

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. File No. 1408826

Gennette Sowell,

Employee,
Respondent,

v.

Piggly Wiggly,

Employer,

and

Auto Owners Insurance Inc.,

Carrier,
Appellants.

**RECORD ON APPEAL
VOL. III**

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SC Court of Appeals

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South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1408826
Carrier File #: 03600018352014
February 11, 2016

NOTICE OF HEARING

Gennette Sowell v. Piggly Wiggly

Subject: To determine issues as set forth on Forms 50 and 51.

Date: March 23, 2016 at 09:00 AM

Location: Coach TB Thomas Sports Center
Conference Room
701 W. Washington Street
HARTSVILLE, SC 29550

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Melody L. James
803-737-5668, tmorris@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Tamara Morris, SC Workers' Compensation, February 11, 2016

Party

Employee: Gennette Sowell

Employer: Piggly Wiggly
Carrier: Owners Insurance Company

Attorney

Preston F. McDaniel
preston@pfmcdlaw.com
803-771-7211

Brittany M. Lozanne
blozanne@dmclaw.com
803-285-0004

Kim Hinkle

From: Kim Hinkle <kim@pfmcdlaw.com>
Sent: Friday, March 11, 2016 4:48 PM
To: Tamara Morris (tmorris@wcc.sc.gov)
Cc: Gerald Malloy (gmalloy@bellsouth.net); Greta Elliott (gelliott@bellsouth.net); kmiller@dmclaw.com
Subject: Gennette Sowell v. Piggly Wiggly; WCC File No. 1408826
Attachments: SCAN11133_000.pdf

Importance: High

The attached is being sent to you at the request of Preston F. McDaniel.

Kimberley T. Hinkle, Senior Paralegal
to Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201
T: 803-771-7211
F: 803-252-0709

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Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

March 11, 2016

VIA EMAIL - tmorris@wcc.sc.gov
AND US MAIL

Commissioner Melody L. James
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Gennette Sowell v. Piggly Wiggly
WCC File No.: 1408826

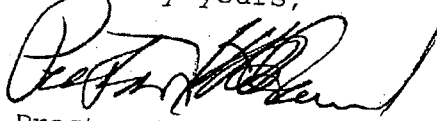
Dear Commissioner James:

At this point, this is to request a postponement of the hearing per agreement of Counsel. Kenya Miller has just taken over representation in this claim and Kenya and I spoke and we believe we are going to be able to request that this matter be resubmitted for mediation and are very hopeful that we will be able to get it resolved. At this point to give Kenya an opportunity this coming week to totally review the file, I would request postponement of the hearing and request that it be reset for one of the last days you are in the District. Kenya also advised me that she is leaving to go out of town today for a death in her family. This is another reason why we cannot immediately notify you and the Commission about an agreement to mediate. We will know by this coming Friday whether we will be able to enter into an agreement to further mediate this case and see if we can get it resolved. By copy of this letter I am confirming and notifying Ms. Miller of this communication.

I am sure you understand and I am sure that you, like I, convey to Kenya our sincere sympathy on the loss of her loved one.

I would appreciate confirmation of receipt of this and that this matter will be continued. As always, I appreciate all the courtesies and kindnesses shown to me by the Commission.

Sincerely yours,



Preston F. McDaniel

PFM/kth

cc: Gerald Malloy, Esquire
Kenya C. Miller, Attorney of Law

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1408826
Carrier File #: 03600018352014
March 15, 2016

NOTICE OF HEARING
RESET

Gennette Sowell v. Piggly Wiggly

Subject: To determine issues as set forth on Forms 50 and 51.
Date: April 25, 2016 at 01:30 PM
Location: Hartsville City Hall
Council Chambers
100 E. Carolina Avenue
Park between First Citizens Bank and Centennial Park
HARTSVILLE, SC 29550

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Melody L. James
803-737-5668, tmorris@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Tamara Morris, SC Workers' Compensation, March 15, 2016

