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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

WCC NO. 1711399

Placido Solano-Pulido, Employee; Gerald Builders of Conway, Inc., Employer;  
and South Carolina Uninsured Employers' Fund, Carrier

vs.

Esteban Vera Reyes d/b/a Esteban Construction, Employer ..... Appellant/Respondent

Of Which:

Placido Solano-Pulido, Employee is the ..... Respondent

and

Gerald Builders of Conway, Inc., Employer; and

South Carolina Uninsured Employers' Fund, Carrier, are the ..... Respondents/Appellants

PETITION FOR REHEARING

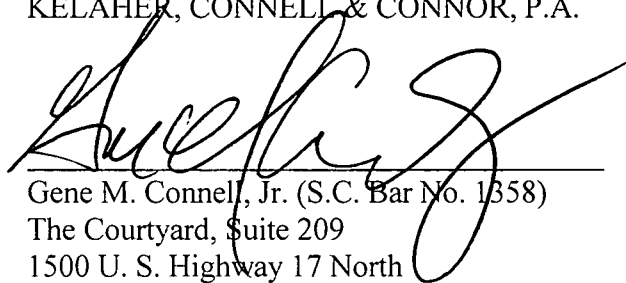
The Appellant Reyes moves the Court pursuant to South Carolina Appellate Court Rule 221 for a rehearing of its Order filed January 3, 2019 and received by Appellant's attorney on January 3, 2019. This request for rehearing is based on points which Appellant/Respondent believes the Court overlooked and/or misapprehended as set forth in the attached Memorandum of Law.

RECEIVED

JAN 11 2019

SC Court of Appeals

KELAHER, CONNELL & CONNOR, P.A.



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January 10, 2019

**Attorney for Appellant/Respondent**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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MEMORANDUM OF LAW IN SUPPORT  
OF PETITION FOR REHEARING

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The Appellant/Respondent Reyes moves this Court for an order rehearing this case and reversing its Order dated January 3, 2019.

This Court in an Order filed January 3, 2019 dismissed this appeal holding:

This appeal arises out an order of a single commissioner denying the appellant's motion to reinstate at the Workers' Compensation Commission (the Commission). The single commissioner's decision does not appear to have been appealed to an appellate panel of the Commission. Accordingly, this appeal is dismissed due the appellant's failure to exhaust all administrative remedies prior to seeking judicial review from this Court.

Appellant believes that the Order signed by this Court January 3, 2019 is factually and legally incorrect as the single Commissioner's Order was properly appealed and the appeal was then

dismissed by the Full Commission. In order to understand Appellant's position, a brief recitation of the facts is necessary.

- This case was originally tried before South Carolina Workers' Compensation Commissioner Gene McCaskill on March 22, 2018 who issued a Decision and Order (Exhibit 1) finding the claim compensable.
- Thereafter, Esteban Vera Reyes timely filed his WCC Form 30 Appeal/Request for Commission Review. (Exhibit 2).
- The case was set for review before the South Carolina Workers' Compensation Commission on November 27, 2018. (Exhibit 3).
- Counsel for Reyes advised the Commission that he had a conflict for November 27, 2018 and asked that the hearing be cancelled for that date which was granted. (Exhibit 4).
- The Judicial Director of the South Carolina Workers' Compensation Commission dismissed the appeal by Administrative Order on October 29, 2018. (Exhibit 5).
- Counsel for Reyes then contacted the Judicial Director who indicated that the procedure was to request the Full Commission to reinstate the appeal. (Exhibit 6).
- The Full Commission issued its Decision and Order denying the motion to reinstate on November 24, 2018 signed by Commissioner Beck with Commissioners Barden, Taylor, Wilkerson and Campbell concurring. Commissioner James dissented and Commissioner McCaskill not participating. (Exhibit 7).
- Thereafter Reyes timely commenced this appeal to this Court.

