – At the hearing, Claimant testified that he is 50 years old, has a high school diploma, and a commercial driver’s license. At the time of the hearing, Claimant had been working for Wando Trucking for approximately nine to ten months. Claimant worked for Senn as a truck driver for approximately three to four months but had not worked for them

since October 30, 2015. Claimant testified that on October 23, 2015, he was securing and tarping a load on his truck when a bungee cord came loose and struck his right arm/wrist. Claimant notified the office manager, Travis, as well as another person in the office. Claimant testified that he left work to go home but his arm continued to bleed and he had a lot of swelling. Claimant continued to work the following week but continued to have complications. Claimant reported his issues to his employer and was sent to Abbeville Hospital. Claimant was diagnosed with a broken wrist and referred to an orthopedist. He was later seen by Lakeland Orthopedic and placed in a cast. Claimant testified that was still having problems so he was ordered to undergo an MRI and nerve conduction test. Claimant testified that the tests revealed he had carpal tunnel in the middle of hand, as well as damaged ligaments and cartilage. Claimant testified that he understands that he needs to have surgery to correct the issues he is still having.

Claimant testified that Senn paid him \$500 a week while he was out of work starting October 30, 2015 and continuing until February 18, 2016. Claimant testified that on February 18, 2016, he advised Senn that his doctor ordered him to stay out of work for another two months. At that point, Senn stopped paying Claimant the \$500 weekly payment. Claimant testified that he did not feel he could have done his job duties for Senn during the time he was out because of the wrist injury. Claimant testified that he started working with a new employer, Thomas Concrete, sometime in March, 2016. Claimant testified that his current job with Wando Trucking only requires him to drive; he does not have to load the truck or secure any loads. He is currently earning \$1,000 to \$1,200 a week, sometimes less. Claimant testified he still has daily pain in his right wrist, for which he is taking 600 mg of Ibuprofen.

Claimant testified that his medical bills have not been paid, except for a couple of orthopedic bills that he paid out-of-pocket.

Testimony of Danny Senn – Danny Senn, General Manager and President of Senn Freight Lines, testified that his relationship with Entera and GIC began in June 2013. According to Mr. Senn, his company got into a billing dispute with Entera in January of 2015. He testified that he placed a deposit of \$130,000 with Entera at the beginning of their contractual relationship and he wanted an accounting from Entera of where that money was. Mr. Senn testified that he informed Entera that he was not going to continue making monthly payments to Entera as long as Entera was holding the deposit. Mr. Senn explained that Senn started withholding some of its monthly payments and applying it against the deposit. Mr. Senn testified that he received a letter from Entera in October 2015 advising Senn of termination of its workers' compensation coverage. Mr. Senn testified that Senn responded immediately that they did not agree with the letter. He explained his position that Entera could not terminate for nonpayment since it was in possession of the \$130,000 deposit. He indicated that he advised Entera that he would hold them accountable for anything that happened until he could find new coverage. Mr. Senn testified that he received a response indicating that Entera did not agree with Senn's position and the cancellation would stand.

Mr. Senn testified that a few days later, he was advised of Claimant's injury. At that point, he was setting things in motion to try to find new coverage. According to Mr. Senn, Claimant was being paid \$500 per week from his date of hire through his date of injury. This was the amount paid to Claimant while he was in training and he was not cleared to drive without a trainer until October 17, 2015. Mr. Senn testified that Claimant was paid \$763.92 for the week of October 24, and \$78.26 for the week of October 31. After Claimant was taken out of work by his doctor, Senn paid Claimant \$500 a week in compensation. According to Mr. Senn,

these payments stopped in February 2016 after he requested a medical update from Claimant but did not receive one and had difficulty reaching Claimant.

Mr. Senn testified that some of Claimant's early medical bills were paid by Senn but they didn't pay any more because they were not getting any updates or records from Claimant or the providers.

On cross examination, Mr. Senn described Entera as a form of PEO that provides leasing through a contract. Mr. Senn verified that the unsigned copy of the contract in the record was a true copy of the contract between Senn and Entera. (Defendants APA, p. 36) Mr. Senn explained that the monthly payments to Entera were calculated based on a percentage of Senn's weekly payroll. At the end of the month, Senn would submit its payment along with a report showing the calculation method for that period. Mr. Senn testified that Entera is not an insurance company but is, in fact, insured by GIC. Mr. Senn admitted that the contract between Senn and Entera provided for termination by Entera upon 10-days' notice for nonpayment. Senn testified that he did believe the termination was proper in this case because, even though payments were being withheld, Entera still had Senn's initial deposit money. Mr. Senn admits to receiving a letter dated October 6, 2015 notifying Senn of the termination of the contract to be effective on October 17, 2015. Mr. Senn testified that he had been looking for alternative coverage prior to receiving the October 6, 2015 termination letter. Mr. Senn admitted that he has not initiated any legal action against Entera related to the deposit money that he claimed had not yet been returned. Mr. Senn testified that prior to Claimant's accident, he put Entera on notice that they disputed the cancellation but no action was taken by Senn to seek a determination of whether the cancellation was proper or not. Mr. Senn testified that he never received any notice of cancellation from GIC but admitted that Senn did not have a policy issued by GIC.

Testimony of Cliff Bray – Mr. Cliff Bray testified for the defendants Entera and GIC.

Mr. Bray testified that he is employed by two companies: PEO Consultants, Inc. and First Choice ASO, LLC. Mr. Bray testified that both of his companies are affiliated with Entera. Mr. Bray explained that First Choice ASO is an administrative service organization that is part of the master policy issued to Entera through which he manages as client base that he brings into and out of the policy. As explained by Mr. Bray, an ASO contracts to take over certain duties for an employer/client to provide HR type functions, safety, claims management, implement light duty programs, etc. Mr. Bray testified that he functioned as the broker to facilitate the contract between Entera and Senn in 2013. According to Mr. Bray, Entera is not an insurance company and he is not an insurance agent. Mr. Bray testified that Entera's relationship with its clients is a contractual relationship and not an insurance coverage relationship. Mr. Bray testified that Entera's contract with Senn provided that Senn's drivers would be covered by the GIC policy during the term of the contract. The contract did not provide for any coverage to any non-driver employees of Senn.

