

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**RECEIVED**

APR 30 2012

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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**SC Court of Appeals**

Appellate Panel  
Richland County  
Trial Court Case No. 2004-WC-40-10622

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WCC File No. 0710622

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Antonio Lazaro, by and through his GAL,  
Decidora Lazaro, Employee, ..... Respondent,

v.

Burriss Electrical, Inc., Employer, and  
Comptrust AGC of the Carolinas, Carrier, ..... Appellants.

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REPLY TO  
MOTION FOR RECALL OF REMITTITUR

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By way of Reply to the Motion for Recall of Remittitur, the Respondent would respectfully submit to the Court as follows:

1. That as is set out under Exhibits H and I of the Motion for Recall of Remittitur, by email John E. Duncan, Esquire as Attorney for the Respondent advised Landon Hughey, Counsel for the Appellants, that the Respondent was withdrawing from the settlement and that, "y'all need to pursue your appeal." In follow-up to that email by letter sent via email

and mail on January 26<sup>th</sup> as is set forth in Exhibit I to the Motion, Counsel for the Respondent Preston F. McDaniel wrote Landon Hughey, Counsel for the Appellants, confirming that the Respondent was withdrawing from any settlement and stated to Counsel at that time, "I look forward to getting your appeal reinstated and to proceeding with this case. I will be glad to assist with any paperwork necessary to reinstate the appeal or if your carrier decides to pay the lump sum as ordered to the Lazaro Family (for Gene's/Billy's information - out of which John and I were not asking for or awarded a fee) and then proceed on with the case, let me know that as well." (Emphasis added). Counsel for the Respondent would submit as officers of the Court that thereafter Counsel for the Respondent had no communication from the Appellants stating that they desired to either reinstate the appeal or proceed with payment on the Award that had been made to the Lazaro Family until this Motion was filed with the Court almost three (3) months later and more importantly, approximately one (1) week after the following settlement proposal letter was written to Counsel for the Appellants in this matter.

2. That having heard nothing from Counsel for the Appellants, on March 20, 2012 the Respondent filed for an additional partial lump sum payment pursuant to the Act which Request for Hearing requesting an additional partial lump sum

payment referenced the previous Award of a partial lump sum payment. Said Request for Hearing (Form 50) is attached hereto and incorporated herein by reference as Exhibit "A".

3. That having still heard nothing from Counsel from the Appellants on or before April 11<sup>th</sup> Counsel for Appellants made a request to the Respondent for a settlement proposal. Counsel for the Respondent as attached hereto and incorporated herein by reference as Exhibit "B" (as redacted as to the pertinent issues to this Reply), sent a settlement proposal on April 11, 2012 in which Counsel references that the previous partial lump sum payment had not been paid and that the Respondent would be entitled to both penalties and interest since the Award had not been paid within fourteen (14) days of the date of the Award.

4. That subsequent to the filing of the request for an additional lump sum and notification that the previous Award that had been made would be deducted from any further partial lump sum, the Appellants filed their response, Form 51, to that request which is attached hereto and incorporated herein as Exhibit "C" in which there is no mention of the previous lump sum payment or that it was being contested.

5. That again it was not until three (3) months after the original notification by the Respondent that the Respondent would assist in any way in having the appeal reinstated and only after the Respondent demanded payment on the settlement amount

as contained in the original Order, that was the subject of the appeal that was dismissed, and only after the response to a proposed further settlement offer had been forwarded to the Appellants and received by the Appellants, have the Appellants sought to have the Remittitur recalled and this appeal reinstated. The Respondent respectfully believes that due to the delay and the failure of the Appellants to have this matter reinstated long ago and once they knew that the proposed settlement agreement had fallen through, which the Respondent had advised again over three (3) months ago and that they would assist in having reinstated, that this Motion should not be granted and the appeal should not be reinstated at this late date.

6. That this is especially true wherein the Appellants by their actions caused the proposed settlement to not be consummated.

7. That as is set forth in the Motion itself and in the Reply, the reason for the settlement proposal in large measure not being consummated was due to the refusal of the Appellants to not include the names of former Counsel of Record on checks and settlement documents necessary to settle the matter. As is set forth in both the Motion and Reply, the Oswald Law Firm had notified the Commission and had been removed as Counsel of Record back in 2007. That the Appellants although knowing that

the Oswald Law Firm no longer had any standing in this matter, included them in settlement documents and checks as set forth hereinabove.

