THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Unpublished Opinion No. 2018-UP-352
(Heard May 17, 2018 -
Filed August 8, 2018)

Decidora Lazaro, on behalf of the Estate of Antonio Lazaro, Employee,.....Petitioner,

v.

Burriss Electrical, Employer, and South Carolina Guaranty Association, Carrier.....Respondents.

APPENDIX

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INDEX

Final Brief of Appellant.....bound/unbound attached

Final Brief of Respondents.....bound/unbound attached

Record on Appeal.....bound/unbound attached

Unpublished Opinion No. 2018-UP-352,
filed August 8, 2018.....bound/unbound attached

Petition for Rehearing.....bound/unbound attached

Order on Rehearing,
filed September 20, 2018.....bound/unbound attached

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Decidora Lazaro, on behalf of the Estate of Antonio Lazaro, Employee, Appellant,

v.

Burriss Electrical, Employer, and South Carolina Guaranty Association, Carrier, Respondents.

Appellate Case No. 2016-000665

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2018-UP-352
Heard May 17, 2018 – Filed August 8, 2018

AFFIRMED

Preston F. McDaniel, of McDaniel Law Firm, of Columbia, for Appellant.

Brett Harris Bayne, of McAngus Goudelock & Courie, LLC, of Columbia, for Respondents.

PER CURIAM: Antonio Lazaro (Claimant) appeals the order of the Appellate Panel of the South Carolina Workers' Compensation Commission (the Commission) denying his request for a partial lump sum payment and adjustment of his average weekly wage and compensation rate. Claimant argues the

Commission erred in denying his request for a partial lump sum payment by finding the award was not in his or his dependents' best interests, finding he was entitled to only 500 weeks of benefits, and considering evidence of his life expectancy following his injury. Claimant further argues the record shows he was entitled to an increase in his average weekly wage and compensation rate, and the Commission erred by comparing him to his employer's non-English speaking, Hispanic employees in determining his average weekly wage. We affirm.

1. We find the Commission did not err in considering medical evidence in determining Claimant's life expectancy. *See Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (recognizing that the Administrative Procedures Act (APA) establishes this court's standard of review of the Commission's decisions); S.C. Code Ann. §1-23-380(5) (Supp. 2017) (stating that under the APA, this court may reverse or modify the decision of the Commission when the substantial rights of the appellant have been prejudiced because the Commission's decision is "affected by other error of law" or "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record"); *Ashley v. Ware Shoals Mfg. Co.*, 210 S.C. 273, 286, 42 S.E.2d 390, 396 (1947) ("It would seem clear that the . . . Commission is not at liberty to guess at the present value of future payments without regard to the contingencies that may arise."); *id.* at 287, 42 S.E.2d at 396 ("[I]f the total disability is such that there may be a change of condition or if a serious question is presented regarding the likelihood of the employee's living the length of time required to complete the installment payments, the allowance of a lump sum settlement over the objection of the employer or carrier would constitute an abuse of discretion which the appellate courts are empowered to review."); *Glover by Cauthen v. Suitt Constr. Co.*, 318 S.C. 465, 467 n.3, 458 S.E.2d 535, 537 n.3 (1995) (recognizing the South Carolina mortality table may be considered in determining a claimant's life expectancy for the purposes of calculating the present day value of his benefits); S.C. Code Ann. § 19-1-150 (2014) ("When necessary, in a civil action or other litigation, to establish the life expectancy of a person from any period in his life, whether he is living at the time or not, the [mortality table] must be received in all courts and by all persons having power to determine litigation as evidence, *along with other evidence* as to his health, constitution, and habits, of the life expectancy of the person." (emphasis added)); *Haselden v. Davis*, 341 S.C. 486, 506, 534 S.E.2d 295, 306 (Ct. App. 2000) (stating a factfinder is not bound by the life expectancy as indicated in the mortality table), *aff'd*, 353 S.C. 481, 579 S.E.2d 293 (2003).[1]

[1] Claimant passed away during the pendency of this appeal, on June 8, 2017. He was forty-seven years old.

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2. We find the Commission did not abuse its discretion in denying Claimant's request for a second partial lump sum payment because evidence supports the Commission's finding that this second lump sum payment was not in Claimant's or his dependents' best interests, and this request was tantamount to a total lump sum request.[2] *See* S.C. Code Ann. § 42-9-301 (2015) (stating appellate courts review the Commission's award of a lump sum payment for an abuse of discretion); *Thompson v. S.C. Steel Erectors*, 369 S.C. 606, 612, 632 S.E.2d 874, 878 (Ct. App. 2006) ("An abuse of discretion occurs if the Commission's findings are wholly unsupported by the evidence or the conclusions reached are controlled by an error of law."); § 42-9-301 ("Whenever any weekly payment has been continued for not less than six weeks, the liability therefor[e] *may*, when the employee so requests and the [C]ommission deems it not to be contrary to the best interest of the employee or his dependents, or when it will prevent undue hardship on the employer or his insurance carrier, without prejudicing the interest of the employee or his dependents, be redeemed, in whole or in part, by the payment by the employer of a lump sum which shall be fixed by the [C]ommission . . . ." (emphasis added)); *Ashley*, 210 S.C. at 287, 42 S.E.2d at 396 ("[I]f a serious question is presented regarding the likelihood of the employee's living the length of time required to complete the installment payments, the allowance of a lump sum settlement over the objection of the employer or carrier would constitute an abuse of discretion."); S.C. Code Ann. § 42-9-10 (2015) (prohibiting total lump sum payments in cases where a claimant has been awarded lifetime benefits).

3. We find the Commission did not err in refusing to increase Claimant's compensation rate. *See Pilgrim v. Eaton*, 391 S.C. 38, 44, 703 S.E.2d 241, 243–44 (Ct. App. 2010) (recognizing that an appellate court may not reverse the Commission's calculation of a claimant's average weekly wage "unless substantial rights of the appellant have been prejudiced because the decision is affected by an error of law, or because the factual findings are clearly erroneous in view of the reliable, probative, and substantial evidence" (citing S.C. Code Ann. §1-23-

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[2] Claimant previously requested a partial lump sum payment of his lifetime benefits to cover his debts and to purchase a new automobile for his family. On October 14, 2010, the single commissioner awarded Claimant and his dependents a partial lump sum payment of $152,568.75. The Commission affirmed the single commissioner on April 20, 2011, and the court of appeals affirmed the Commission by unpublished opinion 2014-UP-064 (filed February 6, 2014). On February 19, 2014, Claimant requested an additional partial lump sum of approximately $325,000; the denial of this second request is at issue in this case.

380(5))); S.C. Code Ann. § 42-9-10(A) ("When the incapacity for work resulting from an injury is total, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during the total disability a weekly compensation equal to sixty-six and two-thirds percent of his average weekly wages . . . ."); S.C. Code Ann. § 42-1-40 (2015) (defining a claimant's average weekly wage as his earnings "in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury"); *id.* (stating a claimant's average weekly wage is calculated by "the total wages paid for the last four quarters immediately preceding the quarter in which the injury occurred as reported on the Department of Employment and Workforce's Employer Contribution Reports divided by fifty-two or by the actual number of weeks for which wages were paid, whichever is less"); *id.* ("When for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury."); *Roberts v. McNair Law Firm*, 366 S.C. 50, 54, 619 S.E.2d 453, 456 (Ct. App. 2005) (holding a post-injury salary increase based on merit was not an "extraordinary circumstance" to support deviation from the statutory method of calculating a claimant's average weekly wage); *Elliott v. S.C. Dep't of Transp.*, 362 S.C. 234, 238, 607 S.E.2d 90, 92 (Ct. App. 2004) (holding a raise claimant received less than two weeks before her injury was an "exceptional reason" to increase her compensation rate because she earned the merit-based raise by pursuing special certification and licensing, it was not "merely a standard cost-of-living increase or step increase based on longevity of service," and she earned the raise before the accident); *Bazen v. Badger R. Bazen Co.*, 388 S.C. 58, 65, 693 S.E.2d 436, 440 (Ct. App. 2010) (holding the Commission did not err in failing to consider claimant's earnings as reported for tax purposes in calculating his average weekly wage).

4. Because our resolution of these issues is dispositive, we decline to address Claimant's remaining issues. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (finding the appellate court need not address appellant's remaining issue when its resolution of a prior issue is dispositive).

AFFIRMED.

HUFF, GEATHERS, and MCDONALD, JJ., concur.

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THE STATE OF SOUTH CAROLINA
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Appellate Case No. 2016-000665

Decidora Lazaro, on behalf of the Estate of Antonio Lazaro, Employee, ... Appellant/Petitioner,

v.

Burris Electrical, Employer, and South Carolina Guaranty Association, Carrier, ... Defendants/Respondents.

PETITION FOR REHEARING

PREAMBLE

Our Courts are committed to a liberal interpretation of the Act in favor of benefits to the injured worker. Put another way and paraphrasing, the Legislative in 1936 and 1937 and the Supreme Court ever since and specifically since 1941, the benevolent purposes of the Workers' Compensation Act is to partially compensate the injured workers and their families for industrial injuries and to prevent them from becoming charges on society. Does the Court's decision and interpretation achieve that purpose under the Award, the law and benefits available to the Lazaros and

every injured electrician?

Pursuant to 221(a), SCACR, the Appellant hereby petitions the Court for rehearing on the following points that the Appellant would respectfully submit to the Court that the Court overlooked or misapprehended in its decision in this matter as set forth hereinafter:

1. That in its analysis, the Court misapprehended and overlooked the fact that the Legislature completely flipped the standard and applicability from the old lump sum payment statute 1942 Code §7035-47, 1952 Code §72-181, 1962 Code §72-181 codified in 1976 as §42-9-300 and completely changed the burden from the injured worker and his dependents to the insurance carrier when a request for a partial lump sum is made. The Ashley vs. Ware Shoals Manufacturing Co., 210 S.C. 273, 42 S.E.2d 390 (1946) which is the centerpiece of the analysis is totally inapplicable to the standard and is part of the reason that the Legislature, as every practitioner in the area of workers' compensation knows, for the Legislature's intent to flip the burden of denying the lump sum request to the defendants.

Old §42-9-300 which was replaced by §301 reads in pertinent part:

> "Whenever any weekly payment has been continued for not less than six weeks, the liability therefore, **in unusual cases**, when the employee so requests ..." (emp. added).

In S.C. Code §42-9-301 which replaced §300, the Legislature specifically because of past decisions restricting the payment of

lump sums to the injured worker specifically struck the language, "**in unusual cases**". In addition to striking this language, the Legislature saw fit to add additional language clearly establishing the Legislative intent in favor of lump sums to the injured worker when the injured worker makes a request. Paramount to any argument that is made in this Court and is at the root of this situation and the purpose the workers' compensation and Legislative intent is that **this is the injured worker's money**, not the insurance carrier's once it has been **AWARDED by the Commission** as it has been in this case. To make it clear that it was the Legislative intent in favor of lump sums to the injured worker, the Legislature added the following language:

> "Upon a finding by the Commission that a lump sum payment should be made, **the burden of proof as to the abuse of discretion in such finding shall be upon the employer or carrier in any appeal proceedings**." (emp. added).

The legal standard and essential issue that must be addressed in detailed findings of fact and conclusions of law is simply and purely in accordance with the beneficial purposes of the Act:

1. Did the injured worker make a request?

2. Is it contrary to the best interests of the worker or the worker's dependents?

2. That the Court grossly misunderstood, misapprehended and misapplied its decision in Haselden vs. Davis, 341 S.C. 486, 534 S.E.2d 295 (S.C. App. 2000) affirmed on other issues 353 S.C. 481, 579 S.E.2d 293 (2003) in reference to the Mortality Table and its purpose; and grossly misunderstood the argument that is being

made by the Defendants in this case which was also made in Haselden. In this case, the Defendants are arguing and argued that they should have the benefit of the injury in establishing how long the Claimant will live. That is totally contrary to this Court's decision and every Supreme Court decision and the very purpose of the Mortality Table, S.C. Code §19-1-150. Quoting from the jury charge that this Court specifically sanctioned as being a proper rendition of the law in reference to the very purpose of the Mortality Table, the Court in Haselden charged:

> "In determining how long the decedent would have lived had the decedent lived a normal live, you may consider her life expectancy at the time of her death. The Mortality Table received in evidence may be considered in your determining how long the Plaintiff may be expected to live. Such tables are not binding on you but may be considered together with other evidence in the case bearing on the Plaintiff's health, age and physical condition **before the injury** and death in determining the probable length of the Plaintiff's life." (emp. added).

The Court's analysis and decision is based on these two-fundamental misunderstanding and based on this fundamental flawed analysis, the Court cannot sanction allowing the Defendants in any case to take the benefit of the effects of the injury on the life expectancy of the injured worker. The very reason that the life expectancy tables came into existence is so that the Defendants could not take advantage of the injury in limiting the injured person's damages caused by the injury. Actually, the Appellant finds it ironic that the Appellant would have to note this to the Court. The same argument was made and was not countenanced and was rebuked by the Supreme Court in Glover by Cauthen vs. Suitt

Construction Co., 318 S.C. 465, 458 S.E.2d 535 (1995). Glover was an attempt by insurance industry to limit the benefits payable to an injured worker's attorney who obtained a lifetime benefits Award for the Claimant. The Court will note in that case specifically that the Defendants tried to limit the Award of any partial lump sum to no more than the 500-weeks. The same argument that was made in this case concerning the request for a second lump sum that they get the benefit of his life expectancy, **AFTER the injury** could have been made the day after Mr. Lazaro became a vegetable. Oh, we should not have to pay off his family's mortgage because he is going to die tomorrow, or we can put up the evidence right now that normally people in a vegetative state with a dead brain do not live more than five years. This decision allowed to remain by the Court undercuts the very fabric and reason the Legislature passed the Mortality Table to start with.

3. That in section No. 2 of the Court's decision the Court found that the Commission did not abuse its discretion in denying Claimant's request for a second partial lump sum because evidence supports the Commission's finding that this second lump sum payment was not in Claimant's or Dependents best interests and further that this request was tantamount to a total lump sum request. In reference to this section, the Court overlooked or misapprehended several errors of law and also errors of fact in the Commission's decision.

When the Workers' Compensation Act was created and the right to trial by jury was taken away from the injured worker, in

addition to a liberal construction being mandated by the Courts which by history was applied by and the Commission, the Legislature and the Supreme Court mandated that the Commission must make detailed findings of fact and conclusions of law on every essential issue presented to it for decision so that the one man or woman jury decision could be reviewed to make sure there is compliance with the law and that it is based on the facts in the Record. Drake vs. Reybestos Manhattan, Inc., 241 S.C. 116, 127 S.E.2d 288 (1962); Hill vs. Jones, 255 S.C. 219, 178 S.E.2d 142 (1970). There are simply no findings of fact setting forth how a partial lump sum is not in the best interest of the Claimant and/or his Dependents. More importantly, the Court must have overlooked the fact that there is absolutely no conclusion of law setting forth the standard or the actual requirements or the actual code section, S.C. Code §42-9-301 as a basis for its decision. There is nothing to establish the correct legal standard and the laws were applied to avoid an abuse of discretion, there must be findings of fact and there must be an application of the law which is again: that where the Claimant makes the request for a partial lump sum, there must be findings that it is contrary to the best interest of the Claimant to receive a partial lump sum. There are none. Further and more importantly, there is not even, and the Appellant reiterates not even one conclusion of law addressing or even citing §42-9-301. The closest is conclusion of law No. 8 which refers to and quotes from Ashley vs. Ware Shoals, supra. The Court must recognize that

that decision was not decided under S.C. Code §42-9-301 but was decided under its predecessor, §42-9-300 which allowed for a partial lump sum in only **unusual cases**. A decision that does not recognize and address the lack of findings of fact and conclusions of law eviscerates numerous decisions and the very purpose and intent of the Legislature's recodification in favor of partial lump sums to the injured worker. S.C. Constitution Article V. §9.

4. That in addition as to subsection No. 2 of the Court's opinion concerning this request being, "tantamount" of a total lump sum request is simply not true and in addition, it is contrary to the law of the case based on Commissioner Beck's original partial lump sum Order. Commissioner Beck's Order specifically makes detailed findings of fact and in his Statement of the Case, he specifically states:

> "While I agree with the Claimant that under the South Carolina Supreme Court decisions and the statutory law that the Mortality Tables are to be used for determining the total value of a claim and the granting of a lump sum and while I agree that the law provides that I must provide and order a lump sum where it is in the best interest of the Claimant and/or his dependents, at this point, I find the information and evidence submitted for granting a partial lump sum more than to pay off the home, grant money to buy one car and to pay off the debts as listed in the Financial Declaration to be not convincing to transfer **Mr. Lazaro's benefits** from the insurance company to his guardian ...
>
> ... Again when more definitive information is provided concerning looking for college and expenses in that regard and the expenses of college and the needs of the children, then the family may come back and request additional money through an additional partial lump sum payment ...
>
> ... **Findings of Fact**

> ... 5. That in making the partial lump sum award in this case, I find that all the other information and basis for requesting an additional award is speculative at this point but that the dependents and/or the Claimant may request a further lump sum or lump sums at any time in the future pursuant to a determination at that time as to what is in the best interest of the Claimant and/or his dependents ...
>
> ... **CONCLUSIONS OF LAW**
>
> ... 1. ... Under S.C. Code §42-9-10, ... and under S.C. Code §42-9-301, the decision is made as to the granting of a partial lump sum in this matter." (R. p. 8, 14, 16).

Commissioner Beck meticulously went through the appropriate issues to be considered and the requests that had been made for a partial lump sum at that time. He found that the boys were not in college at that point. He found that the Claimant had not put into evidence any specific information as to an annuity and how it would be in the best interest of the family and he addressed all of the issues in reference to and made findings of fact and conclusions of law addressing all of those issues and essential issues presented to him for decision. There is an absolute void in the subsequent decision of the Commissioner that is the subject of this appeal of any analysis or any findings of fact as to how it is not in the best interest of the Claimant and/or his dependents. Instead, there are references that one son dropped out of college because of student loan debt and is in the military serving our country. The other son is putting off going to college to help his mother pay the bills and is working and because Ms. Lazaro is having to work three jobs. Where is the substantial evidence in the Record that it is not in the best

interest of or any analysis of the best interest of the Claimant and/or his dependents in reference to the partial lump sum request made.

5. That it appears the Court overlooked the application of the fundamental principle of law that has been applied to the Workers' Compensation Act since the inception of the Act that the Act is to be construed liberally in favor of benefits to the injured worker and the injured worker's dependents concerning the second prong of the basis for denial. The second prong under No. 2 in the Court's decision was that this request is, "tantamount" of a total lump sum request. The Appellant would respectfully submit that that is no basis under law to deny this family benefits and it is absolutely not a liberal interpretation of the statute. This insured worker has been receiving benefits since the date of the accident, July 6, 2006. This Court approved a previous partial lump sum request made many years after receiving those weekly benefits. The Commission told this family to come back when it had evidence and the Commission would consider an additional partial lump sum when they submitted annuity evidence that a further partial lump sum that would guarantee income to the family and would be in their best interest. It must be noted by the Court that the present additional lump sum request was for those very same reasons that the first partial lump sum was requested in this matter and for which they were told by the Commission to provide evidence. This Court affirmed that decision.

This Court should look at its reasoning in reference to the issues raised at that time which is found at page 22 of the Record in reference to the sufficiency of the Commission's findings and conclusions. This Court did an analysis at that time under law and quoted §42-9-301 as the guiding principle. Again, there is no conclusion of law concerning that section in this Order and again, quoting this Court from its first Order on the first request under section 2 from the case of Thompson vs. S.C. Steel Erectors, 369 S.C. 606, 632 S.E.2d 874 (S.C. App. 2006):

> "An abuse of discretion occurs if the [Appellate Panel's] findings are wholly unsupported by the evidence or the conclusions reached are controlled by **an error of law**."

In that decision, two of the members of this current panel of the Court concurred in the following which is black letter law and has been black letter law (ironically one of the cases cited, for the principle was an average weekly wage case which will be addressed later as to the Court's decision in this regard in this, "electrician's" case) since the inception of the Act.

> "Case vs. Hermitage Cotton Mills, 236 S.C. 515, 531, 115 S.E.2d 57, 66 (1960) The courts of this country have without exception viewed the workman's compensation law as intended primarily for the benefit of the injured employee and it is to be construed liberally for his protection." (; Booth vs. Midland Trane Heating and Air Conditioning, 298 S.C. 251, 254, 379 S.E.2d 730, 731 (Court App. 1989). ("The primary purpose of the Workers' Compensation Act **is to protect the worker**, "and" any reasonable doubt as to its construction should be resolved in favor of the Claimants.") (emp. added).

Where in the law and how is it a liberal construction that an injured worker is to be denied a partial lump sum request because

the residual partial lump sum request that is made which is what is involved in this case would be, "tantamount" of a payment of a residual value of the remaining award. This Court's decision is not based on law or fact and appears to be based on the fact that this Court considers the money under the Award (to the Claimant) to be the money of the insurance company not the injured worker. There are no findings of fact. There are no conclusions of law. There is not one shred of evidence that the payment of this partial lump sum requested is not in the best interest of the injured worker. If this Court does not apply a liberal construction under the prior reasoning of this Court in its own words and based on review of this Record, at a minimum, this Court should grant rehearing and face to face tell the parties the substantial evidence in the Record that it finds exists under a liberal construction of the Act in the favor of benefits to the injured worker for the denial of this request **under law**. Many times, this Court and the Supreme Court where they are forced to make a decision that they do not want to will make that decision under the facts and law but will implore the Legislature or tell the Legislature that if a different result is desired, then they need to change the law. If this Court believes that an injured worker and/or the worker's family should not receive a partial lump sum in any amount or in a lifetime benefits case beyond a certain amount, then that is a function for the Legislature to perform, not this Court.

Finally, Appellant presumes that the Court overlooked the

fact in the criticism of the request being tantamount of a total lump sum request that the value that the partial lump sum requested is less than 94% of the residual value. In other words, under law, which is what this is supposed to be about, S.C. Code §42-9-301, it is less than the maximum cap, a 6% commutation of the residual value that can be awarded as a partial lump sum.

6. That the Court overlooked or misapprehended the substantial evidence in the Record as to the increase in the average weekly wage and also overlooked or misapprehended the law as to the application of exceptional circumstances under paragraph 2 of S.C. Code §42-1-40.

First, there is no substantial evidence in the Record contrary to that placed into the Record by the Appellant in reference to Mr. Lazaro's wages prior to the accident. The Appellant submitted his W-2 showing wages of $33,601.02 and assuming that he worked the entire 52 weeks, that would result in an average weekly wage of $646.17 with a resulting compensation rate of $430.80. The Defendants knew that the average weekly wage and compensation rate was at issue at the hearing. See Form 50, p. 54 and 55 and the Claimant's Pre-Hearing Brief p. 67-70. In fact, the Form 20 is not in the Record and see p. 61 and 62 and specifically No. 10 of the Form 51 found at p. 61. Further, there is no challenge to the wage calculation as to the Claimant's wages prior to the accident in the Defendant's Pre-Hearing Brief but only as to the application of exceptional circumstances and the application of the statutory maximum due to exceptional

circumstances. Therefore, there is no substantial evidence in the Record as submitted to the Commissioner that the compensation rate should not at a minimum have been raised to an average weekly wage of $646.17 with a resulting compensation rate of $430.80.

Since the average weekly wage and compensation rate was contested, the key word is, "evidence". S.C. Code §42-17-10 specifically provides in reference to an agreement to pay compensation which is what occurred in this case that, "all such agreements shall be subject to adjustment and correction as to the compensable rate if subsequent to filing with the Commission, it is determined that such rate does not reflect the correct average weekly wage of the Claimant." The Claimant challenged the average weekly wage and there is no evidence in the Record contrary to the evidence of the Claimant. The average weekly wage should at a minimum be increased based on his pre-injury earnings. In fact, this is in exact accord under the factual situation in Pilgrim vs. Eaton, 391 S.C. 38, 703 S.E.2d 241 (S.C. App. 2010). In Pilgrim what this Court actually did was it reversed the decision of the Commission on the compensation rate based on there being no substantial evidence in the Record under law for the determination of the compensation rate by the Commission.

On the exceptional circumstances, the Court misapprehended and misapplied the law in reference to exceptional circumstances under S.C. Code §42-1-40. This Court in the case of Booth vs. Midland Trane Heating and Air Conditioning and the Supreme Court subsequent to that has specifically held that whether or not under

the facts exceptional circumstances exist is a, "question of law for the Courts," Elliott vs. South Carolina Department of Transportation, 362 S.C. 234, 607 S.E.2d 90 (2005). Note, the Court first misapprehended that the Appellant in no way ever requested the application of exceptional circumstances based on post-injury step-raises. In Elliott, the Supreme Court found exceptional circumstances based on the pre-injury rate increases not the post-injury rate increases. In Booth, this Court found exceptional circumstances based on the number of pre-injury raises and the amount of wage increases Mr. Booth had in a short period of time. The Court will note from the Record that those are two of the reasons that the Claimant had asked the Commission and then this Court to consider as exceptional circumstances. Mr. Lazaro had had a wage increase of 45% over a three-year period and an average 12.86% per year rate increase. That is pre-injury not post-injury. Those facts call for the application of exceptional circumstances as a matter of law just as they did in Elliott and just as they did in Booth. The Court must at least address as to why those cases do not apply not simply those. S.C. Constitution V. §9.

The other basis which is the only basis involving a post-injury analysis and facts was that recognized by this Court (under a liberal interpretation of the Act as the Supreme Court and this Court have always applied in favor of benefits to the injured and the injured worker's dependents) in Sellers vs. Pinedale Residential Center, 350 S.C. 183, 564 S.E.2d 694 (S.C. App. 2002).

This Court has repeatedly applied Sellers, supra, post-injury factors to make a determination at the time that the request for an increase in the average weekly wage and compensation rate is made to increase the compensation rate to properly reflect the loss of earning capacity of the Claimant and to offset the effect that it has on the injured worker and the injured worker's family/dependents into the future. The uncontradicted evidence is again that at the time a request for the review of the average weekly wage and compensation rate was made that the Claimant, Mr. Lazaro would have been making a lot more money as an electrician with the company, as compared even to the other non-English speaking and Hispanic workers even considering the xenophobic and racist evidence in the Record relied on by the Commissioner.

Therefore, as matter of fact and law, the Court misapprehended the substantial evidence in the Record and misapplied the law. Again, the determination of whether or not exceptional circumstances exist is not based on the standard APA review of substantial evidence but is based on this Court's determination, note again this Court's determination, as a matter of law as to whether or not exceptional circumstances exist. (emp. added).

7. That as to whether or not the Court in its decision should have reached the other issues raised by the Appellant, the Appellant would only ask for the Court to review issues raised in II and V under the dictates of the Appellate Court Rules and specifically Rule 220, SCACR.

8. That the Appellant would respectfully request consideration of recaptioning of the case by the Court. Under workers' compensation law at the time of his death, any Award would pass to his dependents. See: S.C. Code §42-9-110 thru 140.

CONCLUSION

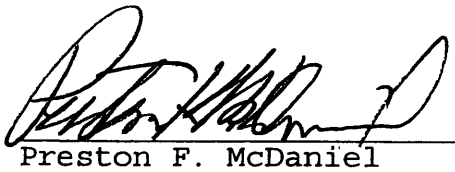
For the foregoing reasons, the Appellant would specifically ask that the Court reconsider and grant rehearing on this appeal and its decision and specifically would ask the Court to grant further oral argument unlimited so that a full discussion in the best interest of this injured worker and the injured worker's dependents can be had. Most of the questions that are raised by the Court's opinion were not asked or addressed to the parties at oral argument. The Court will recall based upon review of the oral argument that the focus was entirely different and if the Court's decision is going to be based on these issues, further oral argument as a matter of justice is required.

Further, there is no question that the Court misapprehended or overlooked the substantial evidence in the Record or the lack of substantial evidence in the Record in its decision. The Court also overlooked or misapprehended the Commission's compliance with its fundamental statutory requirement that it make detailed findings of fact and conclusions of law that are sufficiently definite and detailed enough on every essential issue presented to the Commission for decision so that this Court may properly review those. There are none in this case in reference to particularly whether or not it was in the best interest of the Claimant and/or

the Claimant's dependents to grant a partial lump sum and there was no findings of fact or conclusions of law as to the amount of the lump sum requested.

Finally, the Appellant would request consideration of the re-captioning of the case by the Court and verily believes that it should be at a minimum Decidora Lazaro, Dependent and on behalf of the Dependents of Antonio Lazaro, Employee, Deceased.

Respectfully submitted,



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Attorney for Appellant/Petitioner

August 20, 2018

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Decidora Lazaro, on behalf of the Estate of Antonio Lazaro, Employee, Appellant,

v.

Burriss Electrical, Employer, and South Carolina Guaranty Association, Carrier, Respondents.

Appellate Case No. 2016-000665

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2018-UP-352
Heard May 17, 2018 – Filed August 8, 2018

AFFIRMED

Preston F. McDaniel, of McDaniel Law Firm, of Columbia, for Appellant.

Brett Harris Bayne, of McAngus Goudelock & Courie, LLC, of Columbia, for Respondents.

PER CURIAM: Antonio Lazaro (Claimant) appeals the order of the Appellate Panel of the South Carolina Workers' Compensation Commission (the Commission) denying his request for a partial lump sum payment and adjustment of his average weekly wage and compensation rate. Claimant argues the

Commission erred in denying his request for a partial lump sum payment by finding the award was not in his or his dependents' best interests, finding he was entitled to only 500 weeks of benefits, and considering evidence of his life expectancy following his injury. Claimant further argues the record shows he was entitled to an increase in his average weekly wage and compensation rate, and the Commission erred by comparing him to his employer's non-English speaking, Hispanic employees in determining his average weekly wage. We affirm.

1. We find the Commission did not err in considering medical evidence in determining Claimant's life expectancy. *See Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (recognizing that the Administrative Procedures Act (APA) establishes this court's standard of review of the Commission's decisions); S.C. Code Ann. §1-23-380(5) (Supp. 2017) (stating that under the APA, this court may reverse or modify the decision of the Commission when the substantial rights of the appellant have been prejudiced because the Commission's decision is "affected by other error of law" or "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record"); *Ashley v. Ware Shoals Mfg. Co.*, 210 S.C. 273, 286, 42 S.E.2d 390, 396 (1947) ("It would seem clear that the . . . Commission is not at liberty to guess at the present value of future payments without regard to the contingencies that may arise."); *id.* at 287, 42 S.E.2d at 396 ("[I]f the total disability is such that there may be a change of condition or if a serious question is presented regarding the likelihood of the employee's living the length of time required to complete the installment payments, the allowance of a lump sum settlement over the objection of the employer or carrier would constitute an abuse of discretion which the appellate courts are empowered to review."); *Glover by Cauthen v. Suitt Constr. Co.*, 318 S.C. 465, 467 n.3, 458 S.E.2d 535, 537 n.3 (1995) (recognizing the South Carolina mortality table may be considered in determining a claimant's life expectancy for the purposes of calculating the present day value of his benefits); S.C. Code Ann. § 19-1-150 (2014) ("When necessary, in a civil action or other litigation, to establish the life expectancy of a person from any period in his life, whether he is living at the time or not, the [mortality table] must be received in all courts and by all persons having power to determine litigation as evidence, *along with other evidence* as to his health, constitution, and habits, of the life expectancy of the person." (emphasis added)); *Haselden v. Davis*, 341 S.C. 486, 506, 534 S.E.2d 295, 306 (Ct. App. 2000) (stating a factfinder is not bound by the life expectancy as indicated in the mortality table), *aff'd*, 353 S.C. 481, 579 S.E.2d 293 (2003).[1]

[1] Claimant passed away during the pendency of this appeal, on June 8, 2017. He was forty-seven years old.

2. We find the Commission did not abuse its discretion in denying Claimant's request for a second partial lump sum payment because evidence supports the Commission's finding that this second lump sum payment was not in Claimant's or his dependents' best interests, and this request was tantamount to a total lump sum request.[2] *See* S.C. Code Ann. § 42-9-301 (2015) (stating appellate courts review the Commission's award of a lump sum payment for an abuse of discretion); *Thompson v. S.C. Steel Erectors*, 369 S.C. 606, 612, 632 S.E.2d 874, 878 (Ct. App. 2006) ("An abuse of discretion occurs if the Commission's findings are wholly unsupported by the evidence or the conclusions reached are controlled by an error of law."); § 42-9-301 ("Whenever any weekly payment has been continued for not less than six weeks, the liability therefor[e] *may*, when the employee so requests and the [C]ommission deems it not to be contrary to the best interest of the employee or his dependents, or when it will prevent undue hardship on the employer or his insurance carrier, without prejudicing the interest of the employee or his dependents, be redeemed, in whole or in part, by the payment by the employer of a lump sum which shall be fixed by the [C]ommission . . . ." (emphasis added)); *Ashley*, 210 S.C. at 287, 42 S.E.2d at 396 ("[I]f a serious question is presented regarding the likelihood of the employee's living the length of time required to complete the installment payments, the allowance of a lump sum settlement over the objection of the employer or carrier would constitute an abuse of discretion."); S.C. Code Ann. § 42-9-10 (2015) (prohibiting total lump sum payments in cases where a claimant has been awarded lifetime benefits).

3. We find the Commission did not err in refusing to increase Claimant's compensation rate. *See Pilgrim v. Eaton*, 391 S.C. 38, 44, 703 S.E.2d 241, 243–44 (Ct. App. 2010) (recognizing that an appellate court may not reverse the Commission's calculation of a claimant's average weekly wage "unless substantial rights of the appellant have been prejudiced because the decision is affected by an error of law, or because the factual findings are clearly erroneous in view of the reliable, probative, and substantial evidence" (citing S.C. Code Ann. §1-23-

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[2] Claimant previously requested a partial lump sum payment of his lifetime benefits to cover his debts and to purchase a new automobile for his family. On October 14, 2010, the single commissioner awarded Claimant and his dependents a partial lump sum payment of $152,568.75. The Commission affirmed the single commissioner on April 20, 2011, and the court of appeals affirmed the Commission by unpublished opinion 2014-UP-064 (filed February 6, 2014). On February 19, 2014, Claimant requested an additional partial lump sum of approximately $325,000; the denial of this second request is at issue in this case.

380(5))); S.C. Code Ann. § 42-9-10(A) ("When the incapacity for work resulting from an injury is total, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during the total disability a weekly compensation equal to sixty-six and two-thirds percent of his average weekly wages . . . ."); S.C. Code Ann. § 42-1-40 (2015) (defining a claimant's average weekly wage as his earnings "in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury"); *id.* (stating a claimant's average weekly wage is calculated by "the total wages paid for the last four quarters immediately preceding the quarter in which the injury occurred as reported on the Department of Employment and Workforce's Employer Contribution Reports divided by fifty-two or by the actual number of weeks for which wages were paid, whichever is less"); *id.* ("When for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury."); *Roberts v. McNair Law Firm*, 366 S.C. 50, 54, 619 S.E.2d 453, 456 (Ct. App. 2005) (holding a post-injury salary increase based on merit was not an "extraordinary circumstance" to support deviation from the statutory method of calculating a claimant's average weekly wage); *Elliott v. S.C. Dep't of Transp.*, 362 S.C. 234, 238, 607 S.E.2d 90, 92 (Ct. App. 2004) (holding a raise claimant received less than two weeks before her injury was an "exceptional reason" to increase her compensation rate because she earned the merit-based raise by pursuing special certification and licensing, it was not "merely a standard cost-of-living increase or step increase based on longevity of service," and she earned the raise before the accident); *Bazen v. Badger R. Bazen Co.*, 388 S.C. 58, 65, 693 S.E.2d 436, 440 (Ct. App. 2010) (holding the Commission did not err in failing to consider claimant's earnings as reported for tax purposes in calculating his average weekly wage).

4. Because our resolution of these issues is dispositive, we decline to address Claimant's remaining issues. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (finding the appellate court need not address appellant's remaining issue when its resolution of a prior issue is dispositive).

AFFIRMED.

HUFF, GEATHERS, and MCDONALD, JJ., concur.

The South Carolina Court of Appeals

Decidora Lazaro, on behalf of the Estate of Antonio Lazaro, Employee, Appellant,

v.

Burriss Electrical, Employer, and South Carolina Guaranty Association, Carrier, Respondents.

Appellate Case No. 2016-000665

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Huff J.

J.

Stephanie P. McDonald J.

Columbia, South Carolina

cc:
Preston F. McDaniel, Esquire
Brett Harris Bayne, Esquire
Amy Bracy

FILED
Sept. 20, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2016-000665

RECEIVED
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SC Court of Appeals

Antonio Lazaro, Employee, ... Appellant,

v.

Burriss Electrical, Employer, and
South Carolina Guaranty Association,
Carrier, ...Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. DID THE COMMISSION ERR AS MATTER OF LAW BY FAILING TO REFER TO AND MAKE A DECISION ON THE SINGULAR ISSUE BEFORE THE COMMISSION IN REFERENCE TO A PARTIAL LUMP SUM WHICH IS A PARTIAL LUMP SUM REQUESTED BY A CLAIMANT MUST BE GRANTED BY THE COMMISSION UNLESS THE COMMISSION FINDS THAT IT IS NOT IN THE BEST INTEREST OF THE EMPLOYEE OR HIS DEPENDENTS?

II. DID THE COMMISSION ERR AS A MATTER OF LAW BY FINDING THAT A CLAIMANT HAS A VESTED RIGHT TO ONLY 500 WEEKS OF BENEFITS AND BY APPLYING CASE LAW DECIDED UNDER DEATH BENEFIT STATUTES OF THE ACT WHEREIN THE CLAIMANT IS ALIVE NOW AND AT THE TIME OF THE LUMP SUM REQUEST?

III. DID THE COMMISSION ERR AS A MATTER OF LAW BY CONSIDERING EVIDENCE OF THE CLAIMANT'S LIFE EXPECTANCY POST-ACCIDENT INSTEAD OF CONSIDERING THE CLAIMANT'S LIFE EXPECTANCY PRIOR TO AND AT THE TIME OF THE ACCIDENT AND ANY EVIDENCE THEREON?

IV. DID THE COMMISSION ERR AS A MATTER OF LAW BY FAILING TO APPLY THE CASES DECIDED UNDER AND THE STATUTORY AUTHORITY FOR GRANTING AN INCREASE IN THE COMPENSATION RATE UNDER SC CODE §42-1-40 AND §42-9-10 AND THEREBY FAILING TO INCREASE THE COMPENSATION RATE?

V. DID THE COMMISSION ERR AS A MATTER OF LAW BY COMPARING THE CLAIMANT FOR WAGE EARNING CAPACITY PURPOSES UNDER SC CODE §42-1-40 TO ONLY NON-ENGLISH SPEAKING HISPANIC EMPLOYEES?

STATEMENT OF THE CASE

The South Carolina Workers' Compensation Commission in 2010 granted the injured worker (who is in a vegetative state), and his dependents a partial lump sum and specifically provided in that Award that the Claimant could request additional partial lump sums in the best interest of the Claimant and/or his dependents pursuant to Statute. That partial lump sum Award was appealed and the SC Court of Appeals affirmed that Decision on February 6, 2014 and thereafter based on a Petition for Rehearing, denied the Petition by Order of the Court dated April 10, 2014. (R., pp. 19-23; p. 24). The Remittitur was issued on May 23, 2014. (R., p. 25).

Pursuant to that partial lump sum Award, the Claimant and his dependents through his Guardian ad Litem and General Guardian and wife, Ms. Decidora Lazaro, filed a Form 50 requesting an additional partial lump sum on February 19, 2014. (R., pp. 53-59). A responsive Form 51 was filed on behalf of the Employer and the SC Guaranty Association due to the insolvency of CompTrust AGC of the Carolinas, and the matter was subsequently set for hearing. (R., pp. 60-62; R., pp. 63-64). The Claimant filed his Pre-Hearing Brief and Administrative Procedures Act submissions and the Defendants filed a responsive Pre-Hearing Brief and Administrative Procedures Act admissions. (R., pp. 65-87; pp. 88-114). A hearing was held on the partial

lump sum request which included a request for penalties and fines for untimely payment of the original Award of a partial lump sum in the amount of $152,568.75 within fourteen (14) days after the final Order of the SC Court of Appeals on no later than April 10, 2014. A hearing was held on the Request for Partial Lump Sum and the Commissioner issued his notes for a decision on July 14, 2014 denying the Request for Partial Lump Sum and denying penalties and interest on the original partial lump sum that had been Awarded by the Commission. (R., pp. 365-367).

Subsequently Requests for Amendment and/or Reconsideration were filed on April 13th and 15th, 2015 and the final Decision and Order was issued by the Hearing Commissioner on May 28, 2015 on the Form 50 and 51. A second Order was issued on that date but is not the subject of this appeal. (R., pp. 368-371; R., pp. 26-37).

A timely Request for Review was filed on June 11, 2015 setting forth various Grounds for review by the Full Commission. (R., pp. 115-122). A Briefing Schedule was set and the Claimant filed his Brief to the Full Commission and the Defendants subsequently filed their responsive Brief to the Full Commission. (R., pp. 123-144; pp. 145-161). A Full Commission Hearing was held on September 21, 2015; a Proposed Order (corrected) was forwarded to Counsel for the Defendants on

October 21, 2015, and the Full Commission Order was filed on December 23, 2015. (R., pp. 38-51). A timely Motion for Rehearing was filed on January 19, 2016 and a Judicial Conference Decision was issued denying the Motion for Rehearing on February 22, 2016. (R., pp. 162-170; P. 52). A timely Notice of Intent to Appeal that Decision of the Commission was filed and this appeal follows. (R., pp. 171-183).

STATEMENT OF FACTS

Mr. Lazaro (hereinafter "Claimant"), a naturalized American citizen, citizenship finalized 1991, (fact important to position/evidence of the Defendants at hearing as to non-English speaking Hispanic) has been in a vegetative state since his accident on July 6, 2007, in an air-conditioned hospital bed being fed through a tube, and therefore any request for partial lump sums, including the initial one and the one that is the subject of this appeal, were requested primarily for the benefit of the Claimant's dependents.

In the first request in 2010 for a hearing and award, the Claimant requested an award of total and permanent disability with lifetime benefits (due to his total disability being denied going into that first hearing); and for a partial lump sum pursuant to Statute SC Code §42-9-301 (the Commission shall award a partial lump sum as requested unless it finds that it is not in the, "best interest of the employee **or his dependents**").

The Hearing Commissioner filed an Award on October 14, 2010 awarding a partial lump sum to pay off the Claimant's home, pay off family debt, and allow for the purchase of an automobile. More importantly to this appeal, he specifically noted based on the facts and situation of the family at that time that the Claimant could request further lump sums in the future; specifically noting as a basis for such additional requests the necessities and costs of attending college and expenses related to college and to guarantee an income stream to the family under the Claimant's Award entitling him to compensation benefits, at a minimum, for the life expectancy of the Claimant which vested at the time of and under that Award. That Award also specifically provided that the issue of the applicable average weekly wage and compensation rate was reserved for later decision. (R., pp. 1-18).

Pursuant to that Award and the statute, on February 19, 2015, the Claimant filed for a second partial lump sum and requested an adjustment of the average weekly wage and compensation rate based on our Supreme Court/Court of Appeals decisions under SC Code §42-1-40. The Claimant through his Guardian and spouse requested a partial lump sum and specifically requested that the partial lump sum be put into an annuity tied to both the Claimant and the Claimant's wife's life

so that the Claimant and his family would have a guaranteed income stream for their lives.

As to the average weekly wage and compensation rate, the Claimant requested an increase and presented evidence to support and took the position that based on his W-2 income for the year preceding his injury; his work/pay history of raises up to and including the date of his accident; and considering the facts that the average weekly wage in the State had escalated an average of 3% per year; and considering the Supreme Court decisions holding that wage loss calculation/ compensation must be thought of in terms of the Claimant's future loss of earning capacity; and considering what he would be making at the present time assuming a normal progression in wages, that the Commission should increase the compensation rate to fairly compensate him for his lost earning capacity from the injury. (R., pp. 65-87). The Defendants responded by submitted wage information from employees employed before and after his date of hire through the present time, but took the position that a comparison of current wages for all electricians should not be made. Instead the Commission should only compare his wages to fellow "non-English speaking" Hispanic workers with the company. In taking this position they made the general statement that their "Hispanic" workers were not fluent in English and therefore do not make as much money as other electricians. They excluded at least one

Hispanic worker from consideration because he was in management because he was, "fluent in English". (R., pp. 242-243; pp. 286-287). They also orally made the unsupported statement at hearing that Mr. Lazaro, a naturalized American citizen who has been in the Country since at least five (5) years before 1991 was not fluent in English and deserved to be lumped in with all of the other, "non-English speaking" Hispanics. (R., pp. 286-287). Note: there is absolutely no evidence in the Record that Mr. Lazaro could not speak English fluently or otherwise.

In response to the request for a partial lump sum to be put into an annuity to guaranty an income stream to the Claimant and his dependents as being in the best interest of the employee **or his dependents**, the Defendants took the position that since the widow was now working three (3) jobs to make up for the loss of income and her son had to drop out of college and was working to raise income to go back to college; and taking into consideration the Claimant's Social Security payments, that the family had a greater income on a monthly basis now than at the last hearing. Therefore, it was not in the best interest of the dependents to grant this partial lump sum. (R., pp. 249-254). They also asserted that since the other son, Antonio Lazaro, Jr. had to drop out of college due to loans and was in the military serving our Country, that the partial lump sum should not be granted to help pay off the student loan of Antonio because he

would have borrowed the money anyway. (R., pp. 293-295). They also took the positions that although the requested annuity would be tied to the life of both his dependent wife and to the Claimant's life and would thus guarantee an income stream to his dependents as long as either one of them was alive; and even though the annuity would grant a residual payment to the dependents, because the income stream would be slightly less than the current compensation rate; and further because should Mr. Lazaro die tomorrow all weekly payments to his dependents would stop; that the partial lump sum should not be granted. Their other basis was a legal one based on a 1947 case decided under previous SC Code §42-9-300 and not SC Code §42-9-301 (which completely flipped the burden of proof and the basis upon which a lump sum is granted) which set forth the rationale and considerations for denying a lump sum in that case under that statute.

The Commissioner, over request to modify, signed an Order which, as drafted, misstated the position of the Claimant as to his request for an increase in the compensation rate for exceptional reasons. (R., pp. 365-367). He also stated that the Claimant was making an argument based on pay raises after the accident instead of being based on his wage record with the employer prior to the injury. He also based his decision on a comparison of Mr. Lazaro as a, "non-English speaking Hispanic"

to other non-English speaking Hispanic electricians instead of the entire body of electricians working for the company. He denied the partial lump sum without any Finding of Fact or Conclusion of Law referring to the statute providing that a partial lump sum must be made unless there is a finding that it is not in the best interest of the Claimant or his dependents. (R., pp. 26-37). The only Finding for the denial in the Order was that the family had more money to spend on a monthly now; that the family had no debt, except for a car payment for the son; and that as to the student loan, he found they would not have paid that off even if it hadn't been for the accident. Without referring to the standard of why it was not in the best interest of the Claimant or his dependents, he also considered the fact that one son had dropped out of college to work to earn money to go back to school and was therefore no longer fully dependent on the family for support. He also took into consideration the Claimant's limited life span after the accident because of injuries from the accident thus allowing the Defendants to take advantage of the accident in reference to the lifespan. (R., pp. 365-367; pp. 26-37).

In the Order he also denied penalties, fines and interest for untimely payment of the first Award because it was paid ten (10) days after the Remittitur based on the representations by the Defendants as to what the case law held. In his Conclusions

of Law, he also specifically found that a claimant has only a, "vested interest in 500 weeks of workers' compensation benefits" basing that conclusion on two (2) statutes based on the death of a claimant. From that Decision, this Appeal follows.

ARGUMENTS

I. THE COMMISSION ERRED AS MATTER OF LAW BY FAILING TO REFER TO AND MAKE A DECISION ON THE SINGULAR ISSUE BEFORE THE COMMISSION IN REFERENCE TO A PARTIAL LUMP SUM WHICH IS A PARTIAL LUMP SUM REQUESTED BY A CLAIMANT MUST BE GRANTED BY THE COMMISSION UNLESS THE COMMISSION FINDS THAT IT IS NOT IN THE BEST INTEREST OF THE EMPLOYEE OR HIS DEPENDENTS.

SC Code §42-9-301 specifically provides that where an employee or his dependents makes a request for a lump sum that the Commission shall make the lump sum award, "when the employee so requests and the Commission deems it not to be contrary to the best interest of the employee **or his dependents** ...".

The Commission is required by law to make detailed Findings of Fact and Conclusions of Law that are sufficiently detailed and definite enough on every "essential issue" before the Commission for decision so that an appellate court may determine that the decision is based on the facts and that the law has been properly applied. Drake v. Raybestos Manhattan, Inc., 241 SC 116, 127 SE2d 288, (1962). Smith v. NCCI, Inc., 369 SC 236, 631 SE2d 268, (2006). In this case, the Hearing Commissioner, as affirmed in toto by the Commission, made absolutely no Findings of Fact as to the statutory requirement that a lump sum

when requested must be made unless the Commission finds that the payment of a lump sum is not in the best interest of the "employee or his dependents". Instead the denial was based on the Finding of Fact that, "the testimony . . . revealed the family has more money to spend now on a monthly basis . . ." and, "has no debt with the exception of a car payment . . . and Antonio, Jr.'s student loan . . .".

In this case, the Claimant had a vested entitlement to lifetime compensation benefits with a residual value as to the remaining compensation due exceeding $350,000.00. At the time of the hearing, the Claimant through his GAL in the best interest of his dependents was requesting that he be granted a partial lump sum of approximately $300,000.00 to $325,000.00 to be paid into an annuity or annuities that would guaranty an income stream to his dependents no matter when he passed away. The Supreme Court has tied or held that the meaning and value of vested lifetime benefits is based on the life expectancy of the Claimant under the SC Mortality Table which establishes a finite and definite framework in which to make such partial lump sum awards. There is simply no discussion nor finding as to how such a partial lump sum award as requested is not in the best interest of an employee **or his dependents**. The Commission must make Findings of Fact under the law on each essential issue

before it for decision. Hill v. Jones, 255 S.C. 219, 178 S.E.2d 142 (1970).

Further, the Defendants and the Commission's reliance on the case of Ashley v. Ware Shoals Mfg. Co., 216 S.C. 273, 42 S.E.2d 390 (1947), is not only misplaced, it is wrong. That case was decided under the previous lump sum statute and the requirements the Claimant had to meet to be entitled to a lump sum including he had to prove his was an "unusual" case, SC Code §42-9-300 whereas under SC Code §42-9-301, our current lump sum statute, the specific requirements have been totally flipped where now the Commission must make the Award to a Claimant upon request unless it finds that it is not in the best interest of the Claimant or his dependents to make such Award. There is simply no reference in the Commissioner's Award to this standard or as to how it is not in the best interest of the dependents to have a guaranteed income stream based on his vested right to lifetime benefits which will assure those benefits and that income stream to them for as long as either he or his dependent wife lives. Further, there is no reference or even citation of SC Code §42-9-301 in the Conclusions of Law. The decision of the Hearing Commissioner as affirmed by the Commission failed completely to either cite to or to address the legal standard and/or the best interest of the dependents and therefore the

decision must be reversed as a matter of law. Hill v. Jones, supra.

II. THE COMMISSION ERRED AS A MATTER OF LAW BY FINDING THAT A CLAIMANT HAS A VESTED RIGHT TO ONLY 500 WEEKS OF BENEFITS AND BY APPLYING CASE LAW DECIDED UNDER DEATH BENEFIT STATUTES OF THE ACT WHEREIN THE CLAIMANT IS ALIVE NOW AND AT THE TIME OF THE LUMP SUM REQUEST.

In reference to the Commissioner's Findings of Fact (#3) and Conclusions of Law (#2) that there is a 500-week cap on compensation, the Supreme Court has specifically held in the case of Glover by Cauthen v. Suitt Construction Company, 318 SC 465, 458 SE2d 535, (1995) that:

> **"SC Code Ann. §42-9-10 (1985) eliminates the 500-week cap on compensation for total, permanent disability due to physical brain damage, or when the injury renders the claimant paraplegic or quadriplegic."** (Emphasis added).

And that,

> "The Mortality tables provide an adequate basis upon which to determine the present day value." (Emphasis added).

Thus, the commuting factor is not 500 weeks but is in fact the Claimant's lifetime as determined by the SC Mortality Table, SC Code §42-1-150. Therefore, at the time the Claimant was awarded a lifetime compensation award, the award that vested in him was based on the Mortality Table and the Claimant's life expectancy as of the date of that award. The Claimant cannot request a partial lump sum award greater than the residual value of his

life expectancy, nor can the value be decreased below his life expectancy; particularly where that decision was not appealed and has become the law of the case. The decision that a Claimant has a vested right to only 500 weeks served as the legal basis to deny the Appellant's request for a lump sum.

In addition to this error, the Commission also referred specifically to a death benefits statute §42-9-290, and relied on a case decided under that statute where the Claimant had died to support his finding. The Commission cannot assume facts and must base its decision on the facts before it. Herndon v. Morgan Mills, Inc., 246 S.C. 201, 143 S.E.2d 376 (1965). In this case, unlike the statute, SC Code §42-9-290 and the case decided under it cited by the Commission wherein the Claimant had died and the claim was decided under that death statute's limitation of 500 weeks due to death of the Claimant, the Commissioner made a decision not based on evidence (Mr. Lazaro is alive) and on the unwarranted assumption that Mr. Lazaro would die before the 500 weeks. Therefore, the decision is based on speculation. The Commission therefore erred by relying on a 500-week cap as a basis for the decision to deny a partial lump sum award specifically where the Supreme Court has said there is no 500-week cap under a lifetime benefits award and has said and ruled definitively that the life expectancy table establishes the vested lifetime value for purposes of deciding any issue under

the Workers' Compensation Act tied to the lifespan of the Claimant.

III. THE COMMISSION ERRED AS A MATTER OF LAW BY CONSIDERING EVIDENCE OF THE CLAIMANT'S LIFE EXPECTANCY POST-ACCIDENT INSTEAD OF CONSIDERING THE CLAIMANT'S LIFE EXPECTANCY PRIOR TO AND AT THE TIME OF THE ACCIDENT AND ANY EVIDENCE THEREON.

As noted in previous arguments, the Supreme Court has tied partial lump sum awards and the value of lifetime compensation benefits to the life expectancy of the Claimant under the South Carolina Mortality Table, SC Code §19-1-150. The very purpose of that mortality table is to establish the Claimant's life expectancy at the time of and just before the triggering event, in this case, the accident requiring the need of that table. The very reason for the existence of the mortality table is to tie both parties to a set period of time to argue that the Claimant as a matter of law will live. The Claimant cannot argue he will live to be 100 and the Defendants cannot argue he will only live a week. Also, under the mortality tables, the Supreme Court has made it very clear that the Defendants cannot take advantage of a shortened life expectancy caused by the accident. Again, this is the very reason for the statute to exist. Contrary to the statute and the Supreme Court decision, this is exactly what the Defendants in this case sought to do and upon which the Commission relied.

It is totally appropriate under §19-1-150 for the

factfinder to consider any health conditions or problems that the Claimant had prior to the accident or the triggering event in determining the Claimant's life expectancy. The Court of Appeals and Supreme Court have specifically so held in the case of Haselden v. Davis, 341 SC 486, 534 SE2d 295, (SC app. 2000); affirmed 353 SC 481, 579 SE2d 293, (2003). In Haselden, the Court of Appeals and Supreme Court specifically held that the jury should consider the mortality table,

> ". . . together with other evidence in the case bearing on the Plaintiff's health, age and physical condition **before the injury** and death in determining the probable length of the Plaintiff's life."

The Court held that it is inappropriate for the Defendants to obtain a benefit from the injury that lead to the Claimant's shortened lifespan which is exactly what the Commission sanctioned and the Defendants did by presenting evidence on a shortened lifespan. Again, the very reason for the mortality table is to prevent such arguments and the Commission's reliance on those arguments and that evidence constituted an abuse of discretion and was contrary to the law.

IV. THE COMMISSION ERRED AS A MATTER OF LAW BY FAILING TO APPLY THE CASES DECIDED UNDER AND THE STATUTORY AUTHORITY FOR GRANTING AN INCREASE IN THE COMPENSATION RATE UNDER SC CODE §42-1-40 AND §42-9-10 AND THEREBY FAILING TO INCREASE THE COMPENSATION RATE.

Under SC Code §42-1-40, paragraph 2, in determining the average weekly wage when the usual method of calculating an

average weekly wage will result in an average weekly wage which is unfair or does not properly represent the Claimant's future earning capacity, the Commission may resort to such other method as will most nearly approximate the amount which the injured worker, "would be earning were it not for the injury". SC Code §42-1-40 (Emphasis added).

Under that proviso, both our Supreme Court and this Court have increased the compensation rate as a matter of law. Elliott v. SC Dept. of Transportation, 362 S.C. 234, 607 S.E.2d 90 (2005). ("The determination of whether Elliott's raise constitutes an 'exceptional reason' for purposes of applying the standard wage calculation method provided by the Workers' Compensation Act is a question of law.") In the case of Booth v. Midland Trane Heating & Air Conditioning, 298 S.C. 251, 379 S.E.2d 730 (SC App. 1989), this Court in a case almost identical factually as compared to the facts in this case determined that the compensation rate should be increased. In the Booth case, Mr. Booth was hired in 1983 at $3.50 per hour. By the time of his injury on December 4, 1985, his salary had increased to $7.00 per hour. Quoting Bennett v. Gary Smith Builders, 271 S.C. 94, 245 S.E.2d 129 (1978), this Court reiterated that the,

> "objective of wage calculation is to arrive at a fair approximation of the Claimant's **probable future earning capacity**. His disability reaches into the future, not the past; his loss as a result of the injury

must be thought of in terms of its impact on probable future earnings."

Then in the case of Sellers v. Pinedale Residential Center, 350 S.C. 183, 564 S.E.2d 694 (SC App. 2002), this Court reiterated and applied this principle. Mr. Sellers was a young employee age 16, who became a paraplegic as a result of his injuries entitling him to lifetime compensation benefits. In that case, the Commission and our Appellate Courts applied the principles laid down in Bennett and Booth and held that because of his future loss of earning capacity that he was entitled to an ever escalating compensation rate wherein the compensation rate would increase from 1992, the date of the injury, until 2002 to the maximum compensation rate applicable in 1992. This Court also cited in support of that proposition a previous decision by the Supreme Court in the case of Stokes v. First National Bank, 306 S.C. 46, 410 S.E.2d 248 (1991) which upheld an award entitling the claimant to a permanent partial loss of earning capacity award based on the maximum compensation rate and not just on the actual difference between his pre and post injury wages. Pre-injury Mr. Stokes was a vice-president over computer operations with high stress and high wage earning ability. Post-injury he could and did work in a low stress computer data entry position with lower wage earning future capacity but not in a high stress, high wage earning capacity. The Court and Commission

found that even the application of the maximum compensation rate would only partially compensate him for the Claimant's future loss of earning capacity. Again in the case of Elliott v. SC Dept. of Transportation, supra, this Court found that merit based increases before the accident in the claimant's wages should be applied prospectively into the future to determine the average weekly wage that would apply in that case. In the case of Forrest v. A.S. Price Mechanical, 373 S.C. 303, 644 S.E.2d 784 (SC App. 2007) reh. den., cert. den., this Court held that where a gentleman normally worked year round at two (2) jobs, both a full-time and a part-time job, this income justified the prospective increase in the average weekly wage and compensation rate going forward. Also, where a Claimant worked dual employment even simply during the holiday season, exceptional reasons existed for increasing the Claimant's compensation rate prospectively. Brunson v. Wal-Mart Stores, Inc., 344 S.C. 107, 543 S.E.2d 732 (SC App. 2001). Similar reasons were found to exist in the case of Brown v. Peoplease, 402 S.C. 476, 741 S.E.2d 761 (SC App. 2013).

Based on the facts of this case and in accordance with the law as established by our Supreme Court and this Court, the Claimant would submit that his average weekly wage and compensation rate should be increased to adequately compensate him and his family for his future loss of earning capacity. The

Claimant asked nothing more and nothing less than for the Commission to apply a compensation rate based on what he would have been earning at the time of hearing for his family but for the injury.