Mr. Bray testified that GIC is the insurance carrier for Entera, that its policy is issued to Entera, that the policy has been in place since 2010 and remained in effect at the time of the hearing. Mr. Bray testified that, to his knowledge, the GIC policy issued to Entera has never been cancelled. Mr. Bray testified that, in the event of a termination, the Entera contract requires the client to procure its own replacement coverage.

With regard to Senn, Mr. Bray testified that he was aware of a billing dispute between Senn and Entera that involved Senn not wanting to pay its monthly payments because Senn thought that it could use its deposit for its payments. Mr. Bray testified that Senn's position was not consistent with the contract as the contract. Mr. Bray testified that this dispute was never

resolved and Entera exercised its contractual right to terminate the contract. Mr. Bray testified that the cancellation of the contract did not result in a cancellation of Entera's insurance policy. Mr. Bray testified that at least as of August 2015 he was aware that Senn was actively looking for alternative workers compensation coverage.

Mr. Bray testified that the contract did provide that Entera would comply with applicable workers compensation laws but he did not personally know what those laws required. Mr. Bray admitted that the October 6, 2015 termination letter did not contain the word "contract" and that the letter indicates that certificate holders would be notified of the cancellation though Mr. Bray did not know who would conduct those notifications. Mr. Bray testified that he was not aware of any notices being provided the Commission.

#### Medical Records

On October 23, 2015, claimant sought treatment at Abbeville Area Medical Center. The history indicates that an elastic bungee cord slapped him on his wrist one week ago. Claimant complained of increased pain and presented with a small healing wound on his wrist. Claimant underwent an x-ray of his right wrist, which revealed a comminuted intra articular avulsion fracture of the ulnar styloid. The x-ray report also showed claimant had small bone fragments near the base of the fracture. Claimant's right hand was splinted by the nurse. Claimant was referred to Orthopaedic Associates of the Lakelands (hereinafter "Lakelands"). APA #1, p. 10.

On November 2, 2015, claimant went to Lakelands with continued complaints of pain in his right wrist. An x-ray of claimant's right wrist revealed a minimally displaced ulnar styloid fracture. Claimant was placed in a short arm cast. Claimant was taken out of work until a follow-up appointment with Dr. Charles Gray of Lakelands. APA#2, pp. 11-12.

On November 23, 2015, claimant returned to Lakelands with right wrist tenderness. X-rays of claimant's right forearm revealed a minimally displaced fracture of the distal ulnar styloid. Claimant was continued in the cast for an additional three weeks for follow-up diagnostic testing.

APA#2, pp. 13-14.

On December 14, 2015, claimant returned to Lakelands. X-rays of claimant's right forearm revealed a healed ulnar styloid fracture. APA#2, pp. 15-16.

On January 7, 2016, claimant returned to Lakelands with complaints of stiffness and pain in his right wrist. Claimant stated that there was no new history of trauma. A physical examination revealed that claimant had right wrist swelling and tenderness accompanied with pain upon movement. After performing diagnostic testing on claimant's right forearm, Dr. Gray opined that claimant may have a TFCC tear. Dr. Gray referred claimant to physical therapy, directed claimant to wear a wrist splint as needed, and scheduled a follow-up appointment. APA#2, pp. 17-18.

On February 18, 2016, claimant returned to Lakelands. Claimant stated that physical therapy was assisting in his recovery. A physical examination revealed that he continued to suffer tenderness over the TFCC ligament, but had improved range of motion. After undergoing diagnostic testing, claimant was directed by Dr. Gray to continue physical therapy and remain out of work. Dr. Gray documented that claimant was to return to Lakelands in two months. APA#2, pp. 19-21.

On March 14, 2016, claimant returned to Lakelands with continued complaints of pain in the ulnar aspect of his right wrist. Claimant also had developed numbness in the

radial three digits, mainly in his right thumb. Claimant stated that he awoke at night with numbness causing inability to sleep. A physical examination of his right upper extremity revealed limited range of motion, stiffness of his fingers and difficulty obtaining a full grip. Dr. Gray ordered an MRI of claimant's right wrist, nerve conduction studies to evaluate carpal tunnel syndrome, and a follow up appointment. APA#2, pp. 22-23.

On March 23, 2016, claimant went to Self Regional Healthcare for an EMG/NCS study on his right hand. The procedure revealed that claimant was suffering from right carpal tunnel syndrome. APA#3, pp. 44-45.

On March 24, 2016, claimant underwent an MRI of his right upper extremity without contrast. The MRI revealed that claimant was suffering from the following:

- 1) tear of the TFCC and its ulnar attachments as well as central perforation at the radial attachment;
- 2) nonunited fracture at the base of the ulnar styloid;
- 3) mild edema in the distal pole of the scaphoid volar aspect, which may reflect residual osseous contusion; and
- 4) split interstitial tear of the extensor carpi ulnar tendon at the level of the ulnar styloid with mild tenosynovitis. APA#3, pp. 46-47.

On March 31, 2016, claimant returned to Lakelands with continued complaints of right wrist discomfort. After reviewing the MRI and EMG/NCS studies, Dr. Gray referred claimant to Dr. John A. King, who also practices orthopaedics at Lakelands. APA#2, p. 23.

On April 12, 2016, claimant returned to Lakelands for his initial evaluation with Dr. King. Claimant gave Dr. King a history of his work-related accident. Claimant was experiencing tenderness, loss of range of motion, and diminished sensation in his median nerve at the wrist. Claimant was diagnosed with right carpal tunnel syndrome and a nonunion ulnar styloid fracture with a probable TFCC tear. Dr. King opined that claimant

required surgical intervention consisting of wrist arthroscopy with possible debridement, reconstruction of his ulnar styloid nonunion with possible distal radius bone grafting and fixation, and right carpal tunnel decompression. Dr. King further opined that claimant will require postoperative splinting. Claimant stated that he wished to proceed with surgery. APA#2, pp. 24-26.