8. That contrary to the position set out in the Motion, there is absolutely no responsibility of current Counsel for the Respondent or the Respondent to do anything to either notify the Commission that a law firm is no longer Counsel of Record or to notify the Commission that that law firm is in any way requesting a fee. Under Rule 67-1203, when a law firm or attorney is dismissed as Counsel or desires to withdraw as Counsel, it is the requirement of that attorney(s) to notify the Commission of such withdrawal, which the Oswald Law Firm did by letter back in 2007. In addition, that Rule requires that the law firm is to file a Commission Form 61, which is an Attorney Fee Petition, with the Commission at the time of withdrawal which was not filed nor was there any notification of any fee outside of the letters that were submitted to the Commission and to the adjuster at that time. In addition to the Oswald Law Firm in fact having no standing as either a party or Counsel for a party, pursuant to the Regulations of the Commission, the statutory law and our Supreme Court Rules, the Commission has issued an Order confirming that the Oswald Law Firm has had no standing in this matter since 2007 and requiring the Appellants to have no further contact with the Oswald Law Firm or in any

way communicating with them in any capacity as having any standing in this matter either as Counsel of Record for or as a party to this action. A copy of that Order is attached hereto and incorporated herein by reference as Exhibit "D".

Wherefore, based on the above Reply, at this late date this appeal should not be reinstated especially where it was only requested to be reinstated after the Appellants had requested further settlement proposals and wherein three (3) months had passed after the request for payment had been made on January 26, 2012 as is set forth in an Exhibit to the Motion. The Respondent under these circumstances would hope that the Court would deny the Motion to recall the Remittitur.

Respectfully submitted,



Preston F. McDaniel  
MCDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, South Carolina 29201  
(803) 771-7211

and

John E. Duncan, Esquire  
LAW OFFICE OF JOHN DUNCAN  
137 East Butler Street, Suite 3  
Lexington, South Carolina 29072  
(803) 951-2388

Attorneys for Respondent

April 27, 2012



Claimant's Name: Decidora Lazaro, Guardian ad Litem for Antonio Lazaro SSN: 608-16-1807 Employer's Name: Burriss Electrical, Inc.  
Address: 101 Roiling Rock Road Address: 1251 N. Lake Drive  
City: Columbia State: SC Zip: 29221 City: Lexington State: SC Zip: 29072  
Home Phone: ( ) - Work Phone: ( ) - Insurance Carrier: CompTrust AGC of the Carolinas  
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771 - 7211

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: 7/6/2007

- Injury  Illness  Repetitive Trauma
- 1a. The claimant sustained an injury to brain (Part(s) of Body Injured) on 7/6/2007 (Month/Day/Year) in Florence county, state of SC.
- 1b. Body part(s) affected are: brain  
Briefly describe how the accident occurred. See Attachment
- 2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
- 3. The relationship of employer and employee existed at the time of injury.
- 4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
- 5. Notice of the accidental injury was given to the Employer on 7/6/2007 (Month/Day/Year) in the following manner:  
Employer and supervisors were eyewitnesses to the accident. **ACCEPTED CASE** per Order of Commission.
- 6. Due to injury, the claimant is in need of (check one):  
 (a) medical examination and treatment for: anoxic brain injury. Not an issue. Treatment being provided at Brian Center Nursing Care. ACCEPTED CASE per Order of Commission. Permanent total disability with lifetime medical care.  
 (b) additional medical examination and treatment for: \_\_\_\_\_
- 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: Accepted case per Order of Commission - permanent total disability with lifetime medical care.
- 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):  
 (1) General Disability:  Total  (2) Specific Disability:  Total  
 (3) Wage Loss  Partial  Partial
- 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:  
10a. At the time of the injury, the Claimant was paid weekly wages of See Attached and demands accounting of days worked and wages earned as provided by law.  
10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident: N/A  
11a. Further grounds or unusual aspects of claim: See Attachment.  
11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:  
Brian Center Nursing Care - Columbia, SC; Palmetto Health Richland - Columbia, SC; Lake City Community Hospital - Lake City, SC; Inter Medical Hospital of SC - Columbia, SC  
11c. To the best of your knowledge, did you have any prior permanent disability? N/A  
If yes, describe: \_\_\_\_\_
- 12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- 13a. I am filing a claim. I am not requesting a hearing at this time.
- 13b. I am requesting a hearing. A \$25 fee is required.
- 14. Estimated time needed for hearing: 1 hour

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Attorney for the Claimant mcdaniellaw@hotmail.com  
Title Email

March 20, 2012

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Department.

Employment and/or Hearing  
tabbles  
**EXHIBIT**  
**A**

ATTACHMENT TO FORM 50

Antonio Lazaro v. Burriss Electric and c/o CompTrust AGC of  
the Carolinas

WCC File No.: 0710622

1b. While doing major renovations to a school, Claimant was installing light fixtures on a tall ladder when he was electrocuted by high voltage electricity. When fellow employees saw what was happening one kicked the ladder out from under the Claimant causing the Claimant to fall 12 feet to the floor with his heart stopped for a long time. The Claimant suffers from anoxic brain injury and is in a vegetative state. **ACCEPTED CASE** - total and permanent disability awarded per Order of the Commission.