The undisputed evidence from his W-2 alone established that the Appellant's pre-injury wages divided by 52 weeks resulted in a higher average weekly wage and resulting compensation rate than was being paid by the carrier to the Claimant. There was no explanation as to how the original Form 20 was calculated and there was no evidence presented to dispute that in the year prior to the date of the accident in 2006, the Claimant's average weekly wages as reported on his W-2 resulted in an average weekly wage of $646.17 with a resulting compensation rate (assuming he worked the entire 52 weeks) of no less than $430.80. On this basis alone, the Appellant's compensation rate should have been increased by $24.44/week. The Commission did not even address this argument in the Statement of the Case or the Findings which, in and of itself, is an error of law and represents a total disregard of the Commission's responsibility to liberally interpret the Act in favor of benefits for the injured worker and his family. The primary purpose of the Workers' Compensation Act is to protect the worker. Smith v. Fulmer, 198 S.C. 91, 15 S.E.2d 681 (1941). It is remedial legislation which is entitled to a liberal construction in order

to accomplish the ends and purposes for which it was enacted. Flemon v. Dickert-Keowee, Inc., 259 S.C. 99, 190 S.E.2d 751 (1972).

Next, the evidence established a consistent pattern of wage increases on behalf of the Claimant and based on a review of this Court's decision in Booth v. Midland Trane, supra, the Appellant would submit the facts are almost identical to Mr. Booth's situation. Mr. Lazaro was hired in December of 2003 and in less than three and a half (3 ½) years, he went from $10.00 an hour to $14.50 per hour representing a $4.50 per hour increase which represents a 45% increase in his salary in only three and a half (3 ½) years and also a 12.86% annual salary increase. According to that, in just four (4) years or in other words by 2011, his salary should have increased to $18.50-$19.00 an hour. The Commission did not address this evidence and did not even apply all of the electricians' salaries with the employer to the average weekly wage issue. When this Court looks at the Record, it will find that all three (3) employees that were hired at approximately the same time as the Claimant, as reflected by the employer's records, were making $17.50 to $18.00 an hour. There is simply no contrary evidence. Contrary to what the Respondents asserted and what the Commission found, the Claimant was not requesting consideration of post-injury wage increases but was in fact asking the Commission to project

his future earning capacity which the Commission is required by law to do into the future and which can only be based on his past earning experience and facts in existence and put into evidence at the time of the hearing.

Next, the undisputed evidence establishes that prior to the injury the Claimant with his wife was operating a flea market booth and was making additional income and after the accident the Claimant's wife to make up for that lost income had to work three (3) jobs. The amount of money that she was making was put into the Record and on the basis of this undisputed evidence, the Commissioner should have increased the compensation rate in accordance with the past Supreme Court and Court of Appeals decisions.

Finally, the Record establishes that Mr. Lazaro was an outstanding employee and as previously set forth in both the Order of Commissioner Beck and at this hearing he was a valued employee who did everything he could and was entitled to and did receive every wage increase possible prior to his injury. If one determines that Mr. Lazaro's wages would only have increased to $17.50, which is the low end of employees hired as electricians almost identically at the same time he was, he would have an average weekly wage of $700.00 and a compensation rate of $466.69; assuming that there was no overtime. This is over $60.00/week higher than the compensation rate applied in this

case. Again the Commission is required to apply a liberal interpretation of the Act and is required by all of our Appellate Court decisions to consider the loss of earning capacity stretching into the future. But for this accident, Mr. Lazaro would have been making a lot more money for his family and as this Court and the Supreme Court have held, as a matter of law, that the average weekly wage should be increased to reflect that loss of earning capacity into the future.

Therefore, based on the facts of this case and in accordance with the law as established by our Supreme Court and this Court, the Appellant would submit that his average weekly wage and compensation rate should be increased to adequately compensate him and his family for his loss of earning capacity due to the accident. The Appellant asked nothing more and nothing less than for the Commission to apply a compensation rate based on what he would have been earning at this time for his family but for the injury.

V. THE COMMISSION ERRED AS A MATTER OF LAW BY COMPARING THE CLAIMANT FOR WAGE EARNING CAPACITY PURPOSES UNDER SC CODE §42-1-40 TO ONLY NON-ENGLISH SPEAKING HISPANIC EMPLOYEES.

There is simply no evidence in the Record that Mr. Lazaro was a non-English speaking Hispanic employee and the Commission erred in its finding and analysis under SC Code §42-1-40 by not considering the wages of all electricians who worked for the company at the time of hearing. In addition to there being no

evidence to support the assumption that he was non-English speaking or that a comparison should only be made to Hispanics, this consideration by the Commission violated the Appellant's constitutional right to equal protection by finding that the, "Claimant should be compared to other non-English speaking Hispanic employees". This is an invalid, unconstitutional comparison that is not justified by the evidence under the analysis of the evidence under SC Code §42-1-40 and the factual decision as to whether exceptional reasons exist to increase the average weekly wage and compensation rate. While the Appellant is not per se raising an equal protection violation, what the Appellant is arguing is the decision of the Commission on the essential issue of whether there are exceptional reasons to increase the compensation included a constitutionally suspect consideration of race in the analysis and limited the analysis to just employment with the employer. There was no evidence that Mr. Lazaro was "non-English speaking" and/or that he would not be making the same wages, as a "Hispanic", as would any other non-Hispanic electrician working for any employer at the time of the hearing; not just the employer. The decision of the Commission should be reversed based on this improper comparison made by the Commission of the evidence alone.

Not only is this comparison abhorrent to Counsel for the Claimant personally, our Governor after the slayings in

Charleston based on race committed our State to ending race under our laws. It is exactly this type of unsupported racial profiling and comment that lead to that tragedy and which has no place in our system of government. This was an absolute improper consideration by the Commission under §42-1-40.

CONCLUSION

For all the foregoing reasons, the Decision of the Commission should be reversed and this matter remanded to the Commission for a de novo hearing on the Claimant's request for a partial lump sum. Further, due to the undisputed nature of the evidence and the exceptional reasons in the Record, this Court should increase the average weekly wage and compensation rate under the Act in accordance with the decisions of the Supreme Court and this Court to compensate Mr. Lazaro's family partially for his loss of earning capacity.

Respectfully submitted,



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September 13, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2016-000665

RECEIVED
SEP 13 2016
SC Court of Appeals

Antonio Lazaro, Employee, ... Appellant,

v.

Burriss Electrical, Employer, and
South Carolina Guaranty Association,
Carrier, ...Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.

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STATEMENT OF THE CASE

This claim arises out of an admitted injury sustained by Claimant on July 6, 2007. Claimant suffered severe injuries and is in a persistent vegetative state. Claimant requested that Defendants pay out a partial lump sum of his lifetime benefits award in order to pay off assorted debts and purchase a new car. On October 14, 2010, Commissioner Beck ordered that Claimant was entitled to a partial lump sum of his lifetime benefits award in the amount of $152,568.75. Commissioner Beck found that $122,568.75 was to be used to pay off assorted debts and up to an additional $30,000.00 was to be used for the purchase of an automobile. Commissioner Beck indicated that any balance remaining from these two payments would be refunded to Defendants. The Full Commission affirmed Commissioner Beck's Order on April 20, 2011. Thereafter, this claim was appealed to the Court of Appeals. The Court of Appeals affirmed the Full Commission's Decision and Order on February 6, 2014. A petition for rehearing was denied.

First, Claimant now contends the compensation rate was never addressed and Claimant asked the Single Commissioner to increase his compensation rate by as much as 12.8% per year every year since the accident. Alternatively, he asked for lockstep raises of .50 per year over his hourly rate or a recalculation based on a W2. Defendants opposed this request.

Defendants contend there is no mechanism under the Act that allows the Commission to increase the compensation rate based on cost of living increases, merit based increases, lock step wage increases, or W2 wages. The Commission assigns a compensation rate based on the four quarters preceding the injury. The mere fact that a

claimant may be making more today than at the time of the injury does not constitute an extraordinary reason to increase the compensation rate. Defendants pointed to two cases expressly prohibit a retroactive increase in the compensation rate based on annual, time based, and/or lock step raises. Elliott v. S.C. Department of Transportation, 362 S.C. 234, 607 S.E.2d 90 (S.C. App. 2004), holds that "...a standard cost of living increase or step increase based on longevity of service..." does not constitute an exceptional reason under S.C. Code Ann. § 42-1-40. Further, Roberts v. McNair Law Firm, 366 S.C. 50, 619 S.E.2d 453 (Ct. App. 2005) holds that a post-injury merit increase does not constitute an extraordinary or exceptional reason to increase the compensation rate.

Second, Claimant also sought an additional lump sum in the amount of $325,000.00 or more to pay for college and provide a steady income stream of $369.00 per week for the first 10 years and then $334.14 or $393.55 per week after the first ten years based on the evidence submitted. Defendants opposed this request.

Defendants contended that no additional lump sums can be granted. Defendants presented two separate bases for this contention—one factual and one legal. The factual basis for denying an additional lump sum is grounded in the testimony of the witnesses. Defendants contended the testimony by Claimant's wife and son does not show that an additional lump sum is in the best interest of the Claimant or his dependents. Additionally, Claimant has asked for the lump sum to provide a steady income stream of $369.00 per week for the next 10 years. After that, proposed annuities would pay either $334.00 or $393.00 per week depending on which annuity is chosen. Claimant's family currently receives $406.00 per week in a guaranteed income stream in the form of workers' compensation benefits. Defendants contend there is no scenario in which

receiving less money per week for the rest of his life is in Claimant's or his dependents best interest. Defendants' second basis for denying a second lump sum is grounded in legal precedent. Defendants rely on Ashley v. Ware Shoals, 210 S.C. 273, 42 S.E.2d 390 (S.C. 1947) which is a Supreme Court case that states "...if the total disability is such that...a serious question is presented regarding the likelihood of the employee's living the length of time required to complete the installment payments, the allowance of a lump sum settlement over the objection of the employer or carrier would constitute an abuse of discretion..." In the present case, with the attorney's fee award, Defendants contend they have paid benefits through August 12, 2033. Claimant's maximum life expectancy based on the uncontroverted medical evidence is, at most, through June 2024. Defendants have paid over nine (9) years of benefits more than Claimant's life expectancy. Defendants contend the Ashley case clearly prohibits this Commission from awarding any additional lump sums.

Third, Claimant also requested an assessment of penalties and interest related to the first lump sum payment. It is agreed that the lump sum was paid on June 2, 2014. It is agreed that S.C. Code Ann. 42-9-240 mandates interest to be assessed starting seven (7) days after the award becomes final and that 42-9-90 mandates a 10% penalty be assessed starting fourteen (14) days after the interest begins to accrue. The award in this case was paid ten (10) days after it became final. Defendants conceded Claimant was entitled to $90.85 in interest based on the three (3) days the payment was overdue. Defendants point to the new case of Hudson v. Lancaster Convalescent Center, Appellate Case No. 2011-194189, Filed January 8, 2014. In that case, the Court of Appeals defines at what point an award becomes final. The Court stated "...the Guaranty will only be responsible for

interest from the date that this lump-sum award became final, which under the statute is April 27, 2004, seven days from the date of the order of remittitur from the Court of Appeals. In the present case, the Court of Appeals provided the Order of Remittitur on May 23, 2014. The payment was made on June 2, 2014—ten (10) days after the remittitur. Therefore, Defendants contend they are not liable for any penalty pursuant to 42-9-90 and are responsible for three (3) days of interest pursuant to 42-9-240. Defendants contend three days of interest at the statutory judgment rate of 7.25% is equal to $90.85. This payment has been made to Claimant.

This matter came to a hearing before the Single Commissioner on July 7, 2014 on Claimant's Request for Hearing seeking (1) a second lump sum, (2) an increase in the compensation rate, and (3) fines, penalties, and/or interest related to the first lump sum. A Decision and Order was issued on May 28, 2015[1]. The Single Commissioner denied Claimant's request for a compensation rate increase, denied Claimant's request for a new lump sum, denied Claimant's request for fines and penalties, and awarded Claimant $90.85 in interest. Claimant timely appealed the Single Commissioner Decision and Order to the Full Commission. The Full Commission held a review hearing on September 21, 2015. Both parties were fully heard on the matters. The Full Commission issued its Decision and Order on December 23, 2015. The Full Commission FULLY AFFIRMED the Single Commissioner. Claimant filed a Motion to Reconsider. Claimant's Motion to Reconsider was DENIED on February 22, 2016. This appeal followed.

[1] The reason for the lengthy delay is that both parties asked any decision be held in abeyance to attempt a resolution of the issues. No resolution was agreed upon and the parties asked the Commissioner to issue the Order.

EVIDENCE OF THE CASE

This case has a long history related to the medical evidence and underlying hearings. The pertinent issues for the hearing on the 50/51 before me related to a review of the Commission file, prior Orders, payments by Defendants, medical records, and other records, as well as testimony of Claimant's wife and son.

At the Hearing, Claimant asked for an increase in compensation rate. The only evidence presented at the hearing related to compensation rate was a wage sheet and letter from Burriss Electrical. The letter submitted by Defendants indicates that there was a wage and hiring freeze in 2007 and that Defendant Burriss had to lay off half of its employees. Further, the letter indicates that Claimant would have only been eligible for lockstep raises of .50 per hour and, at most, he would be making $2.00 per hour more today (or $15.50-16.50 per hour). Finally, the letter suggested and representations at the hearing through counsel reflected the opinion that Claimant would not have been eligible for a supervisor or management position at a higher rate of pay because of his inability to speak fluent English. Claimant did not contest his inability to speak English. The letter indicated that only one of Employer's non-English speaking employees[2] have mastered

[2] As will become painfully apparent, Claimant has repeatedly argued in his brief about a disparate pay scale between "Hispanic" and "non-Hispanic" employees. The evidence reflects that a majority of Employer's Hispanic employees are lower paid than other employees. However, the dichotomy between the pay scales is clearly set out as reflective of the ability, or inability, to speak fluent English. The inability to speak fluent English means the employee is less skilled for Employer's purposes and thus is paid at a slightly lower rate. This would be true regardless of the employees' nationalities or heritage. This is reflected in both Employer's letter and the trial transcript. Claimant has attempted to forge an issue out of thin air for this appeal related to some apparent alleged racial bias of Employer which simply holds no water when the actual evidence is reviewed.

the English language well enough to serve as a project manager or superintendent. Employer reportedly required employees in supervisory positions to be fluent in English because of their interaction with architects and engineers. Claimant did not submit any evidence that he would have been a supervisor or manager and/or would have been making a supervisor or manager level salary. Defendants' position was that, if a compensation rate increase was granted, he should be compared to other similarly experienced/situated non-English speaking employees.

Claimant next asked for an additional lump sum of benefits in the amount of $325,000 to pay for colleges and provide a steady income stream of $369.00 per week for the first 10 years and then $334.14 or $393.55 per week after the first ten years. The testimony at the hearing by Claimant's wife and son does not show that an additional lump sum is in the best interest of the Claimant or his dependents. At the time of the accident, Claimant's wife was working one job and ran a flea market boot on the weekends. Claimant's wife testified she is no longer operating the booth but is now working three jobs. However, Claimant's wife testified the two additional jobs replaced the income derived from the flea market booth. Claimant's wife testified that the family is debt free (with the exception of a car purchased for their son) and that the family's take home pay has increased by over $100.00 per week since the accident. Claimant's wife conceded that, if this accident did not happen, they would not have been able to pay for college. Rather, Claimant's wife testified that they would have still taken out loans for their sons to attend college. Claimant's wife testified Antonio, Jr. is no longer in college and has enlisted in the military and that he currently owes on student loans. Oliver

testified that he is not in college currently and is working to save money to return to school.

Additionally, Claimant has asked for the lump sum to provide a steady income stream of $369.00 per week for the next 10 years. After that, the annuities would pay either $334.00 or $393.00 per week tied to the life of Claimant and his wife depending on which annuity is chosen. Claimant's family currently receives $406.00 per week in a guaranteed income stream in the form of workers' compensation benefits which will be paid while Claimant is alive. Defendants submit there is no conceivable scenario in which receiving less money per week for the rest of his life is in Claimant's or his dependents best interest.

Claimant did not present any evidence to the court related to life expectancy. Claimant took the position that life expectancy is to be based upon Claimant's condition before the accident. Defendants presented a questionnaire filled out by Claimant's authorized treating physician—Dr. Charmagne George. Dr. George indicated Claimant is likely only 50% to live for 5 more years and less than 50% to live for 10 or more years due to Claimant's condition resulting from the accident. Dr. George also indicated her reasoning for these findings. She stated he has had three episodes requiring hospitalization. Claimant has been hospitalized two times in the prior six months for pneumonia, trachea-bronchitis, and sepsis. Claimant also is in renal failure and has experience respiratory infections. She concluded his current state following the accident leaves him at a much greater risk that common ailments could result in his death.

LEGAL ARGUMENT

I. THE FULL COMMISSION DID NOT ERR BY DENYING CLAIMANT'S REQUEST FOR AN ADDITIONAL LUMP SUM.

Claimant asserts the Full Commission erred by denying the $300,00-$325,000 additional lump sum request because the request was "in the best interest of the Claimant and/or his dependents."

First, as briefly addressed at the hearing, Defendants believe that there is no more than $210,000.00 of benefits remaining after lump sums and attorney's fees are deducted[3]. That amount may be lower depending on calculation of present day value of the attorney's fee. Regardless, a hearing to determine remaining benefits will need to be conducted by the Commission prior to an additional lump sum award, if one is granted.

As a threshold issue, Defendants contend that no additional lump sums can be granted. Defendant presented two separate bases for this contention—one factual and one legal.

The factual basis for denying an additional lump sum is grounded in the testimony of the witnesses. As noted above, the testimony at the hearing by Claimant's wife and son does not show that an additional lump sum is in the best interest of the Claimant or his dependents. Claimant's wife testified that the family is debt free (with the exception of a car purchased for their son) and that the family's take home pay has increased by over $100.00 per week since the accident. Claimant conceded that, if this accident did not happen, they would not have been able to pay for college. Rather, Claimant's wife testified that they would have still taken out loans for their sons to attend college.

---

[3] This estimate is now more than a year old and the amount owing at this time is under $200,000.00.

Additionally, **Claimant has asked for the lump sum to provide a steady income stream of $369.00 per week** for the next 10 years. After that, the annuities would pay either $334.00 or $393.00 per week depending on which annuity is chosen. **Claimant's family currently receives $406.00 per week** in a guaranteed income stream in the form of workers' compensation benefits. There is no conceivable scenario in which receiving less money per week for the rest of his life is in Claimant's or his dependents best interest.

It is clear from the testimony that there is a factual basis to deny Claimant's request for an additional lump sum because it is not in the best interest of the family to receive less money.

The second basis for denying lump sum is grounded in clear legal precedent. Ashley v. Ware Shoals, 210 S.C. 273, 42 S.E.2d 390 (S.C. 1947) is a Supreme Court case that states "...**if** the total disability is such that...**a serious question is presented regarding the likelihood of the employee's living the length of time required to complete the installment payments**, the **allowance of a lump sum** settlement over the objection of the employer or carrier **would constitute an abuse of discretion**..." This case is still good law in South Carolina. While this case was decided when S.C. Code Ann. § 42-9-300 was still in effect, the Legislature's change to that statue only removed the "in unusual cases" language. The effect of the statute remained unchanged. Likewise, the ruling by the Supreme Court that when medical evidence shows a claimant will not survive long enough to see the full lump sum, that lump sum cannot be granted, is unaffected by the minor change in the statute.

In the present case, with the attorney's fee award, Defendants have paid benefits through approximately August 12, 2034. Claimant's maximum life expectancy based on the uncontroverted medical evidence is, at most, through June 2024. As of today, Defendants have paid over nine (9) years of benefits more than Claimant's life expectancy. The Ashley case clearly prohibits this Commission from awarding any additional lump sums. Therefore, the Decision and Order of the Full Commission must be affirmed.

II. THE FULL COMMISSION DID NOT ERR IN FINDING CLAIMANT HAS A VESTED RIGHT TO ONLY 500 WEEKS OF BENEFITS

This exception raised by Claimant again asserts there is some mythical "500 week cap" on benefits in lifetime cases. There is not a "500 week cap" on benefits in lifetime cases. Claimant's counsel appears to be confused by the words "vested" and/or "vested interest" and/or "vested right." The Full Commission did not make any findings related to a "500 week cap." The Full Commission's specific conclusion of law on this "issue" states "Pursuant to the Act, a claimant only has a vested interest in 500 weeks of workers' compensation benefits. See S.C. Code Ann. §§ 42-9-10, -290."

The case law is clear that when a case involves lifetime benefits, the claimant is only vested in 500 weeks of those benefits until those benefits are earned. Those benefits are only earned by surviving to week 501, 502, 503, and so on and so forth. In short, a claimant is not vested in week 501 until week 501 arrives. The applicable case law states that if a claimant is awarded lifetime benefits and passes away prior to the 500-week cap,

benefits are only payable to 500 weeks[4]. *See* Floyd v. C.B. Askins & Co., 382 S.C. 84, 675 S.E.2d 450 (S.C. App. 2009). Similarly, if a claimant is awarded lifetime benefits and passes away after surpassing the 500-week cap, benefits are terminated as of the date of death. *See* Glover by Cauthen v. Suitt Const. Co., 318 S.C. 465, 458 S.E.2d 535 (S.C. 1995). All benefits paid after the statutory 500-week period are to be paid weekly. S.C. Code Ann. §§ 42-9-230, -250.

In sum, the case law on this issue is quite clear that a claimant with a lifetime award is only vested in the first 500 weeks of benefits. Thereafter, the benefits only accrue on a week to week basis. Therefore, the Full Commission did not err when it found there was a 500 week vested limit to benefits and the Decision and Order must be affirmed.

III. THE HEARING COMMISSIONER DID NOT ERR BY CONSIDERING MEDICAL EVIDENCE RELATED TO LIFE EXPECTANCY.

Claimant filed for the underlying hearing and sought an additional lump sum of up to $325,000. Despite this fact, Claimant asserts in this exception that evidence of Claimant's life expectancy is irrelevant to further lump sum awards. Based on well-established case law, the medical evidence of life expectancy is wholly and directly relevant to Claimant's requests.

Claimant did not submit any medical evidence for consideration. Defendant submitted a written opinion from the treating physician. Therefore, the medical evidence

[4] This issue was discussed in Floyd, *supra*. While in that claim the 500 week award of benefits on Claimant's death was not appealed, making it the law of the case, the Court of Appeals did affirm the reduction of lifetime benefits to a fixed time award of 500 weeks when the claimant passed away prior to the 500 week statutory cap and had a lifetime commuted value balance of 987.48 weeks.

is undisputed and uncontroverted. The uncontroverted medical evidence submitted shows that Claimant has, at most, 10 years of life expectancy remaining. In Martin v. Martin, 296 S.C. 436, 373 S.E.2d 706 (S.C. App. 1988), the Court of Appeals held that **mortality tables may be disregarded if there is competent evidence to challenge the use of the mortality table in considering life expectancy**. That determination was reiterated in Haselden v. Davis, wherein the Court of Appeals stated "...the [mortality] table below shall be received in all courts and by all persons having power to determine litigation as evidence **(along with other evidence as to his health, constitution and habits)** of the life expectancy of such person. 341 S.C. 486, 534 S.E.2d 295 (S.C. App. 2000) (emphasis added). It is clear that the mortality tables alone are not conclusive on the issues of life expectancy and that when competent evidence is presented contradicting the mortality tables they may be disregarded[5]. Further, Ashley v. Ware Shoals, 210 S.C. 273, 42 S.E.2d 390 (S.C. 1947) states "...**if** the total disability is such that...**a serious question is presented regarding the likelihood of the employee's living the length of time required to complete the installment payments**, the **allowance of a lump sum** settlement over the objection of the employer or carrier **would constitute an abuse of discretion**..."

The cases cited herein make it clear that not only is the medical evidence of life expectancy relevant and proper but that the uncontested and uncontroverted medical

[5] Glover, as cited by Claimant, contains no language related to utilizing the mortality table in related to benefits in a lifetime case. Glover is a very narrow decision. Glover stands only for the proposition that it would be unfair to award an attorney's fee that is less than a portion of the full lifetime benefits because it may result in an attorney receiving a lesser fee than in a claim that is not a lifetime benefits case. Therefore, the Glover court held that it was "adequate" to use the mortality table only to determine an attorney's fee.

evidence required a denial of any additional lump sums in this case. Therefore, the Full Commission did not err in relying on established precedent in reviewing and relying on the uncontested and uncontroverted medical evidence presented at the hearing and the Decision and Order should be affirmed.

IV. THE HEARING COMMISSIONER DID NOT ERR BY REFUSING TO INCREASE CLAIMANT'S COMPENSATION RATE

Claimant argued that his compensation rate should be increased in one of three possible ways: (1) a percentage increase of up to 12.8% per year every year since the accident; (2) lockstep raises of .50 per hour per year; or (3) recalculated based on aW2. Despite Claimant's requests, there is no mechanism under the Act that allows the Commission to increase the compensation rate based on cost of living increases, merit based increases, lock step wage increases, or W2 wages. The Commission assigns a compensation rate calculated based on the four quarters preceding the injury. The mere fact that a claimant might be making more today than at the time of the injury does not constitute an extraordinary reason to increase the compensation rate. Even, assuming *arguendo*, it was a reason to increase the compensation rate, Claimant presented no evidence to support his claim for an increased compensation rate.

The only actual evidence presented at the hearing related to compensation rate was a wage sheet and letter from Burriss Electrical. The wage sheet shows that the three employees hired immediately before and immediately after Claimant make an average of $13.80 per hour in 2014. The letter submitted by Defendants indicates that there was a wage and hiring freeze in 2007 and that Defendant Burriss had to lay off half of its employees. Further, the letter indicates that Claimant would have only been eligible for

lockstep raises of .50 per hour and, at most, he would be making $2.00 per hour more today (or $16.50 per hour).

However, despite the possibility of making more money today, two cases expressly prohibit a retroactive increase in the compensation rate based on annual, time based, and/or lock step raises. Elliott v. S.C. Department of Transportation, 362 S.C. 234, 607 S.E.2d 90 (S.C. App. 2004), holds that "...a standard cost of living increase or step increase based on longevity of service..." does not constitute an exceptional reason under S.C. Code Ann. § 42-1-40. Further, Roberts v. McNair Law Firm, 366 S.C. 50, 619 S.E.2d 453 (Ct. App. 2005) holds that a post-injury merit increase does not constitute an extraordinary or exceptional reason to increase the compensation rate.

Elliott and Roberts set out exactly the same thing Claimant has attempted in the present case. He is seeking an increase in compensation for what would be annual merit, cost of living, and or lockstep increases. This is simply not permitted under the laws of South Carolina. Therefore, the Full Commission did not err by refusing to increase the compensation rate and the Decision and Order should be affirmed.

V. THE HEARING COMMISSIONER DID NOT ERR BY COMPARING CLAIMANT'S WAGES TO OTHER NON-ENGLISH SPEAKING EMPLOYEES.

The undersigned would first point out that this exception is entirely irrelevant as it is merely a red herring designed to obfuscate the underlying compensation rate increase issue previously discussed. The comparable employee issue is irrelevant because the compensation rate was properly denied as Elliott and Roberts clearly prohibit the increase in compensation rate sought by Claimant.

However, for purposes of the brief, Defendants will address this issue. The record is clear that there is no "racist" or "anti-Hispanic" evidence, position, or findings by the Commission. The evidence presented on the compensation rate topic consisted solely of a wage sheet and letter from Employer. **Claimant did not present any actual evidence on this issue. More importantly, Claimant did not contest that he did not speak English.** The letter presented contains a discussion and explanation for the different classes of employees within Employer. Specifically, the letter states that Employer has project managers/superintendents, foremen, and electricians. It notes that each of these jobs has increasing levels of responsibility (electricians being the least, Claimant was an electrician) and increasing levels of pay (again, electricians being the least). Specifically, it states "we believe the increased responsibility of the foreman and superintendents should maintain some difference in pay commensurate with that responsibility." The letter clearly sets out that in order to be in a position with greater responsibility—e.g. project lead, superintendent, or foreman—the employee was required to speak fluent English because "...our customers, engineers and architects have an expectation of excellent communication. **This requires the ability to communicate quickly and effectively in English.**" (emphasis added). Employer notes in the letter "...to date none of our Spanish speaking employees have mastered English well enough to represent the company in management projects." Claimant was not fluent in English. This was undisputed at the hearing despite Claimant's wife and son testifying (note: Claimant had the burden of proof to justify the requested compensation rate increase, he not only failed to prove Claimant was fluent in English—he failed to present any evidence on this point). In fact, Claimant was one of Employer's highest paid electricians.

The wage sheet similarly reflects there are no "racist" or "anti-Hispanic" sentiments by Employer. Claimant bases this wild and outrageous accusation on a mistaken belief that Employer's Hispanic employees are paid less than other employees. A review of the wage sheet submitted show that this is patently false. For reference, Claimant was making $14.50 per hour at the time of the accident and was one of Employer's highest paid electricians. The wage sheet reflects there are thirty (30) employees making the same hourly wage or less. Of these thirty (30) employees, only eleven (11) are Hispanic. The other nineteen (19) are non-Hispanic employees. In spite of this, rather than simply presenting evidence to support his claim—of which there is none—Claimant's attorney alleges Employer, the undersigned, the Single Commissioner, and the Full Commission all conspired to engage in a racist analysis of the clear evidence to deny an increase in compensation rate. Claimant's counsel goes on to compare the Decision and Order to the type of virulent racism that led to the Emanuel AME Church slayings. The undersigned finds this comparison personally offensive and outragoues as Claimant's attorney has directly accused the undersigned of racial profiling and directly compared him to a racially motivated mass murderer. This type of commentary is sanctionable and this Court should consider a heavy penalty against Claimant's counsel for such accusations.

However, even setting aside the lack of evidence issue for Claimant, at the hearing in this matter, **Claimant put his position on the record that there was no disparate pay between Hispanic and non-Hispanic employees**. Specifically, when

discussing the above referenced letter, he stated the following on three separate occasions:

> "For reference, the highest paid -- and I'm sure this is just probably a Hispanic electrician; I'm sure that I was just -- they were just trying to equate -- **I'm sure there's no difference in the pay of the Hispanic electricians than to other electricians** -- but he's paid seventeen fifty ($17.50)."
>
> R. p. 205, lines 4-11
>
> **"I'm sure that they don't have other non-Hispanic electricians being paid more..."**
>
> R. p. 206, lines 8-10
>
> "Mr. McDaniel: -- since there was -- since it was referenced to, again, to Hispanics and, of course, first of all, I don't think you're going to hear any evidence in reference to Mr. Lazaro's English ability, you know, but -- so, we don't know what he would have done. But the other thing is, that I noticed on there that two (2) of the people on here are making seventeen fifty ($17.50) is Garcia -- Aswaldo Garcia and Lorenzo Cabello...And they are both making seventeen ($17.00) and seventeen fifty($17.50).
>
> Mr. Gallagher: **And they speak English**.
>
> Mr. McDaniel: Well --
>
> Mr. Gallagher: I mean, **that's what the letter says** if you want to look at that.
>
> Commissioner Wilkerson: No, I -- I put it on there. I understand.
>
> Mr. Gallagher: **The letter said they speak English** --
>
> Commissioner Wilkerson: I understand. I'll read it all. Yes, you just looked at it.

> Mr. McDaniel: -- well, and -- and we don't know what -- **and my point being is also we don't know -- I -- I -- let's say they speak very good English** but I -- I don't know what they would testify to about his ability."
>
> R. p. 286, line 5-p. 287, line 13.

The record is clear that even Claimant did not take exception at the time to the dichotomy between English and non-English (or non-fluent English) speaking employees until the preparation of his brief. Further, the issue of "Hispanic" vs. "non-English speaking" was only included in the Decision and Order at the persistent insistence of Claimant who demanded its inclusion on multiple occasions prior to the final Decision and Order being filed. These occasions included multiple conference calls with the Single Commissioner, letters to the Single Commissioner, and Claimant's own handwritten notes on draft versions of the final Decision and Order. It is curious that Claimant demanded the inclusion of intentionally racially tinged information not contained anywhere in the record in the Decision and Order only to then file an appeal attacking the very same information he demanded be included in the Decision and Order.

Nevertheless, the record is clear that there is no "racist" or otherwise "discriminatory" language, intent, or evidence in the record. The record is clear and undisputed the division of wage earners with Employer centers on specific skill sets and fluency or ability to speak English (thus increasing job responsibilities). The record is clear and undisputed that Employer had 30 employees with same or lower wages as Claimant and nineteen (19) of those are non-Hispanic employees. The record is clear the compensation rate increase was properly denied pursuant to established case law and precedent because Claimant's only basis for the increase was either (1) percentage increases, (2) lockstep hourly increases, or (3) prior years' W2s. The Act does not

provide any mechanism for retroactively increasing the compensation rate seven (7) years later simply because a claimant would be making more money seven (7) years later. Further, this entire exception raised by Claimant is based on an unsubstantiated and wholly fabricated belief that Employer pays Hispanic employees less than non-Hispanic employees—a position Claimant knows to be false based on the evidence and testimony submitted. Therefore, the Decision and Order should be affirmed in its entirety.

CONCLUSION

For all the foregoing reasons, the Commission should AFFIRM the Full Commission Decision and Order in its entirety.

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Columbia, South Carolina
September 13, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Case No. 2016-000665

RECEIVED
SEP 13 2016
SC Court of Appeals

Antonio Lazaro, Employee ..... Appellant,

v.

Burriss Electrical, Employer, and
South Carolina Guaranty Association, Carrier ..... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

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South Carolina Guaranty Association, Carrier ..... Respondents.

PROOF OF SERVICE

I certify that I have served the Final Brief of Respondent on the attorney of record for Antonio Lazaro, by depositing a copy of it in the United States Mail, postage prepaid, on the 13th day of September, 2016 addressed to his attorney of record:

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
AUG 24 2016
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Appellate Panel

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Antonio Lazaro, Employee, ...Appellant,

v.

Burriss Electrical, Employer, and
South Carolina Guaranty Association,
Carrier, ...Respondents.

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ORDER AND AWARD

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 0710622

Antonio Lazaro,

Employee/Claimant by
and through his Guardian
and Guardian ad litem,
Mrs. Decidora Lazaro,

v.

Burriss Electrical, Inc.

Employer,

and

CompTrust AGC of South Carolina,

Carrier,

Defendant(s).

HEARING:	Date: July 28, 2010 Location: Columbia, South Carolina
APPEARANCES:	Claimant represented by Preston F. McDaniel, Esquire John E. Duncan, Esquire Defendant(s) represented by John McIntyre Tolar, Esquire
PURPOSE OF HEARING:	This matter came before the Commissioner on a Form 50 and 51.
COMMISSIONER:	T. Scott Beck
FILED:	October 14, 2010

STIPULATIONS

The parties have stipulated to jurisdiction and venue. The Commission File with the exception of self-serving declarations and unstipulated medicals is made a part of the Record.

STATEMENT OF THE CASE

Prior to opening the Record and taking testimony, a pre-hearing conference was held and at that pre-hearing conference, APA Submissions were submitted to this Commissioner pursuant to the Administrative Procedures Act and the Rules of this Commission which included records from the following: Palmetto Health Richland; Dr. Charmaine M. George; Ms. Denise Salyer, RN, CCM; and a financial declaration of Decidora Lazaro. The Defendants submitted documents purported to be from MetLife, John Hancock, Pacific Life Annuity Company and Prudential Insurance companies. Also, at the pre-hearing conference, an amended financial declaration was submitted due to some miscalculations or some numbers not being accurately recorded. The Claimant submitted without objection a projected financial needs statement for the family and offered documents on the estimated college costs per year. The information concerning the estimated college costs per year was objected to by the Defendants and was not received by this Commissioner. The Claimant objected to the information submitted by the Defendants from the various insurance companies and I advised the parties that I would admit

those over objection of the Claimant but that I would give it such weight as I felt appropriate. The Defendants took the position that these documents represented the calculation of Mr. Lazaro's ratable age/life expectancy and were based on a review of medical records. After review, I do not find them to be as purported by the Defendants and after review I advised the parties that I would give them little weight due to their hearsay nature and since based on my review they did not contain the information as purported by the Defendants.

The extensive pre-hearing conference held in this matter lasted for approximately an hour and a half, during which I allowed the parties to argue their positions and state what the testimony and evidence would show. At the conclusion of the conference, I advised the parties of my opinion based on the information that had been presented which was based on the assumption that this is what the evidence, if I were to take testimony, would have shown from Ms. Lazaro, her two sons and several witnesses. I would note that I was advised and veribly believe that the family is highly respected in the Irmo area and that numerous witnesses including many teachers and friends especially from the Irmo soccer community wanted to be present to testify but that Claimants' Counsel would have limited the testimony to Ms. Lazaro, her two sons, and several witnesses. I advised the parties at the conclusion of their presentations and

arguments on their positions and what the evidence would show that I did not believe hearing testimony, assuming it established everything that was argued, would change my decision. Therefore based on their consent I have made my decision based upon the arguments and representations of the parties with the assumption that the testimony would support the arguments made.

Before setting forth my opinion and decision concerning the request for a partial lump sum, I note from the Record and the position of the Defendants that the Defendants take the position at this hearing that this is an accepted brain injury case and that they agree that Mr. Lazaro is totally and permanently disabled due to that brain injury. The Claimant took the position that this hearing only became necessary after the Defendants had refused to enter into a Form 16 settlement agreeing that Mr. Lazaro's vegetative state and brain injury were permanent. After being advised that they would not consent to that and agreeing to change his position from that of being temporary to permanent, the Form 50 was filed asking for a decision of total and permanent disability due to physical brain injury and also asking for a partial lump sum of benefits in the best interest of Mr. Lazaro and his dependents. I note from the Record, the Form 50 and from a review of the Form 51, that while the Defendants now admit that the Claimant sustained a physical traumatic brain injury, they specifically denied in their Form 51

that he is permanently and totally disabled. In their Form 58, Pre-Hearing Brief, is the first time that I can see in the Record that the Defendants admit that the Claimant's condition is permanent. Therefore, I do not find according to the Record that the Defendants have admitted that the condition of the Claimant was permanent until 10 days prior to this hearing and that their refusal to admit to his condition being permanent resulted in the necessity of this hearing.

Next, after review of the information submitted to this Commissioner and the arguments of the parties, it is my opinion that the Claimant is entitled to a partial lump sum in the maximum amount of $152,568.75. This money should not be paid directly to the Claimant's wife, who has been appointed his Guardian and Guardian ad Litem, that being Mrs. Decidora Lazaro, but should be paid to Claimants' Counsel and that any monies that are not used for the purposes allowed by my decision concerning a partial lump sum should be refunded to the insurance company.

First, it is clear from the medical evidence submitted that Mr. Antonio Lazaro is in a vegetative state and has been in a vegetative state ever since the accident and that this condition is most probably permanent in nature. There is a 10% chance of some recovery but only to where he may gain some control of bodily functions at a maximum. However, it is also very clear from the medical evidence submitted that outside of Mr. Lazaro

being in a permanent vegetative state due to the anoxic brain injury he sustained, he is otherwise healthy. If one were to look at him in the bed, it would be as if he was asleep and otherwise a healthy, 41 year old gentleman having turned age 41 on July 4th, 2010, with a date of birth of July 4, 1969. The medical records from his treating physician at the Brian Center Nursing Care Center state that Mr. Lazaro due to his young age is likely to remain in his condition for many years without any improvement expected in his overall clinical condition. Contrary to the position of the Defendants, there is nothing to support that outside of his vegetative state and anoxic brain injury that he is in poor health.

As noted above, from the paperwork in the file and the representations of counsel, his wife, Ms. Decidora Lazaro, has been appointed as both his Guardian ad Litem and general Guardian. It appears from the information provided that Mrs. Decidora Lazaro and husband, Antonio, and their oldest son are legal immigrants to the United States moving to the United States in the late 1980's and early 1990's and are all now naturalized American citizens. Their oldest son, Antonio, is age 17 and they have a younger son, Oliver, 16 years old, who was born in the United States, and who is also obviously an American citizen.

In reference to the request for a partial lump sum and as to the lump sum I will grant I find all of the information

speculative at this point as to granting the Lazaro Family a larger lump sum than that which I have granted. The lump sum granted is based upon paying off the Claimant's home mortgage, paying off existing debts as set forth in Mrs. Lazaro's financial declaration, and allowing them up to $30,000.00 to purchase a reliable automobile. As to all other issues, I have advised Claimant's Counsel that they may come back at any time with additional evidence of and information college costs and/or other needs and request an additional partial lump sum of benefits.

In reference to the partial lump sum payment request, the Defendants argue that all of Mr. Lazaro's needs from a medical and maintenance standpoint are being taken care of at the nursing home in his vegetative state. They argue Mr. Lazaro may die tomorrow and that to grant any lump sum would result in an unjust enrichment at the expense of the Carrier to Mr. Lazaro and his family. They also argue that if I should grant a partial lump sum I should not apply the South Carolina Mortality Tables but should apply the rated age calculations as calculated by the various insurance companies that were submitted. The Claimant on the other hand argues that the law intends that this Commission should only consider the best interests of the Claimant and his Defendants and apply the Mortality Tables and that the Commission should grant a lump sum to the family to address various needs of

the family, Mr. Lazaro's dependants.

While I agree with the Claimant that under our S.C. Supreme Court decisions and the statutory law that the mortality tables are to be used for determining the total value of a claim and the granting of a lump sum and while I agree that the law provides that I must provide and order a lump sum where it is in the best interest of the Claimant and/or his dependants, at this point I find the information and evidence submitted for granting a partial lump sum more than to pay off the home, grant money to buy one car and to pay off the debts as listed in the financial declaration to be not convincing to transfer Mr. Lazaro's benefits from the insurance company to his Guardian.

In reference to several arguments made, I take note of the fact and recognize that the two boys are both 16 and 17 years old and are both members and starters on the Irmo Soccer Team which is one of the premier soccer programs in the State which regularly play for State championships. I recognize that they are also members of various private soccer clubs and that before the injury Mr. Lazaro and/or Mrs. Lazaro would attend their soccer games and would provide transportation to and from all the soccer related events. I also recognize that both boys are excellent students with grades between "B" and "B+" in advanced courses and that the older son has had contact by several colleges for possible soccer scholarships and that both boys are

in college preparatory courses and that the testimony would be that they intend to enroll in college upon graduation. However, I have decided not to give the family any money at this point in reference to looking at colleges or to set aside money for college education, clothing and other essentials that the children need. Again, when more definitive information is provided concerning looking for colleges and expenses in that regard and the expenses of college and the needs of the children, then the family may come back and request additional money through an additional partial lump sum payment.

Next, the evidence would show that they have 3 cars at this time, only one of which is actually safe to drive out of town and only one of which has less than 100,000 miles on that vehicle and that the other two vehicles have over 125,000 and 145,000 miles respectively. The three vehicles involved are a 1991 Ford Aerostar Van, a 1996 Honda Civic, and a 2004 Dodge Durango. I find that it is in the best interest of the family to purchase one new car and that $30,000.00 should be set aside for that purpose. Claimant's Counsel argues that they would like to have money included in the partial lump to buy cars for the boys but I noted that I do not drive a new car and that most children in most families drive "hand-me-downs". Counsel argues that he does not know how to present information to this Commission as to "hand-me-down" automobiles and that they are not asking for the

partial lump at this point to actually buy the cars, but to simply set it aside so that the money will be available when that becomes necessary. Further whether or not the boys go to college and as to their other needs in my opinion is speculative at this point but again they may come back at a later date and request an additional partial lump sum with additional information. Also, I believe and it is my opinion and Order that any funds that are not expended on the purchase of a new car should be returned to the Defendants as there is no reason that this family should have the benefit of that extra money instead of the insurance company.

Further, in reference to the other debts that are listed on the financial declaration, I have made the decision to Order that these be paid off but the Defendants have asked that the pay off of debts be limited to just those listed on the financial declaration. They argue Mrs. Lazaro could very well run out and incur a lot of additional debt or divorce the Claimant and that the Defendants should not be responsible for that. I agree and therefore by this Order will order that only those debts in the amounts as reflected in the financial declaration should be paid.

Next, based on the information submitted, it appears that Mrs. Lazaro works every day Monday through Friday at her full-time job and Saturday and Sunday at the flea market. Mrs. Lazaro leaves her full-time job at 3:00 pm and drives to the nursing home to see her husband daily for half an hour. She then goes

home to prepare dinner, before her children get home from school. She assists her children with their Homework and their other needs. She then returns to the nursing home to read to her husband. She drives back home to do housework and prepare for bed herself. As noted above, prior to this injury, either she or her husband attended all of the boys' soccer games but at this time due to his injury, even on Saturdays and Sundays she is unable to attend because her husband had started a flea market booth which he operated to try to make additional income for the family prior to his tragic accident and now she has to operate that to try to make ends meet with the help of her sons.

The Claimant also made other various arguments in reference to the economic loss to the family and the devastating effect the injury has had on their personal life and the effect that a partial lump sum payment could have from an economic standpoint as far as helping the family and Mrs. Lazaro with the children. While I applaud the Irmo community and the teachers of Irmo High School for their assistance to the Lazaro family in attending parent-teacher conferences and other school related functions because of Ms. Lazaro's inability to attend those and the assistance that they have provided in making sure the boys have transportation to and from all the various out of town and local functions in reference to their school and school team and their other soccer teams and while it is sad that Mrs. Lazaro has to

work Saturdays and Sundays, and while she is Catholic and can no longer attend Catholic Church but has to attend a Lutheran church which is near to the flea market on Saturday evenings, many people have to work secondary jobs to make ends meet. I have noted to the parties that I am not impressed with the economic loss argument at this point particularly as to my finding that college and these other expenses are speculative at this point. Again, I have advised Counsel for the Claimant that they may request additional lump sums to meet the needs of the family at any time with additional information.

The Claimant also has asked that I take into consideration the fact that Mr. Lazaro in less than 5 years had gone from a salary of $10.00 per hour to over $14.50 per hour and the fact that he was operating a flea market booth to generate additional income. The Claimant does not ask me at this point to consider this in reference the compensation rate but simply asks that I consider it in reference to the effect that this has had on the Lazaro family from an economic standpoint. Again, I am not impressed at this point with the economic arguments but again the Claimant may request additional lump sums and may submit more information to support the requests at that point. It should also be pointed out that the Defendants argue that Mrs. Lazaro could get this money and then leave Mr. Lazaro and not use it for his benefit.

Based on all of the above, as noted I have made the decision to grant a partial lump sum of benefits in the best interest of the family only to the extent of paying off the mortgage on their home, providing money for one vehicle up to $30,000.00 and paying off other existing debts as set forth in the financial declaration. Therefore, based upon my review of the information submitted, I find that the Claimant through his Guardian has established by a preponderance of the evidence that she is entitled to a partial lump sum in the maximum amount of $152,568.75, which shall be paid to her Counsel.

FINDINGS OF FACT

Based upon this, I have made the following findings of salient fact:

1. That Antonio Lazaro is in a vegetative state due to anoxic brain injury and is permanently and totally disabled and is entitled to an award for such. While the Defendants denied his condition was permanent and counsel for Claimant had to prepare for this position, they have now admitted this at the hearing.

2. That Mrs. Decidora Lazaro who has been appointed the Guardian and Guardian ad Litem for Antonio Lazaro makes a request for benefits on his behalf.

3. That having determined and found that Mr. Antonio Lazaro is totally and permanently disabled due to physical brain damage, he is entitled to weekly compensation benefits payable to

him for life and to lifetime medical care. It is agreed that weekly compensation benefits are currently being paid and that all necessary medical care is being provided. Having determined his condition is permanent, the benefits to which he is entitled become the property of the Claimant.

4. That the Claimant has submitted evidence establishing the mortgage on their home, the need for an automobile and various debts as set out in the financial declaration and that it is in the best interest of the Claimant and his dependents that these debts be paid in full and that up to $30,000.00 be expended for a vehicle for the Claimant and his dependents. I find, however, that this money shall not be paid to the Guardian of the Claimant but that it should be paid to Claimant's counsel to pay off these debts and to purchase an automobile and that any balance remaining should then be returned to the insurance company.

5. That in making the partial lump sum award in this case, I find that all the other information and basis for requesting an additional award is speculative at this point but that the dependants and/or the Claimant may request a further lump or lump sums at any time in the future pursuant to a determination at that time as to what is in the best interest of the Claimant and/or his dependents.

6. That it is in the best interest of the Claimant and his

dependents to make the partial lump sum award that is made in this matter. I have taken into consideration in making the partial lump sum payment in this matter the arguments of the Defendants and especially the insurance company that the award made should not result in an unjust enrichment to the Claimant and his dependents and that the Claimant may very well die well short of his life expectancy and that the insurance carrier is paying weekly benefits and is paying for all the needs of Mr. Lazaro and that it is not in the best interest of the insurance company at this point in time to make a larger award. I have also taken into consideration the argument of the insurance company that who knows whether or not Mrs. Lazaro will stay with Mr. Lazaro or will separate in the future and that although she has been appointed his Guardian and is responsible to report to the Court that she will utilize these funds granted to her in the best interest of the dependents and/or Mr. Lazaro.

7. That the Lazaro Family has three (3) automobiles at this time (only one of which is safe to drive out of town and has less than 100,000 miles), a 1991 Aerostar Van, a 1996 Honda Civic, and a 2004 Dodge Durango. Two (2) vehicles has 125,000 and 145,000 miles on them.

8. That the financial statement as to the payment of the debts as allowed by this Order is attached hereto and incorporated herein by reference.

9. That all the other issues that have not been presented to this Commission for decision in this case are held in abeyance for further decision by the Commission.

CONCLUSIONS OF LAW

Under S.C. Code §42-17-50, the following Conclusions of Law are made and apply in this matter:

1. Under S.C. Code §42-9-10, the Decision is made as to the Claimant's entitlement to lifetime disability benefits as a result of his total and permanent disability due to physical brain injury and under that Section and under S.C. Code §42-9-301, the decision is made as to a granting of a partial lump sum in this matter.

2. Under the stipulation of the parties, jurisdiction and venue are stipulated.

3. Under S.C. Code §42-15-60, the determination is made as to the Claimant's entitlement to lifetime medical care having been declared totally and permanent disabled.

4. Under S.C. Code §19-1-150, the Mortality Tables establishes Mr. Lazaro's life expectancy is established.

5. Under S.C. Code §42-9-330, the Guardian of the Claimant may on behalf of the Claimant and his dependents assert any rights to which the Claimant is entitled under the Workers' Compensation Act and this Commission may make payment of benefits to the Claimant's Guardian.

6. Under the issues before this Commissioner for decision and the information submitted, this decision is made at the time, and all other issues are held in abeyance.

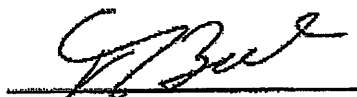
ORDER AND AWARD

THEREFORE IT IS ORDERED that the Claimant through his Guardian, Mrs. Decidora Lazaro, is found to be entitled to a partial lump sum payment in the amount of $152,568.75. Said amount shall be payable not to the Guardian but to Claimant's Counsel to be put into their trust account to pay off the mortgage on the Lazaro home, to purchase an automobile up to the amount of $30,000.00 and to pay off other debts as reflected in the financial declaration filed with the Commission and attached to this Order. Claimant's Counsel is directed to pay off the debts as set forth above in this Order and to purchase a vehicle for the family and if there is any balance left over, they are directed to refund that to the insurance company.

All other issues are held in abeyance.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



T. Scott Beck, Commissioner

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.
October 14, 2010

By: Amy Bracy, Administrative Assistant to Commissioner Beck

The South Carolina Court of Appeals

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

v.

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

Appellate Case No. 2011-192272

ORDER

On October 3, 2013, this court held the above-captioned appeal in abeyance and remanded the case to the South Carolina Workers' Compensation Commission to determine whether there exists a binding agreement between the parties to settle Respondent's claim. We ordered the Commission to make a written determination and report its findings to this court within thirty days. Subsequently, this court granted the Commission's request for an extension of time to comply with the order by November 18, 2013.

The Commission failed to meet the revised deadline, necessitating another order from this court on December 12, 2013, requiring the Commission to set a hearing date with thirty days' notice to the parties and to submit its findings and conclusions to this court within forty-five days. Rather than comply with the court's order, the Commission submitted a letter near the end of the day on which its finding and conclusions were due, informing this court that the Commission would wait until February 28, 2014 to conduct a hearing and take as long as two weeks after the hearing to submit its findings and conclusions to this court.

We admonish the Commission that we find unacceptable its repeated failures to comply with this court's orders and its recent attempt to revise this court's deadline without prior approval. Accordingly, so that this six-year-old case may proceed without further delay, we revoke our order of October 3, 2013 holding this appeal in abeyance and remanding the case to the

Commission. We further revoke our December 12, 2013 order and proceed to issue the attached opinion dispensing with the merits of the appeal.[1]

J.

J.

J.

Columbia, South Carolina

cc:
Virginia Crocker
Preston F. McDaniel
John Earl Duncan
Helen Faith Hiser
Landon L. Hughey
Weston Adams, III

FILED
February 6, 2014

[1] To the extent any party still seeks to hold this appeal in abeyance, we deny the motion. Should any party desire to be heard on the question of the existence and possible enforcement of a settlement agreement, such party will have an opportunity to file the appropriate motion with the Commission after the remittitur is sent to the Commission.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

v.

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

Appellate Case No. 2011-192272

Appeal From the Workers' Compensation Commission

Unpublished Opinion No. 2014-UP-064
Heard September 11, 2013 – Filed February 6, 2014

AFFIRMED

Weston Adams, III, Helen Faith Hiser, and Landon L. Hughey, of McAngus, Goudelock & Courie, LLC, of Columbia, for Appellants.

Preston F. McDaniel, of McDaniel Law Firm, of Columbia, and John Earl Duncan, of Law Office of John Duncan, of Lexington, for Respondent.

PER CURIAM: Appellants, Burriss Electrical, Inc. (Employer) and CompTrust AGC of the Carolinas (Carrier) (collectively, Appellants), seek review of a

decision of the Appellate Panel of the South Carolina Workers' Compensation Commission (Commission) upholding the single commissioner's partial lump sum award to the dependents of Respondent Antonio Lazaro (Employee). We affirm pursuant to Rule 220(b), SCACR, and the following authorities:[1]

1. As to the sufficiency of the Commission's findings and conclusions: S.C. Code Ann. § 42-9-301 (1985) (stating that as to any abuse of discretion in the commission's finding that a lump sum payment should be made, the burden of proof shall be on the employer or carrier in any appeal proceedings); *id.* (merely giving the Commission the authority to affirmatively order a lump sum payment when such a payment will prevent undue hardship on the employer or carrier: "Whenever any weekly payment has been continued for not less than six weeks, the liability therefor ***may, when*** the employee so requests and the commission deems it not to be contrary to the best interest of the employee or his dependents, ***or when it will prevent*** undue hardship on the employer or his insurance carrier, without prejudicing the interest of the employee or his dependents, ***be redeemed,*** in whole or in part, ***by the payment by the employer of a lump sum*** . . . ." (emphasis added)); *Thompson v. S.C. Steel Erectors*, 369 S.C. 606, 612, 632 S.E.2d 874, 878 (Ct. App. 2006) (quoting section 42-9-301 and concluding that this court reviews a partial lump sum award for an abuse of discretion); *id.* ("An abuse of discretion occurs if the [Appellate Panel's] findings are wholly unsupported by the evidence or the conclusions reached are controlled by an error of law.").

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[1] Immediately prior to scheduled oral arguments, Employee's counsel advised this court that the parties had entered into a settlement agreement relating to Employee's workers' compensation claim. Counsel requested this court to continue oral arguments "to allow [him] the opportunity to file a Motion to Compel a Settlement Agreement[.]" Counsel for Appellants denied the existence of a binding settlement agreement between the parties. This court denied the request to continue oral arguments; however, we subsequently remanded this case to the Commission for a determination of whether there exists a binding agreement between the parties to settle Employee's claim.

Due to continued delays by the Commission, we ultimately revoked the order remanding the case so that it may proceed without further delay. To the extent any party still seeks to hold this appeal in abeyance, we deny the motion. Should any party desire to be heard on the question of the existence of a settlement agreement, such party will have an opportunity to file the appropriate motion with the Commission after the remittitur is sent to the Commission.

2. As to the vehicle allowance: *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 476, 629 S.E.2d 653, 670 (2006) ("[A] party may not complain on appeal of error or object to a trial procedure [that] his own conduct has induced."); *Germain v. Nichol*, 278 S.C. 508, 509, 299 S.E.2d 335, 335 (1983) ("Appellant has the burden of providing this Court with a sufficient record upon which this Court can make its decision."); *Thompson v. S.C. Steel Erectors*, 369 S.C. 606, 612, 632 S.E.2d 874, 878 (Ct. App. 2006) (quoting section 42-9-301 and concluding that this court reviews a partial lump sum award for an abuse of discretion); *id.* ("An abuse of discretion occurs if the [Appellate Panel's] findings are wholly unsupported by the evidence or the conclusions reached are controlled by an error of law.").

3. As to Appellants' argument that the partial lump sum award violates the policies underlying the Workers' Compensation Act:[2] *Case v. Hermitage Cotton Mills*, 236 S.C. 515, 531, 115 S.E.2d 57, 66 (1960) ("[T]he courts of this country have without exception viewed the workmen's compensation law as intended pri[m]arily for the benefit of the injured employee and to be construed liberally for his protection."); *Booth v. Midland Trane Heating & Air Conditioning*, 298 S.C. 251, 254, 379 S.E.2d 730, 731 (Ct. App. 1989) ("The primary purpose of the Workers' Compensation Act is to protect the worker[,]" and "[a]ny reasonable doubt as to its construction should be resolved in favor of its claimants.").

4. We need not address the merits of Employee's motion for an award of attorney's fees and costs under the Frivolous Proceedings Sanctions Act,[3] except to state that the motion is denied. *See* Rule 220(b)(2), SCACR ("The Court of Appeals need not address a point which is manifestly without merit."). However, Employee may seek the attorney's fees and costs allowed under Rule 222, SCACR.

AFFIRMED.

HUFF, GEATHERS, and LOCKEMY, JJ., concur.

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[2] S.C. Code Ann. § 42-1-10 to -19-50 (1985 & Supp. 2013).
[3] S.C. Code Ann. § 15-36-10 to -100 (Supp. 2013).

The South Carolina Court of Appeals

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

v.

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

Appellate Case No. 2011-192272

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover any material fact or principle of law that has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Young J.

J.

James E. Lee J.

Columbia, South Carolina

cc:
Preston F. McDaniel, Esquire
John Earl Duncan, Esquire
Helen Faith Hiser, Esquire
Landon L. Hughey, Esquire
Weston Adams, III, Esquire
Virginia Crocker

FILED
April 10, 2014

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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May 23, 2014

The Honorable Virginia Crocker
SC Workers' Compensation Commission
PO Box 1715
Columbia SC 29202

REMITTITUR

Re: Lazaro, Antonio v. Burriss Electrical
Lower Court Case No. 0710622
Appellate Case No. 2011-192272

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

Enclosure

cc: Preston F. McDaniel, Esquire
John Earl Duncan, Esquire
Helen Faith Hiser, Esquire
Landon L. Hughey, Esquire
Weston Adams, III, Esquire

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0710622

ANTONIO LAZARO,

Employee,

Claimant,

vs.

BURRISS ELECTRICAL,

Employer,

AND

SOUTH CAROLINA GUARANTY ASSOCIATION,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING: Hearing held in Richland, S.C. on July 7, 2014.

APPEARANCES: Claimant appeared and represented by Preston F. McDaniel, Esquire, Esquire of The McDaniel Law Firm of Columbia, South Carolina.

Defendants represented by Brett H. Bayne, Esquire of McAngus Goudelock & Courie, L.L.C. of Columbia, South Carolina.

PURPOSE OF THE HEARING: To determine all issues as set forth in Forms 50 and 51 and Motion.

COMMISSIONER: Commissioner Avery B. Wilkerson, Jr.

FILED: May 28, 2015

STIPULATIONS

1. Jurisdiction is proper before the South Carolina Workers' Compensation Commission.
2. Venue is proper in Columbia, South Carolina.
3. No objections to the APA Submissions.

APA SUBMISSIONS

Claimant's submissions:

TAB NOS.	DOCTOR	PRACTICE	DATES	PAGES
1Ex. 1.	Force Consulting Group		06/13/14	1
2	Claimant's 2006 W-2		2006	2
3	College Tuition Costs		6/16/14	3-5
4	Transcript of Oliver Lazaro & Antonio Lazaro, Jr. Student Loan		05/19/11	6-8
5	First Report of Injury and Claimant's Wage Information		07/09/07	9-10

Defendant's submissions:

APA#	DOCTOR	PRACTICE	DATES	PAGES
1.		Southern Rehabilitation Network	6/10/14	1-5
2.	Dr. Charmaine M. George		6/23/14	6-9
	EXHIBITS			
Ex. 1.	Ringler Associates (Rated Age Report)		6/18/14	10-16
Ex. 2	Burriss Electrical, Inc. (current employees list)		6/19/14	17
Ex. 3	Letter from Mr. McDaniel to Dr. George		6/17/14	18-19
Ex. 4	Email note from Mr. McDaniel		6/18/14	20
Ex. 5	Letter from John E. Duncan, Esquire to Burriss Electrical		4/15/14	21

STATEMENT OF THE CASE

This claim arises out of an admitted injury sustained by Claimant on July 6, 2007. Claimant suffered severe injuries and is in a persistent vegetative state. Claimant requested that Defendants pay out a partial lump sum of his lifetime benefits award in order to pay off assorted debts and purchase a new car. On October 14, 2010, Commissioner Beck ordered that Claimant

was entitled to a partial lump sum of his lifetime benefits award in the amount of $152,568.75. Commissioner Beck found that $122,568.75 was to be used to pay off assorted debts and up to an additional $30,000.00 was to be used for the purchase of an automobile. Commissioner Beck indicated that any balance remaining from these two payments would be refunded to Defendants. The Full Commission affirmed Commissioner Beck's Order on April 20, 2011. Thereafter, this claim was appealed to the Court of Appeals. The Court of Appeals affirmed the Full Commission's Decision and Order on February 6, 2014. A petition for rehearing was denied.

