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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

SCWCC File No. 1619767

Appellate No. 2018-001111

**RECEIVED**  
AUG 30 2018  
SC Court of Appeals

Veronica Rodriguez, Employee ..... Respondent

v.

Peggy Evers, Employer and NorGuard Insurance Company, Carrier ..... Appellant.

MOTION FOR AN ORDER REQUIRING PAYMENT PURSUANT TO  
SOUTH CAROLINA CODE §42-17-60 AND FOR PENALTIES, FINES,  
INTEREST AND ATTORNEY FEES PURSUANT TO THE SOUTH  
CAROLINE CODE OF LAW.

YOU WILL PLEASE TAKE NOTICE that pursuant to provisions of the South Carolina Code §42-17-60, the Respondent hereby moves for an Order ordering the Appellants to comply with the award of the South Carolina Workers' Compensation Commission and to make payments of both weekly compensation and for medical care in this matter. Said Motion is based upon Memorandum attached hereto and incorporated herein by reference.

Respectfully submitted,

August 27, 2018

A handwritten signature in black ink, appearing to read "Don C. Gibson", written over a horizontal line.

Don C. Gibson  
Bar No. 2466  
PO Box 60669  
North Charleston, SC 29419  
(843)744-1887  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
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Veronica Rodriguez, Employee ..... Respondent

v.

Peggy Evers, Employer and NorGuard Insurance Company, Carrier .....Appellant.

MEMORANDUM IN SUPPORT OF MOTION FOR AN ORDER REQUIRING  
PAYMENT PURSUANT TO SOUTH CAROLINA CODE §42-17-60 AND FOR  
PENALTIES, FINES, INTEREST AND ATTORNEY FEES PURSUANT TO  
THE SOUTH CAROLINE CODE OF LAW.

The respondent would respect fully show unto this court:

1. That the South Carolina Worker's Compensation Commission filed an Award for total temporary disability with accompanying medical benefits in the above referenced matter on January 5, 2018. A notice of Appeal was filed in that matter with this court on June 12, 2018.

2. That the provisions of South Carolina Code §42-17- 60 require that 30 days after the final award is filed by the South Carolina Worker's Compensation Commission that the defendants are required to make payment of weekly compensation benefits and all medical care as awarded is to be paid during the pendency of the appeal. The final award of the South Carolina Worker's Compensation was filed on January 5, 2018.

3. That the respondent has requested payments of weekly compensation and medical care to begin pursuant to the provisions of the statute under the Award of the Commission and those payments were to begin on February 4, 2018 and such payments have not begun. Copy of the written request is attached hereto as *Exhibit A*. Subsequent to that letter, my office staff corresponded via telephone and E-mail regarding same, attached to the Motion as *Exhibit B*. For the respondent has been notified by counsel of the appellant's that the defendant/appellant's were being notified to begin payments but a response has not been provided by the appellant's/defendants whether they will comply with the provisions of the code. See affidavit attached hereto and incorporated herein by reference.

4. That the defendant's\appellant's are now twenty-nine (29) weeks late in payment pursuant to the provision of the South Carolina Code §42-17-60 and are thus in non-compliance with an Award of the Commission. Per counsel's Affidavit, the Respondent has received no notice of intent to comply.

5. The South Carolina Code §42-9-90 provides that when there is an award of compensation that is due and payable under the Award of the Commission which is not paid within fourteen (14) days of the date that it is due that the penalty for non-payment is to be added to the Award.

6. That South Carolina code §42-9-240 provides that to such Award, the Claimant is entitled to judgment interest. Further, under South Carolina Code §42-1640, the Defendants having failed to perform this statutory duty for instituting payments under the Act, the Defendant's Appellants are subject to a monetary penalty and the amount as determined to be appropriate by the Court for such failure.

7. That under the provisions of South Carolina Code §42-3-175 a claimant may bring in action before the Commission to enforce an Order and Award authorizing medical care and the payment for compensation benefits under the Act and should the Commission determine that the Defendants, without good cause, have failed authorize medical care and/or the payment of compensation when ordered to do so by the Commission, "must" Order payment of the Claimants attorney fees and cost of enforcing the Order or Award. The Commission may also impose for willful disobedience of an Order including but not limited to a fine of up to five hundred dollars (\$500.) for each day of violation. That having been placed on notice by both their own defense counsel and by the Claimant Responded of the mandatory provisions of the Act is evidence of a willful intent to not comply with the Act.