10a. The Claimant would request that the maximum compensation rate apply in this matter based on exceptional circumstances under §42-1-40 paragraph 2 of the S.C. Code concerning the applicable average weekly wage and compensation rate. Mr. Lazaro received a raise every year that he was employed with the company and in addition within a year of the date of this accident, he had started a flea market booth, which has continued to be operated by his wife after his injury, which generates a substantial amount of additional income for the family which has not been considered in establishing the compensation rate to date. Based on his outstanding work career and the decisions of the Supreme Court concerning exceptional circumstances and the additional income generated by the flea market booth, the Claimant would submit that the maximum compensation rate should apply.

11a. Claimant awarded permanent and total disability due to traumatic brain injury with lifetime medical care. Issues are entitlement to partial lump sum and penalties, fines and interest for non payment of previous Award. The Claimant has requested and been awarded lifetime compensation and medical benefits due to his brain injury and has been granted a partial lump sum for payment of certain debts including his home, credit cards and other consumer debt and for the purchase of a new automobile. The Claimant has one son that is a freshman in college and has another son that is getting ready to go to college. In addition, the Claimant had been receiving temporary total disability benefits from the date of the accident in 2007

and continuing until the Award and under the Award since that time. Pursuant to S.C. Code §42-9-10, the Claimant would request a partial lump sum of the remainder of the weekly benefits due to the Claimant under the life expectancy tables adopted by the State of South Carolina §19-1-150. Mr. Lazaro is 42 years old, almost 43 years old and based on his age, he has a life expectancy of 35.5300 years. He has been receiving weekly total disability benefits from the date of the injury on July 6, 2007 through the date that he was declared totally and permanently disabled in October of 2010 and would request the remainder of the weekly benefits due under the life expectancy table be paid to him in a lump sum after the payment of the current existing lump sum payment as ordered by the Commission to pay off debt and to purchase an automobile. This being a lifetime benefits case for physical brain damage with the Claimant being in a vegetative state, the commutation tables adopted by the Commission do not apply. The commuting factor in a lifetime benefits case are the life expectancy tables under S.C. Code §19-1-150 and pursuant to the Supreme Court decision in the case of Glover by Cauthen v. Suitt Construction Co., 318 S.C. 465, 458 S.E.2d 535 (1995).

Further as to why the Commission commutation Rules do not apply to a life time Award, S.C. Code §42-9-301 under which the Rules were established, was adopted by the General Assembly as Act No. 92, Section 5 of the 1983 Acts and Joint Resolutions. The Act was not amended to allow for an entitlement to lifetime benefits under S.C. §42-9-10 until Act No. 417 of the 1984 Acts and Joint Resolutions. The provision for lifetime benefits is thus an ex post facto law to the lump sum provisions which only apply to the 500 week award allowed for under the Act at the time of its adoption and therefore any commutation tables under §42-9-301 do not apply to the benefits under this ex post facto law. The Supreme Court has clearly ruled that a claimant is entitled to and may request a "partial" lump sum of benefits and that the commuting factor again is the life expectancy tables. Thus since the Claimant has been receiving weekly compensation since his accident in July of 2007, the Claimant would request the balance of his weekly payments be paid to him in a lump sum.

That in addition by previous Order of this Commission as affirmed on appeal, the injured worker has been granted a lump sum in the total amount of \$152,568.75. The appeal of that amount was finally dismissed more than 14 days prior to the date of the filing of this Form 50 and in fact was

dismissed back in the fall of 2011. S.C. Code §42-9-240 provides that where an Award is not paid within seven (7) days of the date of becoming due, and in the case of where it is due pursuant to a Judgment of the Court on appeal within seven (7) days of the date of that Judgment, the Claimant is entitled to interest on all amounts due at that time under the judgment interest Statute. In addition, under S.C. §42-9-90, if within fourteen (14) days of that date, that being 7 days after the Judgment of the Court, the Award is not paid the Claimant is entitled to a 10% penalty of the amount due for such non-payment.

Next, S.C. Code §42-9-220 addresses the manner in which compensation is to be paid and provides specifically:

"Compensation under this Title shall be paid periodically, promptly and directly to the person entitled thereto, unless otherwise specifically provided." (Emphasis added).

In this case, the Claimant and Claimant's Counsel would submit that at no time since the appeal was dismissed has any payment been made, "directly to the person" that is entitled to benefits. There is no provision for payment to any other party outside of the individual, i.e. the Claimant or the Claimant's dependents or a person/entity who is entitled to receive benefits on behalf of the Claimant such as his General Guardian and Personal Representative. The Claimant would specifically request that the Defendants be ordered to make payment to the Claimant or his statutory representative and his Attorneys of Record and that the Defendants be subject to all penalties and fines for non-payment pursuant to the Act should they include payment to any other person or entity.