On August 25, 2016, Dr. King completed an affidavit in which he opined that based on his education, training, experience, treatment of claimant and review of his medical records, that it was his opinion to a reasonable degree of medical certainty that it is more probable than not that claimant suffered the ulnar styloid fracture, right carpal tunnel syndrome, tear of the TFCC and its ulnar attachment as well as perforation at the radial attachment and split interstitial tear of extensor carpal ulnaris tendon at the level of the ulnar styloid with mild tenosynovitis due to his work-related accident on October 23, 2015. Further Dr. King opined that based on his education, training, experience, treatment of claimant and review of his medical records, that it was his opinion to a reasonable degree of medical certainty that it is more probable than not that claimant's work-related accident on October 23, 2015 was a substantial contributing cause for his need for the surgeries he recommended. APA#2, pp. 27-28, 43.

#### **FULL COMMISSION REVIEW**

Following the December 8, 2016 hearing, the Single Commissioner made the following findings of fact and conclusions of law:

## FINDINGS OF FACT

Based upon the stipulations of the parties, the testimony and evidence received and produced at this hearing, as well as my personal observations of the witnesses, the undersigned Commissioner finds the following facts based on a preponderance of the evidence:

(1) Claimant sustained an admitted compensable injury by accident arising out of and in the course and scope of his employment to his right upper extremity, wrist and hand. Specifically, as claimant was securing a tarp on his work trailer during the course of his employment with Senn Freight Lines, Inc., an elastic bungee cord tore loose from the tarp and struck claimant in the right upper extremity, wrist and hand. This finding is based on the testimony of claimant, the actions of Senn Freight Lines, Inc., in paying claimant after the injury while he was out of work, and the letter dated April 18, 2016 by Danny Senn, General Manager of Senn Freight Lines, Inc., in which he acknowledged familiarity with claimant's injury in October 2015. APA#4, p. 47.

(2) Claimant gave proper and timely notice to the employer of his injury. This finding is based on the testimony of claimant that he reported that accident to both Travis, the employer's office manager, and Mike, the employer's log manager, as well as the fact that the employer acknowledged familiarity with claimant's injury in October 2015 in his letter dated April 18, 2016, paid claimant \$500.00 per week after the injury by accident, and claimed to have paid for some of his medical care.

(3) Claimant did not seek immediate medical treatment and continued working for the following week. When he returned to work after driving for that week, he informed Travis that he was having complications due to his work injury. Travis advised claimant to seek immediate medical treatment. This finding is based on the testimony of claimant.

(4) Following the advice of his employer, claimant went to Abbeville Area Medical Center seeking medical treatment. Claimant was diagnosed with having suffered a comminuted intraarticular avulsion fracture of the ulnar styloid and he was referred to Charles Gray, M.D. at Orthopaedics Associates of the Lakelands. This finding is based on the testimony of claimant and APA #1, pp. 1-10.

(5) When claimant was taken out of work following his appointment with Abbeville Area Medical Center, Senn Freight Lines, Inc. began paying claimant \$500.00 a week beginning the week of November 2, 2015. This finding is based on the testimony of claimant and Mr. Senn.

(6) On November 2, 2015, claimant began treating with Dr. Gray. Claimant was diagnosed with a minimally displaced ulnar styloid fracture of his right wrist. Claimant was placed in a short arm cast and taken out of work. This finding is based on the testimony of claimant and AP A #2, pp. 11-12.

(7) Claimant continued to treat conservatively with Dr. Gray and remained out of work. On February 18, 2016, Dr. Gray documented that claimant's right upper extremity, wrist and hand symptoms had not resolved. Dr. Gray was concerned that claimant may have a TFCC tear. He continued to keep claimant out of work for two more months until his next follow-up appointment. This finding is based on the testimony of claimant and APA #2, pp. 13-21.

(8) After employer received claimant's work excuse dated February 18, 2016 from Dr. Gray keeping claimant out of work for another two months, the employer stopped paying claimant weekly benefits of \$500.00 as salary in lieu of compensation. This finding is based on the testimony of claimant and Mr. Senn.

(9) Due to continued unresolved problems, claimant underwent an EMG/NCS on his right upper extremity on March 23, 2016, which revealed that claimant was suffering from right carpal tunnel syndrome. This finding is based on AP A#3, pp.44-45.

(10) Likewise, claimant underwent an MRI of his right upper extremity without contrast on March 24, 2016. The MRI revealed that claimant was suffering from the following:

A) tear of the TFCC and its ulnar attachments as well as central perforation at the radial attachment;

B) nonunited fracture at the base of the ulnar styloid;

C) mild edema in the distal pole of the scaphoid volar aspect, which may reflect residual osseous contusion; and

D) split interstitial tear of the extensor carpi ulnaris tendon at the level of the ulnar styloid with mild tenosynovitis.

This finding is based on the testimony of claimant and on AP A#3, pp. 46-47.

(11) Upon receipt of the MRI and EMG/NCS results, Dr. Gray referred claimant to his partner, Dr. King. Following an examination and a review of claimant's diagnostic tests results, Dr. King opined on April 12, 2016 that claimant was a candidate for:

A) wrist arthroscopy with possible debridement;

B) reconstruction of his ulnar styloid nonunion with possible distal radius bone grafting and fixation; and

C) right carpal tunnel decompression.

Dr. King documented that claimant desired to proceed with surgeries. This finding is based on the testimony of claimant and on AP A #2, pp. 24-26.

(12) Claimant returned to work with a new employer on or about April 15, 2016. This finding is based on the testimony of claimant.

(13) As a direct result of claimant's work-related accident on October 23, 2015, claimant suffered an ulnar styloid fracture, right carpal tunnel syndrome, tear of the TFCC and its ulnar attachments, as well as, perforation at the radial attachment and split interstitial tear of the extensor carpal ulnaris tendon at the level of the ulnar styloid with mild tenosynovitis. This finding is based on the questionnaire for claimant completed by Dr. King on August 25, 2016 in which he gave the above-stated opinion to a reasonable degree of medical certainty. AP A #2, pp. 27-28.