Claimant contends the compensation rate has never been addressed and Claimant has now asked this Commission to determine and increase his compensation rate by as much as 12.8% per year every year since the accident. Alternatively, he asked for lockstep raises of .50 per year or a recalculation based on a W2. Claimant bases this request on S.C. Code Ann. § 42-1-40(2), Supreme Court decisions, and Claimant's past wage and work experience. Claimant next asked for an additional lump sum in the amount of $325,000.00 or more to pay for colleges and provide a steady income stream of $369.00 per week for the first 10 years and then $334.14 or $393.55 per week after the first ten years. Claimant finally requested an assessment of penalties and interest for the first lump sum payment. It is agreed that the lump sum was paid on June 2, 2014. It is agreed that S.C. Code Ann. 42-9-240 mandates interest to be assessed starting seven (7) days after the award becomes final and that 42-9-90 mandates a 10% penalty be assessed starting fourteen (14) days after the interest begins to accrue. The award in this case was paid ten (10) days after it became final.

First, Defendants contend there is no mechanism under the Act that allows the Commission to increase the compensation rate based on cost of living increases, merit based increases, lock step wage increases, or W2 wages. The Commission assigns a compensation rate

based on the four quarters preceding the injury. The mere fact that a claimant may be making more today than at the time of the injury does not constitute an extraordinary reason to increase the compensation rate. Defendants pointed to two cases expressly prohibit a retroactive increase in the compensation rate based on annual, time based, and/or lock step raises. Elliott v. S.C. Department of Transportation, 362 S.C. 234, 607 S.E.2d 90 (S.C. App. 2004), holds that "...a standard cost of living increase or step increase based on longevity of service..." does not constitute an exceptional reason under S.C. Code Ann. § 42-1-40. Further, Roberts v. McNair Law Firm, 366 S.C. 50, 619 S.E.2d 453 (Ct. App. 2005) holds that a post-injury merit increase does not constitute an extraordinary or exceptional reason to increase the compensation rate.

Second, Defendants contended that no additional lump sums can be granted. Defendants presented two separate bases for this contention—one factual and one legal. The factual basis for denying an additional lump sum is grounded in the testimony of the witnesses. Defendants contended the testimony by Claimant's wife and son does not show that an additional lump sum is in the best interest of the Claimant or his dependents. Additionally, Claimant has asked for the lump sum to provide a steady income stream of $369.00 per week for the next 10 years. After that, proposed annuities would pay either $334.00 or $393.00 per week depending on which annuity is chosen. Claimant's family currently receives $406.00 per week in a guaranteed income stream in the form of workers' compensation benefits. Defendants contend there is no scenario in which receiving less money per week for the rest of his life is in Claimant's or his dependents best interest. Defendants' second basis for denying lump sum is grounded in legal precedent. Defendants rely on Ashley v. Ware Shoals, 210 S.C. 273, 42 S.E.2d 390 (S.C. 1947) which is a Supreme Court case that states "...if the total disability is such that...a serious question is presented regarding the likelihood of the employee's living the length of time

required to complete the installment payments, the allowance of a lump sum settlement over the objection of the employer or carrier would constitute an abuse of discretion..." In the present case, with the attorney's fee award, Defendants contend they have paid benefits through August 12, 2033. Claimant's maximum life expectancy based on the uncontroverted medical evidence is, at most, through June 2024. Defendants have paid over nine (9) years of benefits more than Claimant's life expectancy. Defendants contend the Ashley case clearly prohibits this Commission from awarding any additional lump sums.

Finally, Defendant contend that Claimant is only entitled to three days' interest related to the payment of the prior award. Defendants point to the new case of Hudson v. Lancaster Convalescent Center, Appellate Case No. 2011-194189, Filed January 8, 2014. In that case, the Court of Appeals defines at what point an award becomes final. The Court stated "...the Guaranty will only be responsible for interest from the date that this lump-sum award became final, which under the statute is April 27, 2004, seven days from the date of the order of remittitur from the Court of Appeals. In the present case, the Court of Appeals provided the Order of Remittitur on May 23, 2014. The payment was made on June 2, 2014—ten (10) days after the remittitur. Therefore, Defendants contend they are not liable for any penalty pursuant to 42-9-90 and are responsible for three (3) days of interest pursuant to 42-9-240. Defendants contend three days of interest at the statutory judgment rate of 7.25% is equal to $90.85.

EVIDENCE OF THE CASE

This case has a long history related to the medical evidence and underlying hearings. The pertinent issues for the hearing on the 50/51 before me related to a review of the Commission file, prior Orders, payments by Defendants, medical records, and other records, as well as testimony of Claimant's wife and son.

Claimant first asked for an increase in compensation rate. The only evidence presented at the hearing related to compensation rate was a wage sheet and letter from Burriss Electrical. The letter submitted by Defendants indicates that there was a wage and hiring freeze in 2007 and that Defendant Burriss had to lay off half of its employees. Further, the letter indicates that Claimant would have only been eligible for lockstep raises of .50 per hour and, at most, he would be making $2.00 per hour more today (or $15.50-16.50 per hour). Finally, the letter suggested and representations at the hearing through counsel reflected the opinion that Claimant would not have been eligible for a supervisor or management position because of his inability to speak fluent English. The letter indicated that none of Employer's Hispanic employees have mastered the English language well enough to serve as a project manager or superintendent. Employer reportedly required employees in supervisory positions to be fluent in English because of their interaction with architects and engineers. Claimant did not submit any evidence that he would have been a supervisor or manager and/or would have been making a supervisor or manager level salary. Defendants' position was that, if a compensation rate increase was granted, he should be compared to other similarly situated non-English speaking Hispanic employees.

Claimant next asked for an additional lump sum of benefits in the amount of $325,000 to pay for colleges and provide a steady income stream of $369.00 per week for the first 10 years and then $334.14 or $393.55 per week after the first ten years. The testimony at the hearing by Claimant's wife and son does not show that an additional lump sum is in the best interest of the Claimant or his dependents. At the time of the accident, Claimant's wife was working one job and ran a flea market boot on the weekends. Claimant's wife testified she is no longer operating the booth but is now working three jobs. However, Claimant's wife testified the two additional jobs replaced the income derived from the flea market booth. Claimant's wife testified that the

family is debt free (with the exception of a car purchased for their son) and that the family's take home pay has increased by over $100.00 per week since the accident. Claimant's wife conceded that, if this accident did not happen, they would not have been able to pay for college. Rather, Claimant's wife testified that they would have still taken out loans for their sons to attend college. Claimant's wife testified Antonio, Jr. is no longer in college and has enlisted in the military and that he currently owes on student loans. Oliver testified that he is not in college currently and is working to save money to return to school.

Additionally, Claimant has asked for the lump sum to provide a steady income stream of $369.00 per week for the next 10 years. After that, the annuities would pay either $334.00 or $393.00 per week tied to the life of Claimant and his wife depending on which annuity is chosen. Claimant's family currently receives $406.00 per week in a guaranteed income stream in the form of workers' compensation benefits which will be paid while Claimant is alive. There is no conceivable scenario in which receiving less money per week for the rest of his life is in Claimant's or his dependents best interest.

Claimant did not present any evidence to the court related to life expectancy. Claimant took the position that life expectancy is to be based upon Claimant's condition before the accident. Defendants presented a questionnaire filled out by Claimant's authorized treating physician—Dr. Charmagne George. Dr. George indicated Claimant is likely 50% to live for 5 more years and less than 50% to live for 10 or more years due to Claimant's condition resulting from the accident. Dr. George also indicated her reasoning for these findings. She stated he has had three episodes requiring hospitalization. Claimant has been hospitalized two times in the prior six months for pneumonia, trachea-bronchitis, and sepsis. Claimant also is in renal failure

and has experience respiratory infections. She concluded his current state following the accident leaves him at a much greater risk that common ailments could result in his death.

Claimant finally requested an assessment of penalties and interest for the first lump sum payment. It is agreed that the lump sum was paid on June 2, 2014.

FINDINGS OF FACT

1. This matter came to a hearing on June 27, 2014. Order instructions were sent the parties on July 14, 2014[1].
2. The hearing before the undersigned covered both the Forms 50/51 and a Motion filed by Defendants. This Order covers only the Form 50/51.
3. Claimant's request for an additional lump sum is denied.
4. The denial of the lump sum is based on all testimony and the greater weight of the evidence presented. In particular, the testimony of Claimant's wife revealed the family has more money to spend now on a monthly basis than they did on the date of the accident. Claimant's wife also indicated the family has no debt with the exception of a car payment for their son and Antonio Jr's student loan of $10,337.91 (which the family would have incurred even absent the accident).
5. The testimony of Claimant's son Oliver also reflects this position. Claimant's son also testified that he is no longer dependent on the family for full financial support as he is working.
6. Dr. George indicated Claimant is likely 50% to live for 5 more years and less than 50% to live for 10 or more years in his current condition following the underlying accident.

[1] The delay in filing of this Order was due to attempts between the parties to reach an agreement on certain issues related to both the Motion and the Forms 50/51. As no agreement was reached, this Order is now being filed.

7. Dr. George stated Claimant has been hospitalized two times in the prior six months for pneumonia, trachea-bronchitis, and sepsis. Claimant also is in renal failure and has experience respiratory infections. She concluded his current state leaves him at a much greater risk that common ailments could result in his death.

8. Claimant's request for an increase in compensation rate is denied. This request is not supported by the evidence including the letter from the employer and the proposed compensation rates presented by Claimant. (*See* Def. APA 1, Cl. APA 1, 3).

9. The letter submitted by Defendants indicates that there was a wage and hiring freeze in 2007 and that Defendant Burriss had to lay off half of its employees. Further, the letter indicates that Claimant would have only been eligible for lockstep raises of .50 per hour and, at most, he would be making $2.00 per hour more today (or $15.50-16.50 per hour).

10. Representations made at the hearing reflected the position that Claimant, who is non-English speaking Hispanic, was ineligible to be promoted to management or supervisory positions because of his inability to speak fluent English. The Defendant took the position that, if any wage increase be considered, Claimant should be compared to other non-English speaking Hispanic employees.

11. Claimant presented no evidence of his ability to speak English to support that he would have been promoted to a supervisor or management level position.

12. The Court of Appeals issued a remittitur in this matter on the prior lump sum on May 23, 2014.

13. Payment of the Order and lump sum was made on June 2, 2014—ten days after the remittitur.

14. Claimant's request for fines and penalties related to the prior lump sum is denied.

15. Claimant is awarded $90.85—equivalent to three days' interest—for delay in payment of the prior award. No additional fines were considered or awarded.

CONCLUSIONS OF LAW

1. Pursuant to the Act, jurisdiction and venue are proper with the South Carolina Workers' Compensation Commission.
2. Pursuant to the Act, a claimant only has a vested interest in 500 weeks of workers' compensation benefits. See S.C. Code Ann. §§ 42-9-10, -290.
3. There is no mechanism under the Act that allows the Commission to increase the compensation rate based on cost of living increases, merit based increases, lock step wage increases, or W2 wages.
4. The Commission assigns a compensation rate based on the four quarters preceding the injury.
5. The mere fact that a claimant may be making more today than at the time of the injury does not constitute an extraordinary reason to increase the compensation rate.
6. Elliott v. S.C. Department of Transportation, 362 S.C. 234, 607 S.E.2d 90 (S.C. App. 2004), holds that "...a standard cost of living increase or step increase based on longevity of service..." does not constitute an exceptional reason under S.C. Code Ann. § 42-1-40.
7. Roberts v. McNair Law Firm, 366 S.C. 50, 619 S.E.2d 453 (Ct. App. 2005) holds that a post-injury merit increase does not constitute an extraordinary or exceptional reason to increase the compensation rate.
8. Ashley v. Ware Shoals, 210 S.C. 273, 42 S.E.2d 390 (S.C. 1947) is a Supreme Court case that states "...if the total disability is such that...a serious question is presented regarding the likelihood of the employee's living the length of time required to complete the

installment payments, the allowance of a lump sum settlement over the objection of the employer or carrier would constitute an abuse of discretion..."

9. In Hudson v. Lancaster Convalescent Center, Appellate Case No. 2011-194189, Filed January 8, 2014, the Court of Appeals clearly defines at what point an award becomes final. The Court stated "...the Guaranty will only be responsible for interest from the date that this lump-sum award became final, which under the statute is April 27, 2004, seven days from the date of the order of remittitur from the Court of Appeals.

10. I further find the Haselden, Silks and Booth cases cited by Claimant do not apply in this proceeding. I do find the Elliott and Ashley cases do apply and utilized them in forming my conclusions based on a greater weight of the evidence.

ORDER

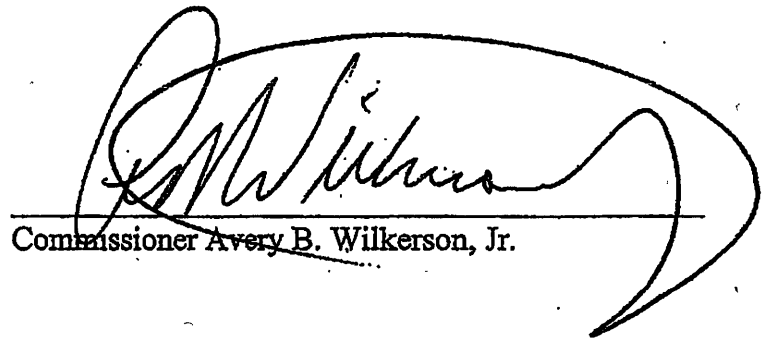
IT IS HEREBY ORDERED that Claimant's request for an additional lump sum is DENIED.

IT IS FURTHER ORDERED that Claimant's request for an increase in compensation rate is DENIED.

IT IS FURTHER ORDERED that Claimant's request for fines or penalties related to the prior lump sum is DENIED.

IT IS FURTHER ORDERED that Claimant is entitled to $90.85 in interest for the delay in payment of the prior lump sum.

AND IT IS SO ORDERED.



Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

This is to certify the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).
May 28, 2015

By: Elaine Boyd, Administrative Assistant to Commissioner Wilkerson

APPELLATE PANEL DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0710622

Antonio Lazaro — EMPLOYEE, CLAIMANT/RESPONDENT

VS.

Burriss Electrical — EMPLOYER,

AND

South Carolina Guaranty Association — CARRIER, DEFENDANTS/APPELLANTS,

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Appellate Panel Review held in Columbia, South Carolina, on September 21, 2015 per notices timely And properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

December 23rd, 2015

APPEARANCES: Claimant/Appellant represented by Preston F. McDaniel, Esquire

Defendants/Respondents represented by Brett H. Bayne

STATEMENT OF THE CASE

This matter came before the Single Commissioner for hearing on July 7, 2014 on Claimant's Request for Hearing seeking (1) a second lump sum, (2) an increase in the compensation rate, (3) fines, penalties, and/or interest related to the first lump sum, and

This claim arises out of an admitted injury sustained by Claimant on July 6, 2007. Claimant suffered severe injuries and is in a persistent vegetative state. Claimant requested that Defendants pay out a partial lump sum of his lifetime benefits award in order to pay off assorted debts and purchase a new car. On October 14, 2010, Commissioner Beck ordered that Claimant was entitled to a partial lump sum of his lifetime benefits award in the amount of $152,568.75. Commissioner Beck found that $122,568.75 was to be used to pay off assorted debts and up to an additional $30,000.00 was to be used for the purchase of an automobile. Commissioner Beck indicated that any balance remaining from these two payments would be refunded to Defendants. The Full Commission affirmed Commissioner Beck's Order on April 20, 2011. Thereafter, this claim was appealed to the Court of Appeals. The Court of Appeals affirmed the Full Commission's Decision and Order on February 6, 2014. A petition for rehearing was denied.

Claimant contends the compensation rate has never been addressed and Claimant has now asked this Commission to determine and increase his compensation rate by as much as 12.8% per year every year since the accident. Alternatively, he asked for lockstep raises of .50 per year or a recalculation based on a W2. Claimant bases this request on S.C. Code Ann. § 42-1-40(2), Supreme Court decisions, and Claimant's past wage and work experience. Claimant next asked for an additional lump sum in the amount of $325,000.00 or more to pay for colleges and provide a steady income stream of $369.00 per week for the first 10 years and then $334.14 or $393.55 per week after the first ten years. Claimant finally requested an assessment of penalties

and interest for the first lump sum payment. It is agreed that the lump sum was paid on June 2, 2014. It is agreed that S.C. Code Ann. 42-9-240 mandates interest to be assessed starting seven (7) days after the award becomes final and that 42-9-90 mandates a 10% penalty be assessed starting fourteen (14) days after the interest begins to accrue. The award in this case was paid ten (10) days after it became final.

First, Defendants contend there is no mechanism under the Act that allows the Commission to increase the compensation rate based on cost of living increases, merit based increases, lock step wage increases, or W2 wages. The Commission assigns a compensation rate based on the four quarters preceding the injury. The mere fact that a claimant may be making more today than at the time of the injury does not constitute an extraordinary reason to increase the compensation rate. Defendants pointed to two cases expressly prohibit a retroactive increase in the compensation rate based on annual, time based, and/or lock step raises. Elliott v. S.C. Department of Transportation, 362 S.C. 234, 607 S.E.2d 90 (S.C. App. 2004), holds that "...a standard cost of living increase or step increase based on longevity of service..." does not constitute an exceptional reason under S.C. Code Ann. § 42-1-40. Further, Roberts v. McNair Law Firm, 366 S.C. 50, 619 S.E.2d 453 (Ct. App. 2005) holds that a post-injury merit increase does not constitute an extraordinary or exceptional reason to increase the compensation rate.

Second, Defendants contended that no additional lump sums can be granted. Defendants presented two separate bases for this contention—one factual and one legal. The factual basis for denying an additional lump sum is grounded in the testimony of the witnesses. Defendants contended the testimony by Claimant's wife and son does not show that an additional lump sum is in the best interest of the Claimant or his dependents. Additionally, Claimant has asked for the lump sum to provide a steady income stream of $369.00 per week for the next 10 years. After

that, proposed annuities would pay either $334.00 or $393.00 per week depending on which annuity is chosen. Claimant's family currently receives $406.00 per week in a guaranteed income stream in the form of workers' compensation benefits. Defendants contend there is no scenario in which receiving less money per week for the rest of his life is in Claimant's or his dependents best interest. Defendants' second basis for denying a second lump sum is grounded in legal precedent. Defendants rely on Ashley v. Ware Shoals, 210 S.C. 273, 42 S.E.2d 390 (S.C. 1947) which is a Supreme Court case that states "...if the total disability is such that...a serious question is presented regarding the likelihood of the employee's living the length of time required to complete the installment payments, the allowance of a lump sum settlement over the objection of the employer or carrier would constitute an abuse of discretion..." In the present case, with the attorney's fee award, Defendants contend they have paid benefits through August 12, 2033. Claimant's maximum life expectancy based on the uncontroverted medical evidence is, at most, through June 2024. Defendants have paid over nine (9) years of benefits more than Claimant's life expectancy. Defendants contend the Ashley case clearly prohibits this Commission from awarding any additional lump sums.

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EVIDENCE OF THE CASE

This case has a long history related to the medical evidence and underlying hearings. The pertinent issues for the hearing on the 50/51 before the Full Commission related to a review of the Commission file, prior Orders, payments by Defendants, medical records, and other records, as well as testimony of Claimant's wife and son.

Claimant first asked for an increase in compensation rate. The only evidence presented at the hearing related to compensation rate was a wage sheet and letter from Burriss Electrical. The letter submitted by Defendants indicates that there was a wage and hiring freeze in 2007 and that Defendant Burriss had to lay off half of its employees. Further, the letter indicates that Claimant would have only been eligible for lockstep raises of .50 per hour and, at most, he would be making $2.00 per hour more today (or $15.50-16.50 per hour). Finally, the letter suggested and representations at the hearing through counsel reflected the opinion that Claimant would not have been eligible for a supervisor or management position because of his inability to speak fluent English. The letter indicated that none of Employer's Hispanic employees have mastered the English language well enough to serve as a project manager or superintendent. Employer reportedly required employees in supervisory positions to be fluent in English because of their interaction with architects and engineers. Claimant did not submit any evidence that he would have been a supervisor or manager and/or would have been making a supervisor or manager level salary. Defendants' position was that, if a compensation rate increase was granted, he should be compared to other similarly situated non-English speaking employees.

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Claimant finally requested an assessment of penalties and interest for the first lump sum payment. It is agreed that the lump sum was paid on June 2, 2014.

SINGLE COMMISSIONER FINDINGS OF FACT

1. This matter came to a hearing on June 27, 2014. Order instructions were sent the parties on July 14, 2014[1].
2. The hearing before the undersigned covered both the Forms 50/51 and a Motion filed by Defendants. This Order covers only the Form 50/51.
3. Claimant's request for an additional lump sum is denied.
4. The denial of the lump sum is based on all testimony and the greater weight of the evidence presented. In particular, the testimony of Claimant's wife revealed the family has more money to spend now on a monthly basis than they did on the date of the accident. Claimant's wife also indicated the family has no debt with the exception of a

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car payment for their son and Antonio Jr's student loan of $10,337.91 (which the family would have incurred even absent the accident).

5. The testimony of Claimant's son Oliver also reflects this position. Claimant's son also testified that he is no longer dependent on the family for full financial support as he is working.
6. Dr. George indicated Claimant is likely 50% to live for 5 more years and less than 50% to live for 10 or more years in his current condition following the underlying accident.
7. Dr. George stated Claimant has been hospitalized two times in the prior six months for pneumonia, trachea-bronchitis, and sepsis. Claimant also is in renal failure and has experience respiratory infections. She concluded his current state leaves him at a much greater risk that common ailments could result in his death.
8. Claimant's request for an increase in compensation rate is denied. This request is not supported by the evidence including the letter from the employer and the proposed compensation rates presented by Claimant. (*See* Def. APA 1, Cl. APA 1, 3).
9. The letter submitted by Defendants indicates that there was a wage and hiring freeze in 2007 and that Defendant Burriss had to lay off half of its employees. Further, the letter indicates that Claimant would have only been eligible for lockstep raises of .50 per hour and, at most, he would be making $2.00 per hour more today (or $15.50-16.50 per hour).
10. Representations made at the hearing reflected the position that Claimant, who is non-English speaking Hispanic, was ineligible to be promoted to management or supervisory positions because of his inability to speak fluent English. The Defendant took the position that, if any wage increase be considered, Claimant should be compared to other non-English speaking Hispanic employees.

11. Claimant presented no evidence of his ability to speak English to support that he would have been promoted to a supervisor or management level position.

12. The Court of Appeals issued a remittitur in this matter on the prior lump sum on May 23, 2014.

13. Payment of the Order and lump sum was made on June 2, 2014—ten days after the remittitur.

14. Claimant's request for fines and penalties related to the prior lump sum is denied.

15. Claimant is awarded $90.85—equivalent to three days' interest—for delay in payment of the prior award. No additional fines were considered or awarded.

SINGLE COMMISSIONER CONCLUSIONS OF LAW

1. Pursuant to the Act, jurisdiction and venue are proper with the South Carolina Workers' Compensation Commission.

2. Pursuant to the Act, a claimant only has a vested interest in 500 weeks of workers' compensation benefits. See S.C. Code Ann. §§ 42-9-10, -290.

3. There is no mechanism under the Act that allows the Commission to increase the compensation rate based on cost of living increases, merit based increases, lock step wage increases, or W2 wages.

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9. In Hudson v. Lancaster Convalescent Center, Appellate Case No. 2011-194189, Filed January 8, 2014, the Court of Appeals clearly defines at what point an award becomes final. The Court stated "...the Guaranty will only be responsible for interest from the date that this lump-sum award became final, which under the statute is April 27, 2004, seven days from the date of the order of remittitur from the Court of Appeals.

10. I further find the Haselden, Silks and Booth cases cited by Claimant do not apply in this proceeding. I do find the Elliott and Ashley cases do apply and utilized them in forming my conclusions based on a greater weight of the evidence.

FULL COMMISSION FINDINGS OF FACT

1. This matter came to a hearing on September 21, 2015. Order instructions were sent the parties on October 21, 2015.

2. The hearing before the Full Commission covered both the Forms 50/51 and a Motion filed by Defendants. This Order covers only the Form 50/51.
3. Claimant's request for an additional lump sum is denied.
4. The denial of the lump sum is based on all testimony and the greater weight of the evidence presented. In particular, the testimony of Claimant's wife revealed the family has more money to spend now on a monthly basis than they did on the date of the accident. Claimant's wife also indicated the family has no debt with the exception of a car payment for their son and Antonio Jr's student loan of $10,337.91 (which the family would have incurred even absent the accident).
5. The testimony of Claimant's son Oliver also reflects this position. Claimant's son also testified that he is no longer dependent on the family for full financial support as he is working.
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8. Claimant's request for an increase in compensation rate is denied. This request is not supported by the evidence including the letter from the employer and the proposed compensation rates presented by Claimant. (*See* Def. APA 1, Cl. APA 1, 3).
9. The letter submitted by Defendants indicates that there was a wage and hiring freeze in 2007 and that Defendant Burriss had to lay off half of its employees. Further, the letter

indicates that Claimant would have only been eligible for lockstep raises of .50 per hour and, at most, he would be making $2.00 per hour more today (or $15.50-16.50 per hour).

10. Representations made at the hearing reflected the position that Claimant, who is non-English speaking Hispanic, was ineligible to be promoted to management or supervisory positions because of his inability to speak fluent English. The Defendant took the position that, if any wage increase be considered, Claimant should be compared to other non-English speaking Hispanic employees.

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12. The Court of Appeals issued a remittitur in this matter on the prior lump sum on May 23, 2014.

13. Payment of the Order and lump sum was made on June 2, 2014—ten days after the remittitur.

14. Claimant's request for fines and penalties related to the prior lump sum is denied. Claimant also failed to raise this issue in his brief to the Full Commission.

15. Claimant is awarded $90.85—equivalent to three days' interest—for delay in payment of the prior award. No additional fines were considered or awarded.

FULL COMMISSION CONCLUSIONS OF LAW

1. Pursuant to the Act, jurisdiction and venue are proper with the South Carolina Workers' Compensation Commission.

2. Pursuant to the Act, a claimant only has a vested interest in 500 weeks of workers' compensation benefits. See S.C. Code Ann. §§ 42-9-10, -290.

3. There is no mechanism under the Act that allows the Commission to increase the compensation rate based on cost of living increases, merit based increases, lock step wage increases, or W2 wages.

4. The Commission assigns a compensation rate based on the four quarters preceding the injury.

5. The mere fact that a claimant may be making more today than at the time of the injury does not constitute an extraordinary reason to increase the compensation rate.

6. Elliott v. S.C. Department of Transportation, 362 S.C. 234, 607 S.E.2d 90 (S.C. App. 2004), holds that "...a standard cost of living increase or step increase based on longevity of service..." does not constitute an exceptional reason under S.C. Code Ann. § 42-1-40.

7. Roberts v. McNair Law Firm, 366 S.C. 50, 619 S.E.2d 453 (Ct. App. 2005) holds that a post-injury merit increase does not constitute an extraordinary or exceptional reason to increase the compensation rate.

8. Ashley v. Ware Shoals, 210 S.C. 273, 42 S.E.2d 390 (S.C. 1947) is a Supreme Court case that states "...if the total disability is such that...a serious question is presented regarding the likelihood of the employee's living the length of time required to complete the installment payments, the allowance of a lump sum settlement over the objection of the employer or carrier would constitute an abuse of discretion..."

9. In Hudson v. Lancaster Convalescent Center, Appellate Case No. 2011-194189, Filed January 8, 2014, the Court of Appeals clearly defines at what point an award becomes final. The Court stated "...the Guaranty will only be responsible for interest from the date that this lump-sum award became final, which under the statute is April 27, 2004, seven days from the date of the order of remittitur from the Court of Appeals.

10. We further find the Haselden, Silks and Booth cases cited by Claimant do not apply in this proceeding. I do find the Elliott and Ashley cases do apply and utilized them in forming my conclusions based on a greater weight of the evidence.

DECISION AND ORDER OF THE FULL COMMISSION

The Panel, after due and proper consideration of Claimant's Request for Hearing and the issues raised therein, FULLY AFFIRMS the Single Commissioner's Decision and Order.

IT IS HEREBY ORDERED that Claimant's request for an additional lump sum is DENIED.

IT IS FURTHER ORDERED that Claimant's request for an increase in compensation rate is DENIED.

IT IS FURTHER ORDERED that Claimant's request for fines or penalties related to the prior lump sum is DENIED.

IT IS FURTHER ORDERED that Claimant is entitled to $90.85 in interest for the delay in payment of the prior lump sum.

AND IT IS SO ORDERED.

Commissioner Aisha Taylor
For the Appellate Panel

WE CONCUR:

Commissioner Melody L. James

Commissioner T. Scott Beck

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Kim Falls on December 23, 2015

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Antonio Lazaro v Burriss Electrical
SCWCC: 0710622
Commissioners: Taylor, James, Beck

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conferer on a **Motion for Rehearing.** The Commissioners considered the matter and ordered the matter handled in t following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission hereby;

_____ Dismissed as Interlocutory. _____Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;

_____ Granted. ___✓___Denied. _____Dismissed _____Set for Hearing.

BEFORE THE;

_____ Hearing Comm. _____Jurisdictional Comm. _____Full Commission.

IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter Order consistent with the Court's directive.

_____ Remand to Panel as indicated below.
_____Barden _____James _____Taylor
_____Beck _____Campbell ____ __Wilkerson
_____McCaskill

_____ Remand for Order consistent with the Order of the Court.
_____ Remand to the Hearing Commissioner.
_____ Remand to the Jurisdictional Commissioner.

_____ Other:_____.

_____ Remand: _____Panel Oral Argument. _____En Banc Oral Argument.

AND IT IS SO ORDERED.

Susan S. Barden, Vice-Chair
For the Commission

Columbia, South Carolina
2/22 2016

CONCURRING:	NOT PARTICIPATING:	DISSENTING:
Commissioner Susan S. Barden	_____	_____
Commissioner Melody James	_____	_____
Commissioner Aisha Taylor	_____	_____
Commissioner Avery Wilkerson	_____	_____
Commissioner Michael Campbell	_____	_____
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 ELECTRONICALLY OR BY DEPOSITING A COPYHEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 22nd day of February, 2016.

By:_____
SCWCC Judicial Department

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
Matthew Robertson
OF COUNSEL:
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

February 19, 2014

Virginia L. Crocker, Judicial Director
SC WORKERS' COMPENSATION COMMISSION
Post Office Box 1715
Columbia, South Carolina 29202

RE: ANTONIO LAZARO v. BURRISS ELECTRICAL, INC.
WCC File No.: 0710622

Dear Ginger:

Please find enclosed a Form 50 in the above-referenced matter along with the required filing fee wherein we are requesting a partial lump sum be made in the above-referenced matter as well as an adjustment to the compensation rate. I know that there is a Stay on all proceedings before the Commission due to the liquidation of Comp Trust AGC of the Carolinas but I wanted to go ahead and get this in line and filed.

By copy of this letter, I am notifying and serving Landon L. Hughey, Counsel of Record for the Defendants, both Burriss Electrical, Inc. and CompTrust AGC of the Carolinas of this filing.

I hope this is sufficient for filing this with the Commission and as always I appreciate all the courtesies and kindnesses shown to me by the Commission.

Sincerely yours,

Preston F. McDaniel

PFM/kth
Enclosures

cc: Landon L. Hughey, Esquire
Jack E. Duncan, Esquire

South Carolina Workers' Compensation Commission
3333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov

WCC File #: 0710622
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Decidora Lazaro, Guardian ad Litem for Antonio Lazaro SSN: ___-___-____
Address:
City: Columbia State: SC Zip:
Home Phone: ( ) Work Phone: ( ) -

Employer's Name: Burriss Electrical, Inc.
Address: 1251 N. Lake Drive
City: Lexington State: SC Zip: 29072
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 ☐ Occupational Disease ☒ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to brain (Part(s) of Body Injured) on 7/6/2007 (Month/Day/Year) in Richland by consent county, state of SC.
2. Body part(s) affected are: brain
   Briefly describe how the accident occurred. SEE ATTACHMENT
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. 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. AWARDED CASE per Order of the Commission.

☐ 7. 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 Center. AWARDED CASE per Order of the Commission. Permanent total disability and lifetime medical care.
   ☐ (b) additional medical examination and treatment for: ____

☐ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
   AWARDED CASE per Order of the Commission – permanent total disability with lifetime medical care.

☐ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
   ☐ (1) General Disability: ☐ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss

9a. ☐ A determination of permanent disability is premature at this time.

☐ 10. 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

11. Further grounds or unusual aspects of claim: SEE ATTACHED.

11a. 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

11b. 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.**

14. Estimated time needed for hearing: 1.5 HOUR

☒ 13b. **I am requesting a hearing. A $25 fee is required.**

☐ **Mediation**
   ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 8.
   ☐ b. Mediation is required pursuant to Reg. 67-1802.
   ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
   ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.
   Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

SCWCC
FEB 20 2014
JUDICIAL

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to SEE ATTACHED CERTIFICATE OF SERVICE on the ___ day of ____ 20__ by ☒ first class postage ☐ certified mail ☐ personal service. I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature	Attorney for the Claimant Title	preston@pfmcdlaw.com Email	2/19/14 Date

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

ATTACHMENT TO FORM 50

Antonio Lazaro v. Burris Electric and c/o CompTrust AGC of the Carolinas
WCC File No.: 0710622

1b. **AWARDED CASE** - total and permanent disability awarded per Order of the Commission. 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.

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 generated 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 has been awarded permanent and total disability due to traumatic brain injury with lifetime medical care. Issues are entitlement to an additional 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 another son that was in college but had to leave college due to incurring substantial debt on behalf of he and his family (Mr. and Mrs. Lazaro) and is now in the military serving his country. The Claimant has been receiving temporary total disability benefits from the date

of the accident in 2007 and continuing until the initial partial lump sum 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 deducting 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 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).

SC Code §42-9-301 provides in pertinent part as to a request for a lump sum payment:

> ". . . when the employee so requests and the Commission deems it not to be contrary to the best interests of the employee or his dependents . . . by the payment by the employer of a lump sum which shall be fixed by the Commission. . ."

SC Code §42-9-330 allows for the Claimant's Guardian to receive and request benefits.

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 dependent, Mrs. Decidoro Lazaro would request that after a deduction of attorneys' fees and costs out of the partial lump sum is made 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 dependents and Personal Representative under S.C. Code §42-9-330 for the use of the Claimant and his dependents. Said annuity or financial vehicle to be placed by Forge

Consulting Group upon approval by separate Order of the Commission.

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.

Next, 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 affirmed more than 14 days prior to the date of the filing of this Form 50 and in fact was initially dismissed back in the fall of 2011 when the parties notified the Court the case had been resolved. 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, the appeal was reinstated due to the Defendants refusal to reissue a check payment pursuant to the Act. 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 refused and 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.

Respectfully submitted,

Preston F. McDaniel, Esquire
Attorney for Claimant

February 19, 2014

CERTIFICATE OF SERVICE BY MAIL

WCC File No. 0710622

I hereby certify that I have on this day served the following in the matter of Antonio Lazaro v. Burriss Electrical, Inc. and CompTrust AGC of the Carolinas with a copy of the FORM 50 REQUESTING A HEARING by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Virginia L. Crocker, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

Landon L. Hughey, Esquire
McAngus Goudelock & Courie, LLC
Post Office Box 12519
Columbia, SC 29211

I also hereby certify that a regular communication by mail exists.

Kimberley T. Hinkle

Kimberley T. Hinkle

SWORN TO BEFORE ME this
7th day of February, 2014.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 10/28/18

mgc | INSURANCE DEFENSE

Reply To
GEORGE D. GALLAGHER
Direct Dial: (803) 227-2227
ggallagher@mgclaw.com

March 21, 2014

VIA HAND DELIVERY
Virginia Crocker, Judicial Director
S. C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

RE: Antonio Lazaro v. Burris Electric and South Carolina Guaranty Association
Date of Accident: July 6, 2007
WCC File No.: 0710622
Our File No.: 20203.14015
Claim No.: S266-07-01390

Dear Ms. Crocker:

Please find enclosed the Form 51 on behalf of the employer and carrier in the above matter for filing in your office.

By copy of this letter, we are serving a copy of the Form 51 on the Claimant's attorney, Preston F. McDaniel, Esquire.

Very truly yours,

BB for
George D. Gallagher

GDG/smg
Enclosures
cc: Randy Mason, South Carolina Guaranty Association
Preston F. McDaniel, Esquire, The McDaniel Law Firm

McANGUS GOUDELOCK & COURIE LLC
1320 MAIN STREET, 10TH FLOOR
POST OFFICE BOX 12519
803.779.2300 PHONE
803.748.0526 FAX

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803)737-5723 www.wcc.sc.gov

WCC File #: 0710622
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Antonio Lazaro SSN ---
Address
Home Phone: Work Phone #
Date of Injury: July 6, 2007
Preparer's Name: George D. Gallagher Law Firm McAngus Goudelock & Courie

Employer's Name: Burriss Electrical, Inc.
Address: 1251 N. Lake Drive, Lexington, SC 29072
Insurance Carrier: South Carolina Guaranty Association
Preparer's Phone #: (803) 227-2227

Date of Injury or Illness: 7/6/2007 **Estimated time for hearing:** 1 hour

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer-Carrier in answer to the claim, respectfully shows:

1. It is ☒ **Admitted** ☐ **Denied** the employee sustained an injury or illness on or about the date set forth in the application. The reasons for denial are:

2. It is ☒ **Admitted** ☐ **Denied** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:

3. It is ☒ **Admitted** ☐ **Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are:

4. It is ☒ **Admitted** ☐ **Denied** at the time in question the employee was performing service arising out of and in the course of employment. The reasons for denial are:

5. It is ☒ **Admitted** ☐ **Denied** notice of injury was given the employer. The reasons for denial are:

6. It is ☐ **Admitted** ☒ **Denied** the employee ☐ **needs** ☐ **is entitled to additional** medical care as a result of injury or illness. The reasons for denial are:
Defendants do not deny that Claimant is in need of ongoing medical care. Defendants deny Claimant is entitled to a lump sum payment for ongoing medical care as it is being provided by Defendants.

7. It is ☐ **Admitted** ☒ **Denied** the employee is entitled to temporary total disability for the period(s) of:
Defendants do not deny that Claimant was entitled to TTD. Defendants deny Claimant is entitled to a lump sum payment for any ongoing TTD or PTD as it is being provided by Defendants on a regularly scheduled basis per statute.

8. It is ☐ **Admitted** ☒ **Denied** the employee is permanently disabled. The reasons for denial are:
Defendants do not deny that Claimant is permanently disabled. Defendants deny Claimant is entitled to a lump sum payment for any TTD or PTD as it is being provided by Defendants on a regularly scheduled basis per statute.

9. It is ☐ **Admitted** ☒ **Denied** the employee has serious disfigurement.

10. It is contended that an average weekly wage of $ 609.66 applies, according to attached Form 20 as provided by law.

11. Further contentions, grounds of defense, or unusual aspects are:
Defendants object to the filing of Claimant's Form 50 as there is presently a stay on all proceedings in place for this claim. That stay applies to ALL filings before the Workers' Compensation Commission including this Form 50. Therefore, the Commission should ignore and dismiss Claimant's Form 50 as it is an improper filing. As to the merits of Claimant's Form 50, Claimant is not entitled to a lump sum payment of the weekly benefits at this time. Further, Claimant is not entitled to an increase in the weekly compensation rate and average weekly wage. Finally, Claimant is not entitled to an award or penalty for "improper addressing" of payments to Claimant. The issue Claimant raises is that a check was issued to Claimant with the name of Claimant's prior attorney included on the check (as well as Claimant and Claimant's present attorney). The reason for this oddity is that Claimant's prior attorney asserted a lien to Defendants for this claim. For that reason, Defendants complied with the lien notice and included Defendant's prior attorney on compensation payments so that Defendants would not be subject to a lawsuit for failure to comply with notice of lien.

☐ **Mediation**.

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67.1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to **mediation@wcc.sc.gov.**

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

Preparer's Signature | Attorney for Employer/Carrier (Title) | ggallagher@mcclaw.com (Email) | March 21, 2014 (Date)

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. 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.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0710622

ANTONIO LAZARO, Employee, Claimant, vs. BURRISS ELECTRICAL, Employer, AND SOUTH CAROLINA GUARANTY ASSOCIATION, Carrier, Defendants.	}	**CERTIFICATE OF SERVICE**

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

VIA HAND DELIVERY
S. C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

DOCUMENT: Form 51

DATE OF MAILING: March 24, 2014

Susan Gosman
Legal Assistant to George D. Gallagher

South Carolina Workers' Compensation Commission

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

WCC File #: 0710622
Carrier File #: 0000
June 9, 2014

NOTICE OF HEARING

RESET

Antonio Lazaro v. BURRISS ELECTRICAL INC

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

Date: **June 27, 2014 at 09:30 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 Avery B. Wilkerson Jr.
803-737-5697, eboyd@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: Elaine Boyd, SC Workers' Compensation, June 9, 2014

Party	Attorney
Employee: Antonio Lazaro	Preston F. McDaniel preston@pfmcdlaw.com 803-771-7211
Employee: Antonio Lazaro	John E. Duncan johnduncanlaw@gmail.com 803-951-2388
Dependent: Decidora Lazaro, GAL	Preston F. McDaniel preston@pfmcdlaw.com 803-771-7211

Party	Attorney
Employer: BURRISS ELECTRICAL INC Carrier: CAGC Insurance Company	George D. Gallagher (5) ggallagher@mgclaw.com 803-227-2234
Employer: BURRISS ELECTRICAL INC Carrier: CAGC Insurance Company	Brett Harris Bayne (5) brett.bayne@mgclaw.com 803-227-2281

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

June 24, 2014

Commissioner Avery B. Wilkerson, Jr.
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

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

Dear Commissioner Wilkerson:

Please find enclosed a copy of the Claimant's Pre-Hearing Brief in the above referenced matter. By copy of this letter, with enclosures, we are forwarding a copy of our Pre-Hearing Brief and APA submissions to opposing counsel on this date.

I hope this is sufficient for filing this matter with the Commission. However, if additional information is needed, please feel free to contact me at your convenience.

I look forward to seeing you at the hearing and to a resolution in the best interest of all parties concerned.

Sincerely yours,

Preston F. McDaniel

PFM/kth
Enclosures

cc: Brett H. Bayne, Esquire

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739 www.wcc.sc.gov

PRE-HEARING BRIEF
WCC File No: 0710622

.nant's Name: Antonio Lazaro
Address:
City: Columbia State: SC Zip:
Home Phone: ( ) - Work Phone: ( ) -

Employer's Name: Burriss Electrical, Inc.
Address: 1251 N. Lake Drive
City: Lexington State: SC Zip: 29072
Carrier: CAGC Insurance Company c/o SC Insurance Guaranty Assn.

Preparer's Name: Preston F. McDaniel
Preparer's Phone #: (803) 771-7211

A claim for workers' compensation benefits is made based on the following grounds:
☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: See attached 2. AWW: $See attached **Date of Injury:** 7/6/2007
3. Type of injury and body part(s): Brain.
4. Facts in controversy: See attached.
5. Legal issues involved: See attached.
6. Unusual aspects:
7. Witnesses (designate if expert):* See Notice of Witnesses.
8. Exhibits: Claimant requests that WCC File No. 0710622 be made a part of the Record.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
   See Notice of Written Report(s)/Physican(s).
10. Name, address, and specialty, if any, of the treating physician: Dr. Charmaine George, The Brian Center Nursing Care, 3514 Sidney Road, Columbia, South Carolina 29210
11. Impairment rating(s); body part(s); physician and date of opinion: On 7/12/10 Dr. George states that the Claimant is permanently disabled.
12. I am amending my Form 50/51 in the following manner:

☐ **Mediation**

- ☐a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐b. Mediation is required pursuant to Reg. 67-1802.
- ☐c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to **mediation@wcc.sc.gov**.

I verify the contents of this form are accurate and true to the best of my knowledge.
I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to SEE ATTACHED CERTIFICATE OF SERVICE on the ____day of ___20___ by; ☒ first class postage ☐ certified mail ☐ personal service.

Signature:
Email: preston@pfmcdlaw.com
Date of hearing: 6-27-14 at 9:30 a.m.
Time needed for hearing: 1.5 hours

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67- 1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

ATACHMENT TO FORM 58

Antonio Lazaro v. Burris Electrical Inc
WCC FILE NO: 0710622

1 & 2. Compensation Rate and AWW:
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. As set out in the chart below and in the APAs, Mr. Lazaro received a raise every year that he was employed with the company and in addition within a year of the date of his accident, he had started a flea market booth, which continued to be operated by his wife after his injury, to generate additional income for the family. The booth was closed and Mrs. Lazaro works three (3) jobs to compensate for the loss of income. Based on his outstanding work career and the decisions of the Supreme Court concerning exceptional circumstances and the Claimant would submit that a much higher, up to and including the maximum compensation rate should apply.

Exceptional circumstances:
Under SC Code §42-1-40 under paragraph 2, in determining the average weekly wage when for exceptional reasons the usual method of calculating an average weekly wage will result in an average weekly wage which is unfair or does not properly represent the Claimant's future earning capacity, the Commission may resort to such method as will most nearly approximate the amount which the injured worker, "would be earning were it not for the injury".

Under that proviso, both our Supreme Court and Court of Appeals have increased the compensation rate as a matter of law. In the case of Booth v. Midland Trane Heating & Air Conditioning, 298 S.C. 251, 379 S.E.2d 730 (SC App. 1989), our Court of Appeals in a case almost identical as to the facts in that case as compared to the facts in this case determined that the compensation rate should be increased. In the Booth case, Mr. Booth was hired in 1983 at $3.50 per hour. By the time of his injury on December 4, 1985, his salary had increased to $7.00 per hour. Quoting from Bennett v. Gary Smith Builders, 271 S.C. 94, 245 S.E.2d 129 (1978), the Court of Appeals quoted that the,

> "objective of wage calculation is to arrive at a fair approximation of the Claimant's **probable future earning capacity**. His disability reaches into the future, not the past; his loss as a result of the

injury must be thought of in terms of its impact on probable future earnings."

Then in the case of Sellers v. Pinedale Residential Center, our Appellate Courts reiterated the application of this principle and in that case, a case wherein a young employee aged 16 became a paraplegic as a result of the injuries entitling him to lifetime compensation benefits. The Commission and our Appellate Courts applied the principles laid down in Bennett and Booth and held that the claimant was entitled to an escalating compensation rate wherein the compensation rate would increase from 1992, the date of the injury, until 2002 to the maximum compensation rate applicable in 1992. Our Appellate Courts also cited in support of that proposition a previous decision by the Supreme Court in the case of Stokes v. First National Bank, 306 S.C. 46, 410 S.E.2d 248 (1991) which upheld an award increasing the claimant's permanent partial loss of earning capacity to the maximum compensation rate which again was based on the Claimant's future loss of earning capacity. Again in the case of Elliotte v. SC Dept. of Transportation, 362 S.C. 234, 607 S.E.2d 90 (SC App. 2004) our Appellate Courts found that a merit based increase in the claimant's wages should be applied prospectively into the future to determine the average weekly wage that would apply in the case. In addition, in the case of Forrest v. A.S. Price Mechanical, 373 S.C. 303, 644 S.E.2d 784 (SC App. 2007) reh. den., cert. den., the Court of Appeals held that where a gentleman normally worked year round at two (2) jobs, both a full-time and part-time job, this income justified prospective increase in the average weekly wage and compensation rate going forward. Also, where a Claimant worked dual employment even just during the holiday season, exceptional reasons existed for increasing the Claimant's compensation rate prospectively. Brunson v. Wal-Mart Stores, Inc., 344 S.C. 107, 543 S.E.2d 732 (SC App. 2001). Similar reasons were found to exist in the case of Brown v. Peoplease, 402 S.C. 476, 741 S.E.2d 761 (SC App. 2013). For the reasons that are based on the facts of this case and in accordance with the law as established by our Supreme Court and the Court of Appeals, the Claimant would submit that his average weekly wage and compensation rate should be increased to adequately compensate him and his family for the loss of earning capacity of the Claimant. The Claimant asks nothing more and nothing less than for the Commission to apply a compensation rate based on what he would have been earning at this time for his family but for the injury.

FACTORS JUSTIFYING SC CODE §42-1-40 WAGE INCREASE

I. PAST WAGE INCREASES

1.	Hired: December 3, 2003	$ 10.00/hr.
2.	Accident: July 6, 2007	
	3 ½ Years Later:	$ 14.50/hr.
3.	Total Hourly Increase:	$ 4.50/hr.
4.	Percentage of Hourly Increase: Original/Last:	45%
	Per Year 45% ÷ 3.5 yrs. =	12.86%/yr.

II. AVERAGE WEEKLY WAGE/COMPENSATION RATES ESIMATES FOR 2014

1.	a. Claimant's AWW per Form 20:	$ 609.66
	b. Current C/R per Form 20 being paid:	$ 406.46
2.	AWW Based on 2006 W-2	
	W-2 Wages:	$33,601.02
	AWW Based on 52 Weeks =	$ 646.17
	C/R:	$ 430.80
3.	a. Maximum C/R for 2007:	$ 646.94
	b. Maximum C/R 2014	$ 752.16
	c. Percentage Increase: in Max. C/R '07-'14	16.44%
4.	Claimant's Current AWW/CR Based on Maximum C/R Increase (16.44%) Applied to Claimant's AWW of $609.66	
	AWW 2014:	$ 709.89
	C/R:	$ 473.28
5.	Claimant's AWW//CR for 2014 Based On Annual Salary Hourly Rate Increase of 12.86%/yr. AWW - $609.66	
	12/31/2013 - AWW =	$ 1,116.31
	C/R =	$ 744.24

6. AWW/CR Based on Annual Salary Increases of $.50/hr.

a. 2007 - $14.50/hr.

b. 2007 to 2014 = 7 yrs.

c. $.50/hr. x 7 yrs. = $3.50

d. $14.50 + $3.50 = $18.00/hr.

e. AWW - $18.00/hr. x 40 = $720.00
C/R = $480.02

4. Facts in Controversy:

a. Claimant has been awarded permanent and total disability due to traumatic brain injury with lifetime medical care.

Issues are entitlement to an additional 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 up to $152,568.75 and his attorneys have been awarded attorneys' fees and costs in the amount of $253,432.23.

The Claimant has one son that was a freshman in college (has had to leave to work due to finances) and another son that was in college but had to leave college due to incurring substantial debt on behalf of he and his family (Mr. and Mrs. Lazaro) and is now in the military serving his country. The Claimant has been receiving temporary total disability weekly benefits from the date of the accident in 2007 and continuing until the initial partial lump sum Award and then continuing under the Award for total and permanent disability since that time.

Pursuant to S.C. Code §42-9-10, the Claimant would request a partial lump sum of the majority 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 deducting the payment of the current existing lump sum payment as ordered by the Commission to pay off debt and to purchase an automobile and the partial lump sum awarded to his attorneys.

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 dependent, Mrs. Decidoro Lazaro would request that after a deduction of attorneys' fees and costs as awarded by the Commission and the partial lump sum awarded by the Commission in the amount of $152,568.75 that the balance of the weekly compensation checks due under a partial lump sum be placed into annuities to provide monthly benefits to the Claimant and his dependents under S.C. Code §42-9-330 with said annuities to be placed by Forge Consulting Group pursuant to the Order of the Commission.

The residual total remaining value of a partial lump sum possible at the current compensation rate alone is more than $350,000.00. After an additional lump sum of $10,447.57 to pay off Antonio Jr.'s student loan and $15,000.00 to pay for Oliver's completion of his degree at Midlands Technical College, the residual lump sum available, again at the current compensation rate, will exceed $325,000.00 Dollars. If only $300,000.00 is awarded as a partial lump sum, possible annuities will be presented that will guarantee:

1. Continuing payment of $1,600.00 per month (the approximate amount being paid now weekly) for a guaranteed 10 years.

2. A second deferred annuity (deferred for 10 years) will guarantee payment of basically that same amount for the remainder of Mr. Lazaro's life. As quoted, it has a provision that upon his death the balance of the principle would be paid to a beneficiary which we would ask be his wife and dependent, Mrs. Lazaro.

b. By previous Order of this Commission as affirmed on appeal, the injured worker was awarded a lump sum in the total amount of $152,568.75. The appeal of that amount was finally affirmed more than 14 days prior to the date of the filing of the Form 50 and was not paid until June 2, 2014. 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 14 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.

5. **Legal issues involved:**
IN CORRELATION WITH RESPONSES UNDER NUMBER 4:

a. 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 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).

SC Code §42-9-301 provides in pertinent part as to a request for a lump sum payment:

> ". . . when the employee so requests and the Commission deems it not to be contrary to the best interests of the employee or his dependents . . . by the payment by the employer of a lump sum which shall be fixed by the Commission. . ."

SC Code §42-9-330 allows for the Claimant's Guardian to receive and request benefits.

In the Court of Appeals decision on file with the Commission affirming the previous lump sum wherein pursuant to the Order of Commissioner Beck, the Claimant could request additional lump sums to pay for such things as college for the Claimant's children and to provide support and benefit for the Claimant's family, the Court of Appeals highlighted parts of SC Code §42-9-301 and specifically those parts that refer to that when the employee requests and the Commission deems it not to be contrary to the best interest of the employee or his dependents . . . the whole or any part shall be, "be redeemed, in whole or in part and then they also highlighted by the payment of the employer of a lump sum." In making that ruling in citing specifically the provision that the Commission when it is not at contrary to the best interest of the employee's dependents, he should be allowed to redeem the benefits awarded to him. In this case, Mr. Lazaro

has been awarded lifetime weekly compensation benefits subject to the payout as ordered by this Commission.

Further, in the affirming the previous Order of this Commission allowing for additional lump sums to be requested, the Court cited with approval the case of Thompson v. SC Steel Erectors, 369 S.C. 606, 632 S.E.2d 874 (SC App. 2006) and rebuked the Appellants and their argument that a partial lump sum violated the policies underlying the Workers' Compensation Act. The Court cited to the case of Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 and quoted this time honored quotation that exists from the very beginning of the Act in 2936:

> "The course of this country **without exception** viewed the workmen's compensation law as intended **primarily for the benefit of the injured employee** and **to be construed liberally for his protection.**"

They then cited to Booth cited previously and cited the other primary and fundamental principle of the Act which is:

> "The primary purpose of the Workman's Compensation Act is to protect the worker and any reasonable doubt as to its construction should be resolved in favor of its claimants."

Finally, the case of Thompson v. SC Steel Erectors, supra, holds that the award of a partial lump sum of lifetime benefits is appropriate.

b. SC Code §42-9-90 provides for a 10% penalty. SC Code §42-9-240 provides for interest on payments not timely made.

Respectfully Submitted,

Preston F. McDaniel
Attorney for Claimant

June 24, 2014

STATE OF SOUTH CAROLINA)) COUNTY OF LEXINGTON)	BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION WCC File No: 0710622
Antonio Lazaro, Employee-Claimant, v. Burriss Electrical, Inc., Employer, and CAGC Insurance Co. c/o SC Insurance Guaranty Assn. Carrier, Defendants.	**NOTICE OF WITNESSES AND WRITTEN REPORT(S)/PHYSICIAN OR OTHER EVIDENCE TO BE INTRODUCED ON BEHALF OF CLAIMANT, ANTONIO LAZARO**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND BRETT H. BAYNE, ESQUIRE ATTORNEY FOR THE EMPLOYER/CARRIER

YOU ARE HEREBY NOTIFIED THAT THE Claimant, Antonio Lazaro, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330 (1976, as amended), herewith submits the following reports/physician or other evidence on behalf of the Claimant, to wit:

Tab Nos.	NAME OF REPORT(S)/PHYSICIAN(S) OR OTHER EVIDENCE	DATE OF REPORT(S)	PAGE Nos.
1	Forge Consulting Group	06-13-14	1
2	Claimant's 2006 W-2	2006	2
3	College Tuition Costs	06-16-14	3-5
4	Transcript of Oliver Lazaro & Antonio Lazaro, Jr. Student Loan	05-19-11	6-8
5	First Report of Injury and Claimant's Wage Information	07-09-07	9-10

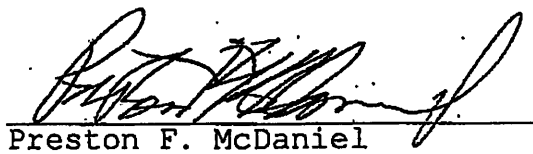
YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any

of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant: The Claimant; Claimant's Wife; Antonio Lazaro, Jr.; Oliver Lazaro; representative from Forge Consulting Co.; any witness listed, named or called by the Defendants; and other lay witnesses to be named.

Respectfully submitted,



Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201
803-771-7211

Attorney for the Claimant

June 24, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No: 0710622

Antonio Lazaro,

Employee-Claimant,

v.

Burriss Electrical, Inc.,

Employer, and

CAGC Insurance Co. c/o
SC Insurance Guaranty Assn.

Carrier,

Defendants.

DATE OF HEARING: 6-27-14
APA SUBMISSIONS

Pursuant to South Carolina Code §1-23-330 and Commission Rule 67-612 Preston F. McDaniel, the Attorney for the Claimant, submits the following report(s) in support of and on behalf of the Claimant in this matter:

Tab Nos.	NAME OF REPORT(S)/PHYSICIAN(S) OR OTHER EVIDENCE	DATE OF REPORT(S)	PAGE Nos.
1	Forge Consulting Group	06-13-14	1
2	Claimant's 2006 W-2	2006	2
3	College Tuition Costs	06-16-14	3-5
4	Transcript of Oliver Lazaro & Antonio Lazaro, Jr. Student Loan	05-19-11	6-8
5	First Report of Injury and Claimant's Wage Information	07-09-07	9-10

Kim Hinkle

rom:	Jake Duvall <jduvall@forgeconsulting.com>
Sent:	Friday, June 13, 2014 10:00 AM
To:	kim@pfmcdlaw.com
Cc:	mgunn@forgeconsulting.com
Subject:	Antonio Lazaro - Annuity Illustrations
Attachments:	Lazaro, Antonio - Options 1-3 @ 300K Blended 6-13-14.pdf

Kim,

Per Preston's letter, here are a few options for consideration for Mr. Lazaro, which are based around the parameters he wanted to see. I did it a few different ways:

Option 1 would provide the $1,600.00 per month for 10 years, and then immediately following that period, there would be 10 additional years of guaranteed income at $1,700 per month.

Option 2 would also provide the $1,600.00 per month for 10 years, and then begin a guaranteed income stream for life immediately following that. The monthly income would decrease to $1,448 per month, but it would have that lifetime rider attached that would contine to pay him for as long as he lives.

Option 3 is one that we would likely recommend to be the most suitable choice, however. It accomplishes the goal of the $1,600.00 per month, with the lifetime income portion to begin after that. The difference between this plan and the first two options, however, is that there is a little more flexibility in the annuities. Both offer what is called "living commutation," which means that a portion of cash value could be taken after three contract years if there were to ever be a financial emergency that arose. This, and the Fixed Index Annuity payment also offers a qualified care rider, which means that the monthly amount on the second portion of the quote would be doubled once the income is turned on if he still remains in a facility by then.

Please give me a call if you would like to discuss further! We appreciate the opportunity to work on this case.