Party

Employee: Gennette Sowell

Employer: Piggly Wiggly
Carrier: Owners Insurance Company

Employer: Piggly Wiggly
Carrier: Owners Insurance Company

Attorney

Preston F. McDaniel
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South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
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Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1408826
Carrier File #: 03600018352014
April 27, 2016

**NOTICE OF HEARING
RESET**

Gennette Sowell v. Piggly Wiggly

Subject: To determine issues as set forth on Forms 50 and 51.
Date: June 22, 2016 at 10:00 AM
Location: SC Workers' Compensation Commission, 1333 Main Street, Suite 500, Hearing Room A
Columbia, SC 29202

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Melody L. James
803-737-5668, tmorris@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Tamara Morris, SC Workers' Compensation, April 27, 2016

Party

Employee: Gennette Sowell

Employer: Piggly Wiggly
Carrier: Owners Insurance Company

Attorney

Preston F. McDaniel
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Kenya C. Miller
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803-285-0004

Rose Thielke

From: Rose Thielke <rose@pfmcdlaw.com>
Sent: Wednesday, April 27, 2016 5:15 PM
To: tmorris@wcc.sc.gov
Cc: gmalloy@bellsouth.net; kmiller@dmclaw.com
Subject: Gennette Sowell v Piggly Wiggly
Attachments: SCAN11515_000.pdf

The attached letter is being sent at the request of Preston McDaniel.

Rose Thielke
McDaniel Law Firm

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

April 27, 2016

VIA EMAIL ONLY - tmorris@wcc.sc.gov
Ms. Tamara Morris
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Gennette Sowell v. Piggly Wiggly
WCC File No.: 1408826

Dear Tamara:

I am not sure as to whether or not we agreed that there was going to be a formal written order or not but based on what I received in the mail today, I would request one as the Defendants are trying to go outside of the parameters of what the Commissioner ordered. In fact, I just thought of this, you were actually present during the discussion so if I am correct, you can confirm this and discuss this with the Commissioner.

I would appreciate it if you would confirm my understanding with the Commissioner and if I am correct then I will be glad to prepare a very short written order confirming this, my understanding at the Hearing was as follows:

We presented our APA Submissions and Notices of Witnesses and the Record is closed except for:

1. The APA's/Notice of Witnesses actually submitted and noticed on April 27th as to our Case-in-Chief and subject to objection.
2. The deposition of Dr. Gordon Early which is set for May 18th.
3. The deposition of Dr. Menendez who took over as Ms. Sowell's family doctor whenever Dr. Hammett left the practice. The deposition is for the purpose of examination on the medical record that was put into evidence from him and concerning his personal knowledge and treatment of Ms. Sowell after the date he took over her treatment.
4. We would produce Ms. Sowell's tax returns and her Social Security Award.

Ms. Tamara Morris
April 27, 2016
Page 2

5. Kenya submitted a Memorandum of Law and the Commissioner stated that I would be allowed to submit a Memorandum of Law after and assuming that mediation was not successful.

6. This case would be reset as soon as possible after the mediation. Tamara, we were given several dates that day and actually the hearing has been reset but I think the order should read simply that the Commissioner was directing that it be reset pursuant to her schedule and our schedules ASAP after the mediation date.

By copy of this letter, I am notifying Kenya of this request to draft a proposed order but if the Commissioner does not feel that we need an order, let me know.

I look forward to hearing from you.