(14) It is the opinion of Dr. King to a reasonable degree of medical certainty that the surgeries that he recommends for treatment of claimant's injuries are causally-related to claimant's work related accident. This finding is also based on the questionnaire for claimant completed by Dr. King on August 25, 2016. APA #2, pp. 27-28.

(15) Claimant has not reached maximum medical improvement. This finding is based on the testimony of claimant, the medical records of Dr. King, and on the questionnaire for claimant completed by Dr. King on August 25, 2016. APA #2, pp. 24-43.

(16) Claimant's average weekly is \$554.22 and his corresponding compensation rate is \$369.48 per week. This finding is based on the sworn testimony of Mr. Senn that claimant worked for eight weeks at \$500.00 per week, one week at \$763.92 and one week at \$778.26. This equates to total earnings of \$5,542.18 over a ten week period of employment. Furthermore, based on this same sworn testimony and in the absence of payroll records of a like kind employee, I find that the most applicable and fairest methodology to determine claimant's

average weekly wage is the second method under Section 42-1-40, which permits the determination to be made based on wages earned during actual time worked.

(17) Defendants dispute whether or not the employer's workers' compensation coverage was still in effect at the time of claimant's alleged work-related accident. Guarantee Insurance Company provides insurance coverage for Entera, who contracted with Senn Freight Lines, Inc. to provide workers' compensation coverage, as well as other employer related services. The contract between Entera and Senn Freight Lines, Inc. stated that Entera could terminate its services, including the termination of the workers' compensation coverage, by providing Senn Freight Lines, Inc. with ten (10) days written notice, if Senn Freight Lines, Inc. either fails to pay the monthly premiums or fails to provide monthly payroll information. The contract further provides that "Entera warrants that it will comply with all applicable workers' compensation laws." This finding is based on the testimony of Mr. Senn and Mr. Bray as well as the Service and Leasing Agreement set forth as APA #A, pp. 36-40.

(18) A billing dispute arose between Entera and Senn Freight Lines, Inc. and, therefore, Senn Freight Lines, Inc. decided to quit paying monthly premiums to Entera. This finding is based on the testimony of Mr. Senn and Mr. Bray as well as the Service and Leasing Agreement set forth as APA #A, pp. 36-40 and APA #B, pp. 41-43.

(19) On October 6, 2015, Mr. M. Clark Fain, III, of Entera wrote a letter to Senn Freight Lines, Inc., setting forth that the letter was to serve as its ten (10) day written notice of cancellation of Senn's workers' compensation coverage for non-payment. The letter further stated that as of October 17, 2015, Entera will be under no farther obligation to provide workers' compensation coverage to Senn. This finding is based on the testimony of Mr. Senn and Mr.

Bray as well as the Service and Leasing Agreement set forth as APA #A, pp. 36-40 and APA #B, p. 44.

(20) Despite setting forth in the letter dated October 6, 2015 to Senn that Entera would notify all certificate of insurance holders and the South Carolina Workers' Compensation Commission of the cancellation of Senn's workers' compensation coverage, Entera never followed thru with notification of the cancellation to the South Carolina Workers' Compensation Commission. This finding is based on the testimony of Mr. Senn and Mr. Bray, Entera's failure to produce evidence of having given notification of the cancellation of Senn's coverage to the South Carolina Workers' Compensation Commission, as well as my review of the South Carolina Workers' Compensation Commission's records.

(21) Entera's failure to give notification of the cancellation of Senn's workers' compensation coverage to the South Carolina Workers' Compensation Commission was in direct violation of R. 67-405 and, therefore, I find that Entera did not cancel Senn's workers' compensation coverage in accordance with the workers' compensation law.

(22) Even if Entera had immediately notified the Commission of the October 6, 2015 termination letter to Senn, Entera's cancellation still would not have been valid because R. 67-405 also states that the termination shall not be effective for 30 days. Claimant's accident occurred on October 23, 2015, which was well within the 30 day "grace" period before termination would have become effective.

(23) Based on the foregoing, I find that Entera's letter dated October 6, 2015 to Senn did not serve to terminate the service and leasing agreement between Entera and Senn Freight Lines, Inc. and did not effectively cancel coverage pursuant to R. 67-405. Therefore, Guarantee Insurance Company remains the responsible carrier.

(24) Claimant is entitled to receive temporary total disability benefits from November 2, 2015 until April 15, 2016, at which time claimant began working for a different employer. The total amount of temporary total benefits owed to claimant will be \$8,603.61 [(\$369.48 + 7 days/wk)@163 days]. Claimant actually went out of work on October 30, 2015; however, the payroll records indicate that he received a payroll check covering him until November 2, 2015. This finding is based on the testimony of claimant and Mr. Senn and upon a review of claimant's work excuses documented in APA# 1 and APA #2, as well as the payroll records in APA #D.

(25) Since Senn Freight Lines, Inc. paid claimant \$500.00 per week salary in lieu of workers' compensation benefits while claimant was out of work from November 2, 2015 until February 18, 2016, the Defendants are entitled to a credit against the temporary total benefits owed to claimant in the amount of \$7,642.86 [(\$500.00 + ?days/wk) @ 107 days]. This finding is based on the testimony of claimant and Mr. Senn and on APA #4, p. 47.

(26) Guarantee Insurance Company is required to pay for all causally-related medical, surgical, hospital, nursing, physical therapy, diagnostic testing, or other treatment as well as medically related travel and mileage expenses incurred by claimant as it relates to treatment of his treatment of his right upper extremity, wrist and hand. The causally-related medical care includes, but is not limited to, treatment rendered at Abbeville Area Medical Center, Lakelands Orthopaedic & Sports Medicine Clinic & Self Regional Healthcare. Accordingly, Guarantee Insurance Company shall pay for and provide all future causally-related medical care subject to the medical fee schedule. This finding is based on the testimony of claimant and on the medical records.