The January 3, 2019 Order of this Court states: "The single commissioner's decision does not appear to have been appealed to an appellate panel of the Commission." Appellant respectfully disagrees as the single commissioner's decision was properly appealed and is attached hereto as Exhibit 2. Appellant in this case has no other remedy but to appeal to this Court. The Full Commission dismissed Appellant's Motion to Reinstate the appeal with prejudice. There is no other administrative remedy available to Appellant.

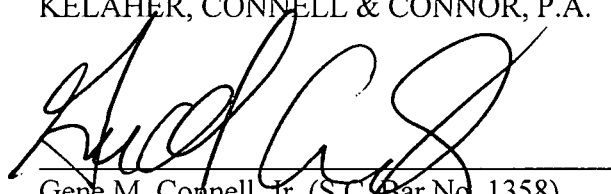
#### CONCLUSION

The Order of this Court indicates that Appellant did not exhaust all administrative remedies prior to seeking judicial review. Appellant respectfully suggests to the Court that this ruling is incorrect. In sum, there is no other relief that Appellant could have or could seek from the South Carolina Workers' Compensation Commission. The Full Commission heard Appellant's request for relief and it was denied. The only relief available is before this Court as all possible remedies before the Commission have been exhausted.

Accordingly, Appellant requests that the Court reverse its prior Order and hear this appeal as it involves the substantive issue as to whether or not Appellant has established good cause for failure to file the brief before the Appellate Division of the Workers' Compensation Commission in a timely manner.

Accordingly, Appellant requests that the appeal be reinstated as the matter was properly appealed from the single commissioner to the full commissioner as can be seen by the attached exhibits.

KELAHER, CONNELL & CONNOR, P.A.



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January 10, 2019

**Attorney for Appellant/Respondent**

# EXHIBIT 1

**BEFORE THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
W.C.C. FILE NO. 1711399**

Placido Solano-Pulido,  
Employee/Claimant,

v.

Esteban Vera d/b/a Esteban Construction  
and Gerald Builders of Conway, Inc.,

Employers,

*and*

South Carolina Workers' Compensation  
Uninsured Employers' Fund,

Defendants.

**DECISION AND ORDER**

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Hearing:	Held in Conway, South Carolina on March 22, 2018.
Appearances:	Jonathan J. Shanks, Esquire, of Surfside Beach on behalf of the Employee/Claimant.  Gene M. Connell, Jr., Esquire, of Surfside Beach on behalf of Esteban Vera d/b/a Esteban Construction.  Natasha M. Hanna, Esquire, of Myrtle Beach on behalf of Gerald Builders of Conway, Inc.  Timothy B. Killen, Esquire, of Mount Pleasant on behalf of South Carolina Workers' Compensation Uninsured Employers' Fund.
Purpose of Hearing:	To determine the issues as set forth in the Forms 50/51 submitted by the parties.
Commissioner:	Gene McCaskill
Filed:	August 7, 2018

### STIPULATIONS

It was stipulated and agreed at the time of this hearing that:

1. The purpose of the hearing was to determine the issues as set forth in the Forms 50/51 submitted by the parties, as well as any other issues which may come before the Commissioner;
2. Notice of the hearing was timely and properly served upon all parties of interest;
3. If Temporary Total Disability payments are due to Claimant, Defendants are entitled to a credit of \$2,100.00; and
4. Venue, set in Horry County, is proper as agreed by all parties.

### APA SUBMISSIONS

Prior to the taking of testimony and pursuant to notices timely filed and served, the following records were submitted into evidence pursuant to the South Carolina Administrative Procedures Act and S.C. Code. Reg. 67-612.