Sincerely yours,



Preston F. McDaniel

PFM/abh/rmt

cc: Gerald Malloy, Esquire (via email only: gmalloy@bellsouth.net)
Kenya C. Miller, Attorney (via email only: kmiller@dmclaw.com)

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1408826
Carrier File #: 03600018352014
June 22, 2016

NOTICE OF HEARING RESET

Gennette Sowell v. Piggly Wiggly

Subject: To determine issues as set forth on Forms 50 and 51.
Date: July 21, 2016 at 11:00 AM
Location: SC Workers' Compensation Commission, 1333 Main Street, Suite 500, Hearing Room A
Columbia, SC 29202

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Melody L. James
803-737-5668, tmorris@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Tamara Morris, SC Workers' Compensation, June 22, 2016

Party

Employee: Gennette Sowell

Employer: Piggly Wiggly
Carrier: Owners Insurance Company

Attorney

Preston F. McDaniel
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803-285-0004

Kim Hinkle

From: Morris, Tamara <TMorris@wcc.sc.gov>
Sent: Thursday, October 20, 2016 12:56 PM
To: 'Kenya C. Miller, Attorney'; Carver, Tamra; PRESTON@PFMCDLAW.COM; Kim Hinkle; 'Gerald Malloy'; Greta Elliotte; 'Denise Chavis'
Subject: FW: Sowell Draft Instructions from Commissioner James
Attachments: Sowell Draft Order Instructions.docx

Importance: High

From: James, Melody
Sent: Thursday, October 20, 2016 12:30 PM
To: Morris, Tamara
Subject: Sowell Draft Instructions

Tamara, Please forward this to the parties. This is the draft order instructions that I gave them last week. (They understand that there may be typographical errors.) Thank you!!!

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The preceding email message, including any attachments, may be confidential and/or protected by the attorney-client or other applicable privileges. It is intended for the sole use of the individual or entity named above. If the reader of this transmission is not the intended recipient, please notify the sender immediately and destroy any copies, electronic, paper or otherwise, that you may have of this communication. Any unauthorized review, use, disclosure or distribution is strictly prohibited and may be unlawful.

Sowell (1408826) Order Instructions:

AWW and CR. -- Stipulated by parties

1. The Claimant has pled an injury by accident, repetitive injury, and occupational disease by exposure to chemicals and other inhaled properties at work.
2. There is not an indication in the record that there was an acute incident.
3. The Claimant has met her burden of proof that she incurred a repetitive injury that arose out of and within the course and scope of her employment.
4. The Claimant was ultimately diagnosed with work related asthma/occupational asthma.
5. The Claimant was exposed to a number of chemicals over a course of time when the drain in the deli would back it. Due to a pipe stopping up repeatedly overnight, the Claimant and her co-workers would come into the deli in the morning to standing water. The co-worker(s) would then clean up the water and put various chemicals into the drains. (This is pursuant to all testimony, including the store manager (Ms. Quick), the Claimant, and the bag boy/custodian (Mr. Harrington), who put many of the chemicals in the drain.) (The allegation that the water was ankle deep is not sustained in the record; however, it is clear that there was standing water.)
6. The conditions of the drain were evaluated by plumbers, who would snake the drain. The date of the final discovery of the cause of the backup is not in the record. (The store manager (Ms. Quick) believed that it might have been fixed permanently sometime in 2012. July Transcript at 33)
7. During the time of the back-up of the drain and attempts to clear it with chemicals the Claimant went to the hospital on June 11, 2011, and was admitted. The diagnosis was bronchitis. (C93)