**WHEREFORE**, the Respondent would move for an Order of the Court:

A. Find in the Appellant's to be in violation of the provisions of South Carolina Code §42-17-60, Ordering the immediate payment pursuant to the statute and allowing them a period of ten (10) days to notify the Court of their intent to comply and barring notice of payment to the Claimant and notice to all medical providers of authorization for payment, setting a date for the Appellant's to appear before the Court to show just cause or excuse, if any they have, for failure to comply with the provision of the Act.

B. Ordering the payment of the penalties and interest as set forth under South Carolina Code §42-9-90 and §42-9-240.

C. Notifying the Defendant/Appellants of intent of the Court at the Show Cause Hearing if the Appellants have failed to comply with the provisions of §42-17-60 that a penalty will be assessed under §42-1-640 barring a showing of just cause and excuse.

D. Finding that the Appellants are in noncompliance with the Commission Award under the provisions of South Carolina code §42-17-60 and confirming that the Commission has jurisdiction over in action and allowing the Claimant has a statutory right to bring enforcement action at the Commission under the provision of South Carolina Code §42-3-175 for attorney fees and cost, and for the imposition of sanctions for willful disobedience of an Order and Award of the Commission and remanding that issue to the Commission for a hearing under South Carolina Code §42-3 175.

E. For the cost of this action and such other and further relief as the court deems appropriate.

Respectfully submitted,



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Don C. Gibson  
Bar No. 2466  
PO Box 60669  
North Charleston, SC 29419  
(843)744-1887  
Attorney for Respondent

August 27, 2018

# GIBSON LAW FIRM, LLC

Attorney Don C. Gibson  
Telephone: (843) 744-1887  
Facsimile: (843) 744-5320  
Toll Free: (866) 744-1887

**STREET ADDRESS:**

5422 Rivers Avenue  
North Charleston, SC 29406

**WEBSITE:**

www.dgibsonlaw.com

July 24, 2018

**Via Fax (803)748-2735 and First Class Mail**

George D. Gallagher  
Speed, Seta, Martin, Trivett & Stuble, LLC  
P.O. Box 11669  
Columbia, SC 29211

**Re: Client:** Veronica Rodriguez Texacahua  
**Date of Injury:** December 5, 2016  
**Carrier Claim No.:** PEWC734403001  
**WCC File No.:** 1619767

Dear Mr. Gallagher:

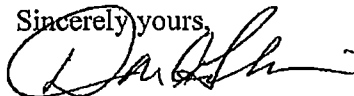
I received your Notice of Appeal to the South Carolina Court of Appeals in the above referenced matter. Please provide written confirmation pursuant to SC Code Section 42-17-60 confirming that your client will be overnighting to my office the payment(s) of compensation beginning on May 21, 2018 and that they have notified all of the authorized medical providers to start forwarding all bills to their attention. Also, confirm that you will make payment(s) for all treatment on or after May 21, 2018. All payments are to be mailed to my office.

If I have not received written confirmation confirming compliance with the provisions of 42-17-60 in reference to medical care and compensation during the Appeal, I will file with the Court of Appeals for a substantial fine with all penalties under the Act, including \$500.00 per day for noncompliance, attorney fees and costs in reference to the provisions of benefits during appeal and enforcement of the Award.

I am sure that will not be necessary, but I wanted to make sure there is compliance (so Ms. Rodriguez will finally receive her benefits).