Sincerely,

FORGE
CONSULTING LLC

Jake Duvall
Case Designer
Forge Consulting LLC
11 Depot Street
Hartwell, GA 30643
706-856-2535 - Phone
678-317-4281 - Direct
706-856-2537 - Fax
jduvall@forgeconsulting.com

Visit our website | Follow us on Twitter | Like us on Facebook | Connect with us on LinkedIn

(1)

a Control number

OMB No. 1545-0008

This Information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

b Employer identification number (EIN)
57-0969798

Employer's name, address, and ZIP code
BURRISS ELECTRICAL, INC.
1251 NORTH LAKE DRIVE
LEXINGTON, SC 29072

1 Wages, tips, other compensation	2 Federal income tax withheld
33601.02	2044.00
3 Social security wages	4 Social security tax withheld
33601.02	2083.26
5 Medicare wages and tips	6 Medicare tax withheld
33601.02	487.21
7 Social security tips	8 Allocated tips
9 Advance EIC payment	10 Dependent care benefits
11 Nonqualified plans	12a See instructions for box 12
	Code
13 Statutory employee ☐ Retirement plan ☐ Third-party sick pay ☐	12b Code
14 Other	12c Code
	12d Code

d Employee's social security number

e Employee's name, address, and ZIP code
ANTONIO LAZARO Suff.

15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name
SC		33601.02	1510.37			

Form **W-2** Wage and Tax Statement

2006

Department of the Treasury—Internal Revenue Service

Copy C For EMPLOYEE'S RECORDS. (See Notice to Employee on back of Copy B) or Copy 2 to be Filed With Employee's State, City or Local Income Tax Return

Safe, accurate, FAST! Use IRS e-file

Printed on Recycled Paper FORM 5203

---

a Control number
03-0004742

Copy C—For EMPLOYEE'S RECORDS (see Notice to Employee on back of Copy B.)
OMB No. 1545-0008

b Employer identification number (EIN)
57-0757502

c Employer's name, address, and ZIP code
AMERICAN SOLID WOVEN CORP
807 BLUFF ROAD
COLUMBIA, SC 29201

1 Wages, tips, other compensation	2 Federal income tax withheld
22814.02	766.00
3 Social security wages	4 Social security tax withheld
22922.30	1421.17
5 Medicare wages and tips	6 Medicare tax withheld
22922.30	332.35
7 Social security tips	8 Allocated tips
9 Advance EIC payment	10 Dependent care benefits
11 Nonqualified plans	12a See instructions for box 12
	Code
13 Statutory employee Retirement plan Third-party sick pay	12b Code
14 Other	12c Code
	12d Code

d Employee's social security number

e Employee's name, address, and ZIP code
DECIDORA LAZARO

101 ROLLING ROCK ROAD
COLUMBIA SC 29212

15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name
SC		22814.02	785.35			

Form **W-2** Wage and Tax Statement

2006

39-1908647 Department of the Treasury—Internal Revenue Service

This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

Midlands Technical College

June 16, 2014

To Whom It May Concern,

Re: Oliver Lazaro

Please see the tuition and fee costs for Midlands Technical College for the upcoming Fall semester:

Tuition per semester for full time students (12 credit hours)

(Tuition is based on the student's residency. The following estimate is based on in county residency status.)

Richland, Lexington and Fairfield counties per semester	$1836.00
Yearly	$3672.00

Tuition per semester for part time students (less than 12 credit hours)

Richland, Lexington and Fairfield counties *per credit hour*	$153.00

Fees

All students are assessed a **$108.00** non-refundable student fee

Students taking over 12 credit hours will be assessed a **$151.00** *per credit hour* fee for the additional hours based on residency.

Student enrolling in technical courses will be assessed a **$10.00** *per credit hour* course fee.

Student enrolling in general education courses will be assessed a **$23.00** *per credit hour* course fee.

If you have any questions please feel free to contact me at (803) 822-3262.

Thank you,

Halsey Hinson
Student Account Analyst
Airport Cashier's Office
Midlands Technical College

Per Year ESTIMATED College Costs

2013 – 2014	Community College	CSU	UC	Private/ Independent
Registration Fees and Tuition*	$1,114 - $1,448	$5,963 - $8,742	$13,398 - $15,666	$27,010 - $56,814
Books and Supplies	$1,788	$1,788	$1,788	$1,788
Room and Board	$4,400 - $11,268	$8,902 - $12,816 on campus housing	$11,978 - $14,718 on campus housing	$8,775 - $15,950 on campus housing
Transportation	$1,496	$1,496	$1,496	$1,496
Personal Expenses	$3,288	$3,288	$3,288	$3,288
Total Expenses	**$12,086 - $19,288**	**$21,437 - $28,130**	**$31,948 - $36,956**	**$42,357 - $79,336**

*Registration fees and tuition are based on full-time enrollment. Fees and tuition are subject to change without advance notice.
*Non-California Residents: Out-of-state and International students must pay additional out-of-state registration fees.

The costs of books and supplies, transportation and personal expenses are estimates and may vary campus to campus.
Total expenses may be less for students living at home. Financial aid is available to help students cover some of the college costs.

College Student Financial Aid Programs for Undergraduates

WORK STUDY: Financial assistance earned by a student through employment.		**GRANTS:** Financial aid that does not have to be repaid.		**LOANS:** Money loaned to students. Repayment begins after student has left college.	
Federal Work Study	$1,000 - $4,500	Pell	$650 - $5,645	Perkins	$3,000 per year maximum
		SEOG	$100 - $4,000	Stafford/Federal Direct Loan	$5,500 - $7,500 per year
		Cal Grant A	$5,472 - $12,192		
		Cal Grant B	$6,945 - $13,665		
		Cal Grant C	Vocational programs only		
		EOP Grant	$100 - $1,000		
		University Grant	Varies by school		

In order to be considered for all types of financial aid, students in California must file a Free Application for Federal Student Aid (FAFSA) **www.fafsa.ed.gov** or CA Dream Application **www.caldreamact.org** and the GPA verification form **www.csac.ca.gov** by March 2nd of the Spring prior to entering college. Dream students are only eligible for CA State Aid. To continue to receive student aid, students must re-apply every year, observe the March 2nd deadline and maintain satisfactory academic progress toward a degree. Contact the financial aid office at the college you want to attend to determine the specific Cost of Attendance and receive more information.

At San Francisco State University (SFSU), about half our students receive financial aid to help cover costs. There are many types of aid available, including private and institutional scholarships. Call the SFSU Office of Student Financial Aid at 415.338.7000 with questions or visit **www.sfsu.edu/~finaid**.

The figures listed above are provided by the SFSU Office of Student Financial Aid.

© Student Outreach Services (email: **outreach@sfsu.edu**), San Francisco State University 1994, Revised 09/2013

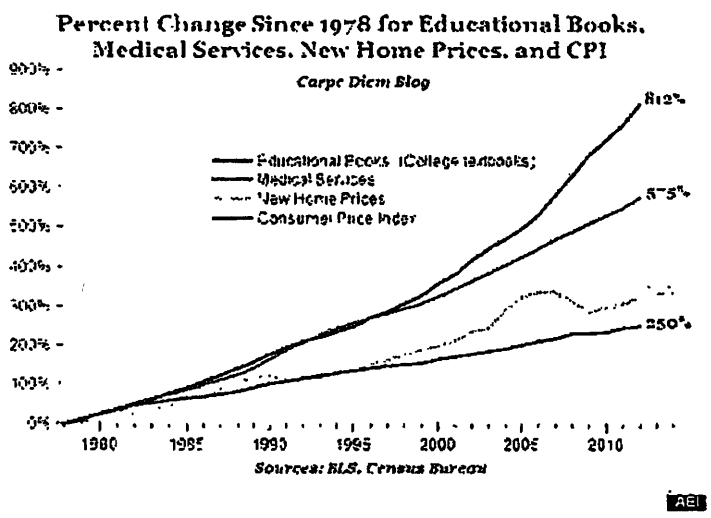
(4)

College Textbook Prices Increasing Faster Than Tuition And Inflation

The Huffington Post | By Tyler Kingkade Posted: 01/04/2013 11:11 am EST | Updated: 01/23/2014 6:58 pm EST

College textbook prices have increased faster than tuition, health care costs and housing prices, all of which have risen faster than inflation.

College textbook prices are 812 percent higher than they were a little more than three decades ago, the American Enterprise Institute, a think tank, reports. Textbook costs have well outpaced the 559 percent increase in tuition and fees over roughly the same period.



"The 812 percent increase in the price of college textbooks since 1978 makes the run-up in house prices and housing bubble (and subsequent crash) in the 2000s seem rather inconsequential," writes University of Michigan economics professor Mark J. Perry at the AEIdeas blog, "and the nine-fold increase in textbook prices also dwarfs the increase in the cost of medical services over the last three decades."

The National Association of College Stores (NACS) says the average college student will spend $655 on textbooks each year, but with a single textbook easily costing as much as $300, that total can easily be much higher. In fact, the College Board puts the annual cost of books and materials at $1,168. Students at for-profit colleges tend to spend even more.

Roughly one-fifth of a textbook's price goes to the store where it is sold to cover personnel and operating costs, while more than three-quarters goes straight to the publisher, according to a recent article from U.S. News & World Report. The magazine broke down textbok publishing costs:

NACS no longer receives information from publishers about where textbook money goes, but as recently as 2008, they provided that cost breakdown. At that time, around 15.4 cents of every dollar went toward marketing the textbooks, 11.7 cents went to the authors, and the largest chunk—32.2 cents—went to the basics: paper, printing, and paying publishers' employees.
According to the Government Accountability Office, publishers often include supplemental materials such as CD-ROMs and access to websites, which drive up the sticker price for textbooks.

Other moves by the textbook industry, such as issuing new editions, also drive up the cost according to a 2011 survey from the U.S. Public Interest Research Group. New editions are released on average every 3.9 years, but a 2008 report from the California state auditor found many college deans, department chairs and faculty members admitted revisions to textbooks are often minimal and not always warranted.

U.S. PIRG found a majority of students admit to not purchasing at least one textbook required for their classes because the price is too high.

All is not lost, though, AEI's Perry notes. New, cheaper ways to deliver materials may crush the textbook industry the same way Wikipedia killed the encyclopedia, he writes:

Just like the ongoing home price increases and housing bubble of the last decade were unsustainable, there is now growing evidence that rising college textbook prices and the "college textbook bubble" are also unsustainable, especially because of the growing number of low-priced and even free alternatives to over-priced $200-300 college textbooks. The textbook alternatives are part of the growing "open educational resources" movement, which is "terrifying" the college textbook cartel.

Student Name		
Lazaro , Oliver Alexis		
[illegible]	Grade 11	Gender M
State ID [illegible]		Ethnic Code H

Parent Guardian
Lazaro, Decidora & Lazaro, Antonio

State of South Carolina
Standard Transcript of Student Progress

Enter Date: 08/14/2003
Graduation Date:
Class Of: 2012
Diploma Type: State of SC Diploma

School Name/Address
Irmo High School
6571 St. Andrews Road
Columbia, SC 29212
Tel: (803) 476-3000 Fax: (803) 476-3022

School District 5 of Lexington/Richland Counties
1020 Dutch Fork Road
Irmo, SC 29063
Tel: (803) 476-8000 Fax: (803) 476-8017

Crs ID	Course Title	Term	Grd	Mark	Credit
06-07 Irmo Middle School					
4111HNHW	ALG 1 - H	YR	7	89	1.00
07-08 Irmo Middle School					
3621GLCW	GERMAN 1	YR	8	88	1.00
4121HNHW	GEOM - H	YR	8	87	1.00
08-09 Irmo High School					
3011ADCW	HUM 1 ENG ADV	YR	9	88	1.00
3211ADCW	PHY SCI ADV	YR	9	91	1.00
3310ADCW	GLOBAL 1 ADV	YR	9	93	1.00
33999SCH	FR SUCCESS-S	YR	9	95	0.50
344131CW	PE 1 F/SOCCER/IND	YR	9	100	1.00
3611GLCW	FREN I	YR	9	87	1.00
4112HNHW	ALG 2 HN	YR	9	89	1.00
5100GLCH	Keyboarding	YR	9	90	0.50
09-10 Irmo High School					
3012ADCW	HUM 2 ENG ADV	YR	10	82	1.00
3221ADCW	BIO 1 ADV	YR	10	83	1.00
3360ADCW	GLOBAL 2 ADV	YR	10	91	1.00
3501D1CH	DESIGN FOUND 1	S2	10	96	0.50
3612GLCW	FRENCH 2	YR	10	92	1.00
4113ADCW	ALG 3 ADV	YR	10	89	1.00
6020GLCD	AUTO COL REP/TEC 1	YR	10	96	2.00
10-11 Irmo High School					
3399S3CH	SRVC LEARN-F	S1	11	100	0.50
344315CH	PE 3 ADV S & C 1-F	S1	11	100	0.50

Crs ID	Course Title	Term	Grd	Mark	Credit
Work In Progress				Q1 Q2 Q3 Q4 S1 S2	
10-11 Irmo High School					
6021GLCD	AUTO COL REP/TEC 2	YR	11	95 97 97 99 95 98	
6021NC00	AUTO COL TECH 2 NC	YR	11	– – – – – –	
3231ADCW	CHEM CP	YR	11	78 86 82 48 83 65	
3502GDCH	CONT DESIGN 1	S2	11	. . 96 96 . 96	
3013ADCW	ENG 3 CP	YR	11	67 93 94 95 84 95	
08961100	HR 11	YR	11	. . . . .	
344315CH	PE 3 ADV S & C 1-F	YR	11	100 100. . 100.	
344319CH	PE 3 ADV S & C 1-S	S2	11	. . 100 100. 100	
4131ADCW	PRECALC CP	YR	11	89 87 82 69 87 77	
3399S3CH	SRVC LEARN-F	YR	11	100 100. . 100.	
3320ADCW	US HIST/CONS CP	YR	11	85 95 90 84 89 87	

	SC UGP GPA	4.0 GPA
GPA Summary	3.817	3.216
Class Rank	114 of 472	

Credit Summary
Total Credit Attempted: 18.50
Total Credits Earned: 18.50

UNOFFICIAL

To determine the course academic level refer to the seventh character in each course ID.

If graduation date is a future date, current year reflects Work in Progress.

Official Signature _____ Date: _____

An official signature and/or seal is required for manually created transcripts.

Information about the South Carolina Uniform Grading Policy can be found at:

http://ed.sc.gov/topics/curriculumstds/sc_ugp.html

(6)

08:21 a.m. 05-19-2011 3/8

Irmo High School

Presents this
Academic Excellence Award
to

Oliver Alexis Lazaro

In recognition of outstanding
academic achievement
during the 2010-2011 school year

Rob Weinkle , Principal

May 12, 2011

Duncan Law Firm
8039512389

Summary of Accounts Included in this Forbearance

Lender	Loan Type	Current Principal[1]	Current Accrued Interest	Total Balance	Estimated Interest Accruing Monthly
U.S. DEPARTMENT OF EDUCATION (798581)	Stafford	$10,337.91	$104.45	$10,477.57	$35.21
			Total Amount in Forbearance:	$10,477.57	$35.21 [2]

Estimated Accrued Interest When Your Forbearance Ends: $150.23 [3]

[1] You're responsible for the interest that accrues on this balance during forbearance.
[2] Paying this amount each month would help to limit the effect of capitalization.
[3] If you don't make interest payments during forbearance, this amount will be added to your principal balance on 3/2/2014.

Accruing Interest - Pay Now, or Pay Later?

Note the *Estimated Accrued Interest When Your Forbearance Ends* in the table above. If you don't make interest payments during forbearance, this estimated amount may be added to your principal balance when your forbearance ends. Your increased principal balance will then generate more interest, increasing the overall cost of your loan. This process is called capitalization.

You can limit capitalization by making interest payments during forbearance. See the "Ways to Pay" box on the front of this letter for payment options. Payments that exceed the accrued interest balance will be applied to your principal balance. In general, if you can afford these interest payments, it's a good idea to make them because it will save you money in the long run.

Interest Capitalization Example

This chart shows you the difference between paying interest during forbearance, or not paying it and allowing the interest to be capitalized.

In this example, both scenarios begin with a $15,000 principal balance with a 9% interest rate. Paying interest during forbearance lowers the monthly payment by about $17 and saves about $702 over the life of the loan.

	Principal Balance	Capitalized Interest for 12 Months	Principal to be Repaid	Monthly Payment After Forbearance	Number of Payments	Total Amount to be Repaid	Total Interest to be Paid
Interest is paid during forbearance	$15,000.00	$0.00	$15,000.00	$190.01	120	$24,151.64	$9,151.64
Interest is capitalized at the end of the forbearance	$15,000.00	$1,350.00	$16,350.00	$207.11	120	$24,853.79	$9,853.79

Jennifer Little
704-372-1450 X5276

9/9/07

WORKERS' COMPENSATION - FIRST REPORT OF INJURY OR ILLNESS

EMPLOYER NAME AND ADDRESS INCL ZIP
Burriss Electrical, Inc.
125 North Lake Drive
Lexington, SC 29072

CARRIER/ADMINISTRATOR CLAIM NUMBER

REPORT PURPOSE CODE

JURISDICTION

JURISDICTION CLAIM NUMBER

INSURED REPORT NUMBER

EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT)

LOCATION #

PHONE #

SIC CODE

EMPLOYER FEIN
57-0969798

CARRIER/CLAIM ADMINISTRATOR

CARRIER NAME, ADDRESS AND PHONE NO.
COMPTrust AGC
P. O. Box 30277,
Charlotte, NC 28230-0277

POLICY PERIOD
7/1/07 TO 7/1/08

EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT)

CHECK IF APPROPRIATE
SELF INSURANCE

CARRIER FEIN

POLICY/SELF-INSURED NUMBER
WC-200-0001731-2004A

ADMINISTRATOR FEIN

AGENT NAME & CODE NUMBER
Drew Evans - Willis of South Carolina

EMPLOYEE/CLAIMANT

NAME
Antonio Lazaro

DATE OF BIRTH

SOCIAL SECURITY NUMBER

DATE HIRED
12-03-03

STATE OF HIRE
S.C.

ADDRESS (INCL ZIP)

PHONE

SEX
X MALE
F FEMALE
U UNKNOWN

MARITAL STATUS
UNMARRIED
U SINGLE/DIVORCED
M MARRIED
S SEPARATED
K UNKNOWN

OF DEPENDENTS

OCCUPATION/JOB TITLE
Electrician

EMPLOYMENT STATUS
Full Time

NCCI CLASS CODE
5190

RATE
14.50
PER: DAY WEEK MONTH X OTHER per Hour

DAYS WORKED/WEEK
5 days

FULL PAY FOR DAY OF INJURY? X YES NO
DID SALARY CONTINUE? YES X NO

OCCURRENCE OF ACCIDENT/ILLNESS

TIME EMPLOYEE BEGAN WORK
7:00 AM PM

DATE OF INJURY/ILLNESS
7-6-07

TIME OF OCCURRENCE
AM PM

LAST WORK DATE
7-6-07

DATE EMPLOYER NOTIFIED
7-6-07

DATE DISABILITY BEGAN
7-6-07

CONTACT NAME/PHONE
Tommy Burriss 609-570

TYPE OF INJURY/ILLNESS
Employee was shocked when wiring fixture, fell from ladder

PART OF BODY AFFECTED
Head, other unknown

DID INJURY/ILLNESS EXPOSURE OCCUR ON EMPLOYER'S PREMISES?
YES X NO Job site

TYPE OF INJURY/ILLNESS CODE

PART OF BODY AFFECTED CODE

DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED
Lake City High School

ALL EQUIPMENT, MATERIALS OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED
Light fixture, ladder & meter

SPECIFIC ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN THE ACCIDENT OR ILLNESS EXPOSURE OCCURRED
Wiring light fixture

WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED
same

HOW INJURY OR ILLNESS/ABNORMAL HEALTH CONDITION OCCURRED. DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECTS OR SUBSTANCES THAT DIRECTLY INJURE THE EMPLOYEE OR MADE THE EMPLOYEE ILL
Electrical shock.

CAUSE OF INJURY CODE

DATE RETURNED TO WORK

IF FATAL GIVE DATE OF DEATH

WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED? X YES NO
WERE THEY USED? X YES NO

PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS)

HOSPITAL (NAME & ADDRESS) (803) 434-7000
Palmetto Health Richland
5 Richland Medical Park Dr -
Columbia, S.C. 29203

INITIAL TREATMENT
0 NO MEDICAL TREATMENT
1 MINOR: BY EMPLOYER
2 MINOR CLINIC/HOSP
X EMERGENCY CARE ER
X HOSPITALIZED > 24 HRS.
X FUTURE MAJOR MEDICAL/ LOST TIME ANTICIPATED

WITNESSES (NAME & PHONE #)
Mike Glover 609-5974

DATE ADMINISTRATOR NOTIFIED
7-9-07

DATE PREPARED
7-9-07

PREPARER'S NAME & TITLE
Andrea Cook - Admin. Asst.

PHONE NUMBER
(803) 957-3350

SEE BACK FOR IMPORTANT INFORMATION/SIGNATURE

SCA - 85 - 07

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9

BURRISS ELECTRICAL, INC.

42078

Employee	SSN	Status (Fed/State)	Allowances/Extra
LAZARO, ANTONIO,		Married/Withhold	Fed-2/0/SC-2/0
		Pay Period: 07/15/2005 - 07/21/2005	Pay Date: 07/28/2005

Earnings and Hours	Qty	Rate	Current	YTD Amounts
Hourly Regular Rate	31.00	12.00	372.00	13,221.00
Overtime Hourly Rate 1				648.25
Vacation Hourly Rate				672.00
			372.00	14,541.25

BURRISS ELECTRICAL, INC.

43929

Employee	SSN	Status (Fed/State)	Allowances/Extra
LAZARO, ANTONIO,		Married/Withhold	Fed-2/0/SC-2/0
		Pay Period: 12/30/2005 - 01/05/2006	Pay Date: 01/12/2006

Earnings and Hours	Qty	Rate	Current	YTD Amounts
Hourly Regular Rate	30.00	13.00	390.00	767.00
Holiday	8.00	13.00	104.00	208.00

BURRISS ELECTRICAL, INC.

43879

Employee	SSN	Status (Fed/State)	Allowances/Extra
LAZARO, ANTONIO,	9212	Married/Withhold	Fed-2/0/SC-2/0
		Pay Period: 12/24/2005 - 12/30/2005	Pay Date: 01/05/2006

Earnings and Hours	Qty	Rate	Current	YTD Amounts
Hourly Regular Rate	29.00	13.00	377.00	377.00
Holiday	8.00	13.00	104.00	104.00
			481.00	481.00

BURRISS ELECTRICAL, INC.

44936

Employee	SSN	Status (Fed/State)	Allowances/Extra
LAZARO, ANTONIO,	29212	Married/Withhold	Fed-2/0/SC-2/0
		Pay Period: 04/07/2006 - 04/13/2006	Pay Date: 04/20/2006

Earnings and Hours	Qty	Rate	Current	YTD Amounts
Hourly Regular Rate	40.00	13.50	540.00	8,035.00
Overtime Hourly Rate 1	11.00	20.25	222.75	690.75
Holiday				208.00
			762.75	8,933.75

BURRISS ELECTRICAL, INC.

48050

Employee	SSN	Status (Fed/State)	Allowances/Extra
LAZARO, ANTONIO,		Married/Withhold	Fed-2/0/SC-2/0
		Pay Period: 12/22/2006 - 12/28/2006	Pay Date: 01/04/2007

Earnings and Hours	Qty	Rate	Current	YTD Amounts
Hourly Regular Rate	30.00	13.50	405.00	405.00
Holiday	8.00	13.50	108.00	108.00
			513.00	513.00

BURRISS ELECTRICAL, INC.

50054

Employee	SSN	Status (Fed/State)	Allowances/Extra
ANTONIO LAZARO,		Married/Withhold	Fed-2/0/SC-2/0
		Pay Period: 06/01/2007 - 06/07/2007	Pay Date: 06/14/2007

Earnings and Hours	Qty	Rate	Current	YTD Amount
Hourly Regular Rate	40.00	14.50	580.00	10,630.75
Overtime Hourly Rate 1				496.13
Vacation Hourly Rate				310.50
Holiday				324.00
Sick Hourly Rate				636.50
			580.00	12,395.88

Taxes	Current	YTD Amount
Federal Withholding	-30.00	-607.00
Social Security Employee	-35.96	-768.54
Medicare Employee	-8.41	-179.72
SC - Withholding	-25.14	-516.69
	-99.51	-2,068.95

Adjustments to Net Pay	Current	YTD Amount
Medical Insurance (Emp)	-73.31	-1,686.15

Net Pay	407.18	8,640.78

JRRISS ELECTRICAL, INC., 1251 NORTH LAKE DRIVE, LEXINGTON, 29072 803-957-3350

CERTIFICATE OF SERVICE BY MAIL

WCC File No. 0710622

I hereby certify that I have on this day served the following in the matter of Antonio Lazaro v. Burriss Electrical Inc. with a copy of the **CLAIMANT'S PRE-HEARING BRIEF, NOTICE OF WITNESSES AND WRITTEN REPORT(S)/PHYSICIAN OR OTHER EVIDENCE AND APA SUBMISSIONS** by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Commissioner Avery B. Wilkerson, Jr.
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29201-1715

Brett H. Bayne, Esquire
McAngus Goudelock & Courie, LLC
Post Office Box 12519
Columbia, SC 29211

Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this
27th day of June, 2014.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 12/28/18

mgc | INSURANCE DEFENSE

Reply To
GEORGE D. GALLAGHER
Direct Dial: (803) 227-2234
ggallagher@mgclaw.com

June 23, 2014

VIA HAND DELIVERY
Commissioner Avery B. Wilkerson, Jr.
S. C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

RE: Antonio Lazaro v. Burris Electric and South Carolina Guaranty Association
Date of Accident: July 6, 2007
WCC File No.: 0710622
Our File No.: 20203.14015
Claim No.: S266-07-01390

Dear Commissioner Wilkerson:

Please find enclosed our Pre-Hearing Brief and Notice of Witnesses and Written Medical Reports for filing in the above captioned matter.

By copy of this letter to Preston F. McDaniel, Esquire, the claimant's attorney, we are notifying him of these submissions and serving copies of the same upon him by mail.

Very truly yours,

BMA B for
George D. Gallagher

GDG/smg
Enclosures
cc: Randy Mason, South Carolina Guaranty Association
John Earl Duncan, Esquire
Preston F. McDaniel, Esquire, The McDaniel Law Firm

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739 www.wcc.sc.gov

PRE-HEARING BRIEF
WCC File No: 0710622

Claimant's Name: Antonio Lazaro SSN:

Address:

Home Phone: (803) 798-8731 Work Phone:

Preparer's Name: George D. Gallagher

Employer's Name: Burriss Electrical

Address: 1251 N. Lake Drive
Lexington, South Carolina 29072

Carrier: South Carolina Guaranty Association

Preparer's Phone #: (803) 227-2322

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Comp. Rate: $406.46 2. AWW: $ 609.66 **Date of Injury:** 07/06/07

3. Type of injury and body part(s): Claimant suffered an anoxic brain injury and is in a persistent vegetative state.

4. Facts in controversy: (1) Whether Defendants may suspend weekly benefits until August 29, 2021. (2) Whether Claimant is entitled to a total lump sum award in a lifetime benefits case. (3) Whether Claimant is entitled to an award of penalties and/or interest related to the $152,568.75 advance of benefits requested by Claimant. (4) Whether Claimant is entitled to penalties related to Defendants compliance with a lien notice issued by Claimant's prior attorney. (5) Whether Claimant is entitled to an increase in compensation rate from $406.46 to the statutory maximum compensation rate.

5. Legal issues involved: 19-1-150, 42-1-40, 42-1-640, 42-9-10, 42-9-90, 42-9-220, 42-9-240, 42-9-301, 42-9-330.

6. Unusual aspects: There are two elements to this hearing before the Commission:

First, Defendants have filed a motion asking the Commission to permit the suspension of weekly disability benefits. The basis for this motion is grounded in well-established law that every claimant, regardless of injury, receives a vested entitlement to only 500 weeks of compensation. In lifetime benefit cases, such as this one, any weeks of benefits owed after 500 weeks do not vest, and a claimant is not entitled to receive them, until they have been earned through survival to that point. In other words, the 501st week of benefits is not owed until the 501st week after the accident. As of the date of this brief, we are 363 weeks from the date of accident. As of today, Defendants have paid 738.40 weeks of benefits (363 weeks of weekly benefits and 375.40 weeks in a lump sum advancement of benefits requested by Claimant). In addition, a request has been made for a lump sum attorneys' fee equivalent to 623 weeks of benefits. The current 738.40 weeks paid is equal to 375.40 weeks of advancement of benefits and 238.40 weeks of overpayment beyond 500 weeks that Claimant has no vested entitlement to at this time. Claimant's rights to the entire amount of funds already paid will not vest until August 29, 2021 (as of 6/19/14, each day that passes extends that date by one day). In addition, when the attorneys' fee award is factored in, the total number of weeks that would be paid to date is 1,361.40. This is equivalent to a total advance overpayment of 998.40 weeks to date and 861.40 weeks paid past the 500 week entitlement. Claimant's rights to the entire amount of the funds paid and requested as attorneys' fees will not vest until August 4, 2033 (as of 6/19/14, each that day that passes extends that date by one day). Claimant's present rated age is 68.6 years of age with a life expectancy pursuant to the mortality tables of 78.61. The result being that Claimant has a remaining life expectancy of approximately 10.01 years or 521 weeks. When you compare the 521 week life expectancy with the 998.40 week advance overpayment, it is clear that Claimant is not expected to ever become vested in any additional weekly benefits beyond what has already been paid. In fact, Claimant would have to live almost twice as long as his remaining life expectancy to be owed additional benefits. Accordingly, Defendants have asked to suspend weekly benefits until August 29, 2021 (or the adjusted date post-hearing based on days elapsed) as Claimant has no legal vested right to the funds previously advanced until that date (the attorneys' fees are deducted from the back end of the award and do not factor into this date). On that date, weekly benefits would resume as Claimant would enter the weekly vesting cycle of benefits for the remainder of his life.

The second element to this hearing is the Form 50 filed by Claimant. Claimant has asked the Commission for another lump sum payment which would be equivalent to all remaining lifetime benefits. The law is clear that lifetime benefits cannot be paid in lump sum amounts. Claimant is attempting to piecemeal a lifetime lump sum payment out of multiple partial lump sums under the argument that no one lump sum is a total lump sum. The law related to the prohibition on payment of lifetime lump sum benefits cannot be subverted by simply breaking the lifetime lump sum payment into two payments and calling it two partial lump sums.

Next, Claimant has asked for an increase in his compensation rate from $406.46 to the statutory maximum due to "exceptional circumstances." The basis for this request is twofold: (1) Claimant had started a flea market booth before his accident and (2) Claimant would have received raised in the years since his injury. These reasons do not constitute an "exceptional circumstance" under established South Carolina case law and South Carolina law is clear that subsequent salary increases, raises, or additional income are not grounds for an increase in a claimant's compensation rate.

Next, Claimant has asked for interest and penalties related to the Order and payment of the first partial lump sum of $152,568.75 based on timeliness of payment. Defendants object to this request and will show that no fine or penalty can or should be issued.

Finally, Claimant requests a fine/penalty of at least $10,000 because Defendants' complied with a third party lien notice of Claimant's prior counsel in the issuance of a prior check in 2012. Defendants object to this request and will show that no fine or penalty can or should be issued.

7. Witnesses (designate if expert):* Ringler Associates (expert witness); representatives of Employer.

8. Exhibits: Rated Age Survey; List of Burris Electrical employees; email from Preston McDaniel; Letter from Preston McDaniel; letter from John E. Duncan, Esquire to Burris Electrical, Inc.

9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): Questionnaire from Dr. George dated 6/23/14, consisting of 4 pages; Lazaro Progress Report dated 6/10/14, consisting of 5 pages.

10. Name, address, and specialty, if any, of the treating physician: Charmaine M. George, M. D., Carolina Medical Group, 3010 Farrow Road, Suite 230, Columbia, South Carolina 29203.

11. Impairment rating(s); body part(s); physician and date of opinion: Claimant is permanently and totally disabled.

12. I am amending my Form 50/51 in the following manner: Not applicable.

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☒ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-4803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to **mediation@wcc.sc.gov**.

I verify the contents of this form are accurate and true to the best of my knowledge.
I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Preston F. McDaniel, Esquire, The McDaniel Law Firm
address 1315 Elmwood Avenue Columbia, South Carolina 29201 **on the** 23th **day of** June **20** 14.
by ☒ **first class postage** ☐ **certified mail** ☐ **personal service.**

Signature: _____ Email: ggallagher@mgclaw.com
Date of Hearing: June 27, 2014 Time needed for hearing: 1-2 hours

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211, 67-211, and Regulations 67-601 through 67-615; as well as Reg. 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. *Commissioners reserve the right to admit expert witnesses at hearings.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0710622

ANTONIO LAZARO,

Employee,

Claimant,

vs.

BURRISS ELECTRICAL,

Employer,

AND

SOUTH CAROLINA GUARANTY ASSOCIATION,

Carrier,

Defendants.

NOTICE OF WITNESSES AND WRITTEN MEDICAL REPORTS TO BE INTRODUCED AS DIRECT EVIDENCE ON BEHALF OF DEFENDANT

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND PRESTON F. MCDANIEL, ESQUIRE:

YOU ARE NOTIFIED that the Defendants, pursuant to the provisions of the South Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws (Cum. Supp. 1988) submit the following medical records and other documents as evidence:

APA#	DOCTOR	PRACTICE	DATES	PAGES
1.		Southern Rehabilitation Network	6/10/14	1-5
2.	Dr. Charmaine M. George		6/23/14	6-9
	EXHIBITS			
Ex. 1.	Ringler Associates (Rated Age Report)		6/18/14	10-16
Ex. 2	Burriss Electrical, Inc. (current employees list)		6/19/14	17
Ex. 3	Letter from Mr. McDaniel to Dr. George		6/17/14	18-19
Ex. 4	Email note from Mr. McDaniel		6/18/14	20
Ex. 5	Letter from John E. Duncan, Esquire to Burriss Electrical		4/15/14	21

YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise oppose this evidence and, should you desire to exercise this right, you are to promptly schedule the deposition of any provider whose records are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, will be provided to the South Carolina Workers' Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: Ringler Associates (expert witness); representative of Employer.

GEORGE D. GALLAGHER
BRETT H. BAYNE
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
June 23, 2014

SOUTHERN REHABILITATION NETWORK, INC.

9370 Falls of Neuse
Suite 101
Raleigh, NC 27615

Phone No.: 919/781-3149 or 1-800-772-8514
Fax No.: 919/781-8593 or 1-800-782-8593
E-mail: main.office@southernrehab.net

CLOSURE REPORT

DATE:	February 06, 2014.
CARRIER:	SC Property & Casualty Insurance Guaranty Assoc.
ADJUSTER:	Randy Mason
CARRIER CLAIM #:	S266-07-01390
CASE MANAGER:	Denise Salyer, RN, CCM
SUPERVISOR:	Donna Irby RN, CCM
INSURED:	Burriss Electrical, Inc.
SRN NUMBER:	SR15493C
DATE OF INJURY:	7/06/2007
INJURED WORKER:	Antonio Lazaro

INJURY DESCRIPTION

Electrocution at 227 volts; resuscitated at scene
Anoxic brain injury resulting from electrocution-supportive care
Respiratory failure-ventilator management
Burn wounds to both hands

OVERVIEW/EDUCATION

Injured Worker Current Status:
Mr. Lazaro remains in a persistive vegetative state. He was hospitalized twice due to respiratory infection and renal failure. Mr. Lazaro is currently resides at The Brian Center.

Medical Appointment Activity this Report Period:
Mr. Lazaro was hospitalized in Lexington Medical Center from December 4, 2013 through December 18, 2014. He returned to The Brian Center and was hospitalized again from December 30, 2013 through January 20, 2014 due to respiratory infection and renal failure.

Scheduled/Pending Appointments:
None

Current Medications:

Name of Medication\Indication	Dosage	Frequency	Work Comp Med
Duragesic patch/pain	25 MCG	one every 3 days	Yes
Miralax Powder/fiber	17 GM/8 oz	water daily	Yes
Ferrous Sulfate/Iron	30 mg	daily	Yes
Prevacid Solutab/acid	30 mg	daily	Yes
Theragan Liquid/vitamin	10 mg	daily	Yes
Transderm-Scop/nausea	1.5 MG/7	every 72 hours,	Yes
Baclofen/spasms	10 mg	three time day	Yes
Cardizem/blood pressure	60 mg	every 8 hours	Yes
Valium/anti-anxiety	5 mg	every 8 hours	Yes
Albuterol/bronchodilator	.083 mg	one vial every 6 hours.	Yes
Humidified room air per compressor		continuous	Yes
K-dur/potassium	20 meq	for 5 days	Yes
Vicodin/pain	5/500 mg	every 6 hours prn	Yes
Lantus/insulin	12 units	every night	Yes

EDUCATION IDENTIFIED/PROVIDED: Mr. Lazaro is unable to communicate

Medication Use:No

Durable Medical Equipment:No

Safety:
Home Environment: No
Work Environment:No
Medications: No
Driving: No
Procedures:No
Modalities:No
Work Restrictions:No
Physical Restrictions/Limitations:No

DATE OF SERVICE

12/04/2013 The Brian Center called and reported that Mr. Lazaro had bleeding from the trach site and was sent to Lexington Medical Center for evaluation. They will call me when they receive a report on his condition.

- Email to the adjuster reporting the updated condition.

12/05/2013 The case manager contacted Lexington Medical Center Utilization Review Department. I spoke with Toni and we discussed Mr. Lazaro's previous medical history. Toni stated that she will need a written medical records request from Mr. Lazaro before she can relay any information about his condition.

- Authorization for services letter
- Written request for medical records
- Faxed letters to hospital and adjuster for records.

12/06/2013 Records reviewed 20 pages from Lexington Medical Center.

- Emailed records to attorney and adjuster

12/10/2013 The case manager contacted the Utilization Review department and left a message for an update.

12/11/2013 The case manager contacted The Brian Center and spoke with the Director of Nursing. I informed her that I saw in the hospital notes that Mr. Lazaro had fallen and needed to know the mechanism of the fall and subsequent treatment, if any. She stated that the Injured Worker rolled out off bed and fell on the floor. She sated that he was taken to Lexington Medical Center and had a CT scan of his head that was reported as normal and he was returned back to the Brain Center.

- Records reviewed from hospital
- The case manager contacted the Director of Nursing at The Brian Center and left a message requesting written documentation of events surrounding Mr. Lazaro's fall and treatment.
- Emailed records to attorney and adjuster

12/12/2013 Call from Leah in Utilization Review at Lexington Medical Center. Leah stated that Mr. Lazaro had done well but needed to complete 7 days of IV antibiotics and will need to go to Intermedical Hospital. She stated that the facility will call me to get authorization.

- The case manager contacted the adjuster and she was out of the office. I left a message for Bill Bevins reporting that I needed authorization for transfer to Intermedical hospital.

12/13/2013 Records reviewed from hospital

- Emailed records to attorney and adjuster
- The case manager contacted the adjuster and spoke with Bill Bevins as Ms. Stephens was out of the office. I updated him on Mr. Lazaro's status and the need to move him to Intermedical Hospital. Mr. Bevins agreed.

12/16/2013 Leah from Utilization Review at Lexington Medical Center called and stated that Mr. Lazaro was not accepted as a candidate for Intermedical Hospital and will stay at Lexington Medical Center until 12/18/13 to complete a full course of IV antibiotics.

- Records reviewed from Utilization Review

12/18/2013 Records reviewed from Utilization Review.

- Call from the Brain Center and Ms. Hartwell, Director of Nursing, reported that Mr. Lazaro was back from the hospital. I requested that she send the adjuster the incident report from the recent fall Mr. Lazaro had.

12/19/2013 Emailed records to the attorney and adjuster

12/30/2013 Nurse Smith called and stated that Mr. Lazaro developed respiratory distress and had to be taken to Lexington Medical Center on 12/29/13 and is still in the hospital. She stated that he had labored breathing with oxygen saturations at 88-91%, temperature of 103.1 and heart rate of 140-150 bmp.

12/31/2013 The case manager contacted the hospital utilization review department and left a message to call or fax me an update on Mr. Lazaro's status.

- Call from the Brian Center and Beth reported that they need to know whether to hold the bed for Mr. Lazaro. I stated that they should hold the bed.
- Emailed updated to the attorney and adjuster

01/02/2014 The case manager contacted Lexington Medical Center and left a message for the utilization review department to send me updates.

01/08/2014 Written request for medical records completed

- Records reviewed form Lexington Medical Center.
- Emailed records to the attorney and adjuster

01/10/2014 Records reviewed form hospital

- Emailed records to the attorney and adjuster

01/14/2014 Records reviewed from the hospital

- Emailed records to the attorney and adjuster

01/20/2014 Records reviewed from hospital

- The case manager contacted The Brian Center and was informed that Mr. Lazaro was to be discharged today from the hospital.

01/20/2014	Emailed records to the attorney and adjuster
01/31/2014	The Brian Center called and left a message reporting that they need to re-negotiate Mr. Lazaro's daily rate due to increase medical needs. I returned the call and left a message with Randy Mason's information.
02/06/2014	Closure report completed.

VOCATIONAL STATUS

Job at Time of Injury:
Electrician

Work Restrictions:
N/A

Current Work Status:
Mr. Lazaro will not return to work.

PROJECTIONS

Maximum Medical Improvement/ Permanent Partial Impairment:
Mr. Lazaro's recovery potential was reported as an 80% chance of no recovery or vegetative state and 10% chance of little recovery.

Projected/Anticipated Future Needs:
Mr. Lazaro's future needs will depend on his ability to remain stable and free from infection.
Mr. Lazaro has been placed in Brian Center nursing facility.

Case manager time including travel over next report period:
None

PLAN

Short Term Goals:
Mr. Lazaro will remain in stable condition and be free from infection and skin breakdown.

Long Term Goals:
Mr. Lazaro will continue to receive optimal custodial care and medical treatment in order to prevent complications from profound brain injury over the reminder of his lifetime.

Case Management Interventions:
Close file and remain available to re-open should additional case management services be requested.

Thank you for allowing Southern Rehabilitation Network to assist you in this case. Feel free to contact me should you require additional case management services in the future.

Denise Salyer, RN, CCM
Medical Case Manager
Denise.Salyer@Southernrehab.net
803/622-9825

CC: Preston McDaniel, Attorney at Law
McDaniel Law Firm
1315 Elmwood Ave.
Columbia SC 29201
803/252-0709 (Fax)

John E. Duncan, Attorney at Law
Co counsel for Plaintiff
137 East Butler Street, Suite 3
Lexington SC 29072
803-951-2389 (Fax)

DICTATED BUT NOT READ

mgc | INSURANCE DEFENSE

Bankruptcy Dec.

Reply To
BRETT H. BAYNE
Direct Dial: (803) 227-2281
brett.bayne@mgclaw.com

June 16, 2014

Charmaine M. George, M. D.
Carolina Medical Group
3010 Farrow Road, Suite 230
Columbia, South Carolina 29203

Charmaine M. George, M. D.
The Brian Center
3514 Sydney Road
Columbia, South Carolina 29210

RE: Antonio Lazaro v. Burris Electric
and South Carolina Guaranty Association
Date of Accident: July 6, 2007
WCC File No.: 0710622
Our File No.: 20203.14015
Claim No.: S266-07-01390

Randy Mason person at SCGA.

Dear Dr. George:

Thank you for taking the time to schedule a meeting with us in this case. I have spoken with Mr. McDaniel, one of Mr. Lazaro's attorneys, and he has agreed to simply let me submit a letter to you with questions to answer in lieu of an in-person meeting.

As you are aware, this is a medically complex case in which Mr. Lazaro is in a persistent vegetative state. It is my understanding that Mr. Lazaro recently had at least two hospitalizations for respiratory infections and renal failure. We have a hearing coming up to address issues in this case and Mr. Lazaro's current condition, current and future prognosis, and life expectancy will be issues at the hearing. I would appreciate it if you would answer the questions below to a reasonable degree of medical certainty and sign at the end. If you do not believe you can answer a question to a reasonable degree of medical certainty, please note that where applicable. If possible, please return this questionnaire to me by email or mail before June 24, 2014.

1. Please provide a summary of the current medical conditions Mr. Lazaro has been diagnosed with and/or is being treated for:
1) Chronic Vegetative State 2) Cardiac Arrest s/p Electrocution 3) Respiratory failure s/p tracheostomy 4) Recurrent tracheobronchitis (Pseudomonas),

2. Have Mr. Lazaro's vital signs or condition in general changed over the last year? If so, how?
On general his V/S have been stable in past yr with the exception of 3 episodes of tracheobronchitis, 2 requiring hospitalization 2° to fever, hypoxia,

3. Has Mr. Lazaro's condition changed for the worse in the past year? Is so, how?
I would say in the past 6 mos he has required hospitalization on 2 occasions for tracheobronchitis, pneumonia & sepsis & again required Abx treatment again for tracheobronchitis in 2/14 but did not need hospitalization

4. It is my understanding that Mr. Lazaro was hospitalized on two occasions for respiratory infections and renal failure. Following those two hospitalizations, is Mr. Lazaro in a more unstable condition or weaker state than he was before those hospitalizations?
I believe he had not fully recovered from his initial infection in 12/13. & his acute renal failure was related to sepsis, after repeated courses of Abx x 2, pt has not had any further upper respiratory infections. I do feel he is more susceptible in a weaker state.

5. In Mr. Lazaro's vegetative state, are common ailments such as the common cold or flu more likely to have severe health consequences on Mr. Lazaro as compared to a normal healthy individual his age?
Definitely, the fact that he requires a trach to breath adequately, makes him at risk for any type of upper resp. infection & more difficult to recover also.

6. Given his current condition, is there a much greater risk that such common ailments, if contracted, could result in Mr. Lazaro's death?

yes.

7. Based on the totality of Mr. Lazaro's current condition, including any known future risks associated with a patient in his condition (for example, infections and organ failures), is it more likely than not (i.e. more than 50%) that Mr. Lazaro will live for another 5 years?

I believe he's likely 50% to live another 5yrs.

8. Based on the totality of Mr. Lazaro's current condition, including any known future risks associated with a patient in his condition (for example, infections and organ failures), is it more likely than not (i.e. more than 50%) that Mr. Lazaro will live for another 10 years?

The likelihood of living another 10 yrs, I believe is less than 50%.

9. Based on the totality of Mr. Lazaro's current condition, including any known future risks associated with a patient in his condition (for example, infections and organ failures), is it more likely than not (i.e. more than 50%) that Mr. Lazaro will live for another 15 years?

Likelihood of living 15yrs < 50%

10. Based on the totality of Mr. Lazaro's current condition, including any known future risks associated with a patient in his condition (for example, infections and organ failures), is it more likely than not (i.e. more than 50%) that Mr. Lazaro will live for another 20 years?

likelihood of living 20 yrs < 50%.

11. Are all of your opinions as stated herein to a reasonable degree of medical certainty?

My opinions are to a reasonable degree of medical certainty.

CGeorge.
Charmaine M. George, M. D.

Date: 6/23/14

If you have any questions or concerns, please feel free to contact me and I will speak with Mr. McDaniel to get a resolution of any issues.

With kind regards, I am

Very truly yours,

Brett H. Bayne

BHB/rds
cc: Preston F. McDaniel, Esquire (via/email only)
John Earl Duncan, Esquire (via/email only)
George D. Gallagher, Esquire (via/email only)
Randy Mason, South Carolina Guaranty Association (via/email only)

RINGLER ASSOCIATES
STRUCTURED SETTLEMENTS

704-892-3810 – Phone
704-892-3910 – Fax

Rated Age Cover Sheet

06/18/14

Claimant	DOB	Actual Age	Gender
Antonia Lazaro		44	M

Broker	Insurer/Client
David Ringler	Brett Bayne

	Life Market	Rated Age	Confirmation Date	Valid For
☒	American General	64	06/11/2014	1 Year
☒	Liberty Life	68	06/12/2014	1 Year
☒	Metropolitan Life	44	06/12/2014	1 Year
☒	New York Life	75	06/18/2014	1 Year
☒	Pacific Life	68	06/11/2014	1 Year
☒	Prudential	68	06/12/2014	6 Months

19210 Stableford Lane
Cornelius, NC 28031
www.RinglerAssociates.com
OFFICES IN PRINCIPAL CITIES NATIONWIDE
Member National Structured Settlements Trade Association

Beverly Isenhour

From:	Admin.AG-SS@agsourcetrac.com
Sent:	Wednesday, June 11, 2014 5:19 PM
To:	Admin.AG-SS@agsourcetrac.com
Subject:	Rated Age Notification for: LAZARO, Male, July, 1969, 64
Importance:	High

American General . life Companies

American-General-Structured Settlements
205 E. 10th Ave.
Amarillo, TX 79101
Office: (800)-288-4066
Notice: This information is being given to you as an appointed agent for the sole purpose of pricing a structured settlement annuity offered by a subsidiary life insurance company of American General. Any additional use or distribution of this information is not permitted and may result in termination of the agent agreement, unless you have written approval from the American General subsidiary offering the annuity.

An underwriting assessment for ANTONIO LAZARO has been completed. Rated age is effective for 12 months from the date of this notification unless updated information changes the rated age in the interim.

Last Name	Gender	Birth Date	Rated Age
LAZARO	Male		

Agents:
RINGLER D, RINGLER ASSOCIATES

To view more details about this case, please click the following link and log into our secure website.

https://www.agsourcetrac.com/SS-AgentWeb/Medicals/MedicalSubmissionHistory.aspx

Please do not reply to this message via e-mail. This address is automated, unattended, and can not help with questions or requests. You may call 1 800-288-4066 for further questions.

Liberty Life Assurance Company of Boston
Member of Liberty Mutual Group
100 Liberty Way
Dover, NH 03820
1-800-451-7065
Rated Age Confirmation

Broker:	RINGLER	**Office:**	Cornelius, NC
		Fax #:	704-892-3910
Claimant:	ANTONIO LAZARO		
Gender:	M		
DOB:			

Rated Age: 68 **Standard:**

Inadequate Information:

Most Recent Medical Information Received:	06/12/2014
Today's Date:	6/12/2014
Expiration Date For This Rated Age:	06/12/2015

Telephone #: (800)451-7065 ext.34679
Fax #: (603)334-0377
Comments:
Ringler - 704-892-3910

Medical Reviewer: Scott Hinton

Please verify the accuracy of the information provided on this confirmation form. If claimant's gender and/ or date of birth are incorrect, this rated age will be considered invalid. Any quote utilizing an invalid rated age will not be honored by Liberty Life Assurance Company of Boston and will be considered null and void.

200 Park Avenue, New York, NY 10166
Phone: 1-800-638-0051, prompt 4
Fax: 1-908-552-3101
Email: rateage@metlife.com

MetLife

RATED AGE QUOTE

TO: RINGLER ASSOCIATES, INCORPORATED

FAX: (704) 892-3910

DATE: June 12, 2014

Thank you for your recent Rated Age request. Please find the result for the individual cited below.

NAME: ANTONIO LAZARO

DOB:

GENDER: Male

RESULT: Standard

Rated age may improve with reports submitted by a medical physician.

PLEASE NOTE THE FOLLOWING:

- ✓ THIS RATED AGE IS BASED ON THE ABOVE DATE OF BIRTH AND GENDER.
- ✓ AGE RATING IS VALID FOR 12 MONTHS FROM THE DATE OF THIS COMMUNICATION.

If you received this correspondence in error or have questions regarding the result, please call 800-638-0051 and select prompt 4.



The Company You Keep®

NEW YORK LIFE INSURANCE COMPANY
Structured Settlements

Rated Age Confirmation

BROKER INFORMATION
Agency : RINGLER ASSOCIATES, INC.
City : CORNE
Fax / Email : 704-892-3910 / n/a

CLAIMANT INFORMATION
Name : ANTONIO LAZARO
DOB :
Sex : M
Case #: 2014-11300
Rated Age : 75

If the date of birth and/or gender is incorrectly stated, this rated age will be invalid and New York Life Insurance Company will not be bound by such invalid rated age. Please contact us with the correct date of birth and/or gender for a valid rated age.

This rated age is good for ONE YEAR from the date shown below.

(SA)
Lauren Chaudhry R.N., Stacey Angoy
Denise Walsh-Horowitz R.N.,
Vickie Puckett, Rebecca Schlager, R.N.
Medical Underwriting
Fax: 908-840-3881
Email: ssmedicals@newyorklife.com

DATE : 06/18/2014

New York Life Insurance Company, New York Life Insurance and Annuity Corporation
(A Delaware Corporation)
51 Madison Avenue, New York, NY 10010



PACIFIC LIFE

STRUCTURED SETTLEMENTS
700 Newport Center Drive
Newport Beach, CA 92660
Toll-free: 877-784-0622 FAX: 877-219-8784

Medical Underwriting Review

Date:	06/11/2014 15:33
Claimant Name:	Antonio Lazaro
Sex:	M
DOB:	
Age:	45
Rated Age:	68
Comments:	
Rated age expires:	**6/11/2015**
Sent To:	RIN NC, Corne

The rated age is not valid for non-qualified or attorney fee quotes.

Pacific Life refers to Pacific Life Insurance Company and its affiliates, including Pacific Life & Annuity Company. Insurance products are issued by Pacific Life Insurance Company in all states except New York and in New York by Pacific Life & Annuity Company. Product availability and features may vary by state. Each company is solely responsible for the financial obligations accruing under the products it issues. Insurance product and rider guarantees are backed by the financial strength and claims-paying ability of the issuing company.

Prudential

Structured Settlement Unit
200 Wood Avenue South
Iselin, NJ 08830-2706
Tel: 800-521-5774
Fax: 800-658-5280

June 12, 2014

Ringler Associates
19210 Stableford Lane
Cornelius, NC 28031

Re: Antonio Lazaro
Sex: M
Date of Birth:

From our underwriting review we have determined that the following age should be used in pricing this case.

SIXTY-EIGHT [68]

This age is good for SIX MONTHS from the date shown above. The Prudential reserves the right to change the rated age if we receive additional medicals which indicate a change in the claimant's condition, or we discover an error in the calculation. In that case we will notify you in writing of the new rated age.

Please note that rated ages should not be used when pricing life contingent lump sums. Actual age (age nearest birthday) should be used instead.

When purchasing a substandard annuity, please include a copy of this letter with the application.

This Rated Age is only valid for the purposes of an annuity quote and not for Medicare Set Aside purposes unless in connection with a Structured Settlement annuity placed with Prudential for the individual for whom this rated age was provided.

Medical Desk
Structured Settlement Unit

Decision Date: 06-12-2014 11:28AM

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR AN AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPY OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

BURRISS ELECTRICAL, INC. Current Employees + Lazaro
Employee Contact List Sorted By Hire Date

Yellow = Management Level Knowledge Capable of Running Entire Projects

Employee	Hire Date	Earnings 1/Rate	
GLOVER, MICHAEL O.	1/1/1995	Hourly Regular Rate	22.00
NUNN, ROBERT W.	3/1/1995	Hourly Regular Rate	22.00
VELEZ, ROBERTO	2/7/1999	Hourly Regular Rate	14.50
BURKE, MICHAEL J.	4/19/2000	Hourly Regular Rate	21.00
BROWN, STEVEN E.	6/29/2000	Hourly Regular Rate	20.50
RHOTEN, LINDA C.	1/20/2001	Hourly Regular Rate	12.50
COOK, AUDREY C.	2/20/2001	Hourly Regular Rate	14.50
GARCIA, OSWALDO	6/4/2001	Hourly Regular Rate	17.50
THOMSON, LEE H.	7/3/2001	Hourly Regular Rate	14.50
LIPPS, BLAYN W.	8/13/2001	Hourly Regular Rate	18.00
SALIGAN-MORALES, BER...	4/8/2002	Hourly Regular Rate	12.50
HERNANDEZ, CARLOS A.	4/25/2002	Hourly Regular Rate	13.50
MALPICA-DOMINGUEZ, G...	5/24/2002	Hourly Regular Rate	13.50
CARR, TONY E.	12/17/2002	Hourly Regular Rate	19.50
WELLS, ROY O.	1/23/2003	Hourly Regular Rate	18.50
* LAZARO, ANTONIO	12/3/2003 *	Hourly Regular Rate	14.50
CULEBRO-LARA, FACUNDO	5/9/2005	Hourly Regular Rate	15.00
DELVALLE, MARTIN	6/14/2005	Hourly Regular Rate	13.50
DOMINGUEZ-BECERRA, J...	12/26/2005	Hourly Regular Rate	15.00
RHOTEN, JEFFREY	2/6/2006	Hourly Regular Rate	10.50
GOFF, JAMES E.	2/9/2006	Hourly Regular Rate	26.00
COOK JR., ETHAN L.	3/6/2006	Hourly Regular Rate	10.50
BEARD, EDDIE T.	3/27/2006	Hourly Regular Rate	22.50
LOPEZ-PATRICIO, LOREN...	3/27/2006	Hourly Regular Rate	10.00
RICHARDS, TOMMIE J	3/27/2006	Hourly Regular Rate	17.00
CULEBRO-TAPIA, MATEO	4/3/2006	Hourly Regular Rate	14.50
CRUZ, GILBERTO S.	12/11/2006	Hourly Regular Rate	12.50
CULEBRO-ALVARADO, JA...	12/5/2007	Hourly Regular Rate	12.50
CULEBRO, LORENZO	12/5/2007	Hourly Regular Rate	17.00
FISHER, DEANY R.	10/27/2008	Hourly Regular Rate	10.50
PARKER, BENJAMIN	12/21/2009	Hourly Regular Rate	13.00
BODIE, VICTOR L.	11/23/2010	Hourly Regular Rate	18.00
DONAHUE, III, JAMES M.	6/22/2011	Hourly Regular Rate	12.00
WRIGHT III, ROBERT E.	4/8/2013	Hourly Regular Rate	11.00
DAVIS, JASON W	4/24/2013	Hourly Regular Rate	13.00
GARCIA, EDWIN A.	6/10/2013	Hourly Regular Rate	9.00
NICHOLS, STEPHEN P.	6/17/2013	Hourly Regular Rate	12.00
LAZARO, OLIVER A.	6/24/2013	Hourly Regular Rate	10.00
MARSHALL, DAVID E.	7/15/2013	Hourly Regular Rate	19.00
BEHRENS, JAMES K.	8/14/2013	Hourly Regular Rate	10.00
AMBROSE, KRISTOPHER T.	8/24/2013	Hourly Regular Rate	10.00
HARPER, WILBERT C.	9/16/2013	Hourly Regular Rate	10.00
NUSSBAUM, MATTHEW D	11/7/2013	Hourly Regular Rate	9.00
HERSKIND, SAMUEL E.	12/6/2013	Hourly Regular Rate	10.00
MOORE, DAVID S.	5/12/2014	Hourly Regular Rate	14.00
TABOR, SHANE M.	5/12/2014	Hourly Regular Rate	10.00

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

June 17, 2014

SENT VIA FAX: (803) 731-5006
AND US MAIL
Charmaine M. George, MD
The Brian Center
3514 Sidney Road
Columbia, South Carolina 29210

RE: Antonio Lazaro v. Burriss Electrical
WCC File No. 0710622
Date of Accident: 7-6-2007
Date of Birth:

Dear Dr. George:

I am not sure whether or not you and I have ever met but I need to correct something about the letter you just received from the Defense Attorney, Mr. Brett Bayne. While it is true that we were trying to get together questions to submit to you to save us some time and you some time, I did not agree to the questions that he has submitted to you.

In fact, I specifically objected to question 7, 8, 9 and 10 as calling for speculation and advised Mr. Bayne that I did not see any way that a doctor could answer those with any degree of medical certainty and especially not to a reasonable degree of medical certainty. In my opinion, no matter how you ask the question, whether it is phrased "in your opinion, is it more likely than not that Mr. Lazaro will live another 5 years" or if it is phrased in the negative "in your opinion is it more likely than not that he will not live more than 5 years", it is the same question and calls for speculation.

However, if you feel that you can answer that question to a reasonable degree of medical certainty that is fine with me but if you agree with me that it calls for speculation or you can't answer that with any degree of medical certainty, then I think you need to say that.

Next, question #11 is written for you to give a blanket answer as to whether or not your opinions are stated to a reasonable

degree of medical certainty. I think it is phrased poorly and would tell you that if any are not stated to a reasonable degree of medical certainty, then you need to list those questions in your answer. The way the question is written I would simply put "except for questions ?, ?, ?, ?". (I don't want to try to influence you on which ones you take exception to so I did not use numbers.)

I would point out in fairness to Mr. Bayne that in the last 3 sentences of the first page of his letters he says the exact same thing, that if you can't answer any question to a reasonable degree of certainty, clearly indicate which ones you cannot answer that way.

Finally, what I don't see in Mr. Bayne's letter is the fact that they have to pay you for your time in answering this questionnaire. I believe that in answering written questions that you should be paid at the same rate under the Fee Schedule as for conducting a deposition or an interview.