8. After her hospitalization, the Claimant saw Dr. Vaughn for a couple of visits, and then became a patient of Dr. Hammett.
9. Throughout the course of Dr. Hammett's records his diagnosis varies. On December 6, 2011, he states that the Claimant has acute chronic bronchitis. (C70).
10. The Claimant was sent to the hospital on December 22, 2011 by Dr. Hammett. During her admission there, the chemical exposure was mentioned, and the hospital notes indicate that there was an asthma exacerbation, likely secondary to exposure to chemicals. (C175)
11. Even though the chemicals are mentioned as a likely cause, Dr. Hammett seemed to still be exploring what was the Claimant's diagnosis and what was the cause of the condition. Within a few days of her release from the hospital (December 27, 2011), his records state that she carries a diagnosis of asthma, "but may actually have sarcoidosis which is in the differential." (C64;D258). He indicated that she had a pulmonary referral.
12. On February 14, 2014, Dr. Hammett's records still have a diagnosis of "asthma versus sarcoidosis." (C52;D263)
13. On March 6, 2012 the Claimant sees Dr. Dyce for her allergies for the first time. (C203). There is no mention of a work relationship in that record.
14. Later, Dr. Hammett's records indicate chronic bronchitis on August 8, 2012 (C43), and COPD exacerbation on September 9, 2012. (C40)
15. The Claimant presents again to the hospital on November 12, 2012, and indicates to the provider that she thinks that at work there may be a cleaning compound which she does not handle directly which may aggravate her, and that she also thinks there may be some aggravation as does her physician from the fumes of cooking. (D233). She does indicate that she is bothered greatly by the fumes at work.

16. However, the records of Dr. Hammett still do not appear to contain consistent diagnosis or definitive cause. On November 19, 2012, Dr. Hammett's records contain a diagnosis of COPD. (C32).

17. For the first time she sees a specialist, Dr. Dayrit (Center for Lung and Sleep Medicine) on December 19, 2012. (D306). He does mention the chemicals at work. (D304). A differential between hypersensitivity pneumonia and occupational asthma is mentioned in his records. Also, he states that he does not know what she was exposed to or for how long. He indicates that favors the hypersensitivity pneumonia and it "appears" that she has sensitivity to some chemicals at work. (D306).

18. On March 14, 2013, Dr. Dayrit's notes indicate that the Claimant had returned to work and has not had any exacerbations of her symptoms since returning. (D309).

19. On March 19, 2013, Dr. Hammett states that she has a history of chronic asthma exacerbation that was determined to be work related and it was suggested that she remove herself from the job, which she has not done yet. (C29; D268). It is unclear where the diagnosis in this statement is generated from. He is not stating that it is his diagnosis; And as indicated above, his diagnosis has varied. His subsequent note of January 9, 2014 has a diagnosis of asthma, unspecified type. (C6)). As discussed above, Dr. Dayrit had a differential diagnosis, and stated that he did not know what chemicals she is exposed to and for how long. (D304).

20. Also, the Claimant's testimony is consistent with the variances in the diagnosis and that the doctor's were still trying to figure out what was wrong with the Claimant.

21. The Claimant testified that Dr. Dayrit closed his practice in March. (June Transcript at 50).

22. The Claimant is eventually referred to Dr. deDios (pulmonologist). The first visit appears to occur on May 22, 2013. (D269). (A questionnaire of Dr. deDios indicates the date as April 8, 2013 (C169); the May 22, 2013 note indicates it she is a "new consult." (D269) Whether the first visit is in April or May of 2013 is not critical in this determination.) The first note states that the Claimant has "asthma unspecified", and that the patient likely has adult onset asthma for which she is very symptomatic. (D271).

23. The Claimant testified that she advised in November of 2013 by her doctor (Hammett) that he felt that it was job related, and that she need to come out of work and she it that was what "it was". (June Transcript at 59, 62, 77) The Claimant testified that she advised her supervisor of this. (June Transcript at 59; July Transcript at 115, 116) Although, her supervisor (Ms. Quick) indicates that work was not mentioned, her testimony is consistent that the Claimant did tell her that she needed to be out of work in order to scrape her lungs and find out what was causing her problems. (June Transcript at 24)

24. The Claimant testified that this is the first time that she was advised that work could be the cause of her condition, or a component of her condition. (June Transcript at 77, 78) Her testimony was credible.