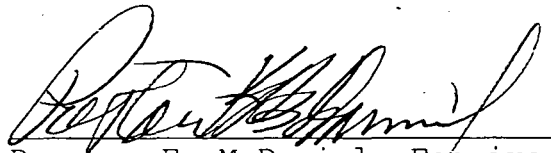
In the Order from henceforth pursuant to S.C. Code §42-1-640, the Claimant would request a statutory penalty be imposed for outrageous conduct on behalf of the Defendants in this matter for failure to pay benefits directly to the injured worker and/or his representative who in this case is his Guardian ad Litem, Guardian and Personal Representative and Trustee under S.C. Code §42-1-640 should this occur. The Defendants have allowed the tortuous interference of contract in this matter based on a lien letter filed in 2007 by the Oswald Law Firm who was removed as Counsel of Record in October of 2007. The Defendants have refused and have continued to allow the Oswald Law Firm to interfere with the benefits to which this family is entitled in 2012 and has refused to cooperate or deal with

current Claimant's Counsel and the Claimant in this matter. The Claimant believes that a fine in excess of no less than \$10,000.00 would be applicable in this matter.

The Claimant, Mr. Antonio Lazaro, is in a vegetative state suffering from anoxic brain injury and has been declared to be permanently and totally disabled by Order of the Commission.

To insure that benefits are expended in the best interests of the Claimant and/or his dependents, the Claimant through his Guardian ad Litem, General Guardian, and wife and dependant, Mrs. Decidoro Lazaro would request that after a determination of attorneys fees and costs out of the partial lump sum that the balance of the partial lump sum be placed into an annuity or other financially secure vehicle to provide monthly benefits tied to the life of the Claimant and his wife payable to Mrs. Lazaro as his Personal Representative under S.C. Code §42-9-330 for the use of the Claimant and his dependants. Said annuity or financial vehicle be placed by Forge Consulting Group upon approval by separate Order of the Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Preston F. McDaniel", written over a horizontal line.

Preston F. McDaniel, Esquire  
Attorney for Claimant

March 20, 2012

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

Proudly representing injured workers  
for over 25 years.

Preston F. McDaniel  
OF COUNSEL:  
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

April 11, 2012

VIA EMAIL - [lhughey@mgclaw.com](mailto:lhughey@mgclaw.com)

Landon Hughey, Esquire  
MCANGUS GOUDELOCK & COURIE, LLC  
Post Office Box 12519  
Capitol Station  
Columbia, SC 29211-2519

RE: Antonio Lazaro v. Burriss Electrical Inc.  
WCC File No.: 0710622

Dear Rocky:

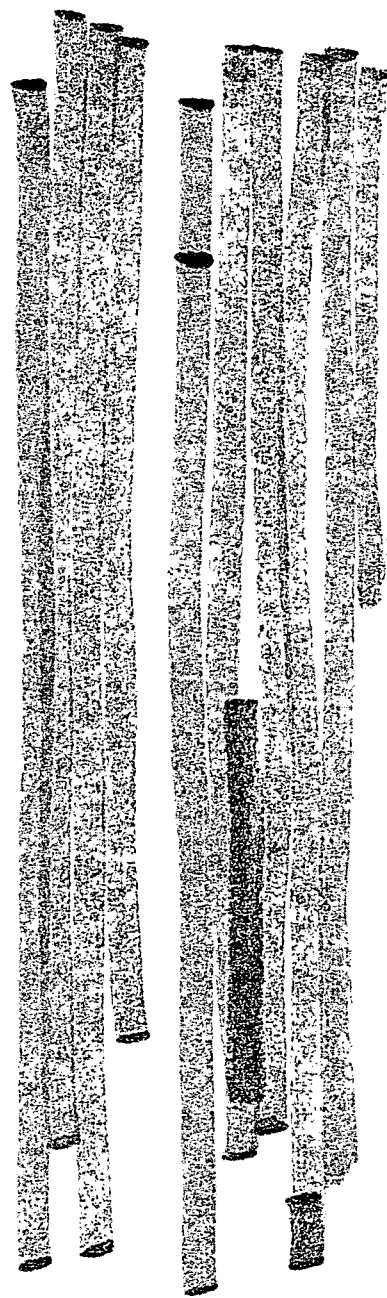
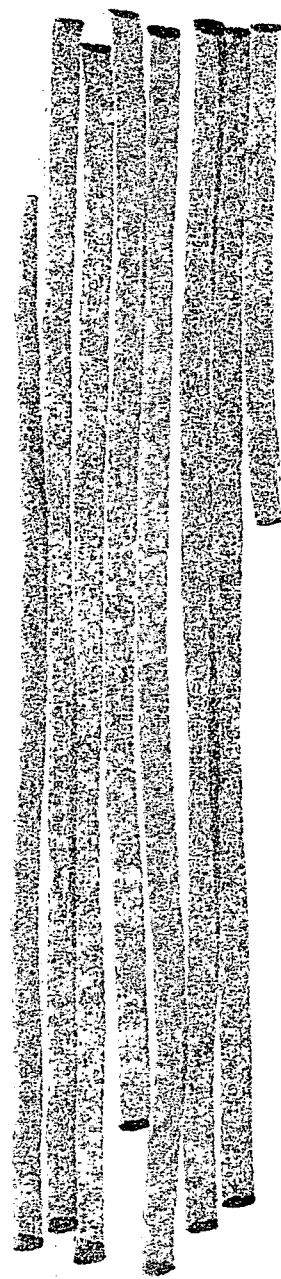
You had asked me whether or not we could settle this matter after we get a decision from Commissioner McCaskill as to whether or not Billy Oswald and his law firm are entitled to any attorney's fees. I cannot allow my emotional feelings to get involved and there is a possibility that we could settle the matter.