(27) Guarantee Insurance Company is required to reimburse claimant for all out of pocket expenses incurred for medical, surgical, hospital, nursing, physical therapy, diagnostic

testing or other treatment, which are causally-related to claimant's compensable injuries. This finding is based on the testimony of claimant and on the medical records.

(28) Claimant is entitled to an evaluation and further causally-related medical treatment for his right upper extremity, wrist and hand by a physician of defendant's choosing who has a specialty in the treatment of hand and wrist injuries. Defendant must identify the doctor to whom it wishes to refer claimant for treatment of these conditions and schedule appointments for said treatment within fifteen (15) days of service of this order or claimant may choose the doctor of his choice. Defendants shall provide its specialist with claimant's prior causally-related medical records.

#### CONCLUSIONS OF LAW

(1) The findings of fact as set forth above are construed to be conclusions of law, if applicable.

(2) Under S.C. Code Ann. §42-1-160, claimant sustained injuries by accident to his right upper extremity, wrist and hand arising out of and in the course and scope of his employment.

(3) Under S.C. Code Ann. §42-1-40, claimant has an average weekly wage of \$554.18 and compensation rate of \$369.48 per week.

(4) Under S.C. Code Ann. §42-15-20, claimant met the requirement of giving timely notice to the employer of the accidental injury.

(5) Under S.C. Code Ann. §42-9-10, claimant is entitled to receive temporary total compensation benefits from November 2, 2015 until April 15, 2016; however, defendants are entitled to a credit against the total amount of temporary total benefits owed to claimant for the

\$500.00 per week salary paid to claimant in lieu of workers' compensation benefits while he was out of work from November 2, 2015 until February 18, 2016. In order for the salary payments to be deductible from an award of workers' compensation benefits, they must have been made with reference to liability under the provisions of the Workers' Compensation Act and intended to be in lieu of compensation. See Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (S.C. App. 1999).

(6) Under S.C. Code Ann. §42-15-60, defendants are required to pay for all causally-related medical, surgical, hospital, nursing, physical therapy, diagnostic testing, or other treatment as well as medically related travel and mileage expenses incurred by claimant as it relates to treatment of his right upper extremity, wrist and hand. The causally-related medical care includes, but is not limited to, treatment rendered at Abbeville Area Medical Center, Lakelands Orthopaedic & Sports Medicine Clinic & Self Regional Healthcare. Accordingly, the defendant shall pay for and provide all future causally-related medical care subject to the medical fee schedule.

(7) Under S.C. Code Ann. §42-15-60, defendants are required to reimburse claimant for all out of pocket expenses incurred for medical, surgical, hospital, nursing, physical therapy, diagnostic testing or other treatment, which are causally-related to claimant's compensable injuries to his right upper extremity, wrist and hand.

(8) Under S.C. Code Ann. §42-15-60, defendants are required to provide Claimant with an evaluation and further causally-related medical treatment for his right upper extremity, wrist and hand by a physician of defendant's choosing who has a specialty in the treatment of hand and wrist injuries. Defendant must identify the doctor to whom it wishes to refer claimant for treatment of these conditions and schedule appointments for said treatment within fifteen (15)

days of service of this order or claimant may choose the doctor of his choice. Defendants shall provide its specialist with claimant's prior causally-related medical records.

(9) Under Regulation 67-405, "[i]f ... the insurer cancels the policy, the employer's insurer shall immediately notify the Commission's authorized agent that it no longer insures the employer. (I) A worker's compensation insurance carrier shall file a notice of cancellation in accordance with R. 67-416. Such termination shall not be effective until thirty days after receipt by the Commission's authorized agent." Since Entera did not notify the Commission's authorized agent that it no longer insures Senn Freight Lines, Inc, the letter from Entera to Senn Freight Lines, Inc. dated October 6, 2015, did not serve to terminate the service and leasing agreement between Entera and Senn Freight Lines, Inc. and did not effectively cancel coverage. Therefore, Guarantee Insurance Company remains the responsible carrier.

#### **DECISION OF THE FULL COMMISSION**

Based upon its review of the record, the briefs of the parties, and the arguments of counsel, the Appellate Panel of the Full Commission finds that the Single Commissioner erred in finding that S.C. Code Regs, 67-405 applied in this case. The Commissioners considered the matter and **Affirms in Part, Reverses in Part** the decision and order of the Single Commissioner. As set forth below, it is the finding of the Commission that Entera and GIC are not responsible for the claim. The Commission further finds that UEF and Senn are responsible as the uninsured employer and Uninsured Fund. The Commission finds that Regulation 67-405 does not apply to the facts of this case. The agreement between Entera and Senn is not an insurance policy but was a contract for service as an ASO statutory employer. The Commission finds that the contractual relationship between Entera and Senn ended prior to the date of injury

and, therefore, GIC was under no obligation to continue provide coverage under its policy for Senn's employees.

Following the October 16, 2017 hearing, and based on the record as a whole, the briefs of the parties, and the arguments of counsel, the Appellate Panel makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

(1) Claimant sustained an admitted compensable injury by accident arising out of and in the course and scope of his employment to his right upper extremity, wrist and hand. Specifically, as claimant was securing a tarp on his work trailer during the course of his employment with Senn, an elastic bungee cord tore loose from the tarp and struck claimant in the right upper extremity, wrist and hand. This finding is based on the testimony of claimant, the actions of Senn, in paying claimant after the injury while he was out of work, and the letter dated April 18, 2016 by Danny Senn, General Manager of Senn, in which he acknowledged familiarity with claimant's injury in October 2015. APA#4, p. 47.

(2) Claimant gave proper and timely notice to the employer of his injury. This finding is based on the testimony of claimant that he reported that accident to both Travis, the employer's office manager, and Mike, the employer's log manager, as well as the fact that the employer acknowledged familiarity with claimant's injury in October 2015 in his letter dated April 18, 2016, paid claimant \$500.00 per week after the injury by accident, and claimed to have paid for some of his medical care.

