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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED  
DEC 28 2018  
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No.: 2016-000788

Clarence B. Winfrey, Jr., ..... Appellant,

v.

American Fire & Casualty Insurance Company c/o  
Liberty Mutual Group.....Respondent,

and

State of South Carolina.....Respondent.

MOTION TO STAY

The Appellant hereby moves to stay further proceedings by the Court in reference to the above-referenced appeal pending the result of the Mediation in January/February as mutually agreed to by the parties, Mr. Winfrey and Liberty Mutual Group. Said Motion is based upon the Memorandum attached hereto and incorporated herein by reference. In support of the Motion to Stay further

actions and proceedings by the Court, the Appellant would respectfully submit to the Court:

1. That at all times relevant to this Motion, Mr. Winfrey's workers' compensation claim is still pending before the SC Workers' Compensation Commission for final adjudication.

2. That the original parties to this matter were the Appellant, Clarence Winfrey, and the Respondent, American Fire & Casualty Insurance Company c/o Liberty Mutual Group. By the Order of the Honorable Thomas Cooper in which Judge Cooper stated that the declaratory judgment action raised serious questions as to the constitutionality of the sections in question, Judge Cooper directed the Appellant to amend the Complaint adding the State of South Carolina as a party and serve the Attorney General. The SC Workers' Compensation Commission is not a party to this action.

3. That the parties, Mr. Winfrey, and Liberty Mutual Group have agreed to mediate all the remaining State Court actions pending between them including this declaratory judgment action. The parties are trying to set mediation for a full-day mediation for the week of January 21<sup>st</sup>, or proposed alternative dates of February 15<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, and 21<sup>st</sup>. Between December 17<sup>th</sup> and December 28<sup>th</sup> the parties lost days for mediation waiting on a response from the State of South Carolina, while a letter dated December 18<sup>th</sup> was hand delivered to the Court, it was not mailed to Mr. Winfrey and Liberty Mutual Group until December 19<sup>th</sup> by regular

mail, and was not received by Mr. Winfrey until December 27<sup>th</sup>.

4. That as stated above, the parties to the declaratory judgment action, Clarence Winfrey and Liberty Mutual Group, have agreed to mediate this and all cases pending in State Courts and have no objection to this stay being granted.

5. That the emails and letters requesting notification of any objection to the Stay were sent by Appellant to the Attorneys for the State of South Carolina are attached hereto and incorporated herein by reference. As set forth hereinabove from December 17<sup>th</sup> thru December 27<sup>th</sup>, Mr. Winfrey nor Liberty Mutual were notified of any objection from the State of South Carolina until received by regular mail the afternoon of December 27<sup>th</sup>, at which time there was no stated objection by the State of South Carolina, but an objection was made by the Workers' Compensation Commission through Counsel for the State. As set forth above the Workers' Compensation Commission is not a party to this action, and which is charged with making all continuing and final judicial determination concerning Mr. Winfrey's workers' compensation claim which is still pending before the Commission.

6. That the parties were advised on December 6<sup>th</sup> that the Court would consider the case without further oral argument and based upon the Briefs during the December term.

7. That on December 10<sup>th</sup> Mr. Brett Bayne, Counsel for Respondent Liberty Mutual Group, advised Appellant's Counsel of

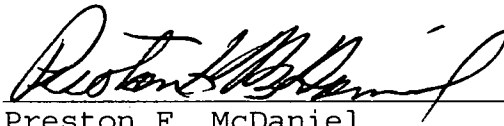
the desire to conduct a mediation the 2<sup>nd</sup> or 3<sup>rd</sup> week of January in an attempt to reach a, "global" settlement of all remaining actions pending and arising out of the underlying workers' compensation claim. Respondent's Counsel also recommended three (3) mediators for that purpose.

8. That the Appellant then confirmed an agreement to mediate and thereafter made attempts to communicate via telephone and emails and thereafter received an "auto reply", to an email to setting up the mediator and a date for mediation, that Respondent's Counsel was in trial through December 21st. Mr. Winfrey and Counsel for Liberty Mutual Group since communicated on mediation dates.

9. That there is no prejudice or detriment to a Stay being granted until after mediation.

WHEREFORE, based on the agreement to mediate this case during the week of January 21<sup>st</sup> thru 25<sup>th</sup>, or February 15<sup>th</sup> thru 22<sup>nd</sup>, 2019, the Appellant without objection from Liberty Mutual would respectfully move for an Order of the Court staying further action by the Court on the appeal pending notification as to the outcome of mediation in this matter.