I am sorry for having to write you this letter but I felt like I had to after I received Mr. Bayne's letter. By copy of this letter I am notifying Mr. Bayne of this communication and my position concerning the questions asked. Also contrary to Mr. Bayne's letter, while they have a right to ask you questions about certain specific issues, we are to be included on any communications and so I believe you need to call me or at a minimal we would have to have a conference call with Mr. Bayne and me and set that up if you have any questions. Also in reference to the questions and what they can and cannot ask you, while they definitely have a right under the Statute to ask you questions without our consent concerning his current condition and prognosis, nowhere are they allowed to ask you about his life expectancy.

I look forward to receiving your response and again by copy of this letter I am notifying Mr. Bayne of this communication.

Sincerely yours,

Preston F. McDaniel

PFM/kth

cc: John E. Duncan, Esquire

From: Kim Hinkle [mailto:kim@pfmcdlaw.com]
Sent: Wednesday, June 18, 2014 9:21 AM
To: George Gallagher
Subject: RE: Antonio Lazaro v. Burriss Electrical, Inc.; WCC File No. 0710622

NOTE FROM PRESTON:

Correct me if I am wrong but the medical condition serves as the basis for the actuarial calculations which in fact is an expert opinion based on those factors. Preston.

JOHN DUNCAN
Attorney at Law
Servicios Legales

137 East Butler Street, Suite 3
Lexington, South Carolina 29072
Telephone (803) 951-2388
Facsimile (803) 951-2389
johnduncanlaw@gmail.com

April 15, 2014

Burriss Electrical, Inc.
1251 North Lake Drive
Lexington, South Carolina 29072

Re: Antonio Lazaro vs Burriss Electrical, Inc. and CompTrustAGC of South Carolina, Inc.

Dear Sir/Madam:

As you may be aware, I represent Mr. Lazaro as a result of the on-the-job injury he suffered while in your employ. I am in receipt of a March 28, 2014, letter from Randy Mason of the South Carolina Guaranty Association indicating they are denying responsibility for payment of Mr. Lazaro's claim along with his medical expenses and weekly temporary total disability payments.

I also am aware McAngus Goudelock & Courie, LLC, has indicated they are no longer representing CompTrust. Can you tell me if y'all have retained counsel in this matter as it appears Burriss Electrical may be financially responsible for Mr. Lazaro's claim?

Thank you for your prompt attention to this matter.

Sincerely yours,

John E. Duncan

JED/rct

cc Decidora Lazaro
Preston McDaniel, Esquire
McAngus Goudelock & Currie, LLC

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0710622

ANTONIO LAZARO,

Employee,

Claimant,

vs.

BURRISS ELECTRICAL,

Employer,

AND

SOUTH CAROLINA GUARANTY ASSOCIATION,

Carrier,

Defendants.

CERTIFICATE OF SERVICE

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

VIA HAND DELIVERY
S. C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

DOCUMENT: Pre-Hearing Brief and Notice of Witnesses and Written Medical Reports

DATE OF MAILING: June 23, 2014

Susan Gosman
Legal Assistant to George D. Gallagher

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

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for over 30 years.

Preston F. McDaniel
Matthew Robertson

Telephone (803) 771-7211
Facsimile (803) 252-0709

June 11, 2015

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

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

Dear Ms. Bracy:

Please find enclosed for filing with the Commission our Form 30 - Request for Commission Review in the above-referenced matter, along with a copy of the Order which is being appealed. Also enclosed is the required $150.00 filing fee. We would appreciate your returning a clocked-in copy to us in the enclosed self-addressed, stamped envelope.

I am, by copy of this letter, serving opposing counsel with a copy of the Form 30. I hope this is sufficient for filing with the Commission, however, if additional information or further clarification is needed, please feel free to contact me at your convenience.

Sincerely yours,

Preston F. McDaniel

PFM/kth
Enclosures

cc: John E. Duncan, Esquire
Brett H. Bayne, Esquire

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov

WCC File #: 0710622
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Antonio Lazaro SSN: Employer's Name: Burriss Electrical, Inc.
Address: Address: 1251 N. Lake Drive
City: Columbia State: SC Zip: City: Lexington State: SC Zip: 29072
Home Phone: ( ) - Work Phone: ( ) - Insurance Carrier: SC Guaranty Association
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771 - 7211

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: (m/d/yyyy) 07/06/2007

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

See Attachment.

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ **Mediation**

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to **mediation@wcc.sc.gov**.

SCWCC
JUN 16 2015
JUDICIAL

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to SEE ATTACHED CERTIFICATE OF SERVICE on the ___day of ____20__, by ___ first class postage ____certified mail ____personal service.

Preparer's Signature | Attorney for the Claimant (Title) | preston@pfmcdlaw.com (Email) | 6/16/15 (Date)

Check this box if you are not represented by an attorney ☐

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

ATTACHMENT TO FORM 30

Antonio Lazaro v. Burriss Electrical, Inc.

WCC File No. 0710622

1. That pursuant to S.C. Code of Laws §42-17-40, the Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner in this matter.

2. That the Hearing Commissioner erred as a matter of law by failing to make any conclusion of law under SC Code §42-9-301 which sets forth the basis upon which a lump sum award is to be made to a claimant or the claimant's dependents which shall be made to an employee "when the employee so requests and the Commission deems it not to be contrary to the best interest of the employee or his dependents . . . ." There is simply no conclusion of law set forth by the Commissioner concerning the statute upon which a decision of the Commission is to be based and therefore the Decision is not based on law and is speculation.

3. That the Hearing Commissioner erred as a matter of law by failing to apply the cases decided and the statutory authority for granting an increase in the compensation rate under SC Code §42-1-40 and §42-9-10.

4. That the Hearing Commissioner erred as a matter of law by failing to increase the compensation rate where the undisputed evidence establishes that the Claimant's pre-injury wages establish a higher average weekly wage and resulting compensation rate than applied in this matter; and where the evidence establishes a consistent pattern of wage increases on behalf of the Claimant in accordance with our Appellate Court decisions in Booth v. Midland Train; and where the undisputed evidence establishes that prior to the injury that the Claimant was operating a flea market booth and that the Claimant's wife to make up for that lost income had to work three (3) jobs; and where the undisputed evidence establishes, per the evidence submitted by the employer, that all employees hired at the same

time as the Claimant were making substantially more in wages than at the time of the accident.

5. That the Hearing Commissioner erred as a matter of law and his decision is based on speculation and innuendo where there is absolutely no evidence to support the Finding of Fact that the employees that were making higher wages that were hired approximately at the same time as the Claimant were English speaking or that they were anything other than Hispanic workers.

6. That the Hearing Commissioner erred as a matter of law by finding that the Claimant was a non-English speaking Hispanic employee where there is absolutely no evidence, testimonial or otherwise to establish that fact and therefore this Finding is based on surmise, speculation and innuendo.

7. That the Hearing Commissioner erred as a matter of law and violated the Claimant's constitutional rights to due process and equal protection by finding that the, "claimant should be compared to other non-English speaking Hispanic employees". This is an invalid, unconstitutional comparison that is not justified by the evidence and is a racist, anti-Hispanic, unconstitutional assessment.

8. That the Hearing Commissioner erred as a matter of law by setting forth in his Order concerning the Form 50, 51 request for an additional lump sum that a claimant in a workers' compensation case and in this case has only a, "vested interest in 500 weeks of workers' compensation benefits" where the Supreme Court has specifically ruled and specifically in a lifetime benefits case that, "**SC Code Ann. §42-9-10 (1985) eliminates the 500 week cap on compensation for total, permanent disability . . .**" and where the Supreme Court has specifically held that in a lifetime benefits case to the contrary that the:

> "Mortality tables provide an adequate basis upon which to determine the present day value."

Thus, the commuting factor is not 500 weeks but is in fact the Claimant's lifetime as determined by the SC Mortality Table, SC Code §42-1-150. Therefore at the time that the Claimant was awarded a lifetime compensation award the award that vested at that time was based on the Mortality Table and the Claimant's life expectancy as of the date of that award; i.e., the Claimant's entitlement to lifetime benefits under SC Law vested at that point. The Claimant cannot request a partial lump sum award greater than the residual value, nor can the value be

decreased particularly where that decision was not appealed and has become the law of the case.

9. That the Hearing Commissioner erred as a matter of law by considering evidence of his life expectancy post-accident wherein the SC Mortality Tables and under SC Law, the Claimant's mortality and life expectancy is determined at the time of the accident. The Defendants cannot benefit from the injuries from his accident to establish a lesser life expectancy and any evidence in that regard is irrelevant, immaterial, prejudicial and should not be considered and establishes that the Hearing Commissioner's decision is based on an abuse of discretion, is capricious and is contrary to statutory law. The reason for the mortality table is to prevent such arguments.

10. That the Hearing Commissioner erred as a matter of law by failing to make an award or partial lump sum in the best interest of the Claimant's dependents under SC Code §42-9-301 and by failing to make Findings of Fact, wherein specifically due to the accident, the Claimant has an admitted shortened life span as a result of the accident and therefore their entitlement to compensation benefits will only apply as long as the Clamant is alive and where the evidence establishes that the request for a partial lump sum was to create annuities that would guarantee an income stream to the Claimant's family from his specific vested lifetime award, that being his entitlement to benefits for his lifetime as established by the Mortality Table; wherein the law assumes and creates a legal fact concerning all litigation. How can it be argued that to guarantee his legally created income from his vested Award to his family is not in their best interest?

11. That the Hearing Commissioner erred as a matter of law specifically wherein the previous lump sum Award, the law of the case, provided that the Claimant could request additional partial lump sums for the specific purpose of paying for college education and where the partial lump sum requested in this case was specifically to pay off debts incurred by Antonio Jr. for attendance at a college and wherein the evidence established that Antonio Jr. had to stop college and enter the military due to his inability to pay for his college education and where the evidence established that Oliver had in fact stopped college to go back to work to raise additional income for the family with the intent of allowing him to return to college. In addition, it is an improper consideration under the best interests of the dependents for the Hearing Commissioner to consider whether or not the dependents would have obtained a loan to pay for college wherein the purpose of the Act is to provide for the best

interest of the claimant **or his dependents** which in this case, the availability of having this money available through a partial lump sum to prevent them from having to pay for college or find some way to scrape up the money to afford college is in the best interest of his dependents. Further there is absolutely no evidence that it is not in their best interest.

12. That the Hearing Commissioner erred in making all of the Findings of Fact discussed and applied to both the decision of the Hearing Commissioner to deny a partial lump sum under SC Code §42-9-301 and his refusal to increase the compensation rate under SC Code §42-1-40.

13. That the Hearing Commissioner erred as a matter of law by failing to award the Claimant penalties and interest pursuant to SC Code §42-9-90 and §42-9-240 wherein the lump sum payment due under the first Order was not made until more than 14 days after the date of the final decision on rehearing by the Court of Appeals and the last date of Defendants right to file for a Writ of Certiorari. The final Opinion of the Court of Appeals denying the Petition for Rehearing was filed on April 10, 2014 and under SC Appellate Court Rules, Rule 242(c), the Opinion of the Court of Appeals becomes final unless a Petition for a Writ or Certiorari is served on opposing counsel and filed with proof of service with the Court of Appeals and the Clerk of the Supreme Court "within **thirty (30) days after the Petition for Rehearing . . . is finally decided by the Court of Appeals.**" Thus the Opinion of the Court of Appeals became final on May 10th and payment of the award was not made within fourteen (14) days of that date.

14. That the Hearing Commissioner erred as a matter of law and refused to follow the law concerning penalties and interests. In fact the case cited by the Defendants Hudson v. Lancaster Convalescence Center (Op. No. 27348, filed 1/08/14) does not stand for the proposition for which the Defendants cited it to the Commissioner and in fact in that case the Court of Appeals Order of Dismissal was combined with an Order of Remittitur whereas in this case there was a separate Opinion issued denying the Petition for Rehearing and holds that it is from that date that the time limits start. In addition, since no Writ of Certiorari was filed the Order became final the date it was filed and further interests is due "from the original date of the award".

15. That the Hearing Commissioner erred as a matter of law by failing to make detailed Findings of Fact and Conclusions of

Law on the issue of whether a partial lump sum was in the best interests of the dependents.

The above-referenced Exceptions are subject to amendment upon receipt of the Transcript.

Respectfully submitted,



Preston F. McDaniel, Esquire
Attorney for the Claimant

June 11, 2015

CERTIFICATE OF SERVICE BY MAIL

WCC File No. 0710622

I hereby certify that I have on this day served the following in the matter of Antonio Lazaro v. Burriss Electrical, Inc. with a copy of the **FORM 30 - REQUEST FOR COMMISSION REVIEW** by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

Brett H. Bayne, Esquire
McAngus, Goudelock & Courie
Post Office Box 12519
Columbia, SC 29211

Kimberley T. Hinkle

Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this
11 day of June, 2015.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 2/4/24

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

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for over 30 years.

Preston F. McDaniel
Matthew C. Robertson

Telephone (803) 771-7211
Facsimile (803) 252-0709

August 13, 2015

VIA eCASE UPLOAD
Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

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

Dear Ms. Bracy:

Please find enclosed for filing with the Commission the **CLAIMANT'S BRIEF TO THE FULL COMMISSION ON APPEAL FROM ORDER DENYING A PARTIAL LUMP SUM AND AVERAGE WEEKLY WAGE/COMPENSATION RATE INCREASE.** I am, by copy of this letter, serving opposing counsel with a copy of same.

I hope this is sufficient for filing with the Commission, however, if additional information is needed, please feel free to contact me at your convenience.

Sincerely yours,

Preston F. McDaniel

PFM/kth
Enclosures

cc: Brett H. Bayne, Esquire (Via US Mail Only)
John E. Duncan, Esquire (Via US Mail Only)

STATE OF SOUTH CAROLINA)) COUNTY OF FLORENCE)	BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION WCC File No: 0710622
ANTONIO LAZARO, BY AND THROUGH HIS GAL DECIDORA LAZARO, Employee, Claimant/Appellant, v. BURRISS ELECTRICAL INC., as Employer, and CAGC INSURANCE COMPANY, Carrier, Defendants/Respondents.	**CLAIMANT'S BRIEF TO THE FULL COMMISSION ON APPEAL FROM ORDER DENYING A PARTIAL LUMP SUM AND AVERAGE WEEKLY WAGE/ COMPENSATION RATE INCREASE**

STATEMENT OF THE CASE

Mr. Lazaro, a naturalized American citizen, citizenship finalized 1991, (fact important to position/evidence of the Defendants at hearing) has been in a vegetative state since his accident on July 6, 2007, in an air-conditioned hospital bed being fed through a tube, and therefore any request for partial lump sums, including the initial one and the one that is the subject of this appeal, were requested for the benefit of the Claimant's dependents; of course, in accord with our State's motto, "Dum Spiro Spero" hoping for a cure or a miracle for Mr. Lazaro and his family.

In the first Request for Hearing the Claimant requested an Award of total and permanent disability with lifetime benefits (this was denied going into that first hearing) and for a partial lump sum pursuant to Statute; §42-9-301 provides that the Commission shall award a partial lump sum unless it finds that it is not in the, "best interest of the employee or his dependents". Chairman Beck awarded a partial lump sum to pay off the Claimant's home, pay off family debt, and allow for the purchase of an automobile, but more importantly, specifically noted based on the facts and situation of the family at that time that the Claimant could request further lump sums in the future specifically noting the necessities and costs of attending college and expenses related to college and to request a partial lump sum to guarantee an income stream to the family pursuant to the Claimant's Award entitling him to compensation benefits at a minimum for the life expectancy of the Claimant which vested by that Award. His Award further specifically provided that the issue of the applicable average weekly wage and compensation rate was reserved for later decision.

Pursuant to that Order and statute, on February 19, 2015, the Claimant filed for second partial lump sum and requested an adjustment of the average weekly wage and compensation rate based on our Supreme Court/Court of Appeals decisions. The Claimant through his Guardian and spouse requested a partial lump sum and

specifically requested that the partial lump sum be put into an annuity tied to both the Claimant and the Claimant's wife's life so that the Claimant and his family would have a guaranteed income stream for their lives. As to the average weekly wage and compensation rate increase requested, the Claimant presented evidence and took the position that based on his W-2 income for the year preceding his injury and based on his work/pay history of raises up to and including the date of his accident; and considering the fact that the average weekly wage in the State has escalated an average of 3% per year; and considering the Supreme Court decisions holding that wage loss calculation/ compensation must be thought of in terms of the Claimant's future loss of earning capacity; and considering what he would be making at the present time assuming a normal progression in wages, that the Commission should increase the compensation rate to fairly compensate him for his losses/earning capacity from the injury. The Defendants responded by submitted wage information from employees from before and after his date of hire thru the present and took the position that a comparison of current wages of all electricians should not be made but that the Commission should only compare his wages to fellow "non-English speaking" Hispanic workers. In taking this position they made the general statement that their Hispanic workers were not fluent in English and therefore do not make as much money as other electricians. They

excluded at least one Hispanic worker from consideration because he was in management because he was fluent in English. They also orally made the unsupported statement that Mr. Lazaro, a naturalized American citizen who has been in the Country since at least five (5) years before 1991 was not fluent in English and deserved to be lumped in with all of the other non-English speaking Hispanics. Note: there is absolutely no evidence in the Record that Mr. Lazaro could not speak English fluently or otherwise.

In response to the request for a partial lump sum to be put into an annuity to guaranty an income stream to the Claimant or his dependents as being in the best interest of the employee or his dependents, the Defendants took the position that since the widow was now working three (3) jobs and her son had to drop out of college and was working to raise income to go back to college, and taking into consideration the Claimant's Social Security payments, that the family had a greater income on a monthly basis now than at the last hearing, therefore it was not in the best interest of the dependents to grant this partial lump sum. They also asserted since the other son, Antonio Lazaro, Jr. had to drop out of college due to loans and was in the military serving our Country, that the partial lump sum should not be granted to help pay off the student loan of Antonio because he would have borrowed the money anyway. They also took the positions that

although the requested annuity would be tied to the life of both his dependent wife and to his life and would thus guarantee an income stream as long as either one of them was alive; and even though the annuity would grant a residual payment to the dependents, because the income stream would be slightly less than the current compensation rate, the partial lump sum should not be granted; and further that if Mr. Lazaro died tomorrow, all weekly payments to his dependents would stop. Their other basis was a legal one based on a 1947 case decided under the previous SC Code §42-9-300 and not SC Code §42-9-301, (which completely flipped the burden of proof and the basis upon which a lump sum is granted) setting for the rationale and considerations for denying a lump sum in that case.

The Commissioner, over request to modify, signed an Order which, as drafted, misstated the position of the Claimant as to his request for an increase in the compensation rate for exceptional circumstances. He also alleged that the Claimant was making an argument based on pay raises after the accident instead of being based on his wage record with the employer prior to the injury. He also based his decision on a comparison of Mr. Lazaro as a non-English speaking Hispanic to other non-English speaking Hispanic electricians instead of the entire body of electricians working for the company. He denied the partial lump sum without referring to the statute providing that a partial lump sum must

be made unless there is a finding that it is not in the best interest of the Claimant or his dependents. His only found basis for the denial in the Order was that the family had more money to spend on a monthly now; that the family had no debt, except for a car payment for the son; and the student loan, which he found they would not have paid off even if it hadn't been for the accident. Without referring to the standard of why it was not in the best interest of the Claimant or his dependents he considered that the one son that dropped out of college to work to earn money to go back to school and was therefore no longer fully dependent on the family for support. He also took into consideration the Claimant's limited life span after the accident because of injuries due to the accident thus allowing the Defendants to take advantage of the accident in reference to the lifespan.

In the Order he also denied penalties, fines and interest which was paid not ten (10) days after the final Order of the Court of Appeals, but ten (10) days after the Remittitur based on the representations by the Defendants as to what the case law held. In his Conclusions of Law, he also specifically found that a claimant has only a, "vested interest in 500 weeks of workers' compensation benefits and referring to two (2) statutes based on the death of the Claimant. From that Decision, this Appeal follows.

ARGUMENTS

I. **THE HEARING COMMISSIONER ERRED AS MATTER OF LAW BY FAILING TO REFER TO AND MAKE A DECISION ON THE SINGULAR ISSUE BEFORE HIM IN REFERENCE TO A PARTIAL LUMP SUM WHICH IS A PARTIAL LUMP SUM REQUESTED BY A CLAIMANT MUST BE GRANTED BY THE COMMISSION UNLESS THE COMMISSION FINDS THAT IT IS NOT IN THE BEST INTEREST OF THE EMPLOYEE OR HIS DEPENDENTS.**

SC Code §42-9-301 specifically provides that where an employee or his dependents makes a request for a lump sum that the Commission shall make the lump sum award, "when the employee so requests and the Commission deems it not to be contrary to the best interest of the employee or his dependents ...".

The Commission is required by law to make detailed Findings of Fact and Conclusions of Law that are sufficiently detailed and definite enough on every "essential issue" before the Commission before the decision so that an appellate court may determine that the decision is based on the facts and that the law has been properly applied. Drake v. Raybestos Manhattan, Inc., 241 SC 116, 127 SE2d 288, (1962). Smith v. NCCI, Inc., 369 SC 236, 631 SE2d 268, (2006). In this case, the Hearing Commissioner made absolutely no Findings of Fact, on the statutory requirement that lump sum when requested must be made unless the Commission finds that the payment of a lump sum is not in the best interest of the Claimant or his dependents, there is no Finding of Fact as to how this request for a partial lump sum was not in the best interest of the Claimant or his dependents. In this case, the Claimant

had a vested entitlement to a lifetime compensation benefits with a residual value as to the remaining compensation due exceeding $350,000.00. At the time of the hearing, the Claimant through his GAL in the best interest of his dependents was requesting that he be granted a partial lump sum of approximately $300,000.00 to $325,000.00 to be paid into an annuity or annuities that would guaranty an income stream to his dependents no matter when he passed away. The Supreme Court has tied or held that the meaning and value of lifetime benefits is based on the life expectancy of the Claimant under the SC Mortality Table establishes a finite framework in which to make such partial lump sum awards. There is simply no discussion nor finding as to how such a partial lump sum award is not in the best interest of an employee or his dependents.

Further, the Defendants and the Commission's reliance on the case of Ashley v. Ware Shoals Manufacturing Company, supra, is not only misplaced, it is wrong. That case was decided under the previous lump sum statute and the requirements the Claimant had to meet to be entitled to a lump sum including he had to prove his was an "unusual" case, §42-9-300 under §42-9-301, our current lump sum statute, the specific requirements have been totally flipped where now Commission must make the Award to a Claimant upon request unless it finds that it is not in the best interest of the Claimant or his dependents to make such Award. There is

simply no reference in the Commissioner's Award to this standard or as to how it is not in the best interest of the dependents to have a guaranteed income stream based on his vested right to lifetime benefits which will assure those benefits and that income stream to them for as long as either he or his dependent wife lives. The decision of the Hearing Commissioner failed completely to address the legal standard and the best interest of the dependents and therefore the decision must be reversed as a matter of law.

II. **THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY FINDING THAT A CLAIMANT HAD A VESTED RIGHT TO ONLY 500 WEEKS OF BENEFITS AND BY APPLYING CASE LAW DECIDED UNDER DEATH BENEFIT STATUTES OF THE ACT WHEREIN THE CLAIMANT IS ALIVE NOW AND AT THE TIME OF THE LUMP SUM REQUEST.**

In reference to the Commissioner's Findings of Fact and Conclusions of Law that there is a 500 week cap on compensation, the Supreme Court has specifically held in the case of CAUTHEN v. Suitt Construction Company, 318 SC 465, 458 SE2d 535, (1995):

> **"SC Code Ann. §42-9-10 (1985) eliminates the 500 week cap on compensation for total, permanent disability due to physical brain damage, or when the injury renders the Claimant paraplegic or quadriplegic."** (Emphasis added).

And that,

> "The Mortality tables provide an adequate basis upon which to determine the present day value."

Thus, the commuting factor is not 500 weeks but is in fact the Claimant's lifetime as determined by the SC Mortality Table, SC

Code §42-1-150. Therefore at the time the Claimant was awarded a lifetime compensation award, the award that vested in him was based on the Mortality Table and the Claimant's life expectancy as of the date of that award. The Claimant cannot request a partial lump sum award greater than the residual value of his life expectancy, nor can the value be decreased below his life expectancy; particularly where that decision was not appealed and has become the law of the case. This decision that a Claimant has a vested right to only 500 weeks served in part as the legal basis to deny the Claimant's request.

In addition to this error, he also referred specifically to a death benefits statute §42-9-290, and relied on a case decided and that statute where the Claimant had died to support his finding. This Commission cannot assume any facts and must base its decision on the facts before it. In this case, unlike the cases cited by Defendants and the Commissioner wherein the Claimant had died and decided under the death statute's limitation of 500 weeks due to death of the Claimant, the Commissioner made a decision not based on evidence and on the unwarranted assumption that Mr. Lazaro would die before the 500 weeks. His decision is therefore based on speculation. The Commissioner therefore erred by relying on a 500 week cap as a basis for his decision to deny a partial lump sum award specifically where the Supreme Court has said there is no cap and

has said and ruled definitively that the life expectancy table establishes the lifetime value for purposes of deciding any issue under the Workers' Compensation Act tied to the lifespan of the Claimant.

III. **THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY CONSIDERING EVIDENCE OF THE CLAIMANT'S LIFE EXPECTANCY POST-ACCIDENT INSTEAD OF CONSIDERING THE CLAIMANT'S LIFE EXPECTANCY PRIOR TO AND AT THE TIME OF THE ACCIDENT AND ANY EVIDENCE THEREON.**

As noted in previous arguments, the Supreme Court has tied partial lump sum awards and the value of lifetime benefits cases to the life expectancy of the Claimant under the South Carolina Mortality Table, SC Code §19-1-150. The very purpose of that mortality table is to establish the Claimant's life expectancy at the time of and just before the triggering of event, in this case, the accident requiring the need of that table. The very reason for the existence of the mortality table is to tie both parties to a set period of time to argue that the Claimant as a matter of law will live. The Claimant cannot argue he will live to be 100 and the Defendants cannot argue he will only live a week. Also, under the mortality tables, the Supreme Court has made it very clear that the Defendants cannot take advantage of a shortened life expectancy caused by the accident. Again, this is the very reason for the statute to exist. Contrary to the statute and the Supreme Court decision, this is exactly what the Defendants in this case sought to do and upon

which the Commissioner relied.

It is totally appropriate under §19-1-150 for the fact finder to consider any health conditions or problems that the Claimant had prior to the accident or the triggering event in determining the Claimant's life expectancy. The Court of Appeals and Supreme Court have specifically so held in the case of Haselden v. Davis, 341 SC 486, 534 SE2d 295, (SC app. 2000); affirmed 353 SC 481, 579 SE2d 293, (2003). In Haselden, the Court of Appeals and Supreme Court specifically held that the jury should consider the mortality table,

> ". . . together with other evidence in the case bearing on the Plaintiff's health, age and physical condition **before the injury** and death in determining the probable length of the Plaintiff's life."

The Court held that it is inappropriate for the Defendants to obtain a benefit from the injury that lead to the Claimant's shortened lifespan which is exactly what the Commissioner sanctioned and the Defendants did by presenting evidence on a shortened lifespan. The very reason for the mortality table is to prevent such arguments and the Commissioner's reliance on those arguments and that evidence constituted an abuse of discretion and as being contrary to the law.

IV. **THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY FAILING TO APPLY THE CASES DECIDED AND THE STATUTORY AUTHORITY FOR GRANTING AN INCREASE IN THE COMPENSATION RATE UNDER SC CODE §42-1-40 AND §42-9-10 AND BY THUS FAILING TO INCREASE THE COMPENSATION RATE.**

Under SC Code §42-1-40 under paragraph 2, in determining the average weekly wage when the usual method of calculating an average weekly wage will result in an average weekly wage which is unfair or does not properly represent the Claimant's future earning capacity, the Commission may resort to such OTHER method as will most nearly approximate the amount which the injured worker, "would be earning were it not for the injury".

Under that proviso, both our Supreme Court and Court of Appeals have increased the compensation rate as a matter of law. In the case of Booth v. Midland Trane Heating & Air Conditioning, 298 S.C. 251, 379 S.E.2d 730 (SC App. 1989), our Court of Appeals in a case almost identical factually as compared to the facts in this case determine that the compensation rate should be increased. In the Booth case, Mr. Booth was hired in 1983 at $3.50 per hour. By the time of his injury on December 4, 1985, his salary had increased to $7.00 per hour. Quoting Bennette v. Gary Smith Builders, 271 S.C. 94, 245 S.E.2d 129 (1978), the Court of Appeals reiterated that the,

> "objective of wage calculation is to arrive at a fair approximation of the Claimant's **probable future earning capacity**. His disability reaches into the future, not the past; his loss as a result of the

injury must be thought of in terms of its impact on probable future earnings."

Then in the case of Sellers v. Pinedale Residential Center, our Appellate Courts reiterated and applied this principle. Mr. Sellers was a young employee age 16, who became a paraplegic as a result of his injuries entitling him to lifetime compensation benefits. In that case, the Commission and our Appellate Courts applied the principles laid down in Bennette and Booth and held that because of his future loss of earning capacity that he was entitled to an ever escalating compensation rate wherein the compensation rate would increase from 1992, the date of the injury, until 2002 to the maximum compensation rate applicable in 1992. Our Appellate Courts also cited in support of that proposition a previous decision by the Supreme Court in the case of Stokes v. First National Bank, 306 S.C. 46, 410 S.E.2d 248 (1991) which upheld an award entitling the claimant to a permanent partial loss of earning capacity award based on the maximum compensation rate not his compensation rate at that time but was based on the Claimant's future loss of earning capacity. Again in the case of Elliott v. SC Dept. of Transportation, 362 S.C. 234, 607 S.E.2d 90 (SC App. 2004) our Appellate Courts found that merit based increases before the accident in the claimant's wages should be applied prospectively into the future to determine the average weekly wage that would apply in that case.

In the case of Forrest v. A.S. Price Mechanical, 373 S.C. 303, 644 S.E.2d 784 (SC App. 2007) reh. den., cert. den., the Court of Appeals held that where a gentleman normally worked year round at two (2) jobs, both a full-time and part-time job, this income justified the prospective increase in the average weekly wage and compensation rate going forward. Also, where a Claimant worked dual employment even simply during the holiday season, exceptional reasons existed for increasing the Claimant's compensation rate prospectively. Brunson v. Wal-Mart Stores, Inc., 344 S.C. 107, 543 S.E.2d 732 (SC App. 2001). Similar reasons were found to exist in the case of Brown v. Peoplease, 402 S.C. 476, 741 S.E.2d 761 (SC App. 2013).

Based on the facts of this case and in accordance with the law as established by our Supreme Court and the Court of Appeals, the Claimant would submit that his average weekly wage and compensation rate should be increased to adequately compensate him and his family for his future loss of earning capacity. The Clamant asks nothing more and nothing less than for the Commission to apply a compensation rate based on what he would have been earning at this time for his family but for the injury.

The undisputed evidence establishes that the Claimant's pre-injury wages establish a higher average weekly wage and resulting compensation rate than was applied in this matter. There is no explanation as to how the original Form 20 was calculated and

there was no evidence presented to dispute that in the year prior to the date of the accident in 2006, the Claimant's average weekly wages as reported on his W-2 resulted in an average weekly wage of $646.17 with a resulting compensation rate, assuming he worked the entire 52 weeks, of no less than $430.80. On this basis alone, the Claimant's compensation rate should have been increased by $24.44/week. The Commissioner does not even address this argument in his Statement of the Case or Findings which, in and of itself, is an error of law and strikes in face of the Commission's responsibility to liberally interpret the Act in favor of benefits for the injured worker and his family.

Next, the evidence established a consistent pattern of wage increases on behalf of the Claimant and in accordance with our Appellate Court decisions in Booth v. Midland Trane, supra, wherein the facts are almost identical to Mr. Booth's situation. Mr. Lazaro was hired in December of 2003 and in less than three and a half (3 ½) years, he went from $10.00 an hour to $14.50 per hour representing a $4.50 per hour increase which represents a 45% increase in his salary in only three and a half (3 ½) years and also a 12.86% annual salary increase. According to that, in just four (4) years or in other words by 2011, his salary should have increased to $18.50-$19.00 an hour. The Commissioner did not address this evidence and did not even apply all of the electricians salaries with the employer to the average weekly

wage issue. When the Commission looks at the Record, it will find that all three (3) employees that were hired at approximately the same time as the Claimant as reflected by the employer's records were making around $17.50-$18.00 an hour. There is simply no contrary evidence. Contrary to what the Defendants tried to assert and what the Commissioner found the Claimant was not requesting consideration of post-injury wage increases but was in fact asking the Commission to project his future earning which this Commission is required by law to do into the future based on his past earning experience with the employer as projected into the future.

Next, the undisputed evidence establishes that prior to the injury the Claimant with his wife was operating a flea market booth and was making additional income after the accident the Claimant's wife to make up for that lost income had to work three (3) jobs. The amount of money that she was making was put into the Record and on the basis of this undisputed evidence, the Commissioner should have increased the Award in accordance with the past Supreme Court and Court of Appeals decisions.

Finally, the Record establishes that Mr. Lazaro was an outstanding employee and as previously set forth in both the Order of Commissioner Beck and at this hearing he was a valued employee who did everything he could and was entitled to and did receive every wage increase that he could get. If you determine

that Mr. Lazaro's wages were only increased to $17.50, which is the low end of employees hired as electricians almost identically at the same time he was, he would have an average weekly wage of $700.00 and a compensation rate of $466.69; assuming that there was no overtime. This is over $60.00 higher than the present compensation rate. This Commission is required to apply a liberal interpretation of the Act and is required by the Supreme Court decisions to consider the loss of earning capacity stretching into the future. But for this accident, Mr. Lazaro would have been making a lot more money for his family and as the Supreme Court has held, as a matter of law, the average weekly wage should be increase to reflect that loss of earnings into the future between the date of the accident and now and stretching forward.

Therefore based on the facts of this case and in accordance with the law as established by our Supreme Court and the Court of Appeals, the Claimant would submit that his average weekly wage and compensation rate should be increased to adequately compensate him and his family for the loss of earning capacity of the Claimant. The Claimant asks nothing more and nothing less than for the Commission to apply a compensation rate based on what he would have been earning at this time for his family but for the injury.

V. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY COMPARING THE CLAIMANT FOR WAGE PURPOSES TO ONLY NON-ENGLISH SPEAKING HISPANIC EMPLOYEES.

There is simply no evidence in the Record that Mr. Lazaro was a non-English speaking Hispanic employee and the Commissioner erred by not considering the wages of all electricians who worked for the company at this time. In addition to there being no evidence to support he was non-English speaking or that a comparison should only be made to Hispanics, this consideration by the Commissioner violated the Claimant's constitutional rights to due process and equal protection by finding that the, "claimant should be compared to other non-English speaking Hispanic employees". This is an invalid, unconstitutional comparison that is not justified by the evidence and is a racist, anti-Hispanic, unconstitutional assessment. The decision of the Hearing Commissioner should be reversed on this improper consideration of the evidence and unconstitutional finding alone.

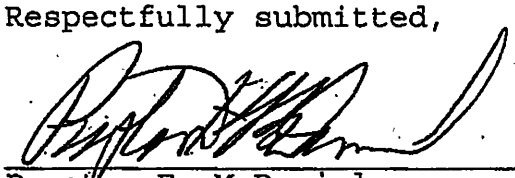
Not only is this comparison abhorrent to Counsel for the Claimant personally, our Governor after the slayings in Charleston based on race committed our State to ending race under our laws. It is exactly this type of unsupported racial profiling and comment that lead to that tragedy and which has no place in our system of government. This was an absolute improper consideration by the Hearing Commissioner.

CONCLUSION

For all the foregoing reasons, the Decision of the Hearing Commissioner should be reversed and this matter remanded to a Hearing Commissioner for a de novo hearing on the Claimant's request for a partial lump sum and on the adjustment of the compensation rate.

In addition, due to the undisputed nature of the compensation rate, this Commission should increase the compensation rate under the Act and in accordance with the Supreme Court and Court of Appeals decisions.

Respectfully submitted,



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and

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Attorneys for the Claimant

August 13, 2015

CERTIFICATE OF SERVICE

Antonio Lazaro v. Burriss Electrical, Inc.
WCC File No. 0710622

I HEREBY CERTIFY that on this date:

I uploaded a copy of the **CLAIMANT'S BRIEF TO THE FULL COMMISSION ON APPEAL FROM ORDER DENYING A PARTIAL LUMP SUM AND AVERAGE WEEKLY WAGE/COMPENSATION RATE INCREASE** only to:

VIA eCASE UPLOAD
Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

And I mailed a copy of the **CLAIMANT'S BRIEF TO THE FULL COMMISSION ON APPEAL FROM ORDER DENYING A PARTIAL LUMP SUM AND AVERAGE WEEKLY WAGE/COMPENSATION RATE INCREASE** to:

VIA FIRST CLASS MAIL:
Brett H. Bayne, Esquire
McAngus, Goudelock & Courie
Post Office Box 12519
Columbia, SC 29211

Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this
23 day of August, 2015.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 10/28/16

mgc | INSURANCE DEFENSE

REPLY TO
BRETT H. BAYNE
Direct Dial: (803) 227-2281
brett.bayne@mgclaw.com

August 28, 2015

VIA HAND DELIVERY
Judicial Director
S. C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

RE: Antonio Lazaro v. Burris Electric and South Carolina Guaranty Association
Date of Accident: July 6, 2007
WCC File No.: 0710622
Our File No.: 20203.14015
Claim No.: S266-07-01390

Dear Sir or Madam:

Please find enclosed the original and three (1) copy of our Respondents' Reply Brief on Motion for Determination of Benefits and Respondents' Reply Brief on Claimant's Request for New Lump Sum, and Increase in Compensation Rate, and Penalties and Interest Related to the Original Lump Sumfor filing.

By copy of this letter to Preston F. McDaniel, Esquire, the claimant's attorney, we are notifying him of this submission and serving a copy of the same upon him by mail and fax.

Very truly yours,

Brett H. Bayne

BHB/cmm
Enclosures
cc: Randy Mason, South Carolina Guaranty Association
Preston F. McDaniel, Esquire, The McDaniel Law Firm

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0710622

ANTONIO LAZARO,

Employee,

Claimant,

vs.

BURRISS ELECTRICAL,

Employer,

AND

SOUTH CAROLINA GUARANTY ASSOCIATION

Carrier,

Defendants.

RESPONDENTS' REPLY BRIEF ON CLAIMANT'S REQUEST FOR NEW LUMP SUM, AN INCREASE IN COMPENSATION RATE, AND PENALTIES AND INTEREST RELATED TO THE ORIGINAL LUMP SUM

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND PRESTON F. MCDANIEL, ESQUIRE:

STATEMENT OF THE CASE

This claim arises out of an admitted injury sustained by Claimant on July 6, 2007. Claimant suffered severe injuries and is in a persistent vegetative state. Claimant requested that Defendants pay out a partial lump sum of his lifetime benefits award in order to pay off assorted debts and purchase a new car. On October 14, 2010, Commissioner Beck ordered that Claimant was entitled to a partial lump sum of his lifetime benefits award in the amount of $152,568.75. Commissioner Beck found that $122,568.75 was to be used to pay off assorted debts and up to an additional $30,000.00 was to be used for the purchase of an automobile. Commissioner Beck indicated that any balance remaining from these two payments would be refunded to Defendants.

The Full Commission affirmed Commissioner Beck's Order on April 20, 2011. Thereafter, this claim was appealed to the Court of Appeals. The Court of Appeals affirmed the Full Commission's Decision and Order on February 6, 2014. A petition for rehearing was denied.

At the Single Commissioner hearing, Claimant contended the compensation rate was never been addressed and Claimant asked this Single Commissioner increase his compensation rate by as much as 12.8% per year every year since the accident. Alternatively, he asked for lockstep raises of .50 per year over his hourly rate or a recalculation based on a W2. Defendants opposed this request.

Claimant also sought an additional lump sum in the amount of $325,000.00 or more to pay for colleges and provide a steady income stream of $369.00 per week for the first 10 years and then $334.14 or $393.55 per week after the first ten years based on the evidence submitted. Defendants opposed this request.

Claimant also requested an assessment of penalties and interest related to the first lump sum payment. It is agreed that the lump sum was paid on June 2, 2014. It is agreed that S.C. Code Ann. 42-9-240 mandates interest to be assessed starting seven (7) days after the award becomes final and that 42-9-90 mandates a 10% penalty be assessed starting fourteen (14) days after the interest begins to accrue. The award in this case was paid ten (10) days after it became final. Defendants conceded Claimant was entitled to $90.85 in interest based on the three (3) days the payment was overdue. This payment has been made to Claimant.

This matter came to a hearing before the Single Commissioner on June 27, 2014. A Decision and Order was issued on May 28, 2015[1]. Claimant's appeal followed.

[1] The reason for the lengthy delay is that both parties asked any decision be held in abeyance to attempt a resolution of the issues. No resolution was agreed upon and the parties asked the Commissioner to issue the Order.

EVIDENCE OF THE CASE

This case has a long history related to the medical evidence and underlying hearings. The pertinent issues for the hearing on the 50/51 before me related to a review of the Commission file, prior Orders, payments by Defendants, medical records, and other records, as well as testimony of Claimant's wife and son.

At the Hearing, Claimant asked for an increase in compensation rate. The only evidence presented at the hearing related to compensation rate was a wage sheet and letter from Burriss Electrical. The letter submitted by Defendants indicates that there was a wage and hiring freeze in 2007 and that Defendant Burriss had to lay off half of its employees. Further, the letter indicates that Claimant would have only been eligible for lockstep raises of .50 per hour and, at most, he would be making $2.00 per hour more today (or $15.50-16.50 per hour). Finally, the letter suggested and representations at the hearing through counsel reflected the opinion that Claimant would not have been eligible for a supervisor or management position at a higher rate of pay because of his inability to speak fluent English. The letter indicated that only one of Employer's non-English speaking employees[2] have mastered the English language well enough to serve as a project manager or superintendent. Employer reportedly required employees in supervisory positions to be fluent in English because of their interaction with architects and engineers. Claimant did not submit any evidence that he would have been a supervisor or manager and/or would have been making a supervisor or manager level salary. Defendants' position was that, if a compensation rate increase was granted, he should be compared to other

[2] As will become painfully apparent, Claimant has repeatedly argued in his brief about a disparate pay scale between "Hispanic" and "non-Hispanic" employees. The evidence reflects that a majority of Employer's Hispanic employees are lower paid than other employees. However, the dichotomy between the pay scales is clearly set out as reflective of the ability, or inability, to speak fluent English. The inability to speak fluent English means the employee is less skilled for Employer's purposes and thus is paid at a slightly lower rate. This would be true regardless of the employees' nationalities or heritage. This is reflected in both Employer's letter and the trial transcript. Claimant has attempted to forge an issue out of thin air for this appeal related to some apparent alleged racial bias of Employer

similarly experienced/situated non-English speaking employees.

Claimant next asked for an additional lump sum of benefits in the amount of $325,000 to pay for colleges and provide a steady income stream of $369.00 per week for the first 10 years and then $334.14 or $393.55 per week after the first ten years. The testimony at the hearing by Claimant's wife and son does not show that an additional lump sum is in the best interest of the Claimant or his dependents. At the time of the accident, Claimant's wife was working one job and ran a flea market boot on the weekends. Claimant's wife testified she is no longer operating the booth but is now working three jobs. However, Claimant's wife testified the two additional jobs replaced the income derived from the flea market booth. Claimant's wife testified that the family is debt free (with the exception of a car purchased for their son) and that the family's take home pay has increased by over $100.00 per week since the accident. Claimant's wife conceded that, if this accident did not happen, they would not have been able to pay for college. Rather, Claimant's wife testified that they would have still taken out loans for their sons to attend college. Claimant's wife testified Antonio, Jr. is no longer in college and has enlisted in the military and that he currently owes on student loans. Oliver testified that he is not in college currently and is working to save money to return to school.

Additionally, Claimant has asked for the lump sum to provide a steady income stream of $369.00 per week for the next 10 years. After that, the annuities would pay either $334.00 or $393.00 per week tied to the life of Claimant and his wife depending on which annuity is chosen. Claimant's family currently receives $406.00 per week in a guaranteed income stream in the form of workers' compensation benefits which will be paid while Claimant is alive. Defendants submit there is no conceivable scenario in which receiving less money per week for the rest of his life is in Claimant's or his dependents best interest.

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which simply holds no water when the actual evidence is reviewed.

Claimant did not present any evidence to the court related to life expectancy. Claimant took the position that life expectancy is to be based upon Claimant's condition before the accident. Defendants presented a questionnaire filled out by Claimant's authorized treating physician—Dr. Charmagne George. Dr. George indicated Claimant is likely 50% to live for 5 more years and less than 50% to live for 10 or more years due to Claimant's condition resulting from the accident. Dr. George also indicated her reasoning for these findings. She stated he has had three episodes requiring hospitalization. Claimant has been hospitalized two times in the prior six months for pneumonia, trachea-bronchitis, and sepsis. Claimant also is in renal failure and has experience respiratory infections. She concluded his current state following the accident leaves him at a much greater risk that common ailments could result in his death.

LEGAL ARGUMENT

I. THE HEARING COMMISSIONER DID NOT ERR BY DENYING CLAIMANT'S REQUEST FOR AN ADDITIONAL LUMP SUM.

Claimant asserts the Single Commissioner erred by denying the $300,00-$325,000 additional lump sum request because the request was "in the best interest of the Claimant and/or his dependents."

First, as briefly addressed at the hearing, Defendants believe that there is no more than $210,000.00 of benefits remaining after lump sums and attorney's fees are deducted. That amount may be lower depending on calculation of present day value of the attorney's fee. Regardless, a hearing to determine remaining benefits will need to be conducted by the Commission prior to an additional lump sum award, if one is granted.

As a threshold issue, Defendants contend that no additional lump sums can be granted. Defendant presented two separate bases for this contention—one factual and one legal.

The factual basis for denying an additional lump sum is grounded in the testimony of the

witnesses. As noted above, the testimony at the hearing by Claimant's wife and son does not show that an additional lump sum is in the best interest of the Claimant or his dependents. Claimant's wife testified that the family is debt free (with the exception of a car purchased for their son) and that the family's take home pay has increased by over $100.00 per week since the accident. Claimant conceded that, if this accident did not happen, they would not have been able to pay for college. Rather, Claimant's wife testified that they would have still taken out loans for their sons to attend college.

Additionally, **Claimant has asked for the lump sum to provide a steady income stream of $369.00 per week** for the next 10 years. After that, the annuities would pay either $334.00 or $393.00 per week depending on which annuity is chosen. **Claimant's family currently receives $406.00 per week** in a guaranteed income stream in the form of workers' compensation benefits. There is no conceivable scenario in which receiving less money per week for the rest of his life is in Claimant's or his dependents best interest.

It is clear from the testimony that there is a factual basis to deny Claimant's request for an additional lump sum because it is not in the best interest of the family to receive less money.

The second basis for denying lump sum is grounded in clear legal precedent. Ashley v. Ware Shoals, 210 S.C. 273, 42 S.E.2d 390 (S.C. 1947) is a Supreme Court case that states "...if the total disability is such that...**a serious question is presented regarding the likelihood of the employee's living the length of time required to complete the installment payments, the allowance of a lump sum** settlement over the objection of the employer or carrier **would constitute an abuse of discretion...**" This case is still good law in South Carolina. While this case was decided when S.C. Code Ann. § 42-9-300 was still in effect, the Legislature's change to that statue only removed the "in unusual cases" language. The effect of the statute remained

unchanged. Likewise, the ruling by the Supreme Court that when medical evidence shows a claimant will not survive long enough to see the full lump sum, that lump sum cannot be granted, is unaffected by the minor change in the statute.

In the present case, with the attorney's fee award, Defendants have paid benefits through August 12, 2033. Claimant's maximum life expectancy based on the uncontroverted medical evidence is, at most, through June 2024. As of today, Defendants have paid over nine (9) years of benefits more than Claimant's life expectancy. The Ashley case clearly prohibits this Commission from awarding any additional lump sums. Therefore, the Decision and Order of the Single Commissioner must be affirmed.

II. THE HEARING COMMISSIONER DID NOT ERR IN FINDING CLAIMANT HAS A VESTED RIGHT TO ONLY 500 WEEKS OF BENEFITS

This exception raised by Claimant again asserts there is some mythical "500 week cap" on benefits in lifetime cases. There is not a "500 week cap" on benefits in lifetime cases. Claimant's counsel appears to be confused by the words "vested" and/or "vested interest" and/or "vested right." The Single Commissioner did not make any findings related to a "500 week cap." The Single Commissioner's specific conclusion of law on this "issue" states "Pursuant to the Act, a claimant only has a vested interest in 500 weeks of workers' compensation benefits. See S.C. Code Ann. §§ 42-9-10, -290."

The case law is clear that when a case involves lifetime benefits, the claimant is only vested in 500 weeks of those benefits until those benefits are earned. Those benefits are only earned by surviving to week 501, 502, 503, and so on and so forth. In short, a claimant is not vested in week 501 until week 501 arrives. The applicable case law states that if a claimant is awarded lifetime benefits and passes away prior to the 500-week cap, benefits are only payable

to 500 weeks[3]. *See* Floyd v. C.B. Askins & Co., 382 S.C. 84, 675 S.E.2d 450 (S.C. App. 2009). Similarly, if a claimant is awarded lifetime benefits and passes away after surpassing the 500-week cap, benefits are terminated as of the date of death. *See* Glover by Cauthen v. Suitt Const. Co., 318 S.C. 465, 458 S.E.2d 535 (S.C. 1995). All benefits paid after the statutory 500-week period are to be paid weekly. S.C. Code Ann. §§ 42-9-230, -250.

In sum, the case law on this issue is quite clear that a claimant with a lifetime award is only vested in the first 500 weeks of benefits. Thereafter, the benefits only accrue on a week to week basis. Therefore, the Hearing Commissioner did not err when he found there was a 500 week vested limit to benefits and the Decision and Order must be affirmed.

III. THE HEARING COMMISSIONER DID NOT ERR BY CONSIDERING MEDICAL EVIDENCE RELATED TO LIFE EXPECTANCY.

Claimant filed for the underlying hearing and sought an additional lump sum of up to $325,000. Despite this fact, Claimant asserts in this exception that evidence of Claimant's life expectancy is irrelevant to further lump sum awards. Based on well-established case law, the medical evidence of life expectancy is wholly relevant to Claimant's requests.

Claimant did not submit any medical evidence for consideration. Defendant submitted a written opinion from the treating physician. Therefore, the medical evidence is undisputed and uncontroverted. The uncontroverted medical evidence submitted shows that Claimant has, at most, 10 years of life expectancy remaining. In Martin v. Martin, 296 S.C. 436, 373 S.E.2d 706 (S.C. App. 1988), the Court of Appeals held that **mortality tables may be disregarded if there is competent evidence to challenge the use of the mortality table in considering life expectancy.** That determination was reiterated in Haselden v. Davis, wherein the Court of

[3] This issue was discussed in Floyd, *supra*. While in that claim the 500 week award of benefits on Claimant's death was not appealed, making it the law of the case, the Court of Appeals did affirm the reduction of lifetime benefits to a fixed time award of 500 weeks when the claimant passed away prior to the 500 week statutory cap and had a

Appeals stated "...the [mortality] table below shall be received in all courts and by all persons having power to determine litigation as evidence **(along with other evidence as to his health, constitution and habits)** of the life expectancy of such person. 341 S.C. 486, 534 S.E.2d 295 (S.C. App. 2000) (emphasis added). It is clear that the mortality tables alone are not conclusive on the issues of life expectancy and that when competent evidence is presented contradicting the mortality tables they may be disregarded[4]. Further, Ashley v. Ware Shoals, 210 S.C. 273, 42 S.E.2d 390 (S.C. 1947) states "...if the total disability is such that...**a serious question is presented regarding the likelihood of the employee's living the length of time required to complete the installment payments, the allowance of a lump sum** settlement over the objection of the employer or carrier **would constitute an abuse of discretion...**"

The cases cited herein make it clear that not only is the medical evidence of life expectancy relevant and proper but that the uncontested and uncontroverted medical evidence required a denial of any additional lump sums in this case. Therefore, the Single Commissioner did not err in relying on established precedent in reviewing and relying on the uncontested and uncontroverted medical evidence presented at the hearing and the Decision and Order should be affirmed.

IV. THE HEARING COMMISSIONER DID NOT ERR BY REFUSING TO INCREASE CLAIMANT'S COMPENSATION RATE

Claimant argued that his compensation rate should be increased in one of three possible ways: (1) a percentage increase of up to 12.8% per year every year since the accident; (2) lockstep raises of .50 per hour per year; or (3) recalculated based on aW2. Despite Claimant's

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lifetime commuted value balance of 987.48 weeks.

[4] Glover, as cited by Claimant, contains no language related to utilizing the mortality table in related to benefits in a lifetime case. Glover is a very narrow decision. Glover stands only for the proposition that it would be unfair to award an attorney's fee that is less than a portion of the full lifetime benefits because it may result in an attorney receiving a lesser fee than in a claim that is not a lifetime benefits case. Therefore, the Glover court held that it was

requests, there is no mechanism under the Act that allows the Commission to increase the compensation rate based on cost of living increases, merit based increases, lock step wage increases, or W2 wages. The Commission assigns a compensation rate calculated based on the four quarters preceding the injury. The mere fact that a claimant might be making more today than at the time of the injury does not constitute an extraordinary reason to increase the compensation rate.

The only actual evidence presented at the hearing related to compensation rate was a wage sheet and letter from Burriss Electrical. The wage sheet shows that the three employees hired immediately before and immediately after Claimant make an average of $13.80 per hour in 2014. The letter submitted by Defendants indicates that there was a wage and hiring freeze in 2007 and that Defendant Burriss had to lay off half of its employees. Further, the letter indicates that Claimant would have only been eligible for lockstep raises of .50 per hour and, at most, he would be making $2.00 per hour more today (or $16.50 per hour).

However, despite the possibility of making more money today, two cases expressly prohibit a retroactive increase in the compensation rate based on annual, time based, and/or lock step raises. Elliott v. S.C. Department of Transportation, 362 S.C. 234, 607 S.E.2d 90 (S.C. App. 2004), holds that "...a standard cost of living increase or step increase based on longevity of service..." does not constitute an exceptional reason under S.C. Code Ann. § 42-1-40. Further, Roberts v. McNair Law Firm, 366 S.C. 50, 619 S.E.2d 453 (Ct. App. 2005) holds that a post-injury merit increase does not constitute an extraordinary or exceptional reason to increase the compensation rate.

Elliott and Roberts set out exactly the same thing Claimant has attempted in the present case. He is seeking an increase in compensation for what would be annual merit, cost of living,

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"adequate" to use the mortality table only to determine an attorney's fee.

and or lockstep increases. This is simply not permitted under the laws of South Carolina. Therefore, the Single Commissioner did not err by refusing to increase the compensation rate and the Decision and Order should be affirmed.

V. THE HEARING COMMISSIONER DID NOT ERR BY COMPARING CLAIMANT'S WAGES TO OTHER NON-ENGLISH SPEAKING EMPLOYEES.

The undersigned would first point out that this exception is entirely irrelevant as it is merely a red herring designed to obfuscate the underlying compensation rate increase issue previously discussed. The comparable employee issue is irrelevant because the compensation rate was properly denied as Elliott and Roberts clearly prohibit the increase in compensation rate sought by Claimant.

However, for purposes of the brief, Defendants will address this issue. The record is clear that there is no "racist" or "anti-Hispanic" evidence, position, or findings. The evidence presented on the compensation rate topic consisted solely of a wage sheet and letter from Employer. Claimant did not present any actual evidence on this issue. The letter presented contains a discussion and explanation for the different classes of employees within Employer. Specifically, the letter states that Employer has project managers/superintendents, foremen, and electricians. It notes that each of these jobs has increasing levels of responsibility (electricians being the least, Claimant was an electrician) and increasing levels of pay (again, electricians being the least). Specifically, it states "we believe the increased responsibility of the foreman and superintendents should maintain some difference in pay commensurate with that responsibility." The letter clearly sets out that in order to be in a position with greater responsibility—e.g. project lead, superintendent, or foreman—the employee was required to speak fluent English because "...our customers, engineers and architects have an expectation of excellent communication. **This requires the ability to communicate quickly and effectively in English.**" (emphasis

added). Employer notes in the letter "...to date none of our Spanish speaking employees have mastered English well enough to represent the company in management projects." Claimant was not fluent in English. This was undisputed at the hearing despite Claimant's wife and son testifying (note: Claimant had the burden of proof to justify the requested compensation rate increase, he failed to prove Claimant was fluent in English). In fact, Claimant was one of Employer's highest paid electricians.

The wage sheet similarly reflects there are no "racist" or "anti-Hispanic" sentiments by Employer. Claimant bases this wild accusation on a mistaken belief that Employer's Hispanic employees are paid less than other employees. A review of the wage sheet submitted show that this is patently false. For reference, Claimant was making $14.50 per hour at the time of the accident and was one of Employer's highest paid electricians. The wage sheet reflects there are thirty (30) employees making the same hourly wage or less. Of these thirty (30) employees, only eleven (11) are Hispanic. The other nineteen (19) are non-Hispanic employees. In spite of this, Claimant alleges Employer, the undersigned, and the Single Commissioner engaged in a racist analysis of the evidence to deny an increase in compensation rate.

Additionally, at the hearing in this matter, Claimant put his position on the record that there was no disparate pay between Hispanic and non-Hispanic employees. Specifically, when discussing the above referenced letter, he stated the following on three separate occasions:

> "For reference, the highest paid -- and I'm sure this is just probably a Hispanic electrician; I'm sure that I was just -- they were just trying to equate -- **I'm sure there's no difference in the pay of the Hispanic electricians than to other electricians** -- but he's paid seventeen fifty ($17.50)."
>
> Single Comm. Hr'g Tr. 22:4-11

"I'm sure that they don't have other non-Hispanic electricians being paid more..."

Single Comm. Hr'g Tr. 23:8-10

"Mr. McDaniel: -- since there was -- since it was referenced to, again, to Hispanics and, of course, first of all, I don't think you're going to hear any evidence in reference to Mr. Lazaro's English ability, you know, but -- so, we don't know what he would have done. But the other thing is, that I noticed on there that two (2) of the people on here are making seventeen fifty ($17.50) is Garcia -- Aswaldo Garcia and Lorenzo Cabello...And they are both making seventeen ($17.00) and seventeen fifty($17.50).

Mr. Gallagher: **And they speak English.**

Mr. McDaniel: Well --

Mr. Gallagher: I mean, **that's what the letter says** if you want to look at that.

Commissioner Wilkerson: No, I -- I put it on there. I understand.

Mr. Gallagher: **The letter said they speak English** --

Commissioner Wilkerson: I understand. I'll read it all. Yes, you just looked at it.

Mr. McDaniel: -- well, and -- and we don't know what -- **and my point being is also we don't know -- I -- I -- let's say they speak very good English** but I -- I don't know what they would testify to about his ability."

Single Comm. Hr'g Tr. 103:5 – 104:13

The record is clear that even Claimant did not take exception at the time to the dichotomy between English and non-English (or non-fluent) speaking employees until the preparation of his brief. Further, the issue of "Hispanic" vs. "non-English speaking" was only included in the Decision and Order at the persistent insistence of Claimant who demanded its inclusion on multiple occasions prior to the final Decision and Order being filed. These occasions included

conference calls with the Single Commissioner, letters to the Single Commissioner, and Claimant's own handwritten notes on draft versions of the final Decision and Order. It is curious that Claimant demanded the inclusion of racially tinged information not contained in the record in the Decision and Order only to then file an appeal attacking the very same information he demanded be included in the Decision and Order.

Nevertheless, the record is clear that there is no "racist" or otherwise "discriminatory" language, intent, or evidence in the record. The record is clear and undisputed the division of wage earners with Employer centers on specific skill sets and fluency or ability to speak English (thus increasing job responsibilities). The record is clear and undisputed that Employer had 30 employees with same or lower wages as Claimant and nineteen (19) of those are non-Hispanic employees. The record is clear the compensation rate increase was properly denied pursuant to established case law and precedent because Claimant's only basis for the increase was either (1) percentage increases, (2) lockstep hourly increases, or (3) prior years' W2s. The Act does not provide any mechanism for retroactively increasing the compensation rate seven (7) years later simply because a claimant would be making more money seven (7) years later. Further, this entire exception raised by Claimant is based on an unsubstantiated and wholly fabricated belief that Employer pays Hispanic employees less than non-Hispanic employees—a position Claimant knows to be false based on the evidence and testimony submitted. Therefore, the Decision and Order should be affirmed in its entirety.

CONCLUSION

For all the foregoing reasons, the Commission should AFFIRM the Single Commissioner Decision and Order in its entirety.

(Signature Page to Follow)

BRETT H. BAYNE
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Attorneys for the Employer/Carrier

Columbia, South Carolina
August 27, 2015

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0710622

ANTONIO LAZARO,

Employee,

Claimant,

vs.