[REDACTED]

With that said, I want to give you a couple of considerations that we will be bringing up at the next hearing concerning the compensation rate if we can't resolve this case now.

[REDACTED]

EXHIBIT  
8



Landon Hughey, Esquire

April 11, 2012

Page 2 of 4

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As you are aware, the Commission has ordered a lump sum payment of \$156,000.00 which we have not received. As I know you are aware, under §42-9-90 when an Award is not paid within 14 days of the date that it becomes due it is subject to a 10% penalty. In addition, the Award is subject to judgment interest which would be added to both the penalty and the original amount so we are probably looking at an additional \$30,000.00 to \$35,000.00 due on the Award because it backdates to the date that the original Award was made by Commissioner Beck. Rocky, I am not pushing that at this point but I bring that to your attention in your client's consideration of what they want to pay to get out of this case. Of course, again if we cannot resolve this then what will have to be paid.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Landon Hughey, Esquire

April 11, 2012

Page 3 of 4

[REDACTED]

At this point I would recommend a settlement to Mrs. Lazaro based on the immediate payment of the partial lump that has been awarded by the Commission and then a separate agreement for

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Landon Hughey, Esquire

April 11, 2012

Page 4 of 4

I look forward to hearing from you.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Preston F. McDaniel". The signature is written in a cursive style with a large initial "P" and "M".

Preston F. McDaniel

PFM/kic

cc: Jack Duncan, Esquire ([jackduncanlaw@gmail.com](mailto:jackduncanlaw@gmail.com))

Compensation Commission

Street, suite 500 · Post Office Box 1715  
South Carolina 29202-1715  
/37-5723



WCC File #: 0710622

Carrier File #: S266-07-01390

Carrier Code #:

Employer FEIN #:

Antonio Lazaro 608-16-1807  
Claimant's Name SSN  
101 Rolling Rock Rd.  
Columbia, South Carolina 29212  
Address City State Zip  
(803) 798-8731  
Home Phone #  
Landon Hughey  
Preparer's Name  
Work Phone #  
McAngus Goudelock & Courie  
Law Firm

Burriss Electrical  
Employer's Name  
1251 N. Lake Drive  
Lexington, South Carolina 29072  
Address City State Zip  
CompTrust AGC of the Carolinas  
Insurance Carrier  
(803) 227-2261  
Phone Number

Date of Accident: 7/6/07

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer-insurance carrier in answer to the claim, respectfully shows:

- 1. It is denied that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are: Defendants admit Claimant is permanently and totally disabled as a result of a brain injury. However, Defendants deny the extent of the allegations in the Form 50..
- 2. It is admitted that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: See Number 1 above.
- 3. It is admitted that the relationship of employer and employee existed at the time in question. The reasons for denial are: See Number 1 above.
- 4. It is admitted that at the time in question the employee was performing service growing out of and incidental to his employment. The reasons for denial are: See Number 1 above.
- 5. It is admitted that notice of injury was given to the employer. The reasons for denial are: See Number 1 above.
- 6. It is denied that the employee needs/is entitled to additional medical care as a result of the injury. The reasons for denial are: Claimant is entitled to lifetime medical treatment for his admitted brain injury. Other relief requested by the Claimant is denied.
- 7. It is denied that the employee is entitled to temporary total disability for the period(s) of: See Numbers 1 and 6 above. Claimant is on a running award of indemnity benefits.
- 8. It is admitted that the employee is permanently disabled. The reasons for denial are: See Number 1 above.
- 9. It is denied that the employee has a serious disfigurement.
- 0. It is contended that an average weekly wage of \$Form 20 already submitted applies, according to attached accounting of employee's earnings as provided by law.
- 1. Further contentions or grounds of defense are: Defendants maintain there is no evidence whatsoever to justify and increase in Claimant's average weekly wage and compensation rate. Defendants reserve to right to postpone a hearing in this matter to conduct appropriate discovery in light of Claimant's allegation of the maximum compensation rate. The deposition of Claimant's wife has been noticed and tax records have been requested. Sufficient time must be allowed for full discovery on this issue prior to a hearing on the merits of that issue.
- 2. Estimated time needed for hearing: 1.5 hours.