Respectfully submitted,



---

Preston F. McDaniel  
SC Bar No. 3770  
MCDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, South Carolina 29201  
(803) 771-7211  
Attorney for the Appellant

December 28, 2018

**McDANIEL LAW FIRM**  
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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

December 18, 2018

VIA FACSIMILE - 734-1839  
AND US MAIL

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

**IMMEDIATE ATTENTION**  
**REQUESTED!**

**RE: Clarence Winfrey v. American Fire & Casualty  
Appellate Case Nos.: 2016-000788**

Dear Ms. Kitchings:

I am writing this letter with a copy to Counsel of Record seeking your assistance on how I should proceed in reference to a request that the Court stay any further consideration of the above-referenced appeal pending mediation by the parties.

We were advised on December 6<sup>th</sup> that the Court would consider the above-referenced appeal during the December term based on the Briefs and without oral argument.

On December 12<sup>th</sup> I received a notification from Mr. Brett Bayne, Counsel for the Respondent Liberty Mutual, that his client wanted to try to mediate the 2<sup>ND</sup> OR 3<sup>RD</sup> week of January a, "global resolution" of all remaining actions pending and arising out of the underlying comp claim; this appeal being one of those. I immediately tried to contact Counsel about a Stay and sent a proposed letter to Respondent's Counsel and to the Attorney General's office mutually requesting a Stay. After several calls and emails Thursday and Friday, we received an "auto reply" that he was in trial through December 21<sup>st</sup>.

Since we have agreed to try to mediate this case in January, I believe it is in everyone's best interest to request that the Court stay further action on the appeal until such time as we have an opportunity to see whether we can mediate a final result.

I believe that the proper way, to make this request based on the agreement to mediate, would be to file a Motion in that regard. However, I would appreciate hearing from you and I will



Jenny Abbott Kitchings  
December 18, 2018  
Page 2

then immediately file the Motion. Hopefully all parties will be able to speak and consent by that time. Again, by copy of this letter I am notifying all Counsel of Record of this request for advice and direction from the Clerk's office concerning requesting a Stay until after mediation.

Sincerely yours,

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

Preston F. McDaniel

PFM/kth

cc: Brett H. Bayne, Esquire (via email and US Mail)  
T. Parkin C. Hunter, Esquire (via email and US Mail)

MCDANIEL LAW FIRM  
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Preston F. McDaniel

Matthew C. Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

FAX TRANSMISSION COVER SHEET

Date: December 18, 2018  
From: Preston F. McDaniel  
To: Jean Abbott Kitchings  
Fax Number Called: 734-1839  
Regarding: Winfrey v. American Fire / Case # 2015-000788  
Comments: Please see attached letter  
concerning the above referenced  
case.

Thank you in advance

We are transmitting 3 pages, including face sheet.

If you have any problems with this transmission, please call me  
at 803-771-7211.

Transmitted from Fax Number 803-252-0709

Transmitted by: Jim

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND  
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, YOU ARE HEREBY  
NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING 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 AT THE  
ABOVE ADDRESS VIA U.S. POSTAL SERVICE. THANK YOU.

Addressee	Start Time	Time	Prints	Result	Note
7341839	12-18 16:50	00:01:43	003/003	OK	

Note TMR:Timer TX, POL:Polling, ORG:Original Size Setting, FME:Frame Erase TX, DPG:Page Separation TX, MIX:Mix Original TX, CALL:Manual TX, CSRC:CSRC, FWD:Forward, PC:PC-FAX, BND:Double-Sided Binding Direction, SP:Special Original, FCODE:F-code, RTX:Re-TX, RLV:Relay, MBX:Confidential, BUL:Bulletin, SIP:SIP Fax, IPADR:IP Address Fax, I-FAX:Internet Fax

Result OK: Communication OK, S-OK: Stop Communication, PW-OFF: Power Switch OFF, TEL: RX from TEL, NG: Other Error, Cont: Continue, NO Ans: No Answer, Refuse: Receipt Refused, Busy: Busy, M-Full:Memory Full, LOVR:Receiving length Over, POVR:Receiving page Over, FIL:File Error, DC:Decode Error, MDN:MDN Response Error, DSN:DSN Response Error, PRINT:Compulsory Memory Document Print, DEL:Compulsory Memory Document Delete, SEND:Compulsory Memory Document Send.

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Matthew C. Robertson

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FAX TRANSMISSION COVER SHEET

Date: December 18, 2018  
From: Preston F McDaniel  
To: Jeanne Abbott Ritchings  
Fax Number Called: 734-1839  
Regarding: Winfrey v. American Fire/Cosett 2015-000188  
Comments: Please see attached letter  
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Thank you in advance

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Transmitted from Fax Number 803-252-0709  
Transmitted by: him

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## Kim's Mailbox

---

**From:** Kim's Mailbox <kim@pfmcdlaw.com>  
**Sent:** Monday, December 17, 2018 2:40 PM  
**To:** 'Brett Bayne'  
**Subject:** Clarence Winfrey v. American Fire & Casualty  
**Attachments:** SCAN18121714140.pdf

Brett:

I am sorry you and I were not able to talk Friday so I have attached an email to Parkin Hunter and also a proposed letter to the Court. With your schedule and mine, I thought it might be better if I just went ahead and got something drafted and notify everybody. Let me know whether or not you have any objection to this.