BURRISS ELECTRICAL,

Employer,

AND

SOUTH CAROLINA GUARANTY ASSOCIATION,

Carrier,

Defendants.

CERTIFICATE OF SERVICE

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO:	Preston F. McDaniel, Esquire The McDaniel Law Firm 1315 Elmwood Avenue Columbia, South Carolina 29201
DOCUMENT:	Respondents' Reply Brief on Motion for Determination of Benefits and Respondents' Reply Brief on Claimant's Request for New Lump Sum, and Increase in Compensation Rate, and Penalties and Interest Related to the Original Lump Sum
DATE OF MAILING:	August 28, 2015

Caroline M. Marcengill
Legal Assistant to Brett H. Bayne

McDANIEL LAW FIRM

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Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

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January 19, 2016

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

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

Dear Ms. Bracy:

Please find enclosed for filing with the Commission our **MOTION FOR REHEARING** in the above-referenced matter. Also enclosed is the required $25.00 filing fee. We would appreciate your returning a clocked-in copy to us in the enclosed self-addressed, stamped envelope.

I am, by copy of this letter, serving opposing counsel with a copy of the Motion for Rehearing. I hope this is sufficient for filing with the Commission, however, if additional information or further clarification is needed, please feel free to contact me at your convenience.

Sincerely yours,

Preston F. McDaniel

PFM/kth
Enclosures

cc: John E. Duncan, Esquire
Brett H. Bayne, Esquire

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION WCC FILE NO.: 0710622
ANTONIO LAZARO, Employee/Claimant, v. BURRISS ELECTRICAL, INC., Employer, and COMPTRUST AGC OF SOUTH CAROLINA, Carrier, Defendants.	MOTION FOR REHEARING

SCWCC
JAN 21 2016
JUDICIAL

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, AND BRETT H. BAYNE, ESQUIRE, ATTORNEY FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that pursuant to SC Code §1-23-380 and the Decisions of the SC Supreme Court, Counsel for the Claimant hereby moves for Reconsideration and Rehearing by the Full Commission Panel of its Order issued on December 23, 2015. Said Motion is based upon the following:

1. That the Claimant would specifically note and would submit to the Commission that there is no Conclusion of Law setting forth or even refers to the section of the Act and/or the law applicable to a request for a partial lump sum and therefore the Order of the Full Commission is fatally deficient because it simply does not set forth reference to the requirements of SC Code §42-9-301 which is the statutory provision that the Commission is

required to apply to a request for a partial lump sum nor is there any Finding of Fact applying the factual evidence to that legal standard. Under that section the Commission, "shall" make a partial lump sum unless it determines that to make a partial lump sum would, "be contrary to the best interest of the employee or his dependents . . .". This is the standard that must be applied and it simply was not applied by either the Hearing Commissioner or the Full Commission. The Commission is required to make detailed Findings of Fact and Conclusions of Law on every, "essential" issue presented to it for decision and that was not done in this case.

2. That the Hearing Commissioner and the Commission in Findings of Fact No. 1-7, and particularly in 4-7 make Findings of Fact that address, "irrelevant and immaterial" issues in reference to the Claimant's request under especially since none of those address the essential factual issue of whether or why it is not in the best interest of the Claimant and/or his dependents to grant a partial lump sum. Again, there is no Conclusion of Law concerning the applicable law and applying it to a request for a partial lump sum under SC Code §42-9-301. The Order is fatally deficient.

3. That the Claimant would request rehearing on Findings of Fact No. 6-7 for the reasons first and foremost that they are totally irrelevant to either the issue of the Claimant's request for a partial lump sum or to the Claimant's request for an

increase in the compensation rate. Also, they are contrary to law and there is no reference under the Conclusions of Law to the statutory Mortality Table. Again, the Commission is required to make detailed Findings of Fact and Conclusions of Law setting forth both the law and the facts applicable to that legal proposition. Assuming for the sake of argument that Findings of Fact No. 6-7 are in reference to the Claimant's request for a partial lump sum, they are contrary to law. The only place that the Claimant's life expectancy is addressed as a matter of law is under SC Code §19-1-150, which establishes and refers to the Claimant's life expectancy before an accident. The Supreme Court has held that the life expectancy applied to lump sum requests. Glover by Cauthen v. Suitt Construction Co., 318 S.C. 465, 458 S.E.2d 535 (1995). These two Findings of Fact refer to the Claimant and the speculation and assertion that the Claimant has a shortened life expectancy due to the accident and after the accident. The Commission's consideration of this evidence would allow a defendant impermissibly to take advantage of the accident as a reason for the Claimant's shortened life expectancy. This is totally contrary to every principle of the Act and law as to the purpose of the life expectancy tables.

4. The Claimant specifically would request rehearing on Conclusion of Law No. 2 because it is totally and absolutely contrary to law and is even contrary to the position that the

Defendants asserted both before the Single Commissioner and before the Full Commission. "There is not a '500 week cap' on benefits in lifetime cases." (Defendants' Brief, p. 7). **The Supreme Court has specifically held that there is no 500 week cap and that in a lifetime benefits award:**

> "The Mortality Tables provide an adequate basis upon which to determine the present day value." Glover, supra.

Also, the Commission leaped back prior to the advent of SC Code §42-9-301 and applied the Ashley case which applies an entirely different standard and has absolutely, and the Claimant would reiterate absolutely, nothing to do with the current standard that the Commission is duty bound to apply.

5. That the Claimant would specifically request rehearing because the Decision of the Full Commission is fatally flawed because it does not even reference the fifteen (15) Grounds for Review that were raised by the Claimant on appeal. The Full Commission is duty bound and required to make Findings of Fact and Conclusions of Law on all of the material issues presented to the Commission for decision. There is simply no, and the Claimant would reiterate no, reference even by setting out the Grounds raised for review in the Order. Actually the Claimant would submit that the Commission is duty bound to make a decision on each of those issues but at a minimum, it must recite those and

refer to the fact that those were reviewed. The Order is totally deficient in that regard.

6. That the Claimant would request rehearing on the basis that the Defendants violated the directions of the Commission in reference to the proposed Order submitted. The Commission directed Defense Counsel to prepare an Order of, "Full Affirmation" of the Hearing Commissioner's Findings of Fact, Conclusions of Law and Decision. Under Full Commission Finding of Fact No. 14, Defense Counsel added the Finding that, "Claimant also failed to raise this issue in his Brief to the Full Commission." This not only was not a direction by the Full Commission but is directly contrary to the directions of the Full Commission and is an effort directly designed by Defense Counsel to limit the Claimant's issues on appeal and to defraud the Claimant of benefits. It is totally improper and inappropriate to deliberately go outside of the directions of a Court or Commission. There is absolutely no direction by the Commission to add this Finding. This Finding is not a matter of interpretation of the Commission's directive; it is a totally additional Finding.

7. That the Commission erred as a matter of law by not applying the exceptional circumstances section of the Code under §42-1-40 and by allowing Defense Counsel to misstate the prior Decisions of the Court of Appeals and Supreme Court in support of that Decision. In addition, there is absolutely no specific basis

cited for the Commission's refusal to apply the Haselden, Silks, and Booth decisions. The Supreme Court and Court of Appeals have repeatedly held that a worker's prior increase in wages prior to the date of the accident constitute a reasonable basis for applying the exceptional circumstances provision.

The Commission also appears to completely try to disregard the exceptional circumstances cases that apply to an increase in the compensation rate going forward based on the mere fact of severe physical brain damage, paraplegia or quadriplegia and the basic fundamental standard applied by the Supreme Court that the objective of wage calculation is to determine the future loss of earning capacity of the Claimant going forward. Also, the Commission ignored the Court of Appeals' specific decision on past wages in Brown v. Peoplease Corp., 402 S.C. 476, 741 S.E.2d 761 (SC App. 2013).

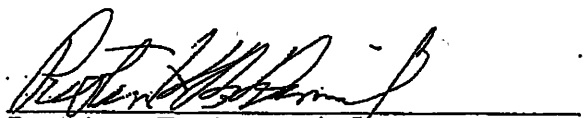
8. That finally rehearing should be granted because the Commission abdicated its responsibility under the SC Workers' Compensation Act and the SC Administrative Procedures Act by allowing Defense Counsel to draft an Order for its review for a , "consensus opinion" reached by three (3) separate Commissioners. Also, the Commission overlooked and thus allowed Defense Counsel to not comply with its directive and to covertly and intentionally add a Finding of Fact that is directly contrary to the Commission's decision which Finding was specifically added and

designed to violate the Claimant's right to review on appeal. For this reason alone, the Order should be withdrawn.

CONCLUSION

For the foregoing reasons, the Claimant would respectfully request Rehearing in this matter. The Claimant would also submit that the Decision by the SC Supreme Court allowing for rehearing and that a Commission Decision is not final until after rehearing requires rehearing in a meaningful manner, in a meaningful way. Paraphrasing without citation, the Supreme Court of the United States as referred to by the SC Supreme Court, due process is not satisfied by an illusory, non-substantive application of the fundamental principles and requirements of due process; due process requires that the due process rights of a litigant must be according to all parties in a "meaningful manner", in a "meaningful way".

Respectfully submitted,



Preston F. McDaniel
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(803) 771-7211

and

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(803) 951-2388

Attorneys for the Claimant

January 19, 2016

CERTIFICATE OF SERVICE BY MAIL

WCC File No. 0710622

I hereby certify that I have on this day served the following in the matter of Antonio Lazaro v. Burriss Electrical, Inc. with a copy of the **MOTION FOR REHEARING** by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

Brett H. Bayne, Esquire
McAngus, Goudelock & Courie
Post Office Box 12519
Columbia, SC 29211

Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this
19th day of January, 2016.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 10/28/18

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Proudly representing injured workers
for over 30 years.

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March 23, 2016

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

RE: Antonio Lazaro, Employee, v. Burriss Electrical, Employer, and South Carolina Guaranty Association, Carrier.
Trial Court Case No. 0710622

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

1. Proof of Service of the Notice of Appeal on the Respondents;

2. A copy of the Orders which are to be challenged on appeal.

3. A Filing fee of $100.00.

Sincerely yours,

Preston F. McDaniel

PFM/kth
Enclosures

cc: John E. Duncan, Esquire
Brett H. Bayne, Esquire
Ms. Amy Bracy, Judicial Director, SCCC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

RECEIVED
MAR 28 2016
SC Court of Appeals

Trial Court Case No. 0710622

Antonio Lazaro, by and through his Guardian ad litem, Decidora Lazaro, Employee,.....Appellant,

v.

Burriss Electrical, Employer, and South Carolina Guaranty Association., Carrier,.....Respondents.

NOTICE OF APPEAL

Appellant, Antonio Lazaro, by and through his Guardian ad Litem, Decidora Lazaro, appeals the May 28, 2015 Decision of the Workers' Compensation Commission as affirmed by the Decision and Order of the SC Workers' Compensation Commission Appellate Panel filed December 23, 2015, and the SC Workers' Compensation Commission Judicial Conference Decision and Order denying the Motion for Rehearing filed February 22, 2016. Appellant received notice of entry of the Judicial Conference Decision and Order (the final Agency Decision) according to a "Certificate of Service" by email on February 22, 2016.

Pursuant to SC Code §42-17-60, the grounds of the appeal and/or the errors of law presented to the Court are set out hereinafter:

1. That pursuant to S.C. Code of Laws §42-17-40, the Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commission at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Commission in this matter as affirmed.

2. That the Commission erred as a matter of law by failing to make any conclusion of law under SC Code §42-9-301 which sets forth the basis upon which a lump sum award is to be made to a claimant or the claimant's dependents:

> "when the employee so requests and the Commission deems it not to be contrary to the best interest of the employee **or his dependents . . . ."**

The Request for a partial lump sum was made in this case under that statute and there is simply no conclusion of law in the Decision by the Commission as required by law concerning that statute under which a decision of the Commission is to be based and therefore the Decision is not based on law and is based on speculation. There are no detailed Findings of Fact and Conclusions of Law as is required on the essential issue for decision.

3. That the Commission erred as a matter of law by failing to apply the cases decided, and the statutory authority for granting an increase in the compensation rate, under SC Code §42-1-40 and §42-9-10.

4. That the Commission erred as a matter of law by failing to increase the compensation rate where the undisputed evidence establishes that the Claimant's pre-injury wages establish a higher average weekly wage and resulting compensation rate than was applied in this matter; and where the evidence establishes a consistent pattern of wage increases on behalf of the Claimant in accordance with our Appellate Court decisions in Booth v. Midland Train; and where the undisputed evidence establishes that prior to the injury the Claimant was operating a flea market booth and that the Claimant's wife to make up for that lost income had to work three (3) jobs; and where the undisputed evidence establishes, per the evidence submitted by the employer, that all employees hired at the same time as the Claimant were making substantially more in wages than at the time of the accident.

5. That the Commission erred as a matter of law, and its decision is based on speculation and innuendo, where there is absolutely no evidence to support the Finding of Fact that the employees that were making higher wages, that were hired approximately at the same time as the Claimant,

were English speaking or that they were anything other than Hispanic workers.

6. That the Commission erred as a matter of law by finding that the Claimant was a non-English speaking Hispanic employee where there is absolutely no evidence, testimonial or otherwise to establish that fact and therefore this Finding is based on surmise, speculation and innuendo.

7. That the Commission erred as a matter of law and violated the Claimant's constitutional rights to due process and equal protection by finding that the,

> "Claimant should be compared to other non-English speaking Hispanic employees."

This is an invalid, unconstitutional class based comparison that is not justified by the evidence and is a racist, anti-Hispanic, unconstitutional assessment that establishes bias and prejudice on behalf of the Commission.

8. That the Commission erred as a matter of law by setting forth in its Order concerning the Form 50, 51 request for an additional lump sum that a claimant in a workers' compensation case and in this case has only a, "vested interest in 500 weeks of workers' compensation benefits" where the Supreme Court has specifically ruled and specifically held in a lifetime benefits case that,

"SC Code Ann. §42-9-10 (1985) eliminates the 500 week cap on compensation for total, permanent disability . . ."

and where the Supreme Court has specifically held in a lifetime benefits case to the contrary that the:

"Mortality tables provide an adequate basis upon which to determine the present day value."

Thus, the commuting factor in a lifetime benefits case is not 500 weeks but is in fact the Claimant's lifetime as determined by the SC Mortality Table, SC Code §42-1-150. Therefore when the Claimant was awarded a lifetime compensation award, the award that vested in the Claimant at that time as a matter of law was based on the Mortality Table and the Claimant's life expectancy under that Table as of the date of that award; i.e., the Claimant's entitlement to lifetime benefits under SC Law vested for that period of time at that point. A Claimant cannot request a partial lump sum award greater than the value as established by the Mortality Table, nor can the value be less than the Claimant's life expectancy; particularly where the decision made in 2010 was not appealed and has become the law of the case.

9. That the Commission erred as a matter of law by considering evidence of the Claimant's life expectancy post-accident wherein under the SC Mortality Tables and SC Law, the Claimant's mortality and life expectancy is determined

immediately prior to the time of the accident: The Defendants cannot benefit from the injuries from his accident to establish a lesser life expectancy and any evidence after the accident on his life expectancy is contrary to law and is irrelevant, immaterial, prejudicial and should not have been considered and establishes that the Commission's decision is based on an abuse of discretion, is capricious and is contrary to statutory law. The very reason for the mortality table is to prevent such arguments.

10. That the Commission erred as a matter of law by failing to make a partial lump sum Award in the best interest of the Claimant's dependents under SC Code §42-9-301 and by failing to make Findings of Fact on that essential issue, wherein specifically due to the accident, the Claimant has an admitted shortened life span as a result of the accident and therefore his dependents' entitlement to compensation benefits will only apply as long as the Claimant is alive; and where the evidence establishes that the request for a partial lump sum was made to create annuities that would guarantee an income stream to the Claimant's family based on his specific vested lifetime award, that being his entitlement to benefits for his lifetime as established by the Mortality Table; wherein the law assumes and creates a legal fact concerning all litigation as to how long Mr. Lazaro will live. How can it be argued that to guarantee, his legally established period

of and entitlement to income from, his vested Award to his family is not in their best interests?

11. That the Commission erred as a matter of law by failing to Award a partial lump sum wherein the previous lump sum Award, which is the law of the case, specifically provided that the Claimant could request additional partial lump sums for the specific purpose of paying for college education and where the partial lump sum requested in this case was specifically to pay off debts incurred by Antonio Jr. for attendance at a college; and where the evidence established that Antonio Jr. had to stop college and enter the military due to his inability to pay for his college education; and where the evidence established that Oliver had in fact stopped college to go back to work to raise additional income for the family with the intent of allowing him to return to college. In addition, it is an improper consideration, under the best interests of the dependents test, for the Commission to consider whether or not the dependents would have obtained a loan to pay for college wherein the purpose of §42-9-301 is to provide for the best interest of the claimant **or his dependents** which in this case involves having money available through a partial lump sum to prevent them from having to pay for college or find some way to scrape up the money to afford college. Further

there is absolutely no evidence that it is not in their best interests.

12. That the Commission erred in making all of the Findings of Fact discussed and applied to both the decision to deny a partial lump sum under SC Code §42-9-301 and the refusal to increase the compensation rate under SC Code §42-1-40. There is no rational connection between the Findings made and the essential factual issues under law that were before the Commission for decision.

13. That the Commission erred as a matter of law by failing to award the Claimant penalties and interest pursuant to SC Code §42-9-90 and §42-9-240 wherein the lump sum payment due under the first Award was not made until more than 14 days after the date of the final decision on rehearing by the Court of Appeals nor within fourteen days of the last date of Defendants right to file for a Writ of Certiorari. The final Opinion of the Court of Appeals denying the Petition for Rehearing was filed on April 10, 2014 and under SC Appellate Court Rules, Rule 242(c), the Opinion of the Court of Appeals becomes final unless a Petition for a Writ of Certiorari is served on opposing counsel and filed with proof of service with the Court of Appeals and the Clerk of the Supreme Court:

> "within **thirty (30) days after the Petition for Rehearing . . . is finally decided by the Court of Appeals.**"

Thus the Opinion of the Court of Appeals became final at the latest on May 10th and payment of the award was not made within fourteen (14) days of that date. SC Code §42-9-240 provides in pertinent part that the:

> "award **shall** become due seven days . . . **from the date of such a judgment of the Court, on which date, all compensation then due shall be paid.**"

SC Code §42-9-90 provides in pertinent part,

> "if any installment of compensation . . . payable in accordance with the terms of an Award by the Commission is not paid within fourteen days after it **becomes due, as provided in §42-9-240**, there shall be added to such unpaid installment an amount equal to ten percent thereof . . . ."

14. That the Commission erred as a matter of law and refused to follow the law concerning penalties and interests. In fact the case cited by the Defendants Hudson v. Lancaster Convalescence Center (Op. No. 27348, filed 1/08/14) does not stand for the proposition for which the Defendants cited it to the Commissioner and in fact in that case the Court of Appeals Order of Dismissal was combined with an Order of Remittitur whereas in this case there was a separate Opinion issued denying the Petition for Rehearing and holds that it is from that date that the time limits start. In addition, since no Writ of Certiorari was filed the Order became final as of the date it was filed and interest is due "from the original date of the award".

15. That the Commission erred as a matter of law by failing to make detailed Findings of Fact and Conclusions of Law on the issue of whether a partial lump sum was in the best interests of the dependents.

16. That the Full Commission erred as a matter of law by allowing a party to draft the consensus Order of the Panel and especially in this case where the Panel requested an Order of:

> "Full Affirmation of the Hearing Commissioner's findings of fact and conclusions of law and decision"

whereas the proposed Order submitted without notice to the Commission contained additional findings meant to bolster the position of the Defendants on appeal.

17. That the Commission erred as a matter of law by failing to grant the Motion for Rehearing for the reasons set forth in the Motion.

18. That the Commission erred as a matter of law by not making detailed findings of fact and conclusions of law on the "essential" issues raised by the Motion for Rehearing.

The above-referenced Exceptions are subject to amendment upon receipt of the Transcript in this matter.

Respectfully submitted,

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March 23, 2016

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

RECEIVED
MAR 28 2016
SC Court of Appeals

Trial Court Case No. 0710622

Antonio Lazaro, Employee, ... Appellant,

v.

Burriss Electrical, Employer, and
South Carolina Guaranty Association,
Carrier, ...Respondents.

PROOF OF SERVICE

I certify that I have served the NOTICE OF APPEAL by depositing a copy of it in the United States Mail, postage prepaid, on March 23, 2016 addressed to: Ms. Amy Bracy, South Carolina Workers' Compensation Commission, Post Office Box 1715, Columbia, South Carolina 29202 AND also serving a copy upon Brett H. Bayne, Esquire, McAngus, Goudelock & Courie, Post Office Box 12519, Columbia, SC 29211.

Dated: March 23, 2016

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #0710622

ANTONIO LAZARO CLAIMANT, VS. BURRIS ELECTRICAL EMPLOYER, AND SC STATE GUARANTY ASSOCIATION CARRIER.	SC WORKERS' COMPENSATION COMMISSION HEARING OF ANTONIA LAZARO VS BURRIS ELECTRICAL, INCORPORATED

This is the Transcript of the South Carolina Workers' Compensation Hearing of Antonio Lazaro versus Burris Electrical, Incorporated, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 9:43 A.M., Friday, June 27, 2014, at South Carolina Workers' Compensation Commission, 1333 Main Street Columbia, South Carolina.

COPY

REPORTED

BY

GLORIA DAVIS

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ALSO PRESENT:

*Reporter's Note: -- Indicates incomplete thought or sentence, trailing off or interruption by speakers.

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I N D E X

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STIPULATIONS

Commissioner Wilkerson: Today is 6/27/2014. We're here in reference to Workers' Comp file number 0710622. The Claimant, Antonio Lazaro, is represented by Preston McDaniel as well as John E. Duncan. The Employer is Burris Electrical, Incorporated, the Carrier is -- it's in --

Mr. Gallagher: They're in receivership.

Commissioner Wilkerson: -- yes, is in -- I just -- isn't that funny? I saw who it was and I knew it was in receivership; that's scary. And it's the UEF -- no, I mean, The State Guaranty Fund. I'm sorry, South Carolina State -- is it still called South Carolina State -- South Carolina State Guaranty Fund or what is it?

Mr. Gallagher: Guaranty Association.

Commissioner Wilkerson: Guaranty Association, you are correct. I'm dating myself. And they are represented by Brett Bayne as well as George Gallagher. The date of accident is 7/6/2007. I'm not going to get into average wage and comp rate; that does not really matter at this point in time.

We're here to determine the issues that are set forth on a Form 50, 51 as well as a motion. And what I've asked both sides to do, is I'm going to get them to put their positions on the record here shortly on all issues. I don't think there are but I'm going to ask this question. Are there any objections to APA's, jurisdiction, venue or any other items, Mr. McDaniel, from you all's side?

Mr. McDaniel: None -- none, Commissioner.

Commissioner Wilkerson: Thank you. From the opposing side?

Mr. Bayne: None.

Commissioner Wilkerson: Okay. Without objections the Commission's file becomes a part of the record with the exception of self-serving declarations and unstipulated medical reports. So, at this point in time however you want to handle it, Mr. McDaniel, if you want to start with the motion and proceed forward, I know it's not your motion but -- or it may be best if you just put your position on the record, let the motion come

in and you can respond to the motion; is that fair?

Mr. McDaniel: That's --

Commissioner Wilkerson: Because I don't think you have a motion before us.

Mr. McDaniel: -- no, I -- I don't, Your Honor.

Commissioner Wilkerson: If there is I don't have it, okay?

Mr. McDaniel: Right.

Commissioner Wilkerson: Okay. So, go ahead. I'm going to --

Mr. McDaniel: Commissioner --

Commissioner Wilkerson: -- take notes as I always do. Thank you.

Mr. McDaniel: -- then we have -- basically, we're here for a request for a partial lump sum of benefits. Mr. Lazaro's family has been receiving benefits since the date of the accident. So, first of all, any award that you would make would be, in fact, a partial lump sum. The -- Commissioner Beck, when we were over here before we presented and requested a partial -- a partial lump sum and we were including in

that funds to be put into an annuity at that time or -- we're not requesting specifically that, an annuity, but we stated to the Commissioner that possibly some funds could be put into a annuity. But we are requesting it to pay off debts, to purchase a new automobile for the family and -- and to pay off their home and then to set money aside because this family at the time of the last hearing was coming into probably the most -- the best way to put it is probably the most expensive time for a family throughout a family's history. In other words, the boys were both sophomores and seniors in high school, they were both playing soccer on the Irmo Soccer Team and I don't think I need to say anything more about that. They were both excellent students and then Oliver -- they were both excellent students and subsequent to the hearing Commissioner Beck, of course at the hearing said, Mr. McDaniel, you can come back for additional lump sums as things develop and so that's what we're here for today. Under Commissioner Beck's order he directed that we pay off the home, and that

in addition to paying off the home that we pay off these debts, and in addition to paying of the debts that thirty thousand dollars ($30,000.00) was set aside to pay -- to purchase a new automobile for the family. Due to the family, in fact, because the payment has just been made, you know the hearing was back in 2010, and at the appeal process, which it was affirmed on appeal, the -- and all the appeals were done, they recently paid the lump sum and we have paid off the home, we have paid off the existing debt as it exists now and we have set aside the thirty thousand dollars ($30,000.00) and they are looking for an automobile for Ms. Lazaro. Now, as a result of all that, right now we anticipate a minimum balance, at least, being returned to the insurance carrier of thirty thousand, eight hundred and seventy-one dollars and fourteen cents ($30,871.14), which Commissioner Beck -- the first time I've ever had this ordered and -- but in other words, ordered that the -- any residual funds were to go back to the insurance company -- I don't -- I don't know

why but that was the order. Now --

Commissioner Wilkerson: Unappealed because -- I mean, I say unappealed, that's the law of the --

Mr. McDaniel: -- that's --

Commissioner Wilkerson: -- of that order, is my understanding?

Mr. McDaniel: -- yes, that --

Commissioner Wilkerson: Okay.

Mr. McDaniel: -- that's the law of the case. You know, and -- and -- but what I -- the recent I cite that to the -- to you is that what we're requesting now is the following: Of course, we're requesting an increase in the compensation rate and under the exceptional circumstances and we believe that there are numerous cases that would allow you to do that but there is actually one (1) that's almost directly on point and I'm going to hand this up and I've got a copy for Brett here as well, the three (3) cases that -- three (3) of the cases that we cite but I think the most -- probably the most apropos case, Commissioner, is the case of Booth versus Midlands Trane. In every case

that -- that has gone up to the Court of Appeals and the Supreme Court they have found, literally, as a matter of law that exceptional circumstances existed but the reason I say that the one in Booth versus Midlands Trane is so identical is it's almost the identical fact situation to what we have here. Mr. Lazaro started off in 2003, making ten dollars ($10.00) an hour and by the time of this injury in 2007, he was making fourteen fifty ($14.50) an hour. That's the exact scenario on -- that you'll see in the Booth versus Midlands Trane wherein Mr. Booth went to work for Midlands Trane and rapidly got raises and then, as a result of that, the Commission found that there was exceptional circumstances existed to increase the compensation rate. So, the first thing we're going to ask you to do is increase the compensation rate and in that regard it might be best, and this is really confusing so I wanted to --

Commissioner Wilkerson: Since I didn't put it on the record because it was -- tell me what the current comp rate is --

Mr. McDaniel: -- the current comp rate is --

Commissioner Wilkerson: -- or the average weekly wage; it doesn't matter, either one.

Mr. McDaniel: -- is four oh six ($406.00) -- four hundred and six dollars and forty-six cents ($406.46).

Commissioner Wilkerson: And that's the comp rate?

Mr. McDaniel: That's the comp rate.

Commissioner Wilkerson: Okay. The AWW, do you have that?

Mr. McDaniel: The AWW is six hundred and nine dollars and sixty-six cents ($609.66).

Commissioner Wilkerson: Okay. All right.

Mr. McDaniel: And --

Commissioner Wilkerson: And you're asking that it go to what?

Mr. McDaniel: -- well, Commissioner, if you would turn to page 3 of our pre-hearing brief I put in a chart of the various things that I think you should consider in reference

to that. Well --

Commissioner Wilkerson: Is that it?

Mr. McDaniel: -- the pre-hearing brief should separate but I tell you what, mine is --

Commissioner Wilkerson: Was it sent in or -- wait a minute, hold on.

Mr. McDaniel: -- it was sent in and hand-delivered.

Commissioner Wilkerson: If it was sent in we shredded it. Oh, you're talking about the 58; I'm sorry. Oh, I apologize. I thought you meant you actually sent stuff in. I wonder if it's on the other Commissioner's -- let's see, what's it dated?

Mr. McDaniel: It should have been Monday -- we sent it in Tuesday or Monday or Tuesday.

Commissioner Wilkerson: I don't have a clue where it is then.

Mr. McDaniel: Okay.

Commissioner Wilkerson: The way our system works here or the way it doesn't work here, if you sent it in it could be here in a day, it might not get here until next week,

it may be over there being scanned; I don't have a clue where it is. So, did you provide it today?

Mr. McDaniel: I did not. I did not put an additional copy in there.

Commissioner Wilkerson: Okay.

Mr. McDaniel: As a matter of fact, what I can do though is I have my copy you could look at while we're doing that and then I'll --

Commissioner Wilkerson: It doesn't matter. Just tell me what it is and -- and if I don't get it I'll make a note --

Mr. McDaniel: -- okay.

Commissioner Wilkerson: -- and Brett, you don't have a -- I mean, I -- I'm not saying we don't have it --

Mr. Bayne: What are you --

Commissioner Wilkerson: -- it's just --

Mr. Bayne: -- what -- what --

Mr. McDaniel: The pre-hearing brief.

Commissioner Wilkerson: -- when stuff comes in late --

Mr. Bayne: Oh.

Commissioner Wilkerson: -- and I

shouldn't say late, it's not late but when stuff comes in close to the hearing date I wish -- I wish I could tell you that I got it.

Mr. Bayne: No, I -- I got his pre-hearing brief.

Commissioner Wilkerson: So, okay. And what I will do, let -- go ahead; I'll see if we get it later. I'll just note the pre-hearing brief.

Mr. McDaniel: Well, do you want to look at mine while I do that?

Commissioner Wilkerson: Well, I was going to see if Elaine has got it.

Mr. McDaniel: Okay.

Mr. Bayne: You can have mine.

Mr. Gallagher: Why don't you -- you can reference our copy.

Commissioner Wilkerson: I can do that.

Mr. Gallagher: Okay.

Commissioner Wilkerson: I just -- that way I can take notes and it's just easier when I go back -- oh, thank you.

Mr. Bayne: I'll just stand over here if I need it right quick.

Commissioner Wilkerson: Oh, absolutely.

Mr. McDaniel: And we'll get Brett a -- another copy of that.

Commissioner Wilkerson: I'm sure we've got it; it's just where it is in our system, I do not know.

Mr. McDaniel: On page -- on page 3 of the attachment to the pre-hearing brief.

Commissioner Wilkerson: Which is Midlands Technical College? Or wait a minute, when you say -- oh, he's talking about --

Mr. McDaniel: The pre-hearing brief.

Commissioner Wilkerson: -- I'm sorry. Okay. All right. I've got you. Hired -- I've got you.

Mr. McDaniel: Okay.

Commissioner Wilkerson: Ten (10) hours, six oh nine, thirty ($609.30), perfect.

Mr. McDaniel: Right. So, in other words, first off under -- under Roman Numeral Number One (I), what we've done there is, this is what his starting salary was and this is what his salary was per hour at the time -- in July of 2006. And you'll see that he

-- in less than three (3) years or just over three (3) years, excuse me, three and a half (3 ½) years, he had a forty-five percent (45%) basic increase in his salary. So -- and if you calculate that out the rest of that says that it would be -- average out to a yearly increase of twelve point eight six percent (12.86%), okay? Now, skipping down to Roman Numeral Number Two (II) -- Number One (I) is the compensation rate at which he is being paid; you'll see four oh six, forty-six ($406.46). Do you see that, Commissioner --

Commissioner Wilkerson: Yes.

Mr. McDaniel: -- under number one (I)?

Commissioner Wilkerson: Got it.

Mr. McDaniel: Number Two (II) is, we put into evidence his W-2 for the full year proceeding the date of the accident and you'll see that even based on that the compensation rate should have been four hundred and thirty dollars and eighty cents ($430.80). Now, so, first off I would argue that even from the get-go but we're only requesting the increase of compensation rate

from this point forward for -- for -- on the case.

Commissioner Wilkerson: When you say, from this point forward, are you talking about today forward --

Mr. McDaniel: Well, from --

Commissioner Wilkerson: -- or are you talking about --

Mr. McDaniel: -- from your order. If you decide --

Commissioner Wilkerson: -- okay.

Mr. McDaniel: -- if you decide to increase it from the point that you decide to increase it and you decide -- back up to this date then we request from this date forward. Now, Number Three (III), Number Four (IV) and Number Five (V) and Number Six (VI) are -- basically Number Three (III) is setting out the maximum compensation rate in 2007 --

Commissioner Wilkerson: I'm fine with that.

Mr. McDaniel: -- and the maximum compensation rate in 2014. So, if you just take as a -- a point of trying to decide what should be the increase, if you determine that

issue be given the increase, if you -- that comes out to a sixteen point three (16.3) -- I mean, four four percent (.44%) increase from 2007 and to 2014, in the maximum compensation rate. So, if you apply that, which I do under Number Four (IV), to the compensation rate at which he is being paid, his average weekly wage -- you see under Number Four (IV)?

Commissioner Wilkerson: Yes. I'm fine.

Mr. McDaniel: Applying that sixteen point forty-four percent (16.44%) interest -- I mean, increase in -- the same thing with the maximum compensation rate, it goes to an average weekly wage of seven hundred and nine dollars ($709.00) with a resulting compensation rate of four hundred and seventy-three dollars and twenty-eight cents ($473.28). If you applied what his average weekly was in 2007, according to their Form 20 or the information the Commission was provided at the time that the accident occurred, okay? So, now, Number Five (V) takes that twelve point eight six percent (12.86%), which is what his average increase

was coming out to be, in other words, just based on his past work history and the past amount of money --

Commissioner Wilkerson: But -- but I'm not disagreeing with the math but also there was a major dip in the economy in '08.

Mr. McDaniel: -- correct. I agree.

Commissioner Wilkerson: Is there any numbers in there for that?

Mr. McDaniel: No, there's not.

Commissioner Wilkerson: Okay.

Mr. McDaniel: No.

Commissioner Wilkerson: All right.

Mr. McDaniel: However, I would say this, if you -- what you'll find is that the average weekly wage increase has continued to be approximately three percent (3%) a year and that's -- if you look at that -- for example, under Number Three (III), the maximum from 2007 to 2014, you can calculate that out and it calculates almost exactly to three percent (3%). All right, so, I think that's a good -- good fair estimation of -- of -- in other words if you apply that percentage of increase it's across the board

what happened in wages across the state during that time period, that's a fair estimation of the increase. And as a matter of fact, it's ironic that based on what Brett presented to me this morning, and to you, it's almost going to go right along with that because if you look under Number -- flip over the page to page 6.

Commissioner Wilkerson: Page 4 at Number Six (VI)?

Mr. McDaniel: Yes, sir.

Commissioner Wilkerson: Okay.

Mr. McDaniel: Page -- now, what I -- what I did here was, I said, okay, let's just assume that over the last seven (7) years he only got a fifty cent ($.50) per hour raise for seven (7) years. I think it's just sort of ironic that what Brett presented to us this morning because that would come out to an average weekly wage of seven hundred and twenty dollars ($720.00). In other words, his -- if you take the fourteen fifty ($14.50) an hour and increase it by only fifty cents ($.50) a year per hour raise that comes out to eighteen dollars ($18.00) an

hour, okay? And so, that would come out to an average weekly wage of seven hundred and twenty dollars ($720.00) with a compensation rate of four hundred and eighty dollars and two cents ($480.02). Now, and here's what -- of course, the Burris family have been outstanding; their -- the whole Burris employees and all that, they actually chipped in wages. Antonio was so well thought of that -- I know Brett and all them know this but they actually -- the employees actually all got together to help the family out and chipped in money out of their salaries after the accident happened for months until -- just to help them out to get through this. But if you look at Brett's document --

Commissioner Wilkerson: At D-1, is that fair?

Mr. McDaniel: -- D-1, yes.

Commissioner Wilkerson: Okay. I'm fine with that. That's okay.

Mr. McDaniel: And look at paragraph number three (3) -- four (4) -- well, actually, let's start with paragraph two (2). Comparing Antonio's wage in 2007, to a couple

of current employees with similar pay shows that he would probably be making between fifteen and -- fifty ($15.50) and sixteen fifty ($16.50) per hour today. For reference, the highest paid -- and I'm sure this is just probably a Hispanic electrician; I'm sure that I was just -- they were just trying to equate -- I'm sure there's no difference in the pay of the Hispanic electricians than to other electricians -- but he's paid seventeen fifty ($17.50). Now, if you look at -- look at Mr. Lazaro's wage increases of forty-five percent (45%), Commissioner, I -- I think you're going to see that -- I believe he'd probably be -- if he were actually out there working today I think he'd be the highest paid. So, if you look at it from the standpoint of the seventeen fifty ($17.50) and -- and if you go down later on in paragraph number one (1), two (2), three (3), four (4), he says -- Brett -- Elizabeth -- the Burris family or the Burris Electrical Company says that the biggest cumulative raise given to any of our electricians was two dollars ($2.00) per hour

across four (4) fifty cents ($.50) per hour raises. So, if you -- if you look at -- if -- if you look at my calculations under Number Six (VI) I just -- I saw -- when I saw that from Brett this morning I said, wow, that's -- that's really great because we're basically on the same page. They're saying that the increase was at the seventeen fifty ($17.50), I took -- my calculation came out to eighteen ($18.00). So, I think, Commissioner, that that's a fair assessment of -- of what he would be making for Burris Electrical Company. I think eighteen dollars ($18.00) an hour is -- they say seventeen fifty ($17.50) to eighteen ($18.00), like here again, I'm sure that they don't have other non-Hispanic electricians being paid more; so, you know, I -- I imagine it's around seventeen fifty ($17.50), eighteen dollars ($18.00) an hour. So, you know, those are the factors we want to ask you to look at and -- and in support of those we put in under tab two (2), we put in his 2006 compensation rate or -- or his W-2.

Commissioner Wilkerson: W-2's, okay.

Mr. McDaniel: And here again, Commissioner, like I said, if you apply that W-2 in 2006, I -- I didn't have anything to do with the calculation -- I don't even know -- we didn't have a Form 20, it was just started and four oh six ($406.00) would be almost -- I think based on fourteen fifty ($14.50) an hour at forty (40) hours I think is pretty close to being the calculation of how that comes out. But here again, if you -- under Number Six (VI) if you apply that -- just what he was actually making a full year before this injury, and he was making a lot of overtime after that, he -- his compensation rate would be four hundred and thirty ($430.00) back then. So, I -- you know, we'd ask you to increase it as high as you possibly can because as you know the law -- and one thing, let me say this right here. I have every respect -- you are a Commissioner, I have every respect for this Commission; however, our responsibility is to apply the law as it exists, not what arguments we -- we may want to make to the Supreme Court or the Court of Appeals in any

given situation.

Commissioner Wilkerson: Does the law apply to the date of the accident or does it apply to --

Mr. McDaniel: Actually --

Commissioner Wilkerson: -- as far as the average weekly wage and comp rate; what -- I mean --

Mr. McDaniel: -- actually, the Supreme Court said, in setting the compensation rate it must be followed in terms of the future loss of earning capacity of the individual.

Commissioner Wilkerson: -- and that would be for disability?

Mr. McDaniel: I'm sorry?

Commissioner Wilkerson: That would be for disability, not for setting the comp rate, wouldn't it?

Mr. McDaniel: Well, that's -- no, that's for setting the comp rate.

Commissioner Wilkerson: Okay.

Mr. McDaniel: And -- and as a matter of fact, one of the cases I cited is the Sellers case and -- and that's a -- also a lifetime benefit case.

Commissioner Wilkerson: Yes, it is. It is.

Mr. McDaniel: The Sellers case is the case where the kid -- the young man was making -- worked for the summer and had the intention of becoming an electrician and the -- the Commission awarded him compensation to increase over a ten (10) year period to where he would be receiving the max. His actual compensation rate was the minimum for that -- the compensation rate that was being awarded; I think it was seventy-five dollars ($75.00) but they actually increased it to two hundred ($200.00) and -- I -- I -- you know, it's in -- it's in the case but it's like two hundred and sixty-six ($266.00) -- whatever the max comp rate was then. So, every case is decided that we look to the future as to the effect it's going to have on the future probable loss of earning capacity of the individual. And so, we're just simply asking you to say, okay, let's look at it just as if Mr. Lazaro was continuing to work in his capacity with Burris Electric Company and what would he -- what would be a fair

estimation of what he's making now and going into the future. You could -- you could have -- you could do like the Stokes case did and actually apply the maximum on loss of earning capacity. You could actually apply the maximum comp rate, if you so chose; we don't think that would be unreasonable. But we think at a minimum it should be increased to what the -- the figures -- it's -- it's also sort of ironic that if -- no matter which way you look at it -- if you look at comparing what would have happened to him as compared to the maximum compensation rate, the average wages in the State of South Carolina, it's almost identical to what he would have received at fifty cents ($.50) an hour. I mean, one is four seventy-three and twenty-eight ($473.28), the other one four hundred and eighty dollars and two cents ($480.02). So, I would ask you to increase the compensation rate along those lines. We also submitted in here -- and we just pulled out samples -- you'll find under page -- under tab, I believe its five (5), we put in the -- the 12-A simply to establish for you

the exact date of hire of 12/3/03, that's the only reason that's in there and also his rate of pay, you know, at the time of the accident was fourteen fifty ($14.50). The next page though is -- Ms. Lazaro has -- had kept all of her husband's pay stubs for a period of time and we put those in from July 15th -- we put in samples, it was like just to show the increases at the time those wages increased from twelve ($12.00) then he got a dollar ($1.00) an hour, then he got another fifty cents ($.50), then he got another dollar ($1.00) an hour raise. So, during from 2012, to 2013, his salary, I mean, look at that, his salary went from -- went up two dollars and fifty cents ($2.50). And here again, if you compare that to the thing that they put in this morning, the letter that they put in, here again it's -- in -- in less than two (2) years he got two dollars and fifty cents ($2.50); that would be a dollar and a quarter ($1.25) a year. So, we're asking you to increase the compensation rate. Now, the second is then in reference to our request for an additional partial lump sum. The --

under tab number -- let me find the appropriate tab and that is under tab --

Commissioner Wilkerson: Is this going to be pre-hearing or is this going to be APA's for today?

Mr. McDaniel: -- this is APA's.

Commissioner Wilkerson: Okay. That's what I thought.

Mr. McDaniel: Everything else is in the APA's.

Commissioner Wilkerson: That's fine.

Mr. McDaniel: Under tab 4, the last page, page 8.

Commissioner Wilkerson: Okay.

Mr. McDaniel: As we said, Antonio, Junior, went on to college; he had excellent grades and went on to college. He played soccer at Spartanburg Methodist and because he didn't have the money -- the only way they could afford it was to take out a loan, and we have put in under tab 8 -- Antonio was supposed to be -- well, he actually got leave to be here today from the military; he is serving our country. He left after one (1) year at Spartanburg Methodist because really

the financial debt was running up, they just -- he decided to serve his country and then go back under the GI Bill. But -- but what you're going to see is that in one (1) year he ran up a debt -- they have an outstanding loan of ten thousand, three hundred and thirty-seven dollars and ninety-one cents ($10,337.91). So --

Commissioner Wilkerson: And that's the principal, right?

Mr. McDaniel: -- that's his principal. That's what's going to have to be paid. Well, actually, ten thousand four hundred and seventy-seven dollars and fifty-seven cents ($10,477.57). Now --

Commissioner Wilkerson: That's the accrued interest.

Mr. McDaniel: -- so --

Commissioner Wilkerson: That's the accrued interest as of --

Mr. McDaniel: -- correct.

Commissioner Wilkerson: -- today or as of the last time this was printed or --

Mr. McDaniel: Well, this is as of the time this was printed.

Commissioner Wilkerson: -- okay. That's fine.

Mr. McDaniel: Now, what I -- I say to that is, you know, let me go on a little bit further --

Commissioner Wilkerson: Has any of this been reduced -- and we can ask him that but has any of the --

Mr. McDaniel: -- well, he's not here.

Commissioner Wilkerson: -- okay. That's not who -- okay, I apologize.

Mr. McDaniel: He -- he came -- he came down -- that's Oliver.

Commissioner Wilkerson: Okay. I'm sorry.

Mr. McDaniel: And he came down with -- they restricted the barracks today or yesterday.

Commissioner Wilkerson: Oh, I'm sorry.

Mr. McDaniel: He got sick.

Commissioner Wilkerson: Okay. I -- because I thought you said he was here. Okay.

Mr. McDaniel: He went -- he -- I --

Commissioner Wilkerson: That's fine.

Mr. McDaniel: -- I maybe misspoke when I said we were planning to have him here --

Commissioner Wilkerson: Okay. That's fine.

Mr. McDaniel: -- and he had gotten leave to come. But the -- we have that principal balance. The other thing is, is that Oliver -- and you're going to find Oliver's -- under page 6 and 7 you're going to find two (2) things: Number one (1), Oliver was a very good student; on a 5.0 scale he had a 3.817, on a 4.0 scale he had a 3.216, that's his final grades; we obtained this previously. His final grades were identically the same, 3.2. You'll see next that he was given academic awards for academic excellence at Irmo High School and he achieved this throughout the time that his daddy is laying in that bed and at the time that, you know, his mother and every teacher -- the last hearing we had, Commissioner, we had so many people that wanted to come testify for this family we were going to have to limit it and -- but, at any event, while playing on the Irmo Soccer Team he achieved

that and -- and went on to play soccer for one (1) year at Spartanburg Methodist. And then he, like his brother, they decided they just -- the family couldn't afford it. So, what he did was, he came home and he actually is working for Burris Electrical right now and will -- had gone to one (1) semester at Tech and what he wants to do is -- and what we're asking for -- money for in a -- in a lump -- partial -- in a lump sum payment is to --

Commissioner Wilkerson: And this is for Oliver; is that correct?

Mr. McDaniel: -- this is for Oliver.

Commissioner Wilkerson: Okay. That's fine.

Mr. McDaniel: Yes, Your Honor. Is to allow him to complete his degree and you'll see we put in, under tab 3, what it cost to go to Midlands Tech. The only thing Midlands Tech could give us, Your Honor, was the cost of -- the yearly cost.

Commissioner Wilkerson: Go ahead, I was just -- due to his grades is he still eligible for the grant money that comes from

the State underneath this as well?

Mr. McDaniel: Good question.

Commissioner Wilkerson: I don't -- I don't know. I know how it works if you continue the education but I don't know how if there is a break. I -- I don't know.

Mr. McDaniel: In the rapidity with which we got this together we will ask him that question today.

Commissioner Wilkerson: That's fine.

Mr. McDaniel: He --

Commissioner Wilkerson: He may not know. It may be something we've got to get from --

Mr. McDaniel: -- but he -- he is going to return to school this fall. He has been saving money and --

Commissioner Wilkerson: -- okay. That's fine.

Mr. McDaniel: -- and will return to school this fall. And we put in a current estimation behind that at the time, USC and College of Charleston had not -- excuse me -- Winthrop College -- his degree, he wants to go into Nutritional Sciences and he will go

to Tech for the two (2) years he can go there, then he will transfer to USC or Winthrop to complete his degree; he'll have two (2) years there. And what I -- the other -- the information I gave you this morning is a reference to Winthrop --

Commissioner Wilkerson: Okay.

Mr. McDaniel: -- and to USC. And Winthrop is about -- I think if he stays on campus, which obviously if he went to Winthrop he'd have to, it's about twenty-five (25) -- I was really surprised at this, but Winthrop is about twenty-five thousand ($25,000.00) a year; Carolina is only twenty thousand ($20,000.00) a year, including books, tuition, room and board. But however, of course, if he stays at home, which he intends on doing, he can finish his degree and won't have the room and board expense. So, we're asking now -- so, if you look at the -- what it's going to cost --

Commissioner Wilkerson: Did you all base -- base it on what, USC or --

Mr. McDaniel: -- I'm sorry?

Commissioner Wilkerson: -- are you

basing it on USC or are you basing it on --

Mr. McDaniel: I think that would -- that would be satisfactory, Commissioner, but what I was going to --

Commissioner Wilkerson: -- stay at home, USC?

Mr. McDaniel: -- Your Honor, we'd just -- we'd like the money if we can to just -- to set aside so that they can set it aside to pay for his education, which is what his dad would want. His brother was the first child in this family to go to college and Oliver is the second, and as a father and as a lawyer all I'm wanting this Commission to do is to do for this family, which it can do, is to do what Mr. Lazaro would want for his son and would try to do for his son. Now, to try to gear up, they had actually opened a flea market booth to try to make additional income. They tried to maintain that after this thing; they ran it for a couple of years. It became so hard on Ms. Lazaro they had to close it. But Ms. Lazaro now works three (3) jobs and the reason she's working those other two (2) jobs is to try to provide

income for her son to go to college. And so, we're just asking that -- that you allow us to set aside money to take care of that. If you look at the thirty thousand dollars ($30,000.00) that under current Commission order we're going to return to them, to the insurance company --

Commissioner Wilkerson: Is it the thirty thousand, seven something ($30,700.00) that I heard?

Mr. McDaniel: -- correct. If you look at that and you take out the payment of the ten thousand dollar ($10,000.00) loan, okay? And then you set aside the remaining twenty thousand ($20,000.00) to take care of Winthrop, we really don't need any additional -- very little additional lump sum to be set aside for them, if any, to -- to pay for the -- you know, at this time. Just order that that residual amount, whatever it is, be paid to the Lazaro family to pay off this student loan and to set aside money for Oliver to go to complete his education. Now -- now, the -- and this is -- I don't know if this is sort of the law of the case but I'm going to

hand up to the Commission one (1) additional -- if I can ever find it. We're asking that a lump sum be made to pay for the -- to set aside money to provide an income stream as it currently exists to the family. The law specifically provides -- give me one (1) minute, Commissioner; I'd like to try to find this. I'm looking for -- I actually -- what I'm looking for, Your Honor, and trying to find and -- where I put all this various documentation is I actually copied a copy from the brief submitted at the first time around to the Court of Appeals, and in that Court of Appeals decision the Defendants originally had argued that --

Commissioner Wilkerson: I've got a copy of the order but you're looking for a document, right?

Mr. McDaniel: -- yes. I'm looking actually for -- like I said, I -- what I did was I made a copy of the front page of our brief and the page that applies to this, but the first time around Mr. Lazaro was in a vegetative state and -- oh, here we go. I'm going to hand this up to the court and here

is a copy for the Defendants and here's a copy for Your Honor. The --

Commissioner Wilkerson: Let's just -- can we just mark this C-3 where it will flow better?

Mr. McDaniel: -- I'm sorry?

Commissioner Wilkerson: Let's just mark it C-3 --

Mr. McDaniel: Okay.

Commissioner Wilkerson: -- because I --

Mr. McDaniel: That will be fine.

Commissioner Wilkerson: -- I think we've already -- I think we already have two (2) don't we?

Mr. McDaniel: Yes.

Commissioner Wilkerson: That way it just flows better when we refer to it. I don't --

(CLAIMANT'S EXHIBIT NUMBER THREE WAS MARKED FOR IDENTIFICATION)

Mr. McDaniel: That -- that's --

Mr. Bayne: This is the -- this is the brief, isn't it?

Mr. McDaniel: -- this is actually just the brief and it was --

Mr. Bayne: Okay. It's not the order.

Mr. McDaniel: -- it was part of my argument but what I'm presenting this for, Commissioner, is the first time around on the first lump sum the Defendants were arguing that -- that the Commission erred by making a -- a partial lump sum award to the Claimant's Guardian Ad Litem and Guardian and dependant, his wife, Ms. Desidora Lazaro. And the first time around the Defense attorney argued that, well, she might run off with the money, she might do away with it; we want to guarantee and income stream. And what I'm presenting that for is that, two (2) things: Number one (1), I'm going to submit to you in just a couple of minutes three (3) different proposals from Ford's Consulting that this Commission will set aside three hundred thousand dollars ($300,000.00) for the purpose of awarding a partial lump sum in the best interest of the Defendant, the Dependant or his -- the Claimant or his dependents and that's critical, Your Honor, in reference to this statute because you are charged under existing State law with when we request a

lump sum of making a decision of what is in the best -- if it -- you are to grant the partial lump sum if it is not contrary to the best interest of the Claimant or his dependants and that's what is extremely important here, and that is -- what we're talking about is Mr. Lazaro's dependants. Mr. Lazaro is in a vegetative state. I firmly believe in our State's motto Dum Spiro Spero, while I breathe I hope, and I thoroughly hope that someday Mr. Lazaro will walk out of that hospital, but if he doesn't, in reference to this, we're -- we -- he would want his family to be taken care of and that's what this law is intended to do. It is to take care of the Claimant and his dependants. And where you find it is in the best interest of the employee or his dependants then you are to make that -- or not that you -- when we request it, unless you find it's contrary to their best interest, we -- we would request that partial lump sum. The Supreme Court and the Court of Appeals have already said partial lump sums are appropriate. We've already got a

situation where this man is -- any award you make will be a partial lump sum. Now, here is what we want to do. The Ford's Consulting --

Commissioner Wilkerson: Is this what's handed up under C-2; is that --

Mr. McDaniel: -- yes, Your Honor.

Commissioner Wilkerson: -- is this all the -- you said there were three (3) proposals, I think? Are they all three (3) in here or --

Mr. McDaniel: They're all three (3) in there.

Mr. Bayne: They should all be on the first page.

Mr. McDaniel: There are three (3) alternatives.

Commissioner Wilkerson: I see Option One (1), Option Two (2) and Option --

Mr. McDaniel: And all --

Commissioner Wilkerson: -- that's fine. I hadn't -- I hadn't read that yet. Okay, thank you.

Mr. McDaniel: -- and all three (3) of those are based on -- are based on putting

into three hundred thousand dollars ($300,000.00) into an annuity stream. Now, we're really now getting into your ball game -- in your area when we refer to annuities, Your Honor, because you've got a lot more experience in those than I do. But basically, you'll see on page -- beginning at -- it's actually Option One (1), Option Two (2) and Option Three (3) but what we're talking about is putting an initial amount into a annuity that will guarantee sixteen hundred dollars ($1,600.00) a month, or more, to this family, which is currently what they're receiving, for the next ten (10) years, guaranteed payment, ten (10) years. So, no matter what happens to Mr. Lazaro there is guaranteed income stream for the next ten (10) years and -- which is, again, a critical time for this family. Antonio is going to come back out of the military, you know, Oliver is already in college and this will guarantee the income for this family to -- just like Mr. Lazaro would do if he were up and working every day. And so, we would ask you to make that partial lump sum award

of three hundred thousand dollars ($300,000.00) and to the Lazaro family for the purpose of -- and we want to put in -- as you know under the statute you have the right to designate it be sent -- given to a trustee or other guardian to be placed on behalf of the Claimant and/or his family and the -- of course the guardian has the right to stand in the stead of the injured employee when he cannot speak for himself to request that lump sum and that's what we're doing today.

Commissioner Wilkerson: Let me ask you a question. Without reading through the document in front of everybody but is that money, the sixteen hundred ($1,600.00) for the first ten (10) and the seventeen ($1,700.00) for the next ten (10), is there an assumption that somewhere in here -- do we know what the interest rate is to -- to spur that amount off or is that guaranteed?

Mr. McDaniel: It's guaranteed.

Commissioner Wilkerson: It's guaranteed. Okay, that's fine. And I haven't read all the documents --

Mr. McDaniel: Right.

Commissioner Wilkerson: -- but if it's guaranteed.

Mr. McDaniel: And we're asking for an annuity so that this -- with a limited amount of three hundred thousand dollars ($300,000.00), I think you can see that we've --

Commissioner Wilkerson: Yes, I haven't read it --

Mr. McDaniel: -- done a pretty good job. What -- what I meant was, in making sure that this family continues with the same income stream of sixteen hundred dollars ($1,600.00) for the next ten (10) years. Now, one thing -- and you can make the -- I mean, you can make the -- you will make the decision on all of this but the other side of this is that after the ten (10) years -- let's say Mr. Lazaro doesn't make it ten (10) years, all right, that -- that amount of money could -- will then be designated to a beneficiary. So, in other words -- but you can -- you can determine -- we hope that you will say that, all right, should that happen, that he -- that he not make it ten (10)

years, that that money go to the family, but you could very well rule that the -- for the first ten (10) years the guaranteed fund will be paid to him and his dependants but then after that that it -- there is -- if he does not live the ten (10) years period, then that money would go back to the -- to the insurance company. So, we're -- we're trying to plan for all contingencies, you know, and also the -- you know, to look out for the best interests of these -- these individuals. Now, I -- I -- there's something else I -- I want to say but -- I need to argue and I don't -- I -- I will argue with -- in reply to the motion but I'm going to argue here because you -- you're going to hear a lot of stuff that is totally irrelevant and improper and I -- I don't mean that in the improper it's not appropriate under -- under the law, I don't mean it's improper argument; I just mean that it's not really on the issue. And that is this; the Supreme Court has ruled that in a lifetime benefits case for determining the partial lump sum, or entitlement to a partial lump sum, we are to

apply the mortality table, okay? Now, that mortality -- under that mortality table Mr. Lazaro has the --

Commissioner Wilkerson: How old was Mr. Lazaro at the time of the accident, just where I don't have to read back through that part of it?

Mr. McDaniel: -- at -- at this time --

Mr. Bayne: He was forty (40).

Mr. McDaniel: -- forty (40) at the time of the accident.

Commissioner Wilkerson: Forty (40), so --

Mr. McDaniel: He's forty (40) --

Commissioner Wilkerson: -- he's forty-seven (47) --

Mr. McDaniel: -- forty-four (44) --

Commissioner Wilkerson: -- or maybe forty-eight (48). I understand. Okay.

Mr. McDaniel: -- he's -- it's --

Mr. Bayne: You have --

Mr. McDaniel: -- it's --

Mr. Bayne: -- you have about forty-one (41) years based on the mortality table from the date of this accident until what the

mortality table says, the end of his life.

Commissioner Wilkerson: -- okay.

Mr. McDaniel: -- correct. We are basing everything current mortality.

Mr. Bayne: He was thirty-seven (37) if that answers your question.

Commissioner Wilkerson: No, that's okay. I'm just -- I'm just trying to get my mind -- since I didn't hear the initial case.

Mr. Bayne: He's forty-four (44).

Commissioner Wilkerson: Forty-four (44).

Mr. McDaniel: Right.

Commissioner Wilkerson: Okay.

Mr. McDaniel: He has thirty-four point sixty one hundredths (34.61) years estimated mortality, okay? And weekly that is eighteen hundred and six point three (1,806.3) weeks; that's the -- that's how many weeks are left on his mortality.

Commissioner Wilkerson: Okay.

Mr. McDaniel: After the existing lump sum and attorney's fees, which have been approved by the Commission, there is a residual at current compensation rate of

three hundred and twenty-eight thousand, one hundred and eighty-seven dollars and seventy-two cents ($328,187.72), approximately.

Commissioner Wilkerson: Okay.

Mr. McDaniel: Now --

Commissioner Wilkerson: For the Claimant?

Mr. McDaniel: -- for the Claimant.

Commissioner Wilkerson: Okay.

Mr. McDaniel: And that's -- all right, now, if you increase the compensation rate to four hundred and eighty ($480.00), there is an additional one hundred and thirty-three thousand, six hundred and seventy-one dollars and forty-three cents ($133,671.43) left on -- on his mortality, okay? So, meaning that there would still be another hundred thousand dollars ($100,000.00) -- hundred and fifty thousand dollars ($150,000.00) to be paid under that or another twenty (20) -- excuse me, a hundred and seventy five ($175,000.00) if you increase, if you don't it would be about another thirty thousand ($30,000.00). Now, why did I bring up that you're going to

hear a lot of stuff because everybody is looking at, oh, well, Mr. Lazaro is in a vegetative state. Well, unfortunately, and I'm sort of surprised that somebody would catch this knowing the -- the extreme brain power over -- that I -- I'm faced against, I'm just trying to feel this -- get this -- the mortality table is applied to the condition of the Claimant at the time just before the accident. And, Your Honor, I just -- in case -- you know, there is a case directly on point in South Carolina. The Defendants in a personal injury case, which is where we'd normally think of these, but the case is -- you'll find it on the 21, that subpoenaed 21, but the Defendants can't take the advantage of what happened from the accident in a Workers' Compensation case. I'm taking out the fault issue.