(3) Claimant did not seek immediate medical treatment and continued working for the following week. When he returned to work after driving for that week, he informed Travis

that he was having complications due to his work injury. Travis advised claimant to seek immediate medical treatment. This finding is based on the testimony of claimant.

(4) Following the advice of his employer, claimant went to Abbeville Area Medical Center seeking medical treatment. Claimant was diagnosed with having suffered a comminuted intraarticular avulsion fracture of the ulnar styloid and he was referred to Charles Gray, M.D. at Orthopaedics Associates of the Lakelands. This finding is based on the testimony of claimant and APA #1, pp. 1-10.

(5) When claimant was taken out of work following his appointment with Abbeville Area Medical Center, Senn began paying claimant \$500.00 a week beginning the week of November 2, 2015. This finding is based on the testimony of claimant and Mr. Senn.

(6) On November 2, 2015, claimant began treating with Dr. Gray. Claimant was diagnosed with a minimally displaced ulnar styloid fracture of his right wrist. Claimant was placed in a short arm cast and taken out of work. This finding is based on the testimony of claimant and APA #2, pp. 11-12.

(7) Claimant continued to treat conservatively with Dr. Gray and remained out of work. On February 18, 2016, Dr. Gray documented that claimant's right upper extremity, wrist and hand symptoms had not resolved. Dr. Gray was concerned that claimant may have a TFCC tear. He continued to keep claimant out of work for two more months until his next follow-up appointment. This finding is based on the testimony of claimant and APA #2, pp. 13-21.

(8) After employer received claimant's work excuse dated February 18, 2016 from Dr. Gray keeping claimant out of work for another two months, the employer stopped paying claimant weekly benefits of \$500.00 as salary in lieu of compensation. This finding is based on the testimony of claimant and Mr. Senn.

(9) Due to continued unresolved problems, claimant underwent an EMG/NCS on his right upper extremity on March 23, 2016, which revealed that claimant was suffering from right carpal tunnel syndrome. This finding is based on APA#3, pp.44-45.

(10) Likewise, claimant underwent an MRI of his right upper extremity without contrast on March 24, 2016. The MRI revealed that claimant was suffering from the following:

A) tear of the TFCC and its ulnar attachments as well as central perforation at the radial attachment;

B) nonunited fracture at the base of the ulnar styloid;

C) mild edema in the distal pole of the scaphoid volar aspect, which may reflect residual osseous contusion; and

D) split interstitial tear of the extensor carpi ulnaris tendon at the level of the ulnar styloid with mild tenosynovitis.

This finding is based on the testimony of claimant and on APA#3, pp. 46-47.

(11) Upon receipt of the MRI and EMG/NCS results, Dr. Gray referred claimant to his partner, Dr. King. Following an examination and a review of claimant's diagnostic tests results, Dr. King opined on April 12, 2016 that claimant was a candidate for:

A) wrist arthroscopy with possible debridement;

B) reconstruction of his ulnar styloid nonunion with possible distal radius bone grafting and fixation; and

C) right carpal tunnel decompression.

Dr. King documented that claimant desired to proceed with surgeries. This finding is based on the testimony of claimant and on APA #2, pp. 24-26.

(12) Claimant returned to work with a new employer on or about April 15, 2016. This finding is based on the testimony of claimant.

(13) As a direct result of claimant's work-related accident on October 23, 2015, claimant suffered an ulnar styloid fracture, right carpal tunnel syndrome, tear of the TFCC and its ulnar attachments, as well as, perforation at the radial attachment and split interstitial tear of the extensor carpal ulnaris tendon at the level of the ulnar styloid with mild tenosynovitis. This finding is based on the questionnaire for claimant completed by Dr. King on August 25, 2016 in which he gave the above-stated opinion to a reasonable degree of medical certainty. APA #2, pp. 27-28.

(14) It is the opinion of Dr. King to a reasonable degree of medical certainty that the surgeries that he recommends for treatment of claimant's injuries are causally-related to claimant's work related accident. This finding is also based on the questionnaire for claimant completed by Dr. King on August 25, 2016. APA #2, pp. 27-28.

(15) Claimant has not reached maximum medical improvement. This finding is based on the testimony of claimant, the medical records of Dr. King, and on the questionnaire for claimant completed by Dr. King on August 25, 2016. APA #2, pp. 24-43.

(16) Claimant's average weekly is \$554.22 and his corresponding compensation rate is \$369.48 per week. This finding is based on the sworn testimony of Mr. Senn that claimant worked for eight weeks at \$500.00 per week, one week at \$763.92 and one week at \$778.26. This equates to total earnings of \$5,542.18 over a ten week period of employment. Furthermore, based on this same sworn testimony and in the absence of payroll records of a like kind employee, I find that the most applicable and fairest methodology to determine claimant's

average weekly wage is the second method under Section 42-1-40, which permits the determination to be made based on wages earned during actual time worked.

(17) GIC and Entera dispute whether or not Entera's workers' compensation coverage was still in effect as to Senn at the time of claimant's alleged work-related accident. The Commission finds that GIC provided insurance coverage for Entera, who entered into an ASO contract with Senn to provide workers' compensation coverage, as well as other employer related services. Pursuant to the Contract, Entera agreed to, among other things, "provide workers' compensation coverage for Covered Employees and shall be considered the statutory employer of Covered Employees for workers compensation purposes." Moreover, the Contract specifies that "[t]his Agreement is a contract and not an insurance policy; therefore, laws specifically governing the issuance of insurance policies, pricing of insurance services, and termination of coverage do not apply." This finding is based on the testimony of Mr. Bray as well as the Service and Leasing Agreement set forth as APA #A, pp. 36-40.

(18) The Contract between Entera and Senn specifically provided that Entera could terminate its services, including the termination of the workers' compensation coverage, by providing Senn with ten (10) days written notice, if Senn either failed to pay the monthly premiums or failed to provide monthly payroll information. This finding is based on the testimony of Mr. Senn and Mr. Bray as well as the Service and Leasing Agreement set forth as APA #A, pp. 36-40.