25. On December 12, 2013, the Claimant filed for Social Security Disability. (D359). Consistent with her testimony that she did not know that her condition was definitively caused by her work, the Claimant indicated to the Social Security offices that she had not filed for nor intended to file for workers' compensation. (D363)

26. On January 7, 2014 Dr. deDios' records reflect that her work environment makes her asthma worse, and that she likely has adult onset asthma for which she is very symptomatic. (C23; C165; D274)

27. On January 9, 2014, Dr. Hammett indicates that the Claimant's diagnosis is asthma unspecified type. (C6)
28. On February 4, 2014, Dr. deDios reflect that the Claimant stated that her asthma has been better since she has been on medical leave (C158), and that clearly her work environment as making it worse. (C161; D281).
29. The Claimant went to her supervisor (Ms. Quick) in March of 2014 and notified her that the doctors had determined that her condition was related.
30. The First Report of Injury was filled out by the Employer on March 25, 2014, indicating that the date of notice was March 25, 2014. (D396).
31. After the First Report of injury was filled out by the Claimant's supervisor, the Disability Claim Form -- Employer's Statement was filled out on April 2, 2014; the Employer indicated on that form that the disability was not caused by an incident that occurred at work while performing the duties of employment. (D395).
32. On April 3, 2014, Dr. deDios authored a letter to Dr. Hammett thanking him for his referral for consultation and evaluation of "f/u asthma/pt file worker com/not working at this time/feeling great." (D285)
33. The Form 50 was filed on July 22, 2014.
34. Dr. Hammett filled out a Disability Claim Form - Physician's Statement on August 29, 2014 stating that the Claimant was permanently disabled. (D368) He indicated that the condition was due to injury or sickness arising out of the employment. (D369) The diagnosis was "Occupational Asthma." (D369)
35. At some point Dr. Hammett had authored a statement to "whom it may concern." In that letter that the Claimant had been under his care for Occupational Asthma, and that it had been

diagnosed with the help of her pulmonologist. (C2). However, there is no date, so it is unclear when he had this opinion. He responded on September 29, 2104 that his opinions were to a degree of reasonable medical certainty. (C2).

36. In his November 4, 2014 note (C127) and subsequent notes, the diagnosis of Dr. deDios is WRA (work related asthma) and WRE (work-exacerbated asthma).

37. The Claimant did give proper notice with regards to a repetitive injury claim. The Claimant may have suspected that the chemicals were not good for her condition, but did not know the cause of her condition until after being out of work. She was advised in November that Dr. Hammett believed that there was a causal relationship to her work; Dr. deDios indicated to the Claimant that he was "on board" with the diagnosis if after being out of work, she was better. (June Transcript at 62)

38. An analysis under the King v. International Knife decision is appropriate. In King, the Claimant testified that his arm ached because he swung a hammer every day. The Claimant (Ms. Sowell) may have known that the chemicals at work caused her irritation, but she did not know that these were the cause of her condition. As indicated above, the diagnosis continued to vary. The Claimant did have disability (medical treatment and missed work) prior, but had not yet discovered the causation of her condition.

39. The earliest date based on review of all of the evidence that the Claimant would have known of the work causation component was in November of 2013. She advised the employer of this. Even if her supervisor is correct that work was not mentioned, the Claimant still did not know of the definite causation until after being out of work for months. Dr. Hammett and Dr. deDios essentially told the Claimant that being out of work would be part of that determination. (Claimant's June testimony at 59, 62, 77).

40. The notice for an occupational disease claim would also be based on the same facts. The Claimant was advised definitively that she had work-related asthma or occupational asthma after she she was out of work in January for a period of months. The Employer filled out the Incident report on March 23, 2014.