Commissioner Wilkerson: Yes.

Mr. McDaniel: Okay. And the Supreme Court set the mortality table -- the reason they set the mortality table is to prevent exactly what is trying to be argued here today but it was preventing me -- and you

know me, Your Honor, reaching for the sun, the moon and the stars and that's my job -- from me coming in here and arguing that Mr. Lazaro is going to live to be a hundred (100) because he was -- what you're going to hear is and what is, in fact, true, that he was as healthy as a horse before the -- the day -- on the date of this accident. So, when we come in here and start talking about, well, he's in a vegetative state. Oh, he may not live that long. Oh, we just want to dah, dah, dah. Well, that's well and good but that's not what the mortality table requires. The mortality table requires that you -- it is to be applied to the -- and any -- any reductions are in reference to the existing state because, as a matter of fact, that case is very much a good scenario. In that case a doctor misdiagnosed breast cancer and misdiagnosed it for two (2) years and the lady wound up dying from breast cancer, and the Defendants tried to go in and argue, well, now, wait a minute, she had breast cancer so she wasn't going to -- you know, that's going to cut down on her age. And the

Supreme Court said, you know, wait a minute, that -- uh-huh, you know, that's -- you -- your negligence resulted in this lady's situation. But in a Workers' Comp context they can't come in here and take advantage of what the accident caused just no more than we can go in a say, somebody at Burris Electric screwed up when they didn't turn -- when they told Antonio to go out on this one light grid, which is what happened, and he worked on every light on that light grid, didn't get shocked but on the last one it was not -- it was on. It was on another panel and if somebody had properly read that panel they would have known that. Now, I can't come in here and argue on a negligence verdict against a fellow employee of Burris Electric Company or the Engineers or whoever it was that turned -- left that panel on -- didn't turn off the entire grid; they should have turned off the whole thing because what happened was, just briefly, he was on a -- sixteen feet (16') off the floor installing lighting in a cafeteria, I believe it was, and -- and got shocked and fell from the

ladder, landed on the concrete and then was unconscious and his heart stopped for about fifteen (15) minutes. At any event, so the mortality table applies at the date -- so, the mortality table, Your Honor, is what it is, and we are requesting a partial lump sum. This Commission is charged with the responsibility of doing what is in the best interest of the Claimant -- unless you find it's not in the best interest of these folks to do that, I'm asking you to do it. And in addition to that -- you know, another argument is going to be made and, here again, this is existing law. I may -- there is a lot of things I really wish I could change but unfortunately right at this point and what this Commission has to do is apply the law as it exists and it says right now that a -- a Claimant has a property interest, a vested right to the benefits awarded. This man has been awarded total and permanent disability benefits and that's the law of the case. And that man, he -- he is entitled to those benefits and any argument -- and the Supreme Court says in that context we apply

the mortality table and we have no right to argue anything less than that and to do anything other than apply the law that was sent down by the Supreme Court. Now, if they want to sometimes say, wait a minute, there is no vested right and -- and there is something about a five hundred (500) weeks, I -- I don't think that -- I don't even think that's the law but -- well, it's not the law as far as the Supreme Court sees it. But that's an argument. I think I've covered everything. We will give testimony in addition to the documents but here again, Your Honor, it's basically just you deciding what you think is fair. And we appreciate you -- I appreciate your time.

Commissioner Wilkerson: And you're going to hold up on anything about the motion?

Mr. McDaniel: Yes, I --

Commissioner Wilkerson: Okay. That's -- yes, that's fine.

Mr. McDaniel: -- I will address that after --

Commissioner Wilkerson: No, absolutely.

That's fine. I'm fine with that. So, Brett --

Mr. Bayne: Thank you.

Commissioner Wilkerson: -- I know sometimes we get a little convoluted but if we could follow just the --

Mr. Bayne: I'll follow the general --

Commissioner Wilkerson: -- there you go. And then, I'll let you -- we can get your motion in.

Mr. Bayne: -- which appropriately starting with the average weekly wage?

Commissioner Wilkerson: Yes. If you could; it'll just flow better.

Mr. Bayne: Commissioner, give me one second to get all this up here.

Commissioner Wilkerson: No, absolutely.

Mr. Bayne: In this case and you have in front of you a letter that we handed up this morning --

Commissioner Wilkerson: From Mr. Burris?

Mr. Bayne: -- do you have our pre-hearing brief in front of you; did you get a copy of that or did it make it to your

office yet?

Commissioner Wilkerson: I don't -- my guess is no. So --

Mr. Bayne: Let me -- let me go ahead and hand you ours.

Mr. McDaniel: -- how about doing this. I'll -- I'll reciprocate the favor --

Mr. Bayne: I -- I have two (2) copies.

Mr. McDaniel: -- oh, do you?

Commissioner Wilkerson: I -- I'm guessing -- I'd rather have two (2) than none; so, yes, I -- I thank you.

Mr. Bayne: Commissioner, the -- the law -- the Act says the compensation rate and the average weekly wage is set based on the previous fifty-two (52) weeks of wages that the Claimant earned. In this case he was earning fourteen fifty ($14.50) an hour. The Form 21 that was filed -- or the Form 20 that was filed indicates that his average weekly -- or his compensation rate was four hundred and six dollars ($406.00) and change a week. Mr. McDaniel is arguing that essentially his compensation rate and average weekly wage should be retroactively increased because of

the possibility that he would receive annual increases after his date of injury; that he would receive what is called a cost of living increase or a merit increase or a step increase of -- one of his arguments was fifty cents ($.50) a year or multiple fifty cents ($.50) step increases. When you look at our pre-hearing brief -- let me figure out which one it is. In conjunction with the letter, if you look at exhibit number two (2), that is a -- and I have a colorized version, which actually may help you; Preston used the -- the color version of it and the colorized version didn't come through in black-and-white. This is a list of all of the current employees at Burris Electric. The names and wages that are highlighted in yellow, if you note at the top of the page, those are management level or supervisory level, employees. When you look at the letter that Mr. Burris submitted today what that letter tells you about those employees, those are employees that speak limited English that they can send out into the field in order to conduct meetings with architects,

meetings with engineers and they can run a project; that's why their wages are of a higher rate. When you look at the employees that are not highlighted in yellow, those are the Electricians in the company. Those are the Electricians that do the same job Mr. Lazaro was doing and those wages on the right side of the page are the wages they are making today in 2014. When you look at those numbers and you look at the three (3) employees immediately hired before Antonia, which are -- I'll get their names for you -- It would be Malkika Domingos, Hernandez and Saligan Morales. They made twelve fifty ($12.50), thirteen fifty ($13.50) and thirteen fifty ($13.50) an hour. When you look at the three (3) employees hired immediately after Mr. Lazaro, who were also standard electricians within the company, they made fifteen ($15.00), thirteen dollars and fifty cents ($13.50) and fifteen dollars ($15.00) an hour; keep in mind that is today in 2014. The average wage, hourly wage, of those employees is thirteen dollars and eighty-three cents ($13.83) an hour. Now,

what that tells us isn't that Mr. Lazaro would make thirteen eighty-three ($13.83), it doesn't tell us he'd be stuck at fourteen fifty ($14.50) but what it does tell you is that those employees that have been tenured as long as he has, that have done the same work he has done and they've been doing it for the last seven (7) years receiving step increases and wages, they're not even beyond the fifteen dollars ($15.00) an hour wage. When you look at the -- the letter and the discussion about the one (1) employee making seventeen fifty ($17.50) an hour, and Mr. McDaniel talked about it being an Hispanic employee, in fact, they -- they don't pay them differently. Well, they do pay them differently because the employees that can speak fluent English that can interact with supervisors, that can interact with managers of projects, that can go out into the field to USC for an eight million dollar ($8,000,000.00) installation and can talk to the Engineers, they have more responsibility in the field so they make more money. Employees that can't do that have less

responsibility in the field and they make less money. The employee making seventeen fifty ($17.50) an hour, if you read the letter, says that he is compensated for his mastery of both English and Spanish and his electrical knowledge that exceeds all of his peers but he is not -- they're not compensating him to manage a project. The letter goes on to say that Antonio would never have reached that level; that, again, their understanding was that he wouldn't be to the level of a project manager. The important part of this letter, Commissioner, is the fourth (4th) paragraph that Mr. McDaniel focused on that talks about the two dollar ($2.00) an hour raise and the fifty cents ($.50) a year raise. Those are block step raises, in fact, it says it in the letter, they are raises that are given as cost of living increases; they're given as periodic raises to keep pace with the industry. The cases that Mr. McDaniel brought up talking about the -- the increase in average weekly wage and how you can do that based on mutual circumstances, in fact,

one of them that he handed to you is the Elliott versus South Carolina Department of Transportation case and we were going to cite that case in support of our position so let me -- if you're not familiar with in I'll explain it briefly. And it's an employee that obtained a CDL license and part of her employment was if she obtains that license she would obtain an extra, I believe, it was five thousand dollars ($5,000.00) a year. The Commission went in and said, that -- that is a bare-faced increase based on a set figure that you can go obtain and receive that money, and you would receive in perpetuity once you've earned it. So, once she did that they said it's only fair that she receives that increase. But in that case they said -- and it's on the -- it's on the back page of that.

Commissioner Wilkerson: And that's one that Mr. McDaniel handed up?

Mr. Bayne: One that Mr. McDaniel handed up.

Commissioner Wilkerson: I've circled them; I'll go back -- I'll read them later.

Mr. Bayne: If you -- if you look at the -- at the very end of that --

Commissioner Wilkerson: These are --

Mr. Bayne: -- sorry.

Commissioner Wilkerson: -- this is the group of the ones he handed up.

Mr. Bayne: -- correct. Correct. If you'll look at the South Carolina Department of Transportation case, which is the third (3rd) one in that list --

Commissioner Wilkerson: I've got it, Elliott.

Mr. Bayne: -- and if you look at page 4 of 5 -- page 3 of the case but it says 4 of 5 at the top -- let me find where it says it. It says in the very last paragraph on the bottom right. It says the additional pay was a bare-faced reward given in recognition of her efforts to obtain a commercial driver's license and was not merely a standard cost of living increase or step increase based on longevity of service. What the Court is telling you in that case, Commissioner, is that an increase based on longevity of service or a step increase, a block step

increase, any of those is not a good reason -- is not an extraordinary reason to increase the average weekly wage and compensation rate. So, when you look at that case and you read it and you say, well, they did increase in that case, look at what the Court said is not a good reason to increase it. And that's what Mr. McDaniel is asking for is -- he's asking for an increase based on the fact that at some point his client would have gotten a raise because they give fifty cents ($.50) every year; so, that addresses that. The Booth case that he handed up involved an employee, he was a young kid, and it was an apprentice electrician and they recognized that at some point he was going to become a master electrician, that he would be making master electrician's money and that his injury prevented him from doing that. There is no evidence in this case that -- that Antonio was going to be improving his skills as far as getting additional certifications. He was already an electrician; he was already doing that work. There was not another place to go other than becoming fluent in English

and becoming a supervisor with the company, which it's my understanding he was not at the time and had no intention of doing. Finally, Commissioner, the --

Commissioner Wilkerson: Would Mr. Duncan share that same --

Mr. Bayne: -- I'm not sure; I've never heard otherwise. It doesn't make any difference.

Commissioner Wilkerson: I know.

Mr. Duncan: Yes, a forty (40) year old is not a young kid.

Commissioner Wilkerson: I understand. No problem. He was on that case back then.

Mr. Bayne: And the final case I'll cite in regards to his average weekly wage is the Roberts v. McNair Law Firm case, which the case where the Claimant received a post-injury increase in salary and it was a -- just a -- we're paying you an extra two thousand dollars ($2,000.00) a year; it was in order to keep him employed. And the Commission -- or the Supreme Court said in no uncertain terms that that is not an extraordinary condition in order to raise the

compensation rate or the average weekly wage. So, no matter how much we want to make more money in the year, no matter how much the Commission raises the maximum compensation rate, the compensation rate is based on the time that you were injured and the fifty-two (52) weeks before that time you were injured. The forward-looking aspect of Workers' Compensation is as you said, disability; it's not the compensation rate. That is set in time at the time you were injured. In terms of the -- is partial lump sum next --

Commissioner Wilkerson: Yes.

Mr. Bayne: -- the remaining -- the remaining lump sum?

Commissioner Wilkerson: Yes.

Mr. Bayne: Before I get into that I want to -- Mr. McDaniel has asked for -- I think its three hundred and twenty-five ($325.000.00) or three hundred and fifty thousand dollars ($350,000.00). This is a matter of math, so it's not an issue today but I show only two hundred and nine thousand ($209,000.00) remaining of the full lifetime lump sum. When you factor in his life

expectancy on the mortality table the number of weeks paid and the number of weeks the attorney's fee was equal to I show there is five hundred and fifteen (515) weeks left, which is two hundred and nine thousand, five hundred and twenty-five dollars ($209,525.00) and that's a matter -- that's not something that's going to be in an order as far as you're not going to order X number of dollars probably but --

Commissioner Wilkerson: No, no.

Mr. Bayne: -- it's something that if -- if you're asking for three hundred thousand ($300,000.00) and there is only two hundred thousand ($200,000.00) left, obviously there's a -- there is a dispute there. So, that will be something that if a lump sum is going to be ordered we need to figure out exactly what is left in the claim so that we can order that amount in the future. But going forward, Commissioner, 42-9-10 bans a total lump sum award in a case. Mr. McDaniel is -- is making a creative argument where he has received one (1) partial lump sum and he is pursuing a second partial lump sum, which

is a total lump sum but it's not because it's only partial lump sums. The intent of the Legislature is not to piecemeal a lifetime total lump sum award; it's to award partial lump sums where they are needed for the best interest of the employee. What Mr. McDaniel is saying is essentially come in and say, I'm owed six hundred thousand dollars ($600,000.00) for my life; I want you to give me five hundred ninety-nine thousand, nine hundred and ninety-nine dollars ($599,999.00) and it's a partial lump sum; that's not what the Legislature intended by permitting you to give a partial lump sum in a case. Additionally, the cost that Mr. McDaniel was talking about, and this will probably come out in testimony today, are costs that no matter how much Mr. Lazaro would want his family to go to college, would want them to have a guaranteed income stream; which they have being paid weekly benefits, that he wants to take the money they are being paid weekly, put it in an annuity and pay them the same amount weekly. So, they're getting the same benefits now that -- that he would be

giving them in that scenario but Mr. Lazaro would never be able to afford twenty-six thousand dollars ($26,000.00) a year in cash to pay for his son to go to college. And the purpose of the Act is not to put a family in a better position than they were before the injury; it's to make them whole. And making them whole in this case, when you look at the numbers, is that this family was bringing in thirty-nine hundred dollars ($3,900.00) a month. And when you look at the cost of Winthrop as one of the -- the things that he put out there, that's twenty-one hundred dollars ($2,100.00) a month in costs going out. So, over fifty percent (50%) of the family's income would be going out to Winthrop to pay for school for just one (1) child, let alone the second one that wants to go to college. Where is the rest of the money going to go to pay for all of their mortgages, to pay for their debts, to pay for their cars, etcetera? So, we're talking about providing income or providing a -- essentially a benefit to the family that they wouldn't have but for this injury. And I

think the answer is -- and I might be wrong but when -- when the son takes the stand I think he's going to tell you that if his father wasn't injured he would have had to take out loans to go to college because his father was not going to be able to pay twenty-six thousand dollars ($26,000.00) a year out of his own pocket to pay for college. All of that to say, at the end of the day it's a moot point because you cannot award a life -- a lump sum in this case. I'm going to hand up the case, Ashley v Ware Shoals, Commissioner, and this is a case that dealt directly with a lifetime lump sum or a partial lump sum. And in this case -- it's on the back page, on the next to the last page -- the Court said -- and this case is still good law -- that if the medical evidence in a case that is presented -- and there is uncontroverted medical evidence in this case that is in our pre-hearing brief that says Mr. Lazaro will not live more than ten (10) more years -- if medical evidence supports a finding that the Claimant will not live long enough to see the weekly value of

the lump sum benefits paid out then it is an abuse of discretion to award a life -- the -- the partial lump sum benefits being requested. In this case, Commissioner, we have already paid benefits -- when you factor in the attorney's fee award that is going to come out -- through the year 2033; that is nineteen (19) years from today. The medical evidence, which again is uncontroverted in this case, tells us that Mr. Lazaro will not live past the year 2024. So, based on that Ashley v. Ware Shoals case, it is an abuse of discretion for you to order any additional lump sums in this case to this family because Mr. Lazaro -- the medical evidence of Mr. Lazaro's life expectancy is that he will not survive long enough to receive the remaining weekly benefits of those lump sum payments. Okay. And, Commissioner, responding to as well to the -- there was a -- some discussion about the mortality table being a requirement for, I guess, computation or compilation of benefits; that case if the Glover by Cauthen v. Suitt Construction case. That case talks only about attorney's fees and how attorney's

fees are to be paid on a lump sum and, in fact, that case does not make it mandatory that you use the -- the mortality tables as a computation factor; at the end of the case, it's in a footnote, it says that they may be used as the computation factor and that they are adequate for that purpose but it does not make it mandatory. And, Commissioner, I'm going to hand up -- actually I don't need to hand it up, you've already seen it, it's the Haselden case that was just handed up by Mr. McDaniel; again, it's a case that we were going to cite for our purposes. But if you'll look at -- and it's going to be right before the final affirmed in bold letters at the end of the opinion.

Commissioner Wilkerson: What page, just so it's easier for me to find; have you got it?

Mr. Bayne: I'm looking at my copy, Commissioner; I --

Commissioner Wilkerson: 6 of 7? Oh, I'm sorry.

Mr. Bayne: -- its right at the very end of the -- the opinion --

Commissioner Wilkerson: Okay.

Mr. Bayne: -- that's in -- its right before the G thirteenth (13th) juror section. They're divided into lettered sections; its F mortality table --

Commissioner Wilkerson: Yes.

Mr. Bayne: -- G thirteenth (13th) juror. It would be F mortality table section, and the page of the opinion is page 306. I can hand you my copy if you'd like to see it.

Commissioner Wilkerson: Go ahead.

Mr. Bayne: Okay.

Commissioner Wilkerson: I'll just make notes on it and I'll go back and reference it.

Mr. Bayne: What -- what this Haselden case said is -- is Mr. McDaniel is correct, it's a breast cancer case, they argue about the mortality tables. But what the Court says in this case is, regarding the use of the mortality tables in litigation the Legislature has provided, when it is necessary in any civil action or other mode of litigation, to establish the life

expectancy of any person from any period of his life, whether he be living at the time or not, the table below shall be received in all courts and by all persons having the power to determine litigation as evidence along with other evidence as to his health, constitution and habits of the life expectancy of such a person. That case does not specifically preclude you from looking at evidence after the accident and determining the life expectancy remaining. What it says is that you use the mortality table and you use other evidence that's submitted in order -- in order to determine what the actual pending life expectancy is. Commissioner, this -- I don't think Mr. McDaniel brought this up but its in his brief and his 51 and that's a request for penalties and fines and interest related to the payment of the lump sum that was paid on June 2nd. I'm just going to -- I'm not sure what he's asking for, as far as that's related the payment was made ten (10) days after the order became final, which under 42-9-240 and 42-9-90 -- 42-9-240 is after seven (7) days interest begins to run;

so, we owe three (3) days of interest. But 42-9-90 gives you twenty-one (21) days before the ten percent (10%) penalty sets in. Since it was paid within ten (10) days of the date of the final order then I'm not sure what fine, what penalty, what interest we're talking about here. I calculate three (3) days interest as being ninety dollars and eighty-five cents ($90.85). So, I don't have a problem with that but there is no statutory entitlement to a ten percent (10%) fine based on the payment of those lump sums.

Commissioner Wilkerson: But you would agree that you owe them ninety dollars and eighty-five cents ($90.85)?

Mr. Bayne: Ninety dollars and eighty-five cents ($90.85) in interest based on the -- the statute interest of point seven two five (.725) as of today.

Commissioner Wilkerson: Yes.

Mr. Bayne: Let me step back real quick, as well. Mr. McDaniel talked about the -- the property interest that is entitled to the Claimant that he has been ordered lifetime benefits so he has a vested interest in

lifetime benefits and that's simply not what the law says. If you look at my -- and this will kind of segue into the motion that I filed as well -- but in my motion for benefits, on the second page, I cite to Floyd v. C. V. Askins and company. In that case the Court of Appeals said, if a Claimant is awarded lifetime benefits and passes away prior to the five hundred (500) week cap the benefits are only payable to five hundred (500) weeks. And then, in Glover case, which we've also talked about already, it says, if the Claimant is awarded lifetime benefits and passes away after the five hundred (500) week cap benefits cease to be paid at that time. So, there is no vested entitlement, no property interest, in lifetime benefits. There is a vested entitlement in the five hundred (500) weeks of benefits and you then vest on a weekly basis every week after that point until you pass away. And now, the segue being to the motion, Commissioner, and this -- I'm going to try to make this simple a little bit because it's -- my motion makes it complex. But what we have in this case is

a Claimant that was injured in 2007, since that time we have paid benefits on a weekly basis, which comes out to a total of three hundred and sixty-two (362) weeks today that we have paid. The Commissioner ordered a lump sum payment of a hundred and fifty-two thousand dollars ($152,000.00) to be paid out as an advance of benefits against future lifetime benefits.

Commissioner Wilkerson: And that's Commissioner Beck?

Mr. Bayne: That's Commissioner Beck's order. Its a hundred and fifty-two thousand dollars ($152,000.00) and some change, and my understanding is thirty thousand ($30,000.00) of that is going to be refunded but for the purpose of this argument I'll go with the one fifty-two ($152,000.00) number. That is equal to three hundred and seventy-five (375) weeks of compensation that we have now paid out to Mr. Lazaro in addition to the three hundred and sixty-two (362) weeks. That brings the total number of weeks we've paid to around seven hundred and forty (740) weeks of benefits that were paid to Mr. Lazaro.

Going back to the case I just talked about, in Floyd and in Glover you are only entitled to five hundred (500) weeks of benefits. After the five hundred (500) week gate hits you have to earn those benefits on a weekly basis going forward. If you pass away at week five oh two (502) you -- your benefits end and week five oh two (502). So, in this case what we have is somebody that has been paid benefits just on the -- taking out the attorney's fee from it because that's off the back end.

Commissioner Wilkerson: Yes.

Mr. Bayne: But just on the benefits paid to date we have paid through the year 2021. We are seven (7) years overpaid for benefits that Mr. -- Mr. Lazaro has earned today. Now, if he were to pass away today we would owe five hundred (500) weeks because that's what the law says. But then, if you look at it -- if we're going past that, we are then two hundred and forty (240) weeks overpaid from what Mr. Lazaro would ever be entitled to in this case. So, what we've asked --

Commissioner Wilkerson: Would you be entitled to that money back?

Mr. Bayne: -- I think we would be, I think we'd have to file a motion to get it; I don't think that we would get it.

Commissioner Wilkerson: I understand.

Mr. Bayne: The money is gone.

Commissioner Wilkerson: I mean, since it's a legal argument.

Mr. Bayne: The -- the money is gone.

Commissioner Wilkerson: I understand.

Mr. Bayne: So, I don't think we'll ever get it but we would be entitled to that because there is only a -- an interest in the five hundred (500) weeks if he doesn't make it to five hundred (500) -- and likewise if he -- if he made it to seven twenty (720) --

Commissioner Wilkerson: You'd owe him that.

Mr. Bayne: -- and we paid him seven forty (740) we'd have twenty (20) weeks left but, you know, that's another issue for another time. But -- but basically, Commissioner, this payment that was made, this lump sum payment, is akin to a loan,

it's akin to an advance on benefits. It's something that was paid to the family because they requested it to pay off some debts because they needed it to reduce their daily burden and that has been done. The family is debt free. The family has a new car. Mrs. Lazaro is still employed, as we have heard. The children are out of the house and working; one is in the military, one is working a job and working to go to college. What we have asked, Commissioner, is that we be permitted to suspend the payment of weekly benefits until the balance of those benefits unpaid equals the amount they have been advanced. Because what we're looking at today, Commissioner, is every week we pay them this going forward is another week that we are extended out overpaid by seven (7) years and at some point in the near future we're going to reach the break-even point between what the medical evidence says Mr. Lazaro's life expectancy is and the benefits we're overpaid. And then, there really is a problem going forward from there because medical evidence that's uncontroverted says

that he will never live long enough to receive a vested entitlement in those benefits. So, what we've asked is that we be permitted to suspend the weekly benefits based on the advancement of funds requested by the family until, I believe its August 21st, 2021, and on that date the benefits would resume because the -- the advancement of benefits that would have been paid to the family will have been exhausted by the weekly benefits that were unpaid and the case -- and the benefits, and the entitlement to benefits will be caught up with the family and from that point on Mr. Lazaro will be vesting on a weekly basis and receiving those benefits on a weekly basis. There is authority -- you know, there -- let me say this. There's -- there's not authority in case law that says that -- that you can't do that. The only case law on this topic is that attorney's fees are to be taken off the back-end of the case. There is no case law and no statute that talks about how an advancement of benefits are to be deducted from a case. In this case we have the medical evidence in

front of you that says that the Claimant may not live long enough to see even the value of those benefits paid out, let alone an additional lump sum, and this goes back to the case we've already handed up to you, tie that in. They said you cannot pay a lump sum benefit out when the medical evidence tells you that there is a serious question as to whether or not the Claimant is going to live long enough to survive to see those weekly value benefits. In this case the lump sum was paid out but there is still a serious question as to whether or not the Claimant is going to live long enough to see the weekly value of that advancement of benefits paid out, that he will ever see that credit. So, what we've asked is that we be able to suspend those benefits so that the family will be able to exhaust the value of the lump sum that's paid out and then moving forward, once that's exhausted, we will resume paying those benefits. And that's our position on all that.

Commissioner Wilkerson: This will be the case that people will refer back to.

Mr. Bayne: It will be the what?

Commissioner Wilkerson: Because my guess is this -- this case will go to the Supreme Court.

Mr. Bayne: If you were to grant that I -- I can assure you it would go to the Supreme Court, Commissioner.

Commissioner Wilkerson: I understand.

Mr. Bayne: But that is --

Commissioner Wilkerson: This will be the case everybody looks back on.

Mr. McDaniel: And forever proper.

Commissioner Wilkerson: No. No, I mean, some --

Mr. Bayne: -- no, I -- I'm just assuming Mr. McDaniel would appeal that if that was -- if that was granted.

Mr. McDaniel: Of course I would.

Mr. Bayne: But that -- that is --

Commissioner Wilkerson: I would expect.

Mr. McDaniel: Oh, yes. Oh, you're talking about the motion.

Commissioner Wilkerson: No. No, no, that's why I was looking at the date of accident; I wasn't sure if it was pre --

Mr. Bayne: -- it's --

Mr. McDaniel: That's not a threat; that is a promise.

Commissioner Wilkerson: -- no, no, it was to go to Court of Appeals before I just --

Mr. Bayne: -- correct.

Commissioner Wilkerson: -- some of us may not live long enough if it gets stuck in the Circuit Court.

Mr. Bayne: I hope I'm still around.

Commissioner Wilkerson: Okay. And -- and I --

Mr. Bayne: Yes, we missed -- we missed 7/1 by five (5) days.

Commissioner Wilkerson: -- yes. That's why -- that's why I pulled it up earlier because I knew it was 7 --

Mr. Bayne: Yes.

Commissioner Wilkerson: -- and I didn't -- I didn't remember --

Mr. Bayne: We were very close to it.

Commissioner Wilkerson: That would be even better on the left side of the board. So, if we can just hear on the --

Mr. McDaniel: Motion?

Commissioner Wilkerson: -- motion, yes. That way because, I mean, all this is legal --

Mr. McDaniel: Right. Right.

Commissioner Wilkerson: -- and you all are not going to agree and nor do I expect you to agree and then --

Mr. McDaniel: Right.

Commissioner Wilkerson: -- we'll get it -- we'll get done.

Mr. McDaniel: And I --

Mr. Bayne: And -- and the penalties and interest is something I assume he wants to respond to.

Mr. McDaniel: -- well, yes, I -- I just --

Commissioner Wilkerson: Yes, I mean, is it three (3) days, is it -- yes. And they have admitted to that.

Mr. McDaniel: -- what's the date of the Court of Appeals order?

Mr. Bayne: The date of the final order is May 23rd, due date June 2nd.

Mr. McDaniel: What's the final order?

Mr. Bayne: Delivered the date of the remitter.

Mr. Duncan: There's a case that says the date but the --

Commissioner Wilkerson: Yes.

Mr. Duncan: -- the award is finalized the date of the award, not the date of the actual order.

Mr. McDaniel: Okay.

Mr. Gallagher: The remitter from the Court to the Commission was May 23rd.

Mr. Bayne: Yes. So, there is -- you pay ten (10) days after the -- the final order from the Court of Appeals.

Commissioner Wilkerson: And I know this case has an unfortunate track history but that's beside the point.

Mr. McDaniel: Well, in any event let's --

Commissioner Wilkerson: Can we visit just that one (1) issue real quick?

Mr. McDaniel: -- which one?

Commissioner Wilkerson: The penalty. I mean, they said they understand its three (3) days. I'm sorry, the interest; I apologize.

Mr. Bayne: Yes, the interest.

Commissioner Wilkerson: The interest is three (3) days. Your thought is its how many days --

Mr. McDaniel: Well, it's --

Commissioner Wilkerson: -- and the penalty, I mean, you need to address that because I think that's what you asked for.

Mr. McDaniel: -- right. The -- I -- the -- you know, I'd like to see the law and the case. I'm not disputing that they say that there is a case out there that says from the day of the remitter but the statute in Workers' Compensation said from the date of the final decision and in -- in the -- on appeal or before the Commission or fourteen (14) days after that you owe a ten percent (10%) penalty. I -- back when before that I, you know, requested the money back before as soon as the order was finalized and the fourteen (14) days -- the time had run for appealing that. So, I -- I think the ten percent (10%) penalty applies.

Commissioner Wilkerson: That's what I wanted to find -- that's what I wanted to

find out.

Mr. McDaniel: So -- but however, you know --

Mr. Gallagher: Commissioner, can we -- I'll just stipulate that, I mean, obviously we paid beyond twenty-one (21) days from the date of the -- from the date of the order --

Commissioner Wilkerson: Right.

Mr. Gallagher: -- but we will argue that is not the applicable time period. We will cite this case.

Commissioner Wilkerson: And that was the Court of Appeals case?

Mr. Gallagher: This is a -- this is a Court of Appeals case that says that --

Mr. McDaniel: -- I've got no -- I've got no problems with also just handing -- you know, when I say send them a copy and, George, if -- if you'll --

Mr. Gallagher: -- I'm fine with that.

Mr. McDaniel: -- send me a copy too because I -- you know, that --

Commissioner Wilkerson: Yes, it is what it is. That's not --

Mr. Gallagher: I mean, it wasn't an

issue, it wasn't the prime issue on appeal but it's kind of indicative of this case.

Commissioner Wilkerson: -- in the overall scope of what we're looking at today it's --

Mr. McDaniel: -- right.

Commissioner Wilkerson: -- it would be a small peanut to an elephant who eats bags of peanuts but I understand.

Mr. McDaniel: Right.

Commissioner Wilkerson: But it -- it needs to be addressed.

Mr. McDaniel: Yes.

Commissioner Wilkerson: Yes, I understand.

Mr. McDaniel: I agree. And so, like I said, the statute says, fourteen (14) days from the date of the final order and, you know, I understand their position that they're saying from the remitter; however, I would say that -- you know, I -- I was trying to get it for them but the -- again, you've got to apply the current law, okay? And in reference to the motion, first of all, this is -- that first lump sum and now the

attorney's fees, I think they'll agree, there is no objection to the attorney's fees; that's been awarded in a lump sum.

Commissioner Wilkerson: Yes.

Mr. Bayne: Off the back-end.

Mr. McDaniel: Right.

Commissioner Wilkerson: Off the back-end, yes.

Mr. McDaniel: Off the back-end.

Commissioner Wilkerson: Absolutely.

Mr. McDaniel: And so -- and we've got the -- that order -- this issue was not raised at the time of Commissioner Beck's order. So, any argument about when this money should be calculated from whatever date is gone because that order is now the law of the case. Their time to say that, well, if you award a lump sum, Commissioner, we want it to come off the front end, you know, or we want to stop benefits at five hundred (500) weeks and then not pay anything until the remainder of the lump sum runs; that time has gone. That time has gone in reference to the attorney's fee. Now -- so, I think that -- that first off those -- those are both the

law of the case. I think that they -- they cannot raise that at this point in time in reference to the Commission's order. Now, second off, I know of -- and I did not hear any statute -- and I raised this in my reply -- I know of no statutory authority for them to raise this by motion or otherwise before the Commission. I -- I have never heard of this type of a motion before in my life and in any context that it has ever been brought up it was brought up within the context of the case at the time that the lump sum was requested. So, I don't think it's a -- I don't think the motion is proper; that's number two (2). Next we've got Glover versus Suitt, Glover by Cauthen versus Suitt; yes, that applies to attorney's fees. Also, the regulation, which is the only place that the Commission has been asked to speak by regulation in reference to attorney's fees is that those are taken off the back-end. So, first -- my first argument is that, Commissioner, if you do think that, number one (1), it's not the law of the case and, number two (2), that -- you know, that this

isn't the proper time to raise this, number two (2), that -- that the time has gone to raise that and that there is no such -- there is no such thing in the motion, is that in the -- in the two (2) instances where this Commission and the Supreme Court have been called upon to address this issue they have both said that its to be taken off the back-end; that's the law. Now, the next thing is this --

Commissioner Wilkerson: And they agree with that.

Mr. Gallagher: Only for attorney's fees.

Commissioner Wilkerson: Only for attorney's fees.

Mr. McDaniel: -- I would -- but however, they may want to limit it to that and I -- I agree to that. But what I'm saying is, is where the Commission has spoken in reference to a partial lump sum and when the Supreme Court has spoken in reference to a partial lump sum, right now the law is it is to be taken off the back-end, okay? Now, I will tell you that in Cauthen -- in Glover

by Cauthen versus Suitt if you look at that you'll find that the attorney's fees far exceed five hundred (500) weeks. It was a hundred and eighty-eight thousand dollars ($188,000.00) and they were awarded sixty-six thousand dollars ($66,000.00), which I've argued to you before in reference to the fact that -- that attorney's fees is -- in a lifetime benefits case is a direct -- you again use the mortality table, which is what the Supreme Court said. But I say that because in addition to the Commission speaking to the regulation, in addition to the Supreme Court speaking, it is the general policy and you can correct me if I'm wrong because you're the Commissioner, I'm not, but it's the general policy any time I've ever had it specifically requested or any -- this issue has been brought up the Commission has ordered that the lump sum be taken off the back-end. As a matter of fact, in the case that he cited the Court didn't actually reach the issue because they said it wasn't properly before the Court, if I remember correctly, and in addition to that, in that

case the Commission awarded that the partial lump sum award would come off the back-end. So, I would ask you to just recognize the policy of this Commission or at least your own policy because every order where the issue has been raised is you have, to my knowledge, have ordered it to come off the back-end. So, I -- for those reason I think that they -- I mean, to -- to just all of a sudden stop the benefits and then here again based on, well, he may not live. We don't have -- here again, I will cite that case, the Haselden case again, for the proposition that we are all duty bound to apply the mortality table and it is the mortality table prior to the time that the accident occurred. You know, in other words, what they're really saying, Commissioner, is, well, this man is in a vegetative state and so he may not live that long. Well, that's -- that's just not -- that is not proper -- and here again, I don't mean that in the context of them making --

Commissioner Wilkerson: No.

Mr. McDaniel: -- an improper argument,

it's just not in accordance of the law in reference to the creation of the mortality table.

Commissioner Wilkerson: And as I understand it, your argument is based on the mortality table; their argument is based on medical evidence or --

Mr. McDaniel: Well --

Commissioner Wilkerson: -- mathematical evidence.

Mr. McDaniel: -- well --

Commissioner Wilkerson: Medical --

Mr. Bayne: In the Ashley v. Ware Shoals case.

Commissioner Wilkerson: -- right. Yes.

Mr. McDaniel: -- well, and -- and let me -- let me --

Commissioner Wilkerson: No. And I just wanted to make sure I understand because we've --

Mr. McDaniel: -- right.

Commissioner Wilkerson: -- we've been going a while; I just want to make sure I understand exactly.

Mr. McDaniel: And I didn't -- I didn't

put the entire briefs in but the Ashley v. Ware Shoals, as you will note, is a 1947 --

Commissioner Wilkerson: '47.

Mr. McDaniel: -- case and it was decided under 42 -- well, what was before the adoption of 42-9-301, 42-9-300. And if, Your Honor, will pardon back to whenever you were dealing with these matters as from an adjusting standpoint you will remember that back then under 42-9-300 we had the burden of proof to prove that an exception should exist to the payment of weekly benefits. And when the Legislature adopted 42-9-301 they completely flipped it because, first off, when we request it and you deemed it not to be contrary to our best interest you shall -- as the Court of Appeals in this case ruled and said, you shall make the award. Now, and then the other thing is in that statute it says that, the burden of proof is on them to prove you abused your discretion. So, the Ashley v. Ware Shoals is absolutely not good law any more. I argued this same identical lawyer against their appellant division before the South Carolina Court of Appeals in

-- in reference to the first appeal and they argued those same three (3) old cases under that old statute. So, Your Honor, I'd ask you not to grant the motion and --

Commissioner Wilkerson: I understand.

Mr. McDaniel: -- I hope you'll give us a lump sum.

Mr. Bayne: That was resolved by the Supreme Court.

Commissioner Wilkerson: Yes. The Supreme Court, yes.

Mr. Bayne: Actually, the Ashley v. Ware Shoals case is still good law, we jeopardize that it exists; it's good law. The only thing that changed and it is under 301 or under 300 --

Commissioner Wilkerson: It is. I agree with that.

Mr. Bayne: -- the only thing that changed between those two (2) statutes was the removal of the words, "In unusual cases." The -- the statute is functionally identical between 300 and 301 and this issue in Ashley v. Ware Shoals has nothing to do with whether or not the case was usual or unusual or

whether it was best interest or not best interest. What the Court said in that case is, when the medical evidence shows you that the Claimant is not going to live long enough to see the weekly value of that lump sum payout is an abuse of discretion, okay? It's plain as day in that case and the changing of the statute to remove the words, "In unusual cases" does not change the meaning of that case, does not change the holding of the Court in that case that says that it's an abuse of discretion to award those benefits. So, that's the -- that's on that. I'm going to hand up this new case that we were talking about and I'm going to hand one to Mr. McDaniel.

Commissioner Wilkerson: Yes. Yes.

Mr. Bayne: This came out in January from the Court of Appeals and it's actually a -- it's a Guaranty Fund case if that makes any difference. But what they said, Commissioner -- I highlighted it for you -- is that interest is appropriate from the date of the final order, which was April 27th, 2004, in this case, which was seven (7) days

after the date of remitter.

Commissioner Wilkerson: Okay.

Mr. Bayne: The Court of Appeals in January held that the date of remitter in comp may be awarded. And finally, Commissioner, if -- if you want to hold that the -- the -- relating to the -- our motion that the original order is res judicata and -- and that it can't be discussed and it can't be appealed and -- that's fine. Commissioner Beck made no finding as to how the award is -- is to be deducted. So, I think that if Mr. McDaniel wants to concede that point I think it leaves it up to us to piece that out and -- and I don't think anyone wants that result but I think that would be -- if -- if -- in fact, if you can't address the topic of how to deduct those benefits, either from the front-end or the back-end --

Commissioner Wilkerson: Oh, understand.

Mr. Bayne: -- because it's res judicata then that means that it's up to the parties to figure that out and that's going to result in --

Mr. Duncan: Chaos.

Mr. Bayne: -- in chaos because what will happen, Commissioner --

Commissioner Wilkerson: No, I understand.

Mr. Bayne: -- is we'll stop benefits and we'll be back in here --

Commissioner Wilkerson: I know.

Mr. Bayne: -- and then we have a res judicata argument then.

Commissioner Wilkerson: I know. That's -- that's why --

Mr. Bayne: So --

Commissioner Wilkerson: -- I --

Mr. Bayne: -- that's just something -- it's not in Commissioner Beck's order --

Commissioner Wilkerson: -- and I -- as a matter of fact, I put a note; "Full Commission makes order, read it in its entirety" is what I made myself a note to do.

Mr. Bayne: -- yes.

Commissioner Wilkerson: I don't do that --

Mr. McDaniel: Your Honor, I -- I don't take threats too well but -- but let me just

say this. I don't think it does leave it up to them because then they would automatically subject themselves to a twenty-five percent (25%) penalty for stop payment of the benefits without an order of the Commission. All right, number one (1). Number two (2), you know, when he didn't address it he did not say one word about anywhere on the statute to where they can bring something up like -- by this like by motion. I don't know of anything they can do.

Mr. Gallagher: Commissioner, how else are we supposed to bring it up then --

Mr. McDaniel: You may not be able to.

Mr. Gallagher: -- if not by motion?

Commissioner Wilkerson: Well, yes. And I -- I understand that --

Mr. McDaniel: That goes back to my argument; you should have raised it then.

Commissioner Wilkerson: -- but no I -- and that's why I'm getting all this on the -- yes. Because there's -- we all know there's -- in the law that's why it evolves is that we wish if we had done certain things ten (10) years ago or even maybe last week we

would have addressed this in a mediation situation but its evolving, okay? So, I don't know how you bring it up --

Mr. Gallagher: Well, if it's --

Commissioner Wilkerson: -- other than by motion.

Mr. Gallagher: -- not by motion and we discussed it then --

Commissioner Wilkerson: Now, whether it's proper --

Mr. Gallagher: -- then he can't bring it up either.

Commissioner Wilkerson: -- well, I said, now, whether it's proper or not I don't --

Mr. Gallagher: Sure.

Commissioner Wilkerson: -- I understand.

Mr. Gallagher: I mean, its just common sense, I mean, obviously if the order doesn't address it then its fair game to be addressed at a later time.

Mr. McDaniel: And that's -- well --

Commissioner Wilkerson: The Supreme Court will decide that one, I promise it --

yes. Avery might have a -- I may put in my opinion or my order what I believe to be the situation but I am sure that somebody much brighter than I will determine that, okay? Anything else before we take any testimony? And let me ask, tell me who we're going to have testify is Oliver -- I say Oliver but it's Mr. Lazaro's youngest child; is that fair?

Mr. McDaniel: Yes. Oliver.

Commissioner Wilkerson: Okay. And is the wife also or no?

Mr. McDaniel: Yes.

Commissioner Wilkerson: Okay. That's fine. Okay.

Mr. McDaniel: Oh, can I bring up one (1) issue about the average weekly wage and comp rate? If you -- if you base it just on fourteen fifty ($14.50) at forty (40) hours back then, it would have been six, sixty ($660.00) and his comp rate would have been four, forty ($440.00).

Commissioner Wilkerson: And I think their position is it's locked.

Mr. Bayne: It's based on the --

Mr. McDaniel: And --

Commissioner Wilkerson: Yes. Yes, that -- and I understand. That -- yes. But I don't -- yes, there is a lot scenario.

Mr. McDaniel: -- since there was -- since it was referenced to, again, to Hispanics and, of course, first of all, I don't think you're going to hear any evidence in reference to Mr. Lazaro's English ability, you know, but -- so, we don't know what he would have done. But the other thing is, that I noticed on there that two (2) of the people on here are making seventeen fifty ($17.50) is Garcia -- Aswaldo Garcia and Lorenzo Cabello. How do you pronounce it, Jack?

Mr. Duncan: Culebro.

Mr. McDaniel: Culebro.

Commissioner Wilkerson: Okay.

Mr. McDaniel: And they are both making seventeen ($17.00) and seventeen fifty ($17.50).

Mr. Gallagher: And they speak English.

Mr. McDaniel: Well --

Mr. Gallagher: I mean, that's what the

letter says if you want to look at that.

Commissioner Wilkerson: No, I -- I put it on there. I understand.

Mr. Gallagher: The letter said they speak English --

Commissioner Wilkerson: I understand. I'll read it all. Yes, you just looked at it.

Mr. McDaniel: -- well, and -- and we don't know what -- and my point being is also we don't know -- I -- I -- let's say they speak very good English but I -- I don't know what they would testify to about his ability. So, anyway, we're ready to go to testimony.

Commissioner Wilkerson: I'm ready to go if you all are ready to go. All right, let's --

Court Reporter: I have a question. The name you all were having trouble with.

Commissioner Wilkerson: Good -- good question.

Mr. Duncan: C-U --

Commissioner Wilkerson: I never think about that because I've got it.

Mr. Duncan: C-U-L-E-B-R-O.

Court Reporter: Thank you so much.

Commissioner Wilkerson: My fault, I -- I forget that; I've got it, so.

Mr. McDaniel: And another thing too. Jack -- I think everybody will stipulate -- if they'll stipulate that he started at ten dollars ($10.00) an hour; one of the things she was going to testify to was, you know, they started him at ten dollars ($10.00) an hour.

Commissioner Wilkerson: Yes, I -- yes, it's in there.

Mr. Bayne: Yes.

Commissioner Wilkerson: They'll stipulate to that.

Mr. McDaniel: It will just cut -- cut down on --

Mr. Bayne: However when the economy turned in 2008 --

Commissioner Wilkerson: Yes.

Mr. Bayne: -- he could have been laid off.

Commissioner Wilkerson: Yes, I understand. I understand. It is what he made; it is what it is.

Mr. Bayne: That's -- that was his salary, yes.

Mr. McDaniel: Yes. That's all I'm asking.

Commissioner Wilkerson: Let me ask you, what is the purpose of her testimony? I'm -- I'm a wee bit confused at this point in time what her testimony --

Mr. McDaniel: Really basically --

Commissioner Wilkerson: -- I'll let you do what you want to; I'm just trying to figure it out.

Mr. McDaniel: -- no, really, to basically let you hear her, what a fine lady and also to just testify that she is about -- you know -- you know, about the flea market and that they closed it to -- that she is now working three (3) jobs to make up the income loss of, you know --

Mr. Bayne: Commissioner, we've never received any evidence about the flea market other than the deposition, there's been trace mentions throughout the case but there has never been any wage reports, tax records, receipts, invoices; anything related to

running a flea market other than her saying she ran a flea market and, frankly, that has no bearing as to whether or not the family is -- whether or not we can cut off benefits and whether or not the family is entitled to an additional lump sum. The fact that -- that maybe she ran a flea market, maybe not, or that she works three (3) jobs doesn't weigh on the factors of whether or not he's going to live ten (10) years or that it's a -- if Mr. McDaniel says it's in the best interest of the family because they're still receiving benefits. What Mr. McDaniel has asked for is an annuity that will pay out the exact same amount of money they're getting today from the -- from the Guaranty Fund in weekly benefits. So, her testimony about working three (3) jobs -- working three (3) jobs or out running a flea market, whatever, doesn't change the fact that at the end of this hearing if you do grant the lump sum they're going to receive the exact same amount of money tomorrow that they receive today, and that they received yesterday, and that they're going to receive six (6) months from

now, and six (6) months in the past. So, I'm not sure -- I agree with you but I'm not sure what relevance testimony has about does she work a job or ran a flea market or there is something her testimony will have on -- on whether or not you can either give them four hundred dollars ($400.00) a week now in lump sum or give them four hundred dollars ($400.00) dollars a week for the rest of their lives, so.

Mr. McDaniel: Well, I think -- I think the -- I think the flea market -- the point of -- all we're going to testify about the flea market is her husband started this flea market before his death with the idea of making additional income for the family. All right, then the purpose of her going -- working three (3) jobs is to establish that the devastating effect that the loss of income and that, you know, to both submit relevant evidence as to both the compensation rate that we asked you to apply and also to show you how the loss of his income -- he is presumed to live for another thirty-four (34) years; so, how this income loss is affecting

the family and -- and you are charged with the responsibility of awarding a lump -- partial lump sum in the best interest of the dependants, and this is -- is part of our presentation of why they need it. It's going to be very limited; it's going to be most personal.

Commissioner Wilkerson: Yes.

Mr. McDaniel: And Oliver is going to be that -- simply the same thing about how he quit college to go back to -- you know, until they could get the income to where it would allow him to go back to college and it's how if you grant us this income in a guaranteed stream it's going to help Mr. Lazaro. You know, counsel argued that, you know, Mr. Lazaro wouldn't be able to pay that twenty-five thousand dollars ($25,000.00) but, yes, had they had his -- had his income and he was normally healthy like he was before this injury he could have got a loan, which we all -- many people, I -- I did, you know, to get through college. So, this income that you're supplying --

Commissioner Wilkerson: Let me ask you,

was she working before the accident?

Mr. McDaniel: -- oh, absolutely, yes.

Commissioner Wilkerson: Okay.

Mr. McDaniel: Not two (2) jobs. Not -- not two (2) jobs.

Commissioner Wilkerson: No, no, no, no.

Mr. McDaniel: Just working one (1) job.

Mr. Bayne: Commissioner, if they got a loan that Mr. McDaniel said they would have gotten anyway. The income they're getting today, the weekly payments, is the same income that he would have been getting today. I'm -- I'm just not -- I can figure out how -- they're not asserting the flea market income as additional compensation.

Commissioner Wilkerson: Well, that's what I was trying to figure out.

Mr. Bayne: Right.

Commissioner Wilkerson: And if not --

Mr. Bayne: And she -- and she can't testify about that he would have gotten increases from Burris Electric. So, the issue of -- of increasing the compensation rate, she can't provide any testimony about that; she has no knowledge of it and she

can't testify -- and -- and if -- if the stipulation or the statement is that if he was alive and healthy and working they'd still be taking out college loans then I'm -- I'm not sure what the need for a lump sum to pay off the loans they were going to take out anyway and -- and how any testimony from either the son or the wife is beneficial on that point because if -- if he's making four hundred dollars ($400.00) a week bringing it home and so he's not going to pay for collage, and so he would have taken out a loan anyway, and he wants a lump sum to pay them four hundred dollars ($400.00) a week, which is the income he had been bringing home anyway, I -- I just -- I don't see how -- how the testimony is relevant on this. I mean, he can -- he can do it --

Commissioner Wilkerson: Oh, yes.

Mr. Bayne: -- but it's something that I don't get. I -- I guess I'm not figuring out how she can testify to anything relevant to the issues that he brings other than saying that they're going through a rough time, which --

Commissioner Wilkerson: Which absolutely.

Mr. Gallagher: We -- we concede --

Commissioner Wilkerson: It's devastating.

Mr. Bayne: I know -- I know she goes every --

Commissioner Wilkerson: It's got to be devastating.

Mr. Bayne: -- goes every day, I think, to the hospital.

Commissioner Wilkerson: It's got to be devastating, absolutely --

Mr. Bayne: So, I know --

Commissioner Wilkerson: -- no doubt.

Mr. Bayne: -- you know, in fact, there is no question about it; we're not saying that she's a -- a bad wife or --

Commissioner Wilkerson: No, no, no. No, no, no.

Mr. Bayne: -- or anything like that. We're not -- we're not going to make the argument she is going to run away with this money.

Commissioner Wilkerson: No.

Mr. Bayne: That's not something -- but it's just, you know.

Commissioner Wilkerson: I understand. And I'll do whatever you all ask me to do. I don't -- I'm trying to -- that's why I was trying to figure out that and the other --

Mr. McDaniel: It's going to be very limited --

Commissioner Wilkerson: -- that's fine.

Mr. McDaniel: -- you know, like you said, it's, you know, I personally -- I think it's truly relevant because part of the responsibility is where it's in the best interest of the dependants -- the Claimant and/or the dependants for you to make -- where they request it and I think it's in the best interest of the Defendants to grant this partial lump sum to guarantee what Mr. Lazaro the -- a continuing stream for this family, which he is -- he's presumed to live thirty-four (34) years, that he would --

Commissioner Wilkerson: But I think the argument is that's -- their argument is he's not. I don't know who is right or who is wrong so --

Mr. McDaniel: -- you'll have to make that decision.

Commissioner Wilkerson: -- yes. So, regardless of what these two (2) fine individuals tell me, if I go with you it probably doesn't matter what they say --

Mr. McDaniel: Okay.

Commissioner Wilkerson: -- if -- if I go with you all, it doesn't matter what they say. I think it's a legal -- but I'll do whatever you ask me to do.

Mr. McDaniel: Right. And -- and --

Commissioner Wilkerson: And I'm -- I'm pretty easy and laidback on that.

Mr. Gallagher: I think -- I think we would rather just let Mr. McDaniel make his record because I think we all agree that there may be further proceedings at some point in time --

Commissioner Wilkerson: Well, there's going -- there's got to be.

Mr. Gallagher: -- and it would be easier just to go ahead and have a record made --

Commissioner Wilkerson: I'm fine.

Mr. McDaniel: Yes, let's go.

Mr. Gallagher: -- rather than have a remand.

Commissioner Wilkerson: I'm fine with that.

Mr. McDaniel: And -- and -- exactly --

Commissioner Wilkerson: I'm fine with that.

Mr. McDaniel: -- and it will be short.

Commissioner Wilkerson: It doesn't matter. Hey, I'm -- you've got to leave before I do.

Mr. McDaniel: I'll let Jack do the questioning.

Mr. Duncan: I'm riding with him.

Commissioner Wilkerson: Yes, but you don't have -- you're back from vacation, he's leaving.

Mr. McDaniel: Jack, be quick.

Mr. Bayne: But I -- I think the real issue is -- I mean, at the end of the day its if -- if you agree with our case then --

Mr. McDaniel: Hey.

Mr. Bayne: -- then what they say won't matter; if you agree that it's in the best

interest then what they say won't matter, you know?

Commissioner Wilkerson: But I understand.

Mr. Bayne: One or the other --

Mr. McDaniel: Commissioner, I --

Commissioner Wilkerson: I just want to make sure Avery hasn't missed something, okay?

Mr. McDaniel: -- I'm going to -- I'm going to tell Michael Gunn we're not going to need him.

Commissioner Wilkerson: Okay. No, I agree.

Mr. Bayne: -- you're going to call both?

Mr. McDaniel: What?

Mr. Bayne: You're going to call the wife and the son?

Mr. McDaniel: Yes.

Commissioner Wilkerson: I probably can read his read his report about as well as what he's going to tell me.

Mr. McDaniel: And you know I --

Commissioner Wilkerson: I probably know

as much about what's in his report as he does.

Mr. McDaniel: -- and since we're still on the record, I think this little -- little lady would have been secure anyway; however, we want to make sure we take some testimony so she can get her -- her -- what rule is it now?

Unknown Speaker: 403.

Mr. McDaniel: 403.

Unknown Speaker: I don't think the administrative requires witness testimony.

Mr. Bayne: Oh, it doesn't? I thought it did.

Unknown Speaker: I don't think it does.

Commissioner Wilkerson: It's going to be your -- it will be your law degree no matter what I decide. So, it doesn't really -- it does matter.

(Off The Record)

Commissioner Wilkerson: Ma'am, I'm going to get you to raise your right hand; I'm going to have the Court Reporter swear you in. I'm pretty informal, and we're just going to take some testimony from you, okay?

Thank you.

Court Reporter: Please raise your right hand.

Whereupon;

Desidora Lazaro, being duly sworn and cautioned to speak the truth, the whole truth and nothing but the truth, testified as follows:

Court Reporter: Speak up for me, please.

Commissioner Wilkerson: Speak up.

Mrs. Lazaro: Yes, I do.

Court Reporter: Please state your full name for the record. State your full name for the record.

Witness: Desidora Lazaro.

Court Reporter: Thank you, ma'am.

Commissioner Wilkerson: Is she fluent in English or --

Mr. Duncan: It's --

Commissioner Wilkerson: -- that's probably something I should have asked.

Mr. Duncan: -- well, and she is, and with the Commissioner and Mr. Bayne's indulgence I will lead a little.

Mr. Bayne: That's fine.

Commissioner Wilkerson: Yes, and I'm

fine with that because it -- it is what it is.

Mr. Bayne: Yes.

Commissioner Wilkerson: Yes, please. Thank you.

DIRECT EXAMINATION

By Mr. Duncan:

Q. Ms. Lazaro, you are forty-seven (47) as I understand it?

A. Yes.

Q. Okay. And you were married to Antonio in 1991?

A. Yes, sir.

Q. Okay. And you have -- you are both natives of Mexico?

A. Yes, sir.

Q. Okay. And you became a permanent resident of the United States subsequent to your marriage?

A. Yes, sir.

Q. Okay. And did you then study to become a citizen?

A. (Nodded head in an up-and-down motion).

Q. How --

Commissioner Wilkerson: You've got to --

A. Yes.

Commissioner Wilkerson: -- you've got

to answer it yes or no.

A. Yes.

Q. All right. And how long did you study for the test?

A. One (1) year.

Q. All right. And you passed the test and became a citizen?

A. Yes, sir.

Q. Okay. And Oliver and Antonio, both your sons -- Antonio, Junior -- are both citizens?

A. Yes.

Q. Okay. Now, in your employment right now you are employed with American Woven as your primary job?

A. Yes, sir.

Q. Okay. And what do you do for them?

A. Machine operator.

Q. All right. And you've been working for them for about ten (10) years?

A. Yes, sir.

Q. Okay. And that -- those hours are from like 7:00 in the morning until 3:00 in the afternoon?

A. Yes, sir.

Q. Okay. And you also have a second job?

A. Yes, sir.

Q. And that is with Eat Mor' Tees?

A. Tees.
Q. I believe that's M-O-R --
A. Yes, sir.
Q. -- and you work there for about twelve (12) hours a week?
A. Yes, sir.
Q. Okay. And then you also work a third job at the -- is it the Richland/Lexington Municipal or --
A. Columbia --
Q. -- it's the airport, whatever the official name for the -- you work for the airport?
A. -- yes, sir.
Q. And that's about twelve (12) hours a week?
A. Yes, sir.
Q. Okay.

Commissioner Wilkerson: What does CAE stand for? It's the Cayce Airport. Go ahead.

Mr. Duncan: Oh -- well, oh --

Commissioner Wilkerson: I live in Cayce.

Mr. Duncan: -- I should have known that.

Commissioner Wilkerson: So, go ahead. We digress, so.

Q. And that was -- you work those jobs because -- all right, you and your husband had -- before the accident -- had started a business at the flea market, correct?
A. Yes, sir.
Q. All right. And that had been running for about a year before --
A. Yes, sir.
Q. -- his accident?
A. Yes, sir.
Q. And then you ran it for about three (3) years afterwards?
A. Yes, sir.
Q. All right. And the income from that was about how much for a weekend?
A. Less than three hundred ($300.00).
Q. Less than three hundred dollars ($300.00)?
A. Yes.
Q. And how long were those days that you -- well, let me ask you this. Who worked -- how many people worked at that booth?
A. My kids and me.
Q. Okay. And you worked roughly twelve (12) hour days, Saturday and Sunday?
A. Yes, sir.
Q. Okay. And you -- as I understand it you quit

those -- that job -- because of what?

A. It was hard for me to work seven (7) days a week.

Q. Okay. And you work now six (6) days a week?

A. Yes, sir.

Q. Okay. And since the accident is it fair to say that you have -- that you have all -- is it true that you have been to the nursing home every day?

A. Yes, sir.

Q. Now, before the accident what was Antonio's, your husband's, state of health?

A. He was healthy.

Q. Did he take -- did he have any kind of condition that he had to take any kind of pills or medication for?

A. No, sir.

Q. Okay.

Mr. Duncan: That's all we have.

Mr. McDaniel: Can I ask one (1)?

Commissioner Wilkerson: Sure.

FURTHER DIRECT EXAMINATION

By Mr. McDaniel:

Q. Ms. Lazaro, let me ask you this. Why did -- why did Mr. Lazaro start that flea market; what was -- what was the reason that you all started it?

A. Because we -- to help more with the money like to

get money to --

Q. To supplement your income?

A. -- yeah, income.

Q. And now, you closed the flea market because it was seven (7) days a week but also --

A. Yes.

Q. -- you're now doing two (2) extra job; why -- why are you doing those two (2) extra jobs?

A. To help like -- like get more money for my kids to --

Q. Okay. Where was the money going --

A. -- like money for tuition.

Q. -- if you made it?

A. -- and so we could get more money.

Q. Okay.

CROSS-EXAMINATION

By Mr. Bayne:

Q. Mrs. Lazaro, how are you doing today?

A. Very good, sir; thank you.

Q. I'm sorry that -- that you have to be here again; I know it has been a long road for you so I'm hoping we can -- we can reach a resolution pretty quickly and get everything done. I just have a few questions for you. Okay. At the -- let me just -- what is your hourly wage at -- you said it was a manufacturing job?