With kindest regards, I remain

Sincerely yours,



Don C. Gibson

DCG:djk  
Enclosures: as stated  
cc: client

## Exhibit A

\* \* \* Communication Result Report ( Jul. 24. 2018 3:04PM ) \* \* \*

2}

Date/Time: Jul. 24. 2018 3:03PM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
2356	Memory TX	18037482735	P. 1	OK	

Reason for error

E. 1) Hang up or line fail	E. 2) Busy
E. 3) No answer	E. 4) No facsimile connection
E. 5) Exceeded max. E-mail size	E. 6) Destination does not support IP-Fax

**GIBSON LAW FIRM, LLC**

Attorney Dan C. Gibson  
 Telephone: (843) 744-1837  
 Facsimile: (843) 744-5320  
 Toll Free: (166) 744-1837

**SECRET ADDRESS:**  
 5422 Rivers Avenue  
 North Charleston, SC 29406

**WEBSITE:**  
[www.dcgibsonlaw.com](http://www.dcgibsonlaw.com)

July 24, 2018

Via Fax (843) 744-2735 and First Class Mail  
 George D. Gallagher  
 Speed, Seis, Martin, Trivett & Stubley, LLC  
 P.O. Box 11669  
 Columbia, SC 29211

Re: Client: Veronika Rodriguez, Taxacalium  
 Date of Injury: December 5, 2016  
 Carrier Claim No.: PISWC734403001  
 WCC File No.: 1619767

Dear Mr. Gallagher:

I received your Notice of Appeal to the South Carolina Court of Appeals in the above referenced matter. Please provide written confirmation pursuant to SC Code Section 42-17-60 confirming that your client will be overlooking to my office the payment(s) of compensation beginning on May 21, 2018 and that they have notified all of the authorized medical providers to start forwarding all bills to their attention. Also, confirm that you will make payment(s) for all treatment on or after May 21, 2018. All payments are to be mailed to my office.

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I am sure that will not be necessary, but I wanted to make sure there is compliance (so Ms. Rodriguez will finally receive her benefits).

With kindest regards, I remain

Sincerely yours,  
  
 Dan C. Gibson

DCC:djk  
 Enclosures as stated  
 cc: client

**Exhibit A**

**Kadoves, Debra**

---

**From:** Kadoves, Debra  
**Sent:** Wednesday, August 22, 2018 11:58 AM  
**To:** Maggie Rogers  
**Cc:** 'George Gallagher'; Gibson, Don  
**Subject:** FW: Veronica Rodriguez

Good Morning Maggie:

In follow-up to last week's emails, Mr. Gallagher was going to correspond with your client and provide me with an updated status of TTD benefits. What were the results of his inquiry?

I look forward to hearing back from you.

With kindest regards,

Debra Kadoves  
Paralegal to Don C. Gibson

**Gibson Law Firm, LLC**  
**5422 Rivers Ave.**  
**N. Charleston, SC 29406**  
**Ph: 843-744-1887**  
**Fax:843-744-5320**  
**Law2@dgibsonlaw.com**

CONFIDENTIALITY. This electronic message may contain confidential information and is protected by the attorney-client privilege. If you are not the intended recipient, you may not read, print, distribute or copy this communication. If you have received this communication in error, please notify the sender immediately and delete this message and any attachments from your computer system.

**Exhibit B**

THE STATE OF SOUTH CAROLINA  
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AFFIDAVIT OF DON C. GIBSON

I, Don C. Gibson, have been duly and properly sworn do depose and state that I am Council for the respondent Veronica Rodriguez, employee in the above referenced matter in which a Notice of Appeal was filed with the court June 1, 2018. Shortly after receipt of the Notice of Appeal, I contacted via letter, which is attached to the Motion as *Exhibit A*, a letter to defense counsel concerning the starting of the weekly compensation benefits and the provisions of medical care pursuant to South Carolina Code §42-17-60. Subsequent to that letter, my office staff corresponded via telephone conversation and E-mail attached to the Motion as *Exhibit B*. I heard nothing from defense counsel in reference to the intent of the defendant to comply with the provisions of the Act and making payment of weekly compensation benefits and medical care to the

claimant. I have heard nothing further from defense concerning any intent on behalf of the defendants\appellant's to comply with the provisions of the Act and making payments of weekly compensation benefits. . That both exhibit A and B which are attached to this Motion and which are incorporated herein by reference are part of the business records of my office and were transmitted to defense counsel via electronic mail or by mail as indicated on the correspondence as to the method of transmission.