41. The Claimant filed her claim on July 22, 2014 within the statute of limitations.

42. As to causation, the Claimant has met her burden. The Claimant's treating pulmonologist, Dr. deDios, opines to a degree of reasonable medical certainty that the triggering factor for the Claimant's adult onset asthmas was her daily and repeated and unusual and extraordinary exposure at work. (C169c). He also opines that her continual and repeated exposure in her job at the Deli after her asthmas was triggered exacerbate and make her condition worse. (C169d). Dr. Hammett confirms that the Claimant's diagnosis with the help of her pulmonologist is Occupational Asthma. (C2). His opinions are to a degree of reasonable medical certainty. (C1). The Claimant's family physician as of 2015 is Dr. Mendez; Dr. Mendez agrees to the diagnosis of occupational asthma. (Deposition of Dr. Mendez 41-42)

43. The Claimant was also seen by Dr. Early on December 17, 2015 (C219). Dr. Early is board certified in Occupational Medicine and Medial Toxicology and general preventative medicine. (C220 and Deposition of Dr. Early at 10). Dr. Early identifies three asthmagens that the Claimant incurred exposure (bleach, surfactant speciic amines in Pine Sol (ethoxylates), and monethanolamine in Mr. Muscle. (C220). His opinion is that the exposure at Piggly Wiggly in 2010 and 2011 was the cause of her Occupational Asthma. His opinions are stated to a degree of reasonable medical certainty. (C220). Dr. Early maintains his opinions in his May 18, 2016 deposition that the repeated exposure at work caused the Claimant's asthma.

44. The Defendant's expert, Robert Bennett, pharmacist, forensic scientist, and forensic toxicologist, testified at the hearing. Dr. Bennett's opinion is that it is more likely that Claimant's asthma was caused by her genetics rather than the chemicals at work. (July Transcript at 105). When asked whether his opinion is that working with the chemicals could cause asthma, he states that it is possible as a couple of the products do vaporize. (July Transcript at 56-57). He indicates that in his opinion her asthma is leaning more towards a predisposition to asthma. (July Transcript at 65). Dr. Bennett indicates that she could be predisposed and that something makes the symptoms worse; he identifies a number of possibilities. (July Transcript at 82-83). His testimony is that bleach would produce vapors. (July Transcript at 87). He agrees that there are a number of components in the water in the deli, including Mr. Muscle and bleach. (July Transcript at 97-98). Dr. Bennett indicates that health problems from inhalation or absorption are all dose related. (July Transcript at 100). He states that the amount of exposure would be a factor and the dose is critical. (July Transcript at 106)

45. The preponderance of the evidence provides that the Claimant's condition is related to her work, and the diagnosis is work related asthma/occupational asthma.

46. The Claimant has had a repeated exposure that has resulted in a repetitive condition. (Drafting attorney to provide discussion of 42-1-172).

47. Occupational disease (as discussed in post-trial conference)

48. Temporary total payments to be paid from (as discussed in post-trial conference).

49. The Claimant is at maximum medical improvement. (Dr. Mendez deposition at 29)

50. The Claimant is permanently and totally disabled. Dr. Mendez (family physician) indicates that she would be able to perform sedentary work. (Deposition of Dr. Mendez at 27 and 33). Although not a vocational expert, Dr. Mendez states that based on her symptoms, she

does not know who would employ her. (Deposition of Dr. Mendez at 35). Dr. Mendez' opinion is that the Claimant must have an "absolutely clean environment." (Deposition of Dr. Mendez at 38). Dr. E. (Deposition at 92 to 93). As indicated, Dr. deDios is the Claimant's treating physician; he is a specialist and expert in pulmonology. Therefore with regards to the Claimant's lung condition, his opinion is given greater weight. Dr. deDios' opinion is that the Claimant is permanently and totally disabled. (C104a).

51. Causally related future medical is to be provided by the Defendants. (Section 42-15-60(c))

52. The above is not a complete discussion of all of the evidence reviewed.; it is an instruction and guidance in the drafting of the order. The drafting attorney is to provide discussion of evidence, findings of facts, and discussion and conclusions of law that are consistent with the instructions. Please provide correction of all dates or citations to the record if typographical errors are discovered.

53. If there are any issues during the review of the instructions or in draft of the order that either party wishes to address, please contact Tamara and she will set up a time that is mutually convenient with both attorneys for a conference call.

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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