Certify that I have served this document pursuant to R.67-211 by delivering a copy to:

eston F. McDaniel, Esquire  
McDaniel Law Firm  
15 Elmwood Avenue  
Columbia, South Carolina 29201

John Earl Duncan, Esquire  
Attorney at Law  
137 East Butler Street, Suite 3  
Lexington, South Carolina 29072

the 19th day of April, 2012 by [X] first class mail; [ ] personal service; [ ] certified mail.  
I certify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Attorney for Employer/Carrier Title lhuqhey@mgclaw.com Email

April 19, 2012 Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FLORENCE )

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
WCC FILE NO.: 0710622

DECIDORA LAZARO, as Guardian )  
ad Litem and Guardian for )  
and as the wife and )  
statutory dependent of, )  
ANTONIO LAZARO, by and )  
through the Attorneys of )  
Record at the SC Workers' )  
Compensation Commission, )  
for the Claimant and his )  
dependents, Preston F. )  
McDaniel, Esquire and )  
John E. Duncan, Esquire, )

Movant, )

v. )

BILLY R. OSWALD, ESQUIRE and )  
THE OSWALD LAW FIRM, )

Respondents. )

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IN RE: )

ANTONIO LAZARO, )

Employee/Claimant, )

v. )

BURRISS ELECTRICAL, INC. )

Employer, and )

COMPTRUST AGC OF SOUTH )  
CAROLINA, )

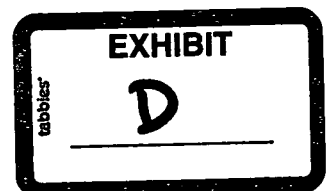
Carrier, )

Defendants. )

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ORDER ON MOTION

This matter came to be heard by me on April 10, 2012 on the basis of a Motion filed by Mrs. Decidora Lazaro as the Guardian ad Litem and Guardian for and as the wife and statutory dependent of Antonio Lazaro. Mrs. Lazaro and the Lazaro Family



were represented by Preston F. McDaniel, Esquire and John E. Duncan, Esquire. The Respondents represented themselves, Billy R. Oswald, Esquire and Gene Stockholm, Esquire of The Oswald Law Firm. Landon L. Hughey, Esquire represented the insurance carrier and the employer.

This matter is before the Commission on Motion requesting a determination as to whether or not the Oswald Law Firm is entitled to any attorney's fees and if so, in what amount. All parties agree that there is no request for attorney's fees or any matter pending before the Commission at this time from which any attorney's fees is requested to be paid. It is also agreed that Billy R. Oswald, Esquire and the Oswald Law Firm back in 2007 appropriately notified the Commission that they had been relieved as Counsel and that subsequent to that, Preston F. McDaniel and John E. Duncan were substituted as Attorneys of Record with the Commission.

Based upon a review of the information submitted to this Commissioner back on July 6, 2007 Mr. Lazaro was involved in a work-related accident which resulted in him being in a vegetative state since that time. On July 11, 2007 at a time at which she had not been appointed Guardian ad Litem nor Guardian for Mr. Lazaro, Mrs. Lazaro signed a Contingency Fee Agreement with the Oswald Law Firm. Subsequent to that, no later than September 28, 2007, Mrs. Lazaro advised the Oswald Law Firm that she was terminating their employment in this matter and

requesting a copy of her file. There is no question that the Fee Agreement that Mrs. Lazaro signed was signed by her at a time that she had not been appointed as Guardian ad Litem nor Guardian and therefore entered into the Agreement in her individual capacity only. Based on a review of that Contract it was a contingency fee contract entitling The Oswald Law Firm to a fee based upon the outcome through either settlement or award of the results obtained for Ms. Lazaro. The agreement sets forth no other basis for a fee to be paid.

Subsequent to the termination of employment, Mr. Oswald wrote the Commission and the adjuster letters notifying the Commission and the Adjuster that The Oswald Law Firm was no longer Attorneys of Record but advising them that he was placing a lien on both the workers' compensation action and any, "possible" third-party action. At that time Preston McDaniel was contacted concerning representation and subsequently entered into a contract to represent the Lazaro Family and advised Mr. Oswald that he would protect any costs that he had in the matter.