(19) The record shows that a billing dispute arose between Entera and Senn resulting in Senn decided to withhold its monthly payments to Entera. This finding is based on the testimony of Mr. Senn and Mr. Bray as well as the Service and Leasing Agreement set forth as APA #A, pp. 36-40 and APA #B, pp. 41-43.

(20) On October 6, 2015, Mr. M. Clark Fain, III, of Entera wrote a letter to Senn setting forth that the letter was to serve as its ten (10) day written notice of cancellation of Senn's workers' compensation coverage for non-payment in accordance with the terms of the Contract. The letter further stated that as of October 17, 2015, Entera will be under no farther obligation to provide workers' compensation coverage to Senn. This finding is based on the testimony of Mr. Senn and Mr. Bray as well as the Service and Leasing Agreement set forth as APA #A, pp. 36-40 and APA #B, p. 44.

(21) While the letter dated October 6, 2015 indicated that Entera would notify all certificate of insurance holders and the South Carolina Workers' Compensation Commission of the cancellation of Senn's workers' compensation coverage, such notice was not provided the South Carolina Workers' Compensation Commission. This finding is based on the testimony of Mr. Senn and Mr. Bray, as well as the records of the South Carolina Workers' Compensation Commission.

(22) The Commission finds, based on the express terms of the Contract, and the testimony of the parties, that the Contract between Entera and Senn is not a policy of insurance but was a contract for services for Entera to assume the contractual obligations of an ASO statutory employer. This finding is based on the testimony of Mr. Senn and Mr. Bray as well as the Service and Leasing Agreement set forth as APA #A, pp. 36-40 and APA #B, p. 44.

(23) Senn's workers compensation coverage for certain of its employees was provided by GIC in accordance with the terms of its policy with Entera and the ASO contract that Senn voluntarily entered into. At no time relevant to this matter did Senn have a policy of insurance issue in its name by GIC.

(24) At no time relevant to this matter was GIC's policy of insurance with Entera cancelled or terminated.

(25) The Commission finds that Regulation 67-405 does not apply to the facts of this case. Regulation 67-405, by its plain language, applies when an employer fails to renew coverage or the insurer cancels the policy; neither of which occurred in this case.

(26) The Commission finds that the contractual relationship between Entera and Senn ended prior to the date of injury and, therefore, GIC was under no obligation to continue to provide coverage under its policy for Senn's employees.

(27) It is the finding of the Commission that Entera and GIC are not responsible for the claim.

(28) The Commission further finds that Senn and UEF are responsible for this claim as the uninsured employer and Uninsured Fund.

(29) Claimant is entitled to receive temporary total disability benefits from November 2, 2015 until April 15, 2016, at which time claimant began working for a different employer. The total amount of temporary total benefits owed to claimant will be \$8,603.61 [(\$369.48 + 7 days/wk)@163 days]. Claimant actually went out of work on October 30, 2015; however, the payroll records indicate that he received a payroll check covering him until November 2, 2015. This finding is based on the testimony of claimant and Mr. Senn and upon a review of claimant's work excuses documented in APA# 1 and APA #2, as well as the payroll records in APA #D.

(30) Since Senn paid claimant \$500.00 per week salary in lieu of workers' compensation benefits while claimant was out of work from November 2, 2015 until February 18, 2016, the employer is entitled to a credit against the temporary total benefits owed to

claimant in the amount of \$7,642.86 [(\$500.00 + ?days/wk) @ 107 days]. This finding is based on the testimony of claimant and Mr. Senn and on APA #4, p. 47.

(31) As the responsible parties, UEF/Senn are required to pay for all causally-related medical, surgical, hospital, nursing, physical therapy, diagnostic testing, or other treatment as well as medically related travel and mileage expenses incurred by claimant as it relates to treatment of his treatment of his right upper extremity, wrist and hand. The causally-related medical care includes, but is not limited to, treatment rendered at Abbeville Area Medical Center, Lakelands Orthopaedic & Sports Medicine Clinic & Self Regional Healthcare. Accordingly, UEF/Senn shall pay for and provide all future causally-related medical care subject to the medical fee schedule. This finding is based on the testimony of claimant and on the medical records.

(32) UEF/Senn are required to reimburse claimant for all out of pocket expenses incurred for medical, surgical, hospital, nursing, physical therapy, diagnostic testing or other treatment, which are causally-related to claimant's compensable injuries. This finding is based on the testimony of claimant and on the medical records.

(33) Claimant is entitled to an evaluation and further causally-related medical treatment for his right upper extremity, wrist and hand by a physician of defendant's choosing who has a specialty in the treatment of hand and wrist injuries. UEF/Senn must identify the doctor to whom it wishes to refer claimant for treatment of these conditions and schedule appointments for said treatment within fifteen (15) days of service of this order or claimant may choose the doctor of his choice. UEF/Senn shall provide its specialist with claimant's prior causally-related medical records.

### CONCLUSIONS OF LAW

(10) The findings of fact as set forth above are construed to be conclusions of law, if applicable.

(11) Under S.C. Code Ann. §42-1-160, claimant sustained injuries by accident to his right upper extremity, wrist and hand arising out of and in the course and scope of his employment.

(12) Under S.C. Code Ann. §42-1-40, claimant has an average weekly wage of \$554.18 and compensation rate of \$369.48 per week.

(13) Under S.C. Code Ann. §42-15-20, claimant met the requirement of giving timely notice to the employer of the accidental injury.

(14) Under S.C. Code Ann. §42-9-10, claimant is entitled to receive temporary total compensation benefits from November 2, 2015 until April 15, 2016; however, defendants are entitled to a credit against the total amount of temporary total benefits owed to claimant for the \$500.00 per week salary paid to claimant in lieu of workers' compensation benefits while he was out of work from November 2, 2015 until February 18, 2016. In order for the salary payments to be deductible from an award of workers' compensation benefits, they must have been made with reference to liability under the provisions of the Workers' Compensation Act and intended to be in lieu of compensation. See Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (S.C. App. 1999).