A. Yes, sir.
Q. Yes. How much do you make per hour?
A. On -- on which one?
Q. Just with the manufacturing -- the one that you've had for ten (10) years?
A. Oh, ten forty ($10.40).
Q. Ten forty ($10.40)?
A. Uh-huh.
Q. Okay. And how much -- do you know what your -- are you paid weekly, bi-weekly?
A. Every two (2) weeks.
Q. Every two (2) weeks.
A. Uh-huh.
Q. How much do you get every two (2) weeks?
A. Five hundred and fifty-two dollars ($552.00).
Q. Okay. And you said you're working at the airport as well?
A. Two (2) days.
Q. Two (2) days?
A. Yes, sir.
Q. Okay. And -- and is that every week, every two (2) weeks that you're paid?
A. Every week.
Q. Every week. How much do you get a week from that?
A. Like seventy-five dollars ($75.00).

Q. Okay. And did you say you have a third job?
A. Yes.
Q. What is the third job?
A. Tees -- Mor' Tees; that's that name.
Q. Okay. And how much do you get a week from that?
A. One eighty-five ($185.00).

Commissioner Wilkerson: Let me make sure I understand. I always -- what you get and what you make might be different; so, I guess my question is --

Mr. Bayne: I -- I'm sorry.

Commissioner Wilkerson: The first one was how much she made an hour ten forty ($10.40) an hour.

Mr. Bayne: Yes.

A. Ten forty ($10.40).

Commissioner Wilkerson: That's four hundred ($400.00) -- around four hundred dollars ($400.00) --

A. Yeah.

Commissioner Wilkerson: -- is that fair?

A. Yeah.

Commissioner Wilkerson: The seventy-five dollars ($75.00) is that a flat

amount or -- or do you get paid hourly at the airport?

A. I'm paid seven twenty-five ($7.25).

Commissioner Wilkerson: So, that's -- okay, that's what she said.

Mr. Bayne: And I can rephrase it.

Commissioner Wilkerson: No, that's fine. I just wanted to get -- because if we start mixing apples and oranges --

Mr. Bayne: Sure. Sure.

Commissioner Wilkerson: -- we're going to end up with apple salad.

Mr. Bayne: It was poorly phrased on my part.

Q. Mrs. Lazaro, what I want to know is, when you get your paycheck for each of these jobs and each -- you said one (1) is -- two (2) of them are weekly and one (1) is every two (2) weeks, right?

A. Uh-huh.

Q. Okay. The one (1) that's every two (2) weeks, how much is that check for when you get it every two (2) weeks?

Mr. McDaniel: Bring home, correct?

Mr. Bayne: Yes.

Q. What is your take home pay from that job?

A. Five hundred ($500.00).
Q. About five hundred ($500.00)?
A. Yes.
Q. So, about two hundred and fifty ($250.00) a week?
A. Uh-huh.
Q. Okay. And then the job at the airport is -- your take home from that is about seventy-five dollars ($75.00) a week?
A. Yes, sir.
Q. Okay. And then the third job, the take home from that is about a hundred and eighty-five dollars ($185.00)?
A. Uh-huh.
Q. Okay. So, that is -- according to my count it's about five hundred and ten dollars ($510.00) a week when you add all those up; is that correct?
A. Yes, sir.
Q. Okay. Are you receiving any type of Social Security payments for your husband at this time?
A. Yes, sir.
Q. All right. How much is that that you're getting?
A. Four hundred and six ($406.00).
Q. Is that per -- well, you're receiving a four hundred and six dollar ($406.00) check per week, right?
A. Yes, sir.

Q. Okay. Are you receiving anything with what we call Social Security, are you getting any additional checks for Antonio?
A. For the Social Security?
Q. Yes.
A. Yes, sir.
Q. Okay. And how much are those for?
A. Four eighty-five ($485.00).
Q. Four eighty-five ($485.00) a week or a month?
A. No, a month.
Q. A month?
A. Uh-huh.
Q. Okay. You get that a month?
A. Uh-huh.

Commissioner Wilkerson: Absolutely, yes.

Q. Okay. So, it's about a hundred and twenty ($120.00) a week; would that be right?
A. Uh-huh.
Q. Okay. So, when I'm looking at those numbers, the four hundred and six dollars ($406.00) that you get for -- from the Workers' Compensation, the hundred and twenty ($120.00) that you get from the Social Security, and then the five hundred and ten ($510.00) that you bring home, we're looking at about a thousand, thirty

dollars ($1,030.00) a week; is that right?

A. Yes, sir.

Q. Okay. And you started these -- the second and the third job because you stopped doing the flea market work, right?

A. Yes, sir.

Q. Okay. You said the flea market work was less than three hundred dollars ($300.00) a weekend?

A. Yes, sir.

Q. Okay.

A. For two (2) days.

Q. And the second and third job are coming out to, it looks like about two hundred and sixty dollars ($260.00) a week?

A. Yes, sir.

Q. Okay. So, those two (2) are fairly similar as far as what you replaced with the flea market is what you're getting back --

A. Yes, sir.

Q. -- from the second and third job?

A. (Nodded head in an up-and-down motion).

Q. Okay. I want to show you --

Mr. Bayne: -- was this actually entered for Winthrop and USC?

Commissioner Wilkerson: Yes.

Mr. Bayne: Is that C-1 and C-2?

Commissioner Wilkerson: Yes. Actually what I did is I put both of those together --

Mr. Bayne: Okay.

Commissioner Wilkerson: -- because they were stapled together. I think that's C-1 --

Mr. Bayne: C-1? Okay.

Commissioner Wilkerson: -- both of those documents.

Mr. Bayne: The -- the college costs?

Commissioner Wilkerson: Yes. The college costs I put under one (1).

Q. I'm going to show you this real quick and this is something that Mr. McDaniel put into evidence and what that is -- if you can -- if you can look at that, it's just the cost of what Winthrop and the cost of what USC will be per year. And if you'll look at that and -- and glance at those numbers real quick -- the instate tuition -- and what I show is that Winthrop, if you add all those numbers up, comes out to about twenty six thousand dollars ($26,000.00) a year; is that right?

A. Yes, sir.

Q. Okay. And on the second page it shows that USC comes out to about twenty-one thousand dollars ($21,000.00) a year when you add up all the instate

costs; is that right?

A. Yes, sir.

Q. Okay. At the time of the accident, your husband was making about thirty-two ($32,000.00) to thirty-three thousand dollars ($33,000.00) a year; is that right?

A. Yes, sir.

Q. Let me -- let me put it this way. When you add up your income at the time of the accident and his income at the time of the accident --

Mr. Bayne: -- and, Commissioner, this would be based on the average weekly wage plus the -- her W-2 that is in --

Commissioner Wilkerson: Yes.

Mr. Bayne: -- the Defendant's exhibits.

Commissioner Wilkerson: The W-2's that were provided, yes.

Q. Does about nine hundred dollars ($900.00) a week sound correct as to what you were bringing home a week at the time of the accident?

A. Excuse me?

Q. The -- this may require you to think back, it may not help you out but we -- your attorney gave us your W-2 from 2006, and it showed that you made about twenty-two thousand dollars ($22,000.00) that year and

Antonio's was about thirty-three thousand dollars ($33,000.00) for the year.

A. Yes, sir.

Q. And after taxes and everything, when I did the math on that it came out to what looks like about nine hundred and three dollars ($903.00) a week that your family was taking home before Antonio got hurt; does that sound correct to you as to what you were bringing home at the time of the accident?

A. Yes, sir.

Q. Okay. So, at the time you were making -- you were bringing nine oh three ($903.00), today you're bringing about a thousand thirty ($1,030.00) home; is that correct?

A. Yes, sir.

Q. Okay. My question to you is, if Winthrop costs twenty-six thousand dollars ($26,000.00) a year and USC costs twenty-one thousand dollars ($21,000.00) a year, how were you and Antonio planning to pay for that for Oliver and for Antonio, Junior; were you going to pay it with case or were you going to take out loans for it or what -- what was your plan?

A. We was to make a loan.

Q. Okay. You were going to take out loans?

A. Uh-huh.

Q. Were you going to take out the full cost of loans in order to allow them to go to college and get a degree?
A. Yes, sir.
Q. Okay. And how did you plan to pay off those loans once they completed their education?
A. Oh.
Q. In other words, were you going to pay it out of your salary or was Antonio and Oliver going to be responsible for paying that off once they got a job?
A. I think both.
Q. Okay. So, it was going to be a combination of the two (2)?
A. Yeah.
Q. Okay.

Mr. Bayne: I have no further questions, Commissioner.

Mr. Duncan: Nothing further.

Commissioner Wilkerson: Okay. Thank you. Ma'am, you may step down.

Mrs. Lazaro: Yes, sir.

Commissioner Wilkerson: Thank you for being here under these extenuating circumstances.

Mrs. Lazaro: Thank you, sir.

Commissioner Wilkerson: Thank you.

Mr. Duncan: Oliver Lazaro.

Commissioner Wilkerson: If you'll have a seat I'm going to have --

Mr. Lazaro: Yes, sir.

Commissioner Wilkerson: -- the Court Reporter swear you in. Thank you.

Whereupon;

Oliver Alexis Lazaro, being duly sworn and cautioned to speak the truth, the whole truth and nothing but the truth, testified as follows:

Court Reporter: Please state your full name for the record.

Witness: Oliver Alexis Lazaro.

DIRECT EXAMINATION

By Mr. Duncan:

Q. Oliver, how old are you?

A. I'm twenty (20).

Q. And where did you go to high school?

A. I went to Irmo High School and I graduated in 2012.

Q. Okay. And as I understand it from what Preston has already put in the record, you had a three two (3.2) GPR on a four (4) point scale?

A. Yes, sir.

Q. Okay. Did you an outstanding achievement award also?
A. Yes, sir; I did.
Q. Okay. And you also played on the soccer team while you were at Irmo?
A. Uh-huh. Yes, sir; that's correct.
Q. All right. You attended college for a year at --
A. Spartanburg Methodist College.
Q. -- okay. And why did you leave there?
A. Well, it was -- I'm pretty sure it was getting -- with the second year they were trying to charge me more for --
Q. Okay.
A. -- to go to school; so, it was going to be tough to pay --
Q. So, you were going --
A. -- one (1) more year.
Q. -- you were trying to avoid the --
A. The cost of --
Q. -- okay.
A. -- paying that.
Q. All right. And so, you dropped out of school and you're working for Burris at this time?
A. Yes, sir.
Q. You're saving money for college?

A. Yes, sir.
Q. Do you intend to go back in August?
A. Yeah, go back to Tech and complete --
Q. And why Tech?
A. -- so I can stay home and save money and because of my mom too.
Q. Okay. And you've got a little over a year at Tech as I understand it --
A. Uh-huh.
Q. -- for your core courses?
A. Yes, sir; just one (1) more year so I can finish the core courses.
Q. Okay. And then you intend -- you would like to go to either Winthrop or USC?
A. Yes.
Q. And why is that, for what purpose?
A. Oh, I'm trying to get into a Nutrition Science program.
Q. Okay. And if you had to -- if you had to make a decision because of costs or whatever where would you go?
A. I'd probably choose USC just so I can stay home.
Q. And avoid some of the expenses in the twenty-one thousand ($21,000.00)?
A. Yes, sir.

Q. So, it would be more like about fifteen ($15,000.00) a year?
A. I think so; yes, sir.
Q. Okay. And you -- that course of study will take about two (2) years?
A. Yes, two (2) years because I did two (2) years already.
Q. Okay.

Mr. Duncan: Thank you.

Mr. Bayne: One second.

Commissioner Wilkerson: No, that's fine. Let me ask you this question and you --

A. Uh-huh.

Commissioner Wilkerson: -- probably don't know --

A. Okay.

Commissioner Wilkerson: -- because I've sent two (2) to college and I'm not sure I still know, okay?

A. Yes.

Commissioner Wilkerson: The main thing is, before I ask you the question --

A. Uh-huh.

Commissioner Wilkerson: -- you're doing

the right thing to stay in school; you're doing the right thing to better your education.

A. Well, I'm trying to stay in school; yes, sir.

Commissioner Wilkerson: And --

A. Yeah.

Commissioner Wilkerson: -- hopefully you'll be very successful with -- with that. Do you know if there is any opportunity for any money to come from any of these programs to help further your education at this point in time?

A. As in what programs?

Commissioner Wilkerson: As far as the program you may be taking at --

A. Oh, like the --

Commissioner Wilkerson: -- USC?

A. -- oh --

Commissioner Wilkerson: Is there a potential scholarship for that? And I know we're projecting forward --

A. -- uh-huh.

Commissioner Wilkerson: -- but that's what we're trying to do here today. You -- I mean, you can apply for certain scholarships

--

A. Yes, sir. Yeah.

Commissioner Wilkerson: -- but that doesn't mean you're going to get them; is that fair?

A. Yeah, I mean, I'm sure, like, if I look there could be some but, I mean, I haven't researched, like, so much into it yet.

Commissioner Wilkerson: Okay. That's fine.

A. But if I look into it I think I could maybe find something if there's any available so I can apply.

Commissioner Wilkerson: Okay. That's fine. That's neither here nor there at this point in time.

Mr. Bayne: Oliver, I just have a couple of questions for you.

Mr. Lazaro: All right.

CROSS-EXAMINATION

By Mr. Bayne:

Q. Are you -- you're fairly familiar with your family's finances, I guess; have you been helping them out?

A. Yes. Some -- most of them but not -- it just depends on -- just --

Q. Okay. And what we talked about with Winthrop and USC --

A. -- uh-huh.

Q. -- I guess if you're staying -- if you stayed at home USC would be about fifteen thousand ($15,000.00) --

A. Yeah.

Q. -- and Winthrop would be about twenty-six ($26,000.00). Had you ever talked with your father and have you talked with your mother about how that's going to be paid for, assuming you don't get the scholarships?

A. Yeah, yeah. Oh, well, I mean, it could have been, like, both of us because my mom works and -- I mean, well, you're saying as if my dad was still here?

Q. Well, my -- my question, I guess, is -- is when you look at those bills --

A. Uh-huh.

Q. -- and what your -- your parents were bringing in on a weekly and monthly basis, were they going to pay cash to Winthrop or to USC, fifteen thousand dollars ($15,000.00) a year and twenty thousand dollars ($20,000.00) a year to them out of their income or were they going to take out loans for you to go to college?

A. I'm not so sure, sir. It would probably be -- it

would just depend, I guess, on the situation but I can't be a hundred percent (100%) sure which.

Q. Okay. And you heard a minute ago when I was talking to your mom --

A. Uh-huh.

Q. -- that what is coming in today to the family --

A. Uh-huh.

Q. -- is potentially more money than at the time that your father was injured; did you -- did you hear her say that?

A. Yeah, I heard her.

Q. Okay. And so, when you went to college there was more money coming in as far as -- there was about a hundred dollars ($100.00) more a week coming in --

A. Uh-huh.

Q. -- and you'd still have to take out loans to be able to pay for that, correct?

A. Well, I didn't take out any loans.

Q. Okay.

A. I was paying, like, cash.

Q. Okay. Where -- where did the ten thousand dollar ($10,000.00) -- was it -- was it your ten thousand dollar ($10,000.00) loan or is that your brother's?

A. It was both.

Q. Okay.

A. Yeah, for his loans and, like, the books --
Q. Okay.
A. -- and all the expenses over there.
Q. At the time that he took those out your mother was working those jobs, correct?
A. I think she was, yeah.
Q. Okay.
A. She was -- I think the Eat Mor' Tees she wasn't working at but I'm not sure. I think she was though.
Q. Okay. That's fine.

Mr. Bayne: I have no further questions, Commissioner.

Mr. Duncan: Nothing else.

Commissioner Wilkerson: Thank you. You may step down.

Mr. Bayne: If I could recall Mrs. Lazaro for -- I just have one (1) question for her, if that's all right with you?

Commissioner Wilkerson: I'm fine with that. Thank you. You can step down.

Mr. Lazaro: All right. Thank you.

Commissioner Wilkerson: I thought for a minute we were fixing to get into an economics class.

Mr. Bayne: No. No.

Commissioner Wilkerson: Was the value of a dollar in '06 greater than the value of a dollar in '05? We're going to start --

Mr. Bayne: No. Mrs. Lazaro, I -- I apologize.

Commissioner Wilkerson: -- okay. You're still under oath just -- you're going to answer correctly anyway; I already know that.

RECROSS-EXAMINATION

By Mr. Bayne:

Q. I apologize, I forgot to ask you, just recently there was a lump sum paid out to your family as part of this case; did that take care of the outstanding debts that your family had?

A. One (1) more time, please?

Q. Okay. I'm sorry. There was a lump sum, there was -- it was about a hundred and fifty thousand dollars ($150,000.00) that was paid as part of the prior hearing that you were at and that was to pay off your mortgage and -- and credit card debt and those things; has that been done? In other words, are you still paying a mortgage today?

A. No, sir.

Q. No? Okay. Do you still have the credit card debt

that was paid off or was that satisfied by the payment of those -- of those funds?

A. It's hard for me to understand.

Q. Okay. Do you have --

Commissioner Wilkerson: She could still have credit card debt --

Mr. Bayne: -- I understand.

Commissioner Wilkerson: -- it could be -- yes, I understand.

A. Yeah.

Q. You did have a number; do you have the ongoing debt that you pay out --

Mr. McDaniel: Yes, because we were restricted to --

Mr. Bayne: -- most certainly.

Mr. McDaniel: -- we were restricted -- yes, we were restricted. We couldn't pay anything that wasn't running.

Mr. Bayne: Okay. I understand.

Q. Real -- real quick, do you have any debt that you pay out that you've taken a loan from somewhere or you've taken money from somebody and you're paying that back every week or every month?

A. Well, I was paying my car --

Q. Okay.

A. -- a car payment.
Q. And what car is that?
A. It's a 2004 --
Q. Okay. And that's the only --
A. -- that I was paying.
Q. -- that's the only payment you're making right now?
A. Yes, sir.
Q. Okay. And how much is that?
A. Four hundred eighty something ($480.00) it was; it's almost finished.

Mr. Bayne: Was that one part of the --

Commissioner Wilkerson: No. I'm sorry.

Mr. McDaniel: Yes. No, it was --

Mr. Bayne: -- that's all I have, Commissioner.

Mr. McDaniel: -- I've got just one (1) more.

Mr. Bayne: It's getting replaced as part of the -- that's the car she wants replaced?

Commissioner Wilkerson: Yes.

REDIRECT EXAMINATION

By Mr. McDaniel:
Q. You actually owe one more loan because you had to

buy a car --

A. For my --

Q. -- for Antonio?

A. -- yes, sir.

Q. I mean, excuse me --

A. For Oliver.

Q. -- for Oliver. Okay. I believe you all owe at some point the gentleman -- how much do you owe for that car, forty-five hundred ($4,500.00), I believe; is that correct?

A. Yes, sir.

Q. Okay.

Mr. McDaniel: That's it.

Commissioner Wilkerson: Anything else?

Mr. Bayne: Nothing further.

Commissioner Wilkerson: Anymore witnesses?

Mr. Bayne: No, sir.

Commissioner Wilkerson: Anybody else need to testify today?

Mr. McDaniel: No.

Mr. Bayne: Do you want us just to sum up our position real quick for you? I can be brief --

Commissioner Wilkerson: No.

Mr. Bayne: -- very brief.

Commissioner Wilkerson: Because you all will be another three (3) hours summing something up.

Mr. Bayne: I can do it in under three (3) minutes.

Commissioner Wilkerson: Because if you say something, they've got to say something --

Mr. Bayne: Sure.

Commissioner Wilkerson: -- if they say something, you've got to say something.

Mr. Bayne: Can you give us two (2) minutes?

Mr. Duncan: Nobody wants to answer to Preston's wife.

Mr. Bayne: I see -- I see he's got ten (10) minutes.

Commissioner Wilkerson: It may help us all.

Mr. Gallagher: Commissioner, I think the horse is dead.

Commissioner Wilkerson: I agree. Yes, there you go. And as my friend in -- as my friend in Gaston always tells me, I don't

need to hear it twiced. This concludes the hearing. Thank you all for being here.

(There being no further questions, the hearing concluded at 11:51 A.M.)

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF RICHLAND)

Be it known that I took the foregoing South Carolina Workers' Compensation Commission Hearing of Antonia Lazaro, vs. Burris Electrical, Incorporated;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was first duly sworn to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript of 149 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

Witness my hand and seal this 22nd Day of February, 2015.

_Gloria G. Davis_____
Gloria G. Davis
Notary Public for South Carolina
My Commission Expires 12/21/21

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STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 0710622

Antonio Lazaro,

Claimant,

v.

Burris Electrical, Inc.,

Employer,

and

CACG Insurance,

Carrier/Defendants.

COPY

FULL COMMISSION HEARING

****

Monday, September 21, 2015
2:52 p.m. - 3:15 p.m.

The Full Commission Hearing was heard before Commissioners Susan S. Barden, Aisha Taylor and Avery B. Wilkerson, Jr., at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 21st day of September, 2015, before Jennifer Nottle, Court Reporter and Notary Public in and for the State of South Carolina.

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EXHIBITS

(There were no exhibits marked during the hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.

THE COURT REPORTER: Today is Monday, September 21st, 2015. This is South Carolina Workers' Compensation case number 0710622. This is the case of Antonio Lazaro, Claimant, versus Burris Electrical, Incorporated, Employer, and CACG, the Carrier. The Appellant is the Claimant, represented by Preston F. McDaniel. The Respondent is represented by Brett H. Bayne. Each side is allowed 10 minutes for oral argument and the Appellant three minutes in reply. You are requested to argue the grounds of exception and stay within the record.

COMMISSIONER BECK: Mr. McDaniel?

ARGUMENT BY MR. MCDANIEL:

MR. MCDANIEL: Commission, we are set on both the appeals, on two orders?

COMMISSIONER BARDEN: Uh-huh.

MR. MCDANIEL: Okay. I just wanted me make sure. I appreciate your leeway in giving us as much time as you can. First, I'm going to hand up just a case that I will be referring to. And that's the Hudson -- Hudson versus Lancaster County. I'm just going to hand up a copy. I made a copy for each one of you.

COMMISSIONER TAYLOR: Thank you.

MR. MCDANIEL: And this will be very -- referred to very briefly. I'm going to first argue the issue of the motion, and then after that -- Brett, here is another copy, just so you have it. First off, we have a motion filed in this case. Basically, Commissioner Beck, Chairman Beck, originally granted us a partial lump sum on October the 14th of 2010. And he gave us a partial lump sum up to $152,000 to pay off the Claimant's mortgage, and to pay bills, and then to buy a car. And we were given up to that amount, and then -- which is good -- I think very important in this regard, because we were given up to that amount, and then we were to make an accounting and then return the money. Well, that order was appealed, and finally decided on February 6th of 2014 when the Court of Appeals affirmed your decision, and the decision of the full commission. Two and a half months later, when there's nothing pending in the -- you know, that order was final, at least if nothing else, by February 6th of 2014. But however, really after the appeals, it was final as of the date of the original order. So at no time, at that time, or any time up until

two and a half months later did any action happen. And then they file a motion. And not the original insurance carrier. The original insurance carrier went insolvent and the Guarantee Fund files a motion wanting to take the partial lump sum off of the front end of the -- of the Claimant's lifetime award. They file a petition for rehearing which was finally decided on May 10th of 2014. But in any event, our first argument is that the Commission lacked jurisdiction for multiple reasons. First off, there's no pending action. This was a motion. And it was a motion filed as to -- you know, in the -- a motion is an ancillary action -- as we all know as lawyers, it's an ancillary action to a pending action. There's a -- there was no pending action in reference to that. The pending action for the partial lump sum that we're talking about here was back in 2010. So I would submit to you that, first off, a motion was improper because it's an ancillary to a pending action. On that basis, the -- the case should not have been heard. The Commission lacked jurisdiction because it wasn't a pending action. Second off, the

motion does not set out any basis for the guarantee fund being able to file a motion. Now, the guarantee fund inherits the obligations and has the same rights and privileges as the defunct insurance company has, and I don't dispute that. And that's one reason I handed you up the case, the Hudson case, because what we have here is they inherit the obligations, they also inherit any rights that they had. The Carrier had a right to say that they wanted this taken off of the front end. Whether or not this Commission should have granted it back in 2010, they didn't do that. They, at no time for three and a half years, ever did that. They then paid benefits for three and a half years, temporary total. Now, so I would submit to you that there's no jurisdiction. The order is final. It is the law of the case, number one. Number two, they did not file -- timely file any type of motion in that regard, and they did not set out the standing of the guarantee fund under the act. See, the act -- the Employer is the person responsible for paying benefits. However, the act provides that the insurer can go out and

cover his liability by providing for an insurance carrier on the common market. That gives the insurance carrier standing, because they are the employer for the insurance company. The carrier -- they can also be a self-insured. The question here about this in that regard, but that's irrelevant to this appeal. But in other words, they can be a self -- the statute gives the self-insured fund or self-insurance fund standing. The state accident fund is given standing to handle state liability. The UEF is given standing because it was created to handle uninsured employers fund. There simply is no standing. The only standing that the guarantee fund is given is given in a separate statute which's cited in the Hudson statute, and the statute gives them and allows them to inherit the responsibilities of the carrier. So what I'm saying to you is that if you look at the motion, as we all know in pleading any pleading, you've got to set out a jurisdictional basis. You know, there is nothing in this motion, when you read it, that sets number one, that law of the case, number two, that there's an action pending before the

commission, number three, that there is -- that the guarantee fund, who is filing the motion, has any standing. You've got to establish jurisdictional basis in the motion. I'd say the motion is totally improper, totally inadequate in many regards. And I ask you to review that in that regard from the standpoint of lawyers understanding what I'm saying about the requirement of -- you know, you got to say the plaintiff is a resident of, the defendant is a resident of, they had a -- you know, you've got to set out your jurisdictional basis both in personal and subject matter. It's not done in this case. Now -- so for all of those reasons, I would ask you to -- I think the motion was improper. I don't think it was properly before the commission. Now, next the act contemplates -- there's two methods of payments in either a total permanent disability 500 week case, or in this case, a total permanent disability lifetime benefits case. That is the -- you can pay out the benefits as soon as that -- my client was awarded, Commissioner Beck awarded us, lifetime benefits. Commissioner, if you will remember,

they challenged whether or not he was entitled to it. We tried to resolve the first partial lump sum but they actually denied liability that he was totally and permanently disabled. And we actually had to try that issue before you the first time around up until the point of the hearing. Now, the act contemplates two methods of payments. The preferred method, and all the case law talks about this, is the payment of weekly benefits. You know, then the second side of that is that you can -- in a lifetime benefits case, Sprinkler said you can get -- you can award a partial lump sum. So the preferred method is -- and all the -- many, many myriad of cases have talked about this is that the primary purpose of paying weekly benefits is to provide income protection for the injured worker or supplemental -- to provide income in place of the lost wages. In other words, that's why it's a preferred method. Now as a result of that, you know, all the regulations, every time this Commission has been asked to speak to it, every time the Supreme Court has been asked to speak to it, we talk about that any partial lump sum that is

granted should be taken off the back end. There is simply no case law, no regulation, no statute, that allows the Commission to take it off of the front end. And this Commission -- if we look at it from the standpoint -- because what this order would do is it would deprive this family of benefits from 20 -- until 2023, or maybe 2021. But in other words, for another 300 and some odd or 200 and some odd weeks without benefits. They'd cut them off, and then they don't get to resume until 200 weeks later. So this Commission, to my knowledge, has never taken partial lump sums off of the front end. It has never passed any regulation in reference to any -- to take it off the front end. And so this family is going to go out there -- if you affirm Commissioner Wilkerson's decision, they're going to be without benefits. Those benefits are going to be cut off to this family for the next four years. I don't think that is in line with the original beneficial purposes of the act, which is to provide income protection. And the preferred method being to pay weekly benefits to the Claimant. So if you apply a literal construction -- the next thing

is that Commissioner Wilkerson relied on a case the Defense cited which applies to a death claim. And while I reread their brief, they said that I -- that I was arguing that there's 500 weeks vested. In both of the orders, it refers to that Commissioner Wilkerson looked at it, there's a 500 weeks of vesting of benefits under the act, and that's -- the Supreme Court has specifically said that, no, in a lifetime benefits case, the computing factor is the life expectancy. There is no 500 week cap on benefits, which is part of the reasoning for his ruling of saying that, okay, they've been paying them for 300 and some odd weeks, and you've got a partial lump sum of 300 and some odd weeks. And then in addition to that -- so, I'm going to stop them over the 500 weeks that you get vested, which the Supreme Court has said that's totally wrong. There is no vesting of 500 week benefits.

COMMISSIONER BECK: Finish your thought.

MR. MCDANIEL: All right. Thank you, Commissioner. I'd submit that, you know, that -- I didn't even reach the appeal from the lump sum. You know, I'll address that somewhat in reply with

no objection to Mr. Bayne having a brief reply also. Thank you, Commissioner.

COMMISSIONER BECK: Mr. Bayne?

ARGUMENT BY MR. BAYNE:

MR. BAYNE: Thank you, Commissioners. There's a lot of issues in this case but I'll try to kind of boil them down simply. As Mr. McDaniel set out, there's a prior order in this case that awards a lump sum of approximately $150,000 to the family. Some of that money is actually going to end up to be due and owing and coming back, we think, based on that order. But what that order didn't provide, and it's kind of a rare issue, so it's not something that would provide, and I haven't happened to find any case law one way or the other, is how to apply that award. What we have in this case is not an attorney's fee award; although, there was an attorney's fee award taken off the back end. But we have what is an advancement of weekly lump sum benefits, or weekly benefits in a lump sum, in order to help the family out and pay off debts, pay off benefits. As a kind of threshold issue here, Mr. McDaniel talked about Commissioner Wilkerson's order deprives this

family of benefits. They've received the benefits. They received them in a lump sum of $152,000. They've received them weekly ever since. So what we did is, instead of stopping benefits because we're overpaid, which we don't believe we could do anyway properly, and because the order doesn't set it out, and because the statute doesn't set out whether an advance on a lifetime case comes off the front or back, we asked the Commission for guidance. We said we believe, in certain cases when the medical evidence that is presented does not support the life expectancy exceeding the period that has already been paid, that there is a significant bias, there's a significant prejudice against the insurance company and the employer that they have paid X amount of weeks, that they have now paid past the 500 vested limit, it's not a cap. If you look at the case law, if you look at Floyd and Glover, which were cited in the brief, what those cases tell us is, that in a lifetime case, you get 500 weeks no matter what. If you're killed on the job, you get 500 weeks. If you are awarded lifetime benefits and you make it to 492, you

get 500 weeks. But if you live to week 503, and it's a little morbid kind of talk about it in this, you know, this method. But if you make it to 502, that's it. You don't get any more benefits beyond week 502. So the 500 week, while it's not a cap on benefits, you get them for your life. It is a vested limit. In other words, on the day of your injury, the day that you become a lifetime beneficiary, you are vested in 500 weeks. After that, you have to earn those benefits on a weekly basis. And so what we did is we looked at the numbers, and we said we've paid out the 300 -- I think it was 362 weeks, and that was as of the date of the motion. So week, to week, to week, we paid 362 weeks. The lump sum that was paid out totaled another 375 weeks of benefits. So what we found when we looked at it is we came out to a total of 737 weeks, which is 237 past this vested period of 500 weeks. So if he dies today, we've overpaid by 237 weeks. And so we asked the Commission to look at that and determine whether or not there was a mechanism to essentially stop the benefits until those numbers caught up to each other. Because our

position was, if the medical evidence supports that the Claimant is not going to live long enough to see those benefits exhausted, then it's unfair and it's prejudicial to the Defense, to the insurance company, to the Employer, and that's what it did in this case. We presented a medical report from Dr. George who's the authorized treating physician in this case, and what she said is there's a 50 percent chance he lives another five years. There's a less than 50 percent chance he lives another 10 years. That -- well, 375 weeks of overpayment -- because what you do -- it's all this math, but you look at what's been paid week to week, and then you look at how far out were paid, and that's what the overpayment is if you were to pass away. It came out to -- the stop payment benefit comes out to, he has less than a 50 percent chance of living long enough to see those benefits paid even if we stop payments today. So we asked the Commission to do that. Commissioner Wilkerson heard the arguments. He determined that because there's not a statute or a regulation that says whether it's front or back or either, he had to make a decision on

that. And he determined that based on the medical evidence, based on the case law that was cited -- and there's several in the brief, but the Martin case, the Glover case, and then there's another case relating to the lump sum, but I think it's applicable -- it's Ashley versus Ware Shoals. In that case, the court said if the total disability is such that there is a serious question presented regarding the likelihood of the employees living the length of time required to complete the installment payments, the allowance of a lump sum settlement over the objection of the employer/carrier would constitute an abuse of discretion. So that has to do more with an additional lump sum situation, but I think it's applicable here when you look at it -- and we're not appealing Commissioner Beck's order, we're not trying to rewrite Commissioner Beck's order, we're asking for clarification on how that should be applied in this case. And when you look at the medical evidence and you look at the case law, what it says is, there should be a consideration. And it's not a blanket consideration but if the evidence in the case

supports a finding that the benefit should be stopped because the Claimant is not going to live to a period of time in order to see the payout of those benefits, then that's what should occur equitably and to avoid prejudicing the defendant and the carrier. And as I said, I'll jump back to the very first thing I addressed which was, it's not -- stopping benefits is not denying this family benefits. They've received these benefits through the date that Commissioner Wilkerson ordered the benefits stopped. They've received weekly benefits through today and continuing until any further orders come down. Those have never been stopped. And then they received that advancement of lump sum benefits, which would be applied for that period of time in which the benefits are stopped. And if Mr. Lazaro is still -- is still with us when that time period passes, then the benefits resume and they continue paying until such time as he passes away. And that's what the act contemplates. It contemplates a replacement of wage, which has been given. And it contemplates a lifetime of benefits. But it doesn't contemplate a

carte blanche, stick your hand in the honeypot lifetime of benefits. It doesn't indicate that somebody who -- who is -- even if their lifetime is entitled to a full lifetime of benefits if they don't earn them.

COMMISSIONER BECK: Mr. Bayne, could you address Mr. McDaniels' jurisdictional argument on the motion?

MR. BAYNE: Sure. Sure. I think the -- a couple things. The guarantee fund stands in the shoes of the insurance carrier. So I think they have the -- they have a jurisdictional right to be here to contest any future issues going forward, to discuss compensation benefits, medical benefits, if there -- if he woke up tomorrow and was no longer a lifetime case, I think they'd probably have the right to come in and address that. The employer certainly has the right, jurisdictionally, to come in and discuss that as their part of this claim. As far as standing goes or as far as just the right of the commission to hear this. I don't think the issue of whether it's ancillary, or whether it's related to the 2010 order, is the issue. The question is, we have to pay

benefits and we're being asked to pay benefits that we don't believe were due and owing, so what is our recourse there, what is our obligation, and there's really two options. One is to stop benefits and let Mr. McDaniel file a form and probably get dressed down a little bit for stopping benefits. And the other is to ask the Commission what we should do, because they're ultimately the final decision-makers, and that's what we did. Rather than unilaterally create a situation, we just -- we asked for guidance. And I think Commissioner Wilkerson made the right decision. He looked at it and he said, the medical evidence supports a stop of benefits. The situation the family is in supports a stop of benefits. The testimony at the hearing was that the children no longer are dependants of the family, that they have more money coming in today that they did at the time of the accident, that they're debt free, their mortgage is paid off, their cars are paid off, they're getting a brand new car, by virtue of that lump sum which still has not been purchased, as I understand. So if there ever

was a case where there's not a prejudice to a Claimant, or to a Claimant's family, this is one of them. He is still obviously in the hospital, but the family is in a better situation today than they ever were before this accident happened. That's not necessarily a good or a bad thing, because the accident happened, but it is what it is. So we've got a situation where a family is not prejudiced by the suspension of benefits until that credit becomes due. And then we've got a situation where the medical evidence supports the fact that he is not going to live long enough, based on what was presented, to ever accrue or reach the max accrual of those already paid benefits.

COMMISSIONER BECK: Thank you, sir.

MR. BAYNE: Thank you, Commissioner.

COMMISSIONER BECK: Mr. McDaniel?

REPLY BY MR. MCDANIEL:

MR. MCDANIEL: Commissioner, first off let me say -- let me try to go in reverse order. First off, number one, the Ashley versus Ware Shoals case was decided under 42-9-300 whenever a Claimant had to prove that a lump sum was granted only in exceptional circumstances. Total reverse

now. Lump sum is to be granted when a Claimant requests it and it's not -- unless the Commission finds it's contrary to his best interest. Second off, I don't know how in the world they have ever argued that this family is in a better condition because of this. Commissioner Beck, at the time that you heard this case, we had two kids in high school that were both outstanding soccer players and were outstanding students.

COMMISSIONER BECK: I remember the case.

MR. MCDANIEL: And one of them graduated and went to college and ran up a student debt. And he had to go -- he had to quit college and is now in the military. He was going to testify at this hearing. His other -- the other son graduated and went to Tech. And had to quit Tech because he didn't have enough money to pay for his college education. So what we -- one of the things we wanted to do was pay off that debt for the other son and this son was working -- has actually worked for the same employer, this employer thinks so much of his family, he's actually working as an electrical apprentice for the same company. And he's trying to save

up money so he can go back to college. So don't -- and this lady is now -- remember they had a flea market that her husband and her run together to make extra money for the family. And remember they had a car that they were even scared to drive out of town. Remember how all the friends and family of the Irmo community were pitching in, the teachers were taking him too, because they didn't have but one car that would even operate for her to get back and forth to her job. You know, so what they did was is that, you know, now they -- she's now working three jobs, Commissioner, three jobs. Okay. And she still goes every morning to visit her husband in the hospital and every evening. You know, so I don't know how in the world they could sit there and argue -- they had to give up the flea market because she just couldn't handle it. She had to have extra money. She didn't know what she was doing in that regard, that was her husband's. You know, so -- now, next off, they're trying to take the benefit of -- under the mortality table -- and I'm so glad to be looking at lawyers that have tried cases here. You know, they're trying to

take the benefit. They're saying, oh, because of the injury, he now has a short life expectancy. That's the exact reason that the mortality table exists. Every case, and I've cited several of them in my brief, and that is, you apply the mortality table, yes, you can take it for a person who is dying of cancer at the time that the accident occurred. You can take their pre-existing medical condition. But they're trying to take the benefit of the accident -- now, we really have this in workers' comp because normally we're talking about tort liability type cases where the, you know, mortality table was applied. So we don't ever think about this in workers' comp. But there is -- their evidence, I highly objected to it, strenuously objected to it, however you want to call it. But in other words, there is -- the evidence should not have been admitted because it's post-accident. This man is -- looks like he's asleep, 41 years old, in excellent health, you know, laying in a bed. However, the bottom line is is that they can't take advantage and say, listen, you need to say and apply a death case, this man's still alive,

and you need to apply this death case. That's the only place that's -- the Supreme Court, contrary to what Mr. Bayne argued has never ruled, never had stated anything in reference to where a Claimant is alive and request for a partial lump sum, every regulation in all that apply. Now, the Commissioner also ---

COMMISSIONER BECK: Your time has expired, sir.

MR. MCDANIEL: I'm sorry. Well, I've got a -- thank you, Commissioner. I'm sorry. I wish I could have had additional time. However, thank you very much. I appreciate it.

COMMISSIONER BECK: Thank you, gentlemen.

MR. MCDANIEL: There is no jurisdiction.

MS. TAYLOR: It was briefed well, so we've got the brief, so.

(There being nothing further, the hearing concluded at 3:15 p.m.)

CERTIFICATE

This is to certify that the within hearing consisting of twenty four (24) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on March 24, 2016.



Jennifer Nottle
Court Reporter

Notary Public for South Carolina
My Commission Expires: July 11, 2023

mgc | INSURANCE DEFENSE

Bankruptcy Dec.

Reply To
BRETT H. BAYNE
Direct Dial: (803) 227-2281
brett.bayne@mgclaw.com

June 16, 2014

Charmaine M. George, M. D.
Carolina Medical Group
3010 Farrow Road, Suite 230
Columbia, South Carolina 29203

Charmaine M. George, M. D.
The Brian Center
3514 Sydney Road
Columbia, South Carolina 29210

RE: Antonio Lazaro v. Burris Electric
and South Carolina Guaranty Association
Date of Accident: July 6, 2007
WCC File No.: 0710622
Our File No.: 20203.14015
Claim No.: S266-07-01390

Randy Mason. person at SCGA.

Dear Dr. George:

Thank you for taking the time to schedule a meeting with us in this case. I have spoken with Mr. McDaniel, one of Mr. Lazaro's attorneys, and he has agreed to simply let me submit a letter to you with questions to answer in lieu of an in-person meeting.

As you are aware, this is a medically complex case in which Mr. Lazaro is in a persistent vegetative state. It is my understanding that Mr. Lazaro recently had at least two hospitalizations for respiratory infections and renal failure. We have a hearing coming up to address issues in this case and Mr. Lazaro's current condition, current and future prognosis, and life expectancy will be issues at the hearing. I would appreciate it if you would answer the questions below to a reasonable degree of medical certainty and sign at the end. If you do not believe you can answer a question to a reasonable degree of medical certainty, please note that where applicable. If possible, please return this questionnaire to me by email or mail before June 24, 2014.

1. Please provide a summary of the current medical conditions Mr. Lazaro has been diagnosed with and/or is being treated for:

1) Chronic Vegetative State 2) Cardiac Arrest s/p Electrocution 3) Respiratory failure s/p tracheostomy 4) Recurrent tracheobronchitis (Pseudomonas),

2. Have Mr. Lazaro's vital signs or condition in general changed over the last year? If so, how?

In general his V/S have been stable in past yr with the exception of 2 episodes of tracheobronchitis, 2 requiring hospitalization 2° to fever, hypoxia,

3. Has Mr. Lazaro's condition changed for the worse in the past year? Is so, how?

I would say in the past 6 mos, he has required hospitalization on 2 occasions for tracheobronchitis, pneumonia & sepsis & again required Abx treatment again for tracheobronchitis in 2/14 but did not need hospitalization

4. It is my understanding that Mr. Lazaro was hospitalized on two occasions for respiratory infections and renal failure. Following those two hospitalizations, is Mr. Lazaro in a more unstable condition or weaker state than he was before those hospitalizations?

I believe he had not fully recovered from his initial infection in 12/13. & his acute renal failure was related to sepsis, after repeated courses of Abx x 2, pt has not had any further upper respiratory infections. I do feel he is more susceptible

5. In Mr. Lazaro's vegetative state, are common ailments such as the common cold or flu more likely to have severe health consequences on Mr. Lazaro as compared to a normal healthy individual his age?

& in a weaker state!

Definitely, the fact that he requires a trach to breath adequately, makes him at risk for any type of upper resp. infection & more difficult to recover also.

6. Given his current condition, is there a much greater risk that such common ailments, if contracted, could result in Mr. Lazaro's death?

yes.

7. Based on the totality of Mr. Lazaro's current condition, including any known future risks associated with a patient in his condition (for example, infections and organ failures), is it more likely than not (i.e. more than 50%) that Mr. Lazaro will live for another 5 years?

I believe he's likely 50% to live another 5yrs.

8. Based on the totality of Mr. Lazaro's current condition, including any known future risks associated with a patient in his condition (for example, infections and organ failures), is it more likely than not (i.e. more than 50%) that Mr. Lazaro will live for another 10 years?

The likelihood of living another 10yrs, I believe is less than 50%.

9. Based on the totality of Mr. Lazaro's current condition, including any known future risks associated with a patient in his condition (for example, infections and organ failures), is it more likely than not (i.e. more than 50%) that Mr. Lazaro will live for another 15 years?

Likelihood of living 15yrs < 50%

10. Based on the totality of Mr. Lazaro's current condition, including any known future risks associated with a patient in his condition (for example, infections and organ failures), is it more likely than not (i.e. more than 50%) that Mr. Lazaro will live for another 20 years?

detieli hood of living 20 yrs c. 50%.

11. Are all of your opinions as stated herein to a reasonable degree of medical certainty?

My opinions are to a reasonable degree of medical certainty.

Charmaine M. George, M. D.

Date: 6/23/14

If you have any questions or concerns, please feel free to contact me and I will speak with Mr. McDaniel to get a resolution of any issues.

With kind regards, I am

Very truly yours,

Brett H. Bayne

BHB/rds
cc: Preston F. McDaniel, Esquire (via/email only)
John Earl Duncan, Esquire (via/email only)
George D. Gallagher, Esquire (via/email only)
Randy Mason, South Carolina Guaranty Association (via/email only)

Burriss Electrical Inc

1251 North Lake Drive
Lexington SC 29072
(803) 957-3350 Phone
(803) 951-3634 Fax

June 26, 2014

To Whom It May Concern

Since 2007, Burriss Electrical Inc. has survived and endured some tough economic times. In the past seven years our sales have decreased to about half of what they were pre-2007. In 2008 and 2009, we were able to effectively absorb the decrease in business without a reduction in force by instituting wage freezes. However, by 2010 we had our first reduction in force. In 2012 we had more layoffs and our quarterly reports show Burriss declined from 62 employees in 2010 to 33 employees by June 2013. In other words, we had to lay off half of our employees due to the economic downturn.

A majority of our electricians are currently paid around $15 per hour. Comparing Antonio's pay in 2007 to a couple of current employees with similar pay shows that he would *probably* be making between $15.50 and $16.50 per hour today. For reference, the highest paid Hispanic electrician is paid $17.50 per hour. However, this particular employee is compensated for his mastery of both English and Spanish and his electrical knowledge that exceeds all of his peers, but we are not confident he could manage a project.

Likewise, we do not believe Antonio would be a project manager or superintendent (and thus paid more) because our customers, engineers and architects have an expectation of excellent communication. This requires the ability to communicate quickly and effectively in English. To date none of our Spanish speaking employees have mastered English well enough to represent the company in the management of our projects.

Although we have had hiring freezes and raise freezes during the past several years, some of our electricians have been given periodic lockstep raises of .50 per hour to keep up with comparable wages in the industry and amongst our own employees. From 2007 to 2014, the biggest cumulative raise given to any of our electricians was $2.00 per hour across four .50 per hour raises. Raises, when given, are performance based from field reports of project managers. They are not guaranteed in any given year and are not contingent on acquiring additional certifications, education, etc.

At the present time, we have foremen that are paid as little as $18 per hour. Because of that, we absolutely would not pay an electrician higher than $18. We believe the increased responsibility of the foremen and superintendents should maintain some difference in pay commensurate with that responsibility. While we think it is reasonable to assume Antonio would be earning between $15.50 and $16.50 per hour today, predicting the rate of pay for

Burriss Electrical Inc

1251 North Lake Drive
Lexington SC 29072
(803) 957-3350 Phone
(803) 951-3634 Fax

Antonio is purely speculative. This is because we cannot say with any certainty if Antonio would have received raises, been kept at the same rate of pay, or been part of one of the numerous layoffs of half of our employees.

Sincerely,

Tommy Burriss

Burriss Electrical Inc

HEARING DATE: June 27, 2014
WCC FILE NO.: 0710622

CLAIMANT: Antonio Lazaro
EMPLOYER: Burriss Electrical Inc.
CARRIER: CAGC Insurance Company

ATTORNEY (P): Preston F. McDaniel/John E. Duncan
ATTORNEY(D): Brett Harris Bayne

AWW: $ CR: $ MMI:

Period of TTD: DOI: 7/6/07 Extent of Disability:

COURT REPORTER: Gigi Davis, PalmettoCrtRptng@aol.com

E-Mailed on 7/14/2014

DIRECTIVES

Attorney Bayne, please draft the order consistent with the below findings and return to this office within 30 days:

1. Please note in the order the date these instructions were sent to the parties.
2. Hearing held on 50/51 and Motion.
3. 2 orders – one for hearing, one for motion.
4. Remittur governs (90.85 – 3 days' interest). Interest due only. No additional fines.
5. Motion granted.
6. Paid 738.40 weeks until June 27, 2014. As of 6/19/14 – claim paid up until August 29, 2021.
7. APA 2, pages 6-9.

8. Life expectancy tables apply to case – Note exhibits 1-5.

9. 363 weeks/paid. Currently paid 738.40.

10. Currently with Attorney Fee coming off the back end – 361.40 will be paid.

11. 998.40 weeks overpayment.

12. 861.4 paid past 500 weeks.

13. Note life expectancy of 10.1 years on the table to age 78.61.

14. Claimant would have to live twice amount of years to receive additional benefits.

15. Suspend weekly benefits until August 29, 2021. Attorney fees are not factored into this date.

16. Would order weekly benefits to begin again on August 30, 2021. Based on current advancements.

17. Findings based on greater weight of evidence presented.

18. Granted to stop payment.

19. Lump sum – denied – none needed/based on testimony of Claimant's wife (Mrs. Lazaro). Have more money now to spend monthly than they did on the date of the accident, 7/6/07.

20. Son (Oliver Lazaro).

21. Increase in compensation rate – no, not found based on D-1, letter of employer, C-1, C-3. AWW – CR based on current amount.

22. No fines or penalties.

23. Note Silks case – does not apply, Elliot case – applies to case, Booth case – does not apply, Haselden case – does not apply, Ashley case – applies to case. These findings based on greater weight of evidence presented.

INSTRUCTIONS: Please let our office know if you have difficulty obtaining a transcript or cannot complete the order within this timeframe. Draft the Order consistent with the above substance of the preceding Findings of Fact; however, you may add additional Findings of Fact consistent with the above ruling. The Order should also include biographical information, information regarding the Claimant's work history and previous medical history, if relevant to the case.

If you need a transcript, order it *immediately* from the court reporter, or contact my assistant, Elaine Boyd, in writing at P.O. Box 1715, Columbia, SC 29202-1715 or via e-mail at eboyd@wcc.sc.gov . Provide a copy of the proposed Order to opposing counsel or *pro se* claimant before. When submitting the proposed Order, please e-mail it to eboyd@wcc.sc.gov .

Matters To Include In The Order:

1. APA Submissions
2. Stipulations
3. Statement of the Case (contentions of the parties, stated concisely)
4. Evidence of the Case (synopsis of the evidence, including testimony and medical reports)
5. Findings of Fact – numbered (Do NOT delete any of the above findings, however, the prevailing party may add to support the decision, except regarding credibility, unless I have instructed you to)
6. Conclusions of Law (cite applicable statutory sections and case law)
7. Award

Do not address credibility in the Order, unless it has been addressed in the preceding Order Notes.

Commissioner Avery B. Wilkerson, Jr.
S.C. Workers' Compensation Commission
1612 Marion Street
Columbia, SC 29202-1715

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 13, 2015

VIA EMAIL ONLY - eboyd@wcc.sc.gov
Commissioner Avery Wilkerson
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

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

Dear Elaine:

Please pass along to the Commissioner the following in reference to the Orders submitted.

First as to the Order concerning the Form 50 and 51 and as to the Compensation Rate wherein Brett is stating the position of the parties, I specifically disagreed with his characterization and the phrasing of our position when he referred to our position as "lock step raises". Our position was and is as I corrected in the corrected draft that I sent back to him which is as follows:

"The Compensation Rate has never been addressed and the Claimant has now asked the Commission to determine and increase his Compensation Rate under the evidence based on Paragraph (2) of §42-1-40, the Decisions of the Supreme Court and Court of Appeals, and the Claimant's past work/wage experience." That was, is and will be our position, not some kind of lock step raise issue. I would ask that the Order be corrected in that regard to properly reflect our position and what we were asking for.

In reference to what was originally Finding of Fact No. 11 but is now No. 10 in the final order, Brett left out any reference to the comparison that the Defendants wanted wherein the Defendants wanted Mr. Lazaro compared to only other Hispanic workers, not workers in general. Brett modified that by adding the term, "non-English speaking" Hispanic employees. (emphasis added) While I will agree that Brett made statements that the reason that Hispanic workers were not making more and were not in what he referred to as management positions was their inability to speak fluent English. However, there is no evidence that any of these

workers are, "non-English speaking" and specifically none that Mr. Lazaro is, "non-English speaking". Again, the Defendants wanted the comparison not to fellow workers but only as to Hispanic workers and gave this as the reason as to why this Commission should not take into consideration the higher wages earned by other employees hired around the same time as Mr. Lazaro but that were not Hispanic. They put up no evidence that these high wage earners were in management positions. They simply did a wage chart and then asked this Commission to exclude those high wage earners from consideration based on their position that the Commission should not compare these and should only compare the, "Hispanic" workers on the basis that the Hispanic workers again had trouble speaking English. There is nothing in the Record to justify that position based on that wage chart which is the evidence in the Record. I respectfully request that you delete the, "non-English speaking" words and phrase from the Order because that is not correct as to their position or as to the evidence. I cannot understand why the Defendants now want to hide from the position that they took. You will recall at the Hearing that I was livid that they were presenting that discriminatory position before the Commission.

I would respectfully request a conference with you in person to get the language of these Orders correct as I am quite sure you are aware, both of these Orders have the potential to set significant precedent on appeal and will probably garner a lot of public scrutiny once they are issued.

I also firmly believe that the position of Mr. Duncan and I should be properly stated in the Record at a minimum.

I look forward to a conference and/or receiving your decisions based on your decision in reference to the issuance of these Orders. I am still hopeful that upon reflection and the previous arguments made that you will change your mind on both of these but particularly as to stopping weekly benefits to this family. By copy of this email, I am notifying Brett of this communication.

Sincerely yours,

Preston F. McDaniel

PFM/abh
cc: John E. Duncan, Esquire (via email only - johnduncanlaw@gmail.com)
Brett H. Bayne, Esquire (via email only - brett.bayne@mgclaw.com)

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April 15, 2015

VIA EMAIL ONLY - eboyd@wcc.sc.gov
Commissioner Avery Wilkerson
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

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

Dear Commissioner Wilkerson:

First and foremost, I am going to make one last attempt to see if we can resolve the issues short of you issuing Orders, and would appreciate it if you would hold up issuing any Orders until five business days from the date of this email to allow Brett the opportunity to discuss this with his client.

In reference to Brett's email about my concerns in reference to our position on the AWW, quite simply Brett is referring to evidence presented; I am referring to our position. I think the section of the Order detailing our positions should properly represent our position, not any evidence we have submitted to support that position.

In reference to the terms, "English speaking" and "non-English speaking" in my initial revisions I specifically referred to the Hispanic workers not being, "fluent in English", which was my understanding of their reason for Hispanic workers making less, not that the Hispanic workers were totally, "non-English speaking". For example, the Burriss letter says:

> "The highest paid Hispanic electrician is paid $17.50 per hour. However, this particular employee is compensated for his mastery of both English and Spanish."

and later in the letter:

> "Likewise, we do not believe Antonio would be . . . because our customers . . ., have an expectation of excellent communication . . . . To date none of our Spanish speaking employees have mastered English well enough to represent the company in the management of our projects."

There is nothing in the letter that my client cannot speak English.

By copy of this email I am notifying Brett Bayne of this communication.

Sincerely yours,

FINAL NOT READ

Preston F. McDaniel

PFM/rmt/kth

cc: John E. Duncan, Esquire (via email only - johnduncanlaw@gmail.com)
Brett H. Bayne, Esquire (via email only - brett.bayne@mgclaw.com)

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May 19, 2015

VIA EMAIL ONLY - eboyd@wcc.sc.gov
Commissioner Avery Wilkerson
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

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

Dear Commissioner Wilkerson:

I was in hopes that we would hear something back from Mr. Bayne's new client, the Insurance Reserve Fund, before making this request. However since we have not heard anything, to cut down on appeals and litigation as you know before your final decision is issued it is subject to change within your discretion. I would therefore request that we be allowed, pursuant to your discretion, to withdraw our request for a second lump sum. In support of this request, as we previously discussed, we have now fully complied with the initial lump sum request Order and have advised Mr. Bayne of that but there remains a balance which after an accounting will be returned to "somebody" unless otherwise ordered. Obviously that payment will require a recalculation as to your second Order concerning them being allowed to take the first lump sum off of the front end of the lifetime benefits award.

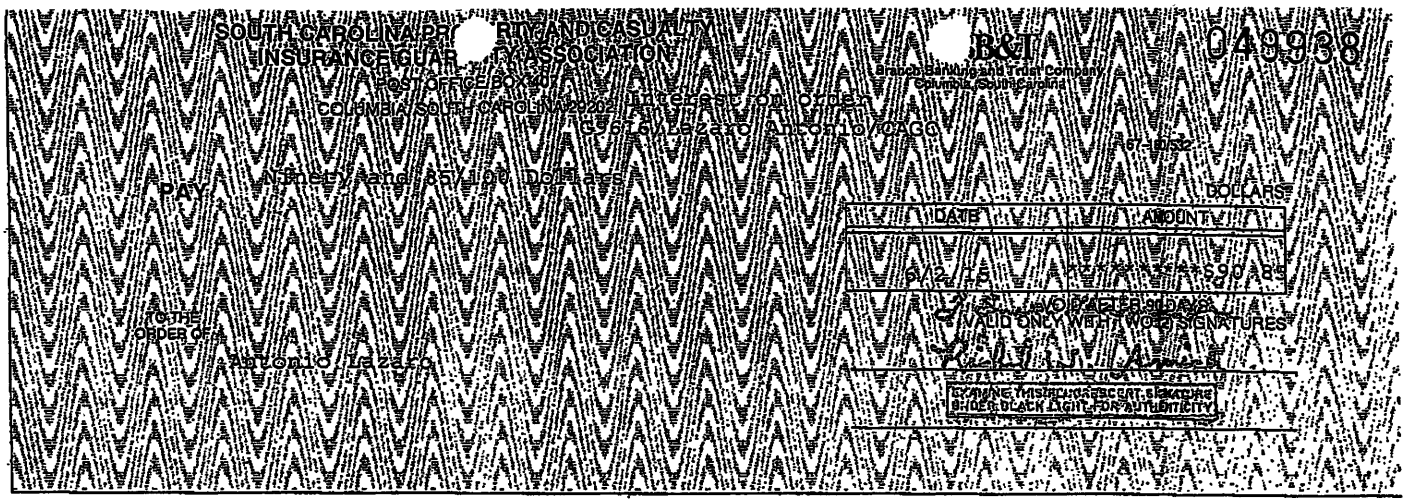
By copy of this email, I am notifying Mr. Bayne of this communication and again hopefully we will hear something before June 1st from his clients, but if not hopefully in your discretion you will allow us to withdraw this second lump sum request which will prevent that additional litigation expense on both sides.

Sincerely yours,

Preston F. McDaniel

PFM/kth

cc: John E. Duncan, Esquire (via email only - johnduncanlaw@gmail.com)
Brett H. Bayne, Esquire (via email only - brett.bayne@mgclaw.com)



"049938" :053201607: 5123945028"

049938

CHECK NUMBER: 49938 | AMOUNT: $90.85 | CHECK DATE: 6/2/15

PAY TO: Antonio Lazaro

Amount	Account
90.85	Indemnity WC CAGC

Interest on order

G9616/Lazaro Antonio/CAGC

Preston mcDaniel

From:	Hollmon, Eugenia <EHollmon@wcc.sc.gov>
Sent:	Wednesday, October 21, 2015 4:38 PM
To:	preston@pfmcdlaw.com; Brett Bayne (brett.bayne@mgclaw.com)
Cc:	BMOORE@MGCLAW.COM
Subject:	Lazaro (corrected)

Below is a request for porposed decision and order

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
REQUEST FOR A PROPOSED DECISION AND ORDER

This document is not a Decision and Order. It is a request for a proposed order. The Commissioners reserve the right to modify and/or delete any or all portions of the submitted Decision and Order.

Antonio Lazaro v Burris Electrical
SCWCC: 0710622
Commission Panel: Barden, Taylor, Beck; Chair
Order Assigned to Commissioner: Taylor
Court Reporter –Jennifer Nottle – 803-252-3445

Preston F. McDaniel	Claimant/1st & 2nd Appellant
Brett Harris Bayne	Defendants/Respondent

This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term of Review. The Commissioners considered the matter and **Full Affirm** the Single Commissioner's Decision and Order.

Mr. Bayne please prepare a proposed order and submit to the Judicial Department within thirty (30) days of this notice. The proposed order shall be submitted in Word format to appeals@wcc.sc.gov and shared with each Party. Please make sure the Appellate Panel Decision and Order recites the specific Finds of Fact and Rulings of Law of the Single Commissioner's Decision and Order and reflects any comments requested by a Commissioner.

The signature page shall include a signature line for each Commissioner and the first signature should be the name of the Commissioner assigned the case as indicated above.

If you have any questions, please do not hesitate to email me at ehollmon@wcc.sc.gov or call at 803.737.5737

Judicial

Transmitted via email this 21 October 2015

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2016-000665

RECEIVED
AUG 24 2016
SC Court of Appeals

Antonio Lazaro, Employee, ... Appellant,

v.

Burriss Electrical, Employer, and
South Carolina Guaranty Association,
Carrier, ... Respondents.

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 materials.

Dated: June 6, 2016

Preston F. McDaniel
SC Bar #: 3770
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

Attorney for Appellant