Since 2007 and notification of a termination as Attorneys of Record and potential lien with the Commission, The Oswald Law Firm has had nothing to do nor had any involvement in the matter. The Oswald Law Firm noted and stipulated at the hearing that they are not involved with representation and that any reference to their representation by the insurance carrier

and/or the employer should be terminated as they had properly been removed as Attorneys of Record in 2007. It is clear from The Record that The Oswald Law Firm has had no standing in this matter since 2007.

Mr. McDaniel and Mr. Duncan on behalf of Mrs. Lazaro note to the Commission that there is no request for attorneys fees pending at this time nor is any matter pending that would result in any attorneys fees. A partial lump sum payment has been ordered but all of the proceeds from that Award are to be paid to the Lazaro Family to pay off debt and to purchase a needed automobile for the family. That Award was appealed and dismissed by the Court of Appeals pending a possible settlement, which has since fallen through and will not be consummated.

Because the insurance company and the employer have continued to note the potential lien and have refused to deal only with the Lazaro Family and with their Attorneys of Record, Mr. McDaniel and Mr. Duncan, without the continued involvement of The Oswald Law Firm, Ms. Lazaro, through her attorneys, requests an Order directing the defendants to stop all communication with The Oswald Law Firm and confirming The Oswald law Firm has no standing in this matter with the exception of a determination of whether they are entitled to an attorneys' fee now or if and when that issue becomes ripe for decision.

On behalf of Mrs. Lazaro and the Lazaro Family, Mrs. Lazaro takes the position that The Oswald Law Firm is not entitled to

any fee and does not want The Oswald Law Firm paid any fee for their approximate 10 weeks that they were Attorneys of Record back in 2007. It is agreed that there were no issues pending between the parties nor was there any settlement agreement or were any negotiations contemplated at the time that employment with The Oswald Law Firm was terminated. Therefore there was no settlement agreement or an award consummated or pending that would have entitled The Oswald Law Firm to a fee under the contingency fee contract.

The Oswald Law Firm takes the position at this hearing that they are not requesting a fee based on a contingency basis but are filing a request for attorneys' fees due to the amount of time that they spent on the file prior to the time that their representation was terminated. They agree and it is clear from the Commission file that no Form 61 was ever presented to Mrs. Lazaro nor has one been filed with the Commission alleging what fee, if any, is requested by The Oswald Law Firm.

Wherefore, based upon a review of the information and evidence submitted to this Commissioner, I have made the following Findings of Fact concerning the Motion that has been filed:

1. That Preston F. McDaniel and John E. Duncan are the Attorneys of Record for the Claimant in this matter and that The Oswald Law Firm was removed as Attorneys of Record back in 2007 and no later than October 11, 2007 when The Oswald Law Firm

noted to the Commission that they had been relieved as Counsel. Thus, The Oswald Law Firm has had no standing in this matter since 2007 as either a party or representative of a party. They are entitled to a determination however of whether they are entitled to a fee if and when that is ripe for decision.

2. That given that this matter is still pending, the question of what monies, if any, are due Mr. Oswald and/or his firm, is premature.

3. That the Defendants are to be advised and reminded by copy of this Order that Mr. McDaniel and Mr. Duncan are now and have been the Attorneys of Record in this case since as early as October 11, 2007 and no later than January 16, 2008 that The Oswald Law Firm has no standing in this matter and that the defendants shall communicate directly with the Attorneys of Record in this matter and stop any further communication with The Oswald Law Firm as in any way being involved in this matter.

4. That Billy R. Oswald and The Oswald Law Firm are to file a Form 61 with the Commission within 30 days setting forth the fee that is claimed and the basis for the request with all appropriate documentation. It is the understanding of this Commissioner that the fee will be based upon the time spent on the file prior to termination of their services.

#### CONCLUSIONS OF LAW

Pursuant to S.C. Code §42-17-40 the following Conclusions of Law apply in this matter as to the issues presented:

1. That S.C. Code §42-15-90, Commission Regulations 67-1205 and the S.C. Supreme Court Rules on attorneys fees and determining a reasonable fee apply to the determination of an entitlement to attorneys fees in a workers' compensation matter.

2. That Regulation 67-1204 and 1205 require an attorney to submit a Form 61 to the Commission for approval of any attorneys fees requested. Reg. 67-1205(D) provides that the attorney is to forward the Form 61 to the Claimant and/or his/her representative and if the Claimant refuses to sign the Form 61, the attorney shall file the unsigned Form 61 with the Commission. Under rule 67-1203 it is the responsibility of the attorney requesting a fee; especially where the Claimant refuses to sign a Form 61, to file a Motion stating that the Claimant refused to sign the Form and requesting a determination on the fee request when a final determination of fees is requested.