FURTHER THE AFFIANT SAYETH NOT.

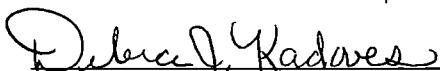
Respectfully submitted,



Don C. Gibson  
Bar No. 2466  
PO Box 60669  
North Charleston, SC 29419  
(843)744-1887  
Attorney for Respondent

August 27, 2018

SWORN before me this 27 day August, 2018.

  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission expires: 07/11/2028

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

SCWCC File No. 1619767

**RECEIVED**

AUG 30 2018

Appellate No. 2018-00111

**SC Court of Appeals**

Veronica Rodriguez, Employee ..... Respondent

v.

Peggy Evers, Employer and NorGuard Insurance Company, Carrier .....Appellant.

PROOF OF SERVICE

This is to certify that a copy of the foregoing MOTION FOR AN ORDER REQUIRING PAYMENT PURSUANT TO SOUTH CAROLINA CODE §42-17-60 AND FOR PENALTIES, FINES, INTEREST AND ATTORNEY FEES PURSUANT TO THE SOUTH CAROLINE CODE OF LAW have been served upon the following parties by placing a copy of the same in the United States mail, first class postage prepaid, addressed to the following as shown below on the 27 day of August, 2018.

VIA FIRST CLASS MAIL

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

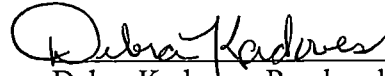
VIA FIRST CLASS MAIL

Mr. Kevin Desmond Maroney, Esquire and  
P.O. Box 11669  
Columbia, SC 29211

VIA FIRST CLASS MAIL

Mr. George D. Gallagher, Esquire  
1122 Lady Street Suite 620  
P.O. Box 11669  
Columbia, SC 29211

North Charleston SC  
August 27, 2018



Debra Kadoves, Paralegal to Don C. Gibson

# GIBSON LAW FIRM, LLC

Attorney Don C. Gibson  
Telephone: (843) 744-1887  
Facsimile: (843) 744-5320  
Toll Free: (866) 744-1887

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5422 Rivers Avenue  
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August 27, 2018

**Via First Class Mail**

The Honorable Jenny Abbott Kitchings  
Clerk of the South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211

**RECEIVED**  
AUG 30 2018  
SC Court of Appeals

**Re:** Client/Respondent: Veronica Rodriguez Texacahua  
Date of Injury: December 5, 2016  
Employer/Appellant: Peggy Evers, Cleaner Concepts/NorGuard Ins. Co.  
WCC File No.: 1619767  
Appellate No.: 2018-001111

Dear Ms. Kitchings:

In connection with the above-referenced matter, enclosed for filing are the original and one (1) copy of the following:

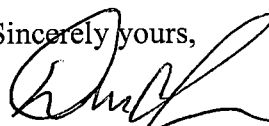
1. Motion for an Order;
2. Memorandum in Support of Motion;
3. Affidavit of Don C. Gibson, Esquire; and
4. Proof of Service.

In addition, enclosed find my firm's check, made payable to South Carolina Court of Appeals, and a self-addressed stamped envelope. Please be so kind as to forward a file-stamped copy of the file-mailed documents for my records.

By copy of this letter, I am serving the aforementioned documents on all counsel of record.

With kindest regards, I remain

Sincerely yours,



Don C. Gibson

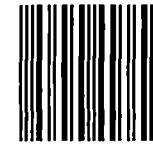
DCG/djk

Enclosures: as stated

cc: Mr. Kevin Desmond Maroney, Esquire  
Mr. George D. Gallagher, Esquire  
Claimant



1000



29211

U.S. POSTAGE PAID  
FCM LG ENV  
NORTH CHARLESTON, SC  
29406  
AUG 28, 18  
AMOUNT

**\$2.05**

R2303S103389-09

**GIBSON LAW FIRM, LLC**

5422 Rivers Avenue  
North Charleston, SC 29406

To:

**The Honorable Jenny Abbott Kitchings  
Clerk of the South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211**

**RECEIVED**

**AUG 30 2018**

**SC Court of Appeals**