I look forward to hearing from you if you have no objection or talking with you if we need to discuss this further.

Sincerely yours,  
Preston

Kimberley T. Hinkle  
Senior Paralegal  
McDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, South Carolina 29201  
T: (803) 771-7211  
F: (803) 252-0709  
[kim@pfmcdlaw.com](mailto:kim@pfmcdlaw.com)

*Please "Reply to All" when responding*

THIS MESSAGE MAY BE PROTECTED BY THE ATTORNEY/CLIENT PRIVILEGE, ATTORNEY WORK PRODUCT OR OTHER PRIVILEGES. IF YOU RECEIVED THIS MESSAGE IN ERROR, PLEASE SEND A REPLY, DELETE THE MESSAGE IMMEDIATELY AND DO NOT FORWARD THIS MESSAGE TO ANY OTHER PERSON.

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Matthew Robertson

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December 17, 2018

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

**DRAFT**

**RE: Clarence Winfrey v. American Fire & Casualty  
Appellate Case Nos.: 2016-000788**

Dear Ms. Kitchings:

We have just agreed to mediate all the remaining pending actions in the above-referenced matter in January of 2019 and try to reach a global settlement as to all actions.

In reference to above-referenced appeal which is pending decision by the Court, we would request if possible that any decision or further action by the Court be deferred until at least after we see if we can reach a global settlement in January. If I need to file a formal Motion or Consent Agreement making that request, please let me know. By copy of this correspondence, I am confirming with all counsel of Record our agreement to make this request to the Court.

As always, I appreciate all the courtesies and kindnesses shown to me by the Court and I look forward to receiving notification from the Court concerning this request.

Sincerely yours,

Preston F. McDaniel

PFM/abh

cc: Brett H. Bayne, Esquire  
T. Parkin C. Hunter, Esquire

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
DeAndrea G. Benjamin, Circuit Court Judge

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Appellate Case No.: 2016-000788

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and

State of South Carolina.....Respondent.

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AFFIDAVIT OF PRESTON F. MCDANIEL

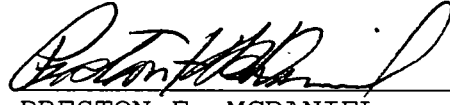
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I, PRESTON F. MCDANIEL, having been duly and properly sworn  
do depose and state:

1. That I am Counsel for Mr. Winfrey in the above-  
referenced appeal. The emails and letters attached to the Motion  
are part of the business records of my office in the  
representation of Mr. Winfrey in this matter. Any factual  
statements contained in the Motion in reference to the actions

between December 17<sup>th</sup> and December 28<sup>th</sup>, the date of the filing of the Motion, were made under oath and are true and accurate to the best of my knowledge and belief.

FURTHER THE AFFIANT SAYETH NOT.

  
PRESTON F. MCDANIEL  
Affiant

SWORN TO BEFORE ME this  
28<sup>th</sup> day of December, 2018.

Wendy T. Hunter L.S.

Notary Public for South Carolina

My Commission Expires: 4/26/20

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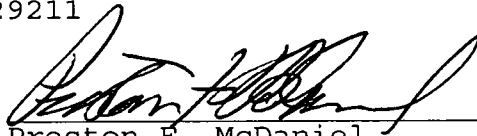
State of South Carolina.....Respondent.

PROOF OF SERVICE

I certify that I have served the MOTION TO STAY and  
AFFIDAVIT OF PRESTON F. MCDANIEL by depositing a copy of it in  
the United States Mail, postage prepaid, on December 28, 2018  
addressed to:

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

T. Parkin C. Hunter  
Senior Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211

  
Preston F. McDaniel  
MCDANIEL LAW FIRM  
1315 Elmwood Avenue  
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(803) 771-7211  
Attorney for Appellant

December 28, 2018

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Facsimile (803) 252-0709

Drafted: December 20, 2018

December 28, 2018

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SC Court of Appeals

Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

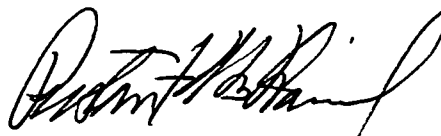
**RE: Clarence Winfrey v. American Fire & Casualty  
Insurance Co. and State of South Carolina  
Appellate Case No.: 2016-000788**

Dear Ms. Kitchings:

Please find attached the original and seven (7) copies of my **MOTION TO STAY** in the above-referenced matter, along with the required \$50.00 filing fee. I would appreciate your returning a clocked-in copy to me via the enclosed self-addressed stamped envelope.

By copy of this letter, I am hereby serving Counsel of Record with a copy of this Motion.

Sincerely yours,



Preston F. McDaniel

PFM/kth  
Enclosures

cc: Brett H. Bayne, Esquire  
T. Parkin Hunter, Esquire