3. That S.C. Code Law as set out hereinabove, the Commission Regulations and the Attorneys Code of Conduct, require that the Defendants and their attorneys are to deal with the Claimant's Counsel of Record and/or the Claimant in all matters in reference to a workers' compensation matter.

4. That under the stipulation of the parties, the parties have stipulated to jurisdiction and venue in this matter. The Oswald Law Firm has stipulated that they are not requesting an attorneys fee based on a contingency fee contract but are requesting a fee based upon the amount of time spent in the case

on a quantum merit type basis. In the Supreme Court Rules, under the Attorneys Code of Conduct concerning fees the Rule states that all contracts for representation should be in writing and should set forth the basis for determining the fee which in a contingency fee type contract is based on, "the outcome of the matter" obtained for the client by the Attorney(s) and if there is an alternative method for determining a fee that alternative method should be presented to the Client in writing for their approval and agreement to a fee being determined on that basis. Commission Regulation 67-1203 sets forth the procedure for requesting a fee when representation is terminated.

#### DECISION

Therefore, IT IS SO ORDERED that The Oswald Law Firm has had no standing in this matter since 2007 and that the Defendants are advised to stop, cease and desist from any and all contact with the Oswald Law Firm as being in any way involved or having standing of any nature in this matter and shall immediately communicate only with Claimant's Counsel of Record and/or the Claimant in all matters pertinent to this workers' compensation matter.


It is further ordered that within 30 days of the date of this Order The Oswald Law Firm shall file a Form 61 with the Commission with a copy to all parties involved setting forth any fee that is claimed and the basis for that fee as requested. It

is further ordered and found that the Oswald Law Firm has been removed as Attorneys of Record since 2007 and that the Attorneys of Record for the Claimant are Preston F. McDaniel and John E. Duncan.

It is further ordered that since this matter is still pending and no request for approval of attorneys fees has been filed, the question of what monies, if any, are due to Mr. Oswald and/or his firm is premature and subject to further order of this Commission in accordance with the statutory law, the Regulations of the Commission and the Supreme Court Rules and the dictates of this Order as set forth hereinabove.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'  
COMPENSATION COMMISSION



Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.  
April 25, 2012

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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Appellate Panel  
Richland County  
Trial Court Case No. 2004-WC-40-10622

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WCC File No. 0710622

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Antonio Lazaro, by and through his GAL,  
Decidora Lazaro, Employee, ..... Respondent,

v.

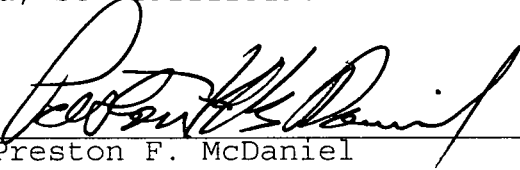
Burriss Electrical, Inc., Employer, and  
Comptrust AGC of the Carolinas, Carrier, ..... Appellants.

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PROOF OF SERVICE

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I certify that I have served on this day by depositing a copy of Respondent's **REPLY TO MOTION FOR RECALL OF REMITTITUR** in the United States Mail, postage prepaid, on April 27, 2012, addressed to Counsel of Record: Weston Adams, III, Esquire and Helen F. Hiser, Attorney, McANGUS, GOUDELOCK & COURIE, LLC, Post Office Box 12519, Capitol Station, Columbia, SC 292112519.

  
\_\_\_\_\_  
Preston F. McDaniel  
MCDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, South Carolina 29201  
(803) 771-7211

and

John E. Duncan, Esquire  
LAW OFFICE OF JOHN DUNCAN  
137 East Butler Street, Suite 3  
Lexington, South Carolina 29072  
(803) 951-2388

April 27, 2012

Attorneys for Respondent

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

Proudly representing injured workers  
for over 25 years.

Preston F. McDaniel  
OF COUNSEL:  
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

April 27, 2012

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

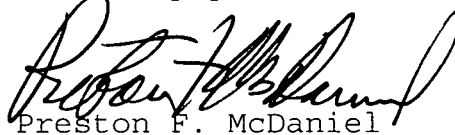
**RE: Antonio Lazaro v. Burriss Electrical Inc.**  
**Case Tracking No. 2011-192272**

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondent's **REPLY TO MOTION FOR RECALL OF REMITTITUR** in the above-referenced matter. Please file the originals and return the clocked-in copy to me in the enclosed, self-addressed, stamped envelope.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,

  
Preston F. McDaniel

PFM/kic  
Enclosures

cc: John E. Duncan, Esquire  
Weston Adams, III, Esquire  
Helen F. Hiser, Attorney

**RECEIVED**

APR 30 2012

**SC Court of Appeals**