(15) Under S.C. Code Ann. §42-15-60, UEF/Senn are required to pay for all causally-related medical, surgical, hospital, nursing, physical therapy, diagnostic testing, or other treatment as well as medically related travel and mileage expenses incurred by claimant as it relates to treatment of his right upper extremity, wrist and hand. The causally-related medical

care includes, but is not limited to, treatment rendered at Abbeville Area Medical Center, Lakelands Orthopaedic & Sports Medicine Clinic & Self Regional Healthcare. Accordingly, UEF/Senn shall pay for and provide all future causally-related medical care subject to the medical fee schedule.

(16) Under S.C. Code Ann. §42-15-60, UEF/Senn are required to reimburse claimant for all out of pocket expenses incurred for medical, surgical, hospital, nursing, physical therapy, diagnostic testing or other treatment, which are causally-related to claimant's compensable injuries to his right upper extremity, wrist and hand.

(17) Under S.C. Code Ann. §42-15-60, UEF/Senn are required to provide Claimant with an evaluation and further causally-related medical treatment for his right upper extremity, wrist and hand by a physician of defendant's choosing who has a specialty in the treatment of hand and wrist injuries. UEF/Senn must identify the doctor to whom it wishes to refer claimant for treatment of these conditions and schedule appointments for said treatment within fifteen (15) days of service of this order or claimant may choose the doctor of his choice. UEF/Senn shall provide its specialist with claimant's prior causally-related medical records.

(18) Under Regulation 67-405, "[i]f ... the insurer cancels the policy, the employer's insurer shall immediately notify the Commission's authorized agent that it no longer insures the employer. (I) A worker's compensation insurance carrier shall file a notice of cancellation in accordance with R. 67-416. Such termination shall not be effective until thirty days after receipt by the Commission's authorized agent." Since the GIC policy at issue in this case was never canceled, Regulation 67-405 has no application to the facts of this.

(19) The Commission finds that the contractual relationship between Entera and Senn ended prior to the date of injury and, therefore, GIC was under no obligation to continue to provide coverage under its policy for Senn's employees.

(20) GIC is not the responsible carrier for this claim.

(21) Senn and UEF are responsible for this claim as the uninsured employer and Uninsured Fund.

### ORDER AND AWARD

**IT IS THEREFORE ORDERED** that **SENN FREIGHT LINES, INC.**, as the Uninsured Employer, and **SOUTH CAROLINA UNINSURED EMPLOYER'S FUND**, shall pay claimant, **RANDY DAVIS**, weekly compensation in the amount of **Three Hundred Sixty Nine One Hundred Eighty-Four and 48/100 (\$369.48) Dollars** from November 2, 2015 until April 15, 2016 in the total amount of **Eight Thousand Six Hundred Three and 61/100 (\$8,603.61) Dollars** [ $(\$369.48 \div 7 \text{ days/wk}) @ 163 \text{ days}$ ]; however, the Employer is entitled to a credit against the temporary total benefits owed to claimant in the amount of **Seven Thousand Six Hundred Forty-Two and 86/100 (\$7,642.86) Dollars** [ $(\$500.00 \div 7 \text{ days/wk}) @ 107 \text{ days}$ ] because Senn paid claimant \$500.00 per week salary in lieu of workers' compensation benefits while claimant was out of work from November 2, 2015 until February 18, 2016. Therefore, the net balance of past temporary total disability benefits owed to claimant is **Nine Hundred Sixty and 75/100 (\$960.75) Dollars**.

**IT IS FURTHER ORDERED** that Senn/UEF are required to pay for all causally-related medical, surgical, hospital, nursing, physical therapy, diagnostic testing or other treatment as well as medically related travel and mileage expenses incurred by claimant as it relates to treatment for claimant's right upper extremity, wrist and hand. The causally-related medical care

includes, but is not limited to, treatment rendered at Abbeville Area Medical Center, Lakelands Orthopaedic Clinic, and Self Regional Healthcare.

**IT IS FURTHER ORDERED** that Senn/UEF are required to reimburse claimant for all out of pocket expenses incurred for medical, surgical, hospital, nursing, physical therapy, diagnostic testing or other treatment, which are causally-related to claimant's compensable injuries to his right upper extremity, wrist and hand.


**IT IS FURTHER ORDERED** that Senn/UEF are required to provide claimant with an evaluation and further causally-related medical treatment for his right upper extremity, wrist and hand, by a physician of Senn/UEF's choosing who has a specialty in the treatment of hand and wrist injuries. Senn/UEF must identify the specialist to whom it wishes to refer claimant for treatment of these conditions and schedule appointments for said treatment within fifteen (15) days of service of this order or claimant may choose the specialist of his choice. Senn/UEF shall provide its specialist with claimant's prior causally-related medical records. Likewise, Senn/UEF must provide claimant with all future causally-related medical care that is prescribed by this specialist and shall pay for this treatment subject to the medical fee schedule.

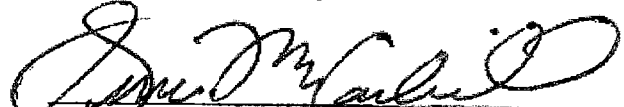
**IT IS FURTHER ORDERED** that Guarantee Insurance Company and Entera Holdings, LLC are dismissed from this claim.

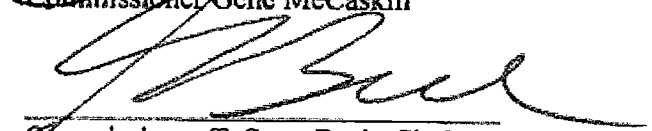
**IT IS SO ORDERED.**

[Signatures to Follow]

SOUTH CAROLINA WORKERS'  
COMPENSATION COMMISSION

  
Commissioner Melody L. James

  
Commissioner Gene McCaskill

  
Commissioner T. Scott Beck, Chairman

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).

***By Eugenia on May 1, 2018***