#### Claimant's Submissions

NO.	PROVIDER	DATES	PAGES
1.	Conway Medical Center (ER care)	6/5/17	2 – 11
2.	Conway Medical Center (surgical care)	6/12/17 – 6/13/17	12 – 32
3.	Coastal Orthopedics – Dr. Peter N. Ramsey	6/6/17 – 11/7/17	33 – 60
4.	Northwood Chiropractic Clinic	6/6/18 – 8/29/17	61 – 66
5.	Accident site photos	7/6/17	67 – 69
6.	Form 50 with service upon Employers	9/7/17	70 – 76
7.	Form 27 Subpoena with service of Esteban Reyes Vera	10/23/17	77 – 85
8.	Form 27 Subpoena with service upon Mitchell Gerald	10/23/17	86 – 95
9.	Deposition of Mitchell Gerald	11/8/17	

#### Submissions of Esteban Vera d/b/a Esteban Construction

NO.	PROVIDER	DATES	PAGES
1.	Northwood Chiropractic Clinic	6/6/17	1 – 3
2.	Donald R. Myers Report and Photos (redacted to exclude all materials prior to 2/19/18)	2/26/17	4 – 12

**Submissions of Gerald Builders of Conway, Inc.**

<b>NO.</b>	<b>PROVIDER</b>	<b>DATES</b>	<b>PAGES</b>
1.	Pages 8 and 10 of deposition of Claimant	11/8/17	2

**Submissions of South Carolina Workers' Compensation Uninsured Employers' Fund**

<b>NO.</b>	<b>PROVIDER</b>	<b>DATES</b>	<b>PAGES</b>
1.	Conway Medical Center	3/29/16	96 – 117

**STATEMENT OF THE CASE**

Placido Solano-Pulido (Claimant) filed a Form 50 on August 11, 2017. In the Form 50, Claimant alleged injuries to his right leg, back, left shoulder, and left arm as a result of an injury by accident on June 5, 2017. The South Carolina Workers' Compensation Uninsured Employers' Fund (UEF) filed a Form 51 on August 22, 2017, generally denying the claim. On November 16, 2017, UEF filed a Motion to Add Defendant Gerald Builders of Conway, Inc. (Gerald Builders) as a statutory employer. By Order dated December 15, 2017, Gerald Builders was added as a party defendant.

The matter was ultimately reset for a hearing to be held on March 22, 2018. Claimant alleged that he injured his right leg, back, right shoulder, and right arm when he slipped off a roof upon which he was working. Claimant's Form 58. Claimant asserted an Average Weekly Wage and corresponding Compensation Rate of \$1,000.00 and \$666.70, respectively. Claimant's Form 58. Claimant asserted he suffered a compensable injury by accident while employed by Esteban Reyes Vera d/b/a Esteban Construction (Esteben) and/or Gerald Builders. Claimant's Form 58. Claimant sought a determination that all past causally related medical care be the responsibility of Claimants, and that he be entitled to continuing care with Peter N. Ramsey, MD, and Christopher Ash, a chiropractor. Claimant's Form 58. Claimant asserted an entitlement to Temporary Total Disability (TTD) compensation benefits from date of accident to the present and continuing, although Esteban would be entitled to an offset of \$2,100.00 for

compensation paid during the three weeks following the accident. Claimant's Form 58.

Esteban asserted the Claimant was not employed on the date the accident occurred. Tr. p. 9, ll. 13 – 14. Esteban also disputed Claimant's alleged compensation rate and asserted that Claimant was only a casual employee. Tr. p. 9, ll. 15 – 17. Esteban also asserted that the medical evidence as presented is not sufficient to support a causal relationship between the accident and the Claimant's condition and need for treatment. Tr. p. 9, ll. 17 – 21.

Gerald Builders mirrored the position of Esteban. Further, Gerald Builders asserted that, should the claim be determined to be compensable, the only compensable body part would be the right knee. Tr. p. 9, l. 25 – p. 10, l. 5. Gerald Builders further asserted that, should the claim be deemed compensable, the Commission should determine that it, as the general contractor, is entitled to reimbursement from Esteban, the direct employer. Tr. p. 10, ll. 5 – 7.

UEF mirrored the positions of both employers. Tr. p. 10, ll. 9 – 10. UEF further asserted that, if compensable, the medical evidence in the record supported only the right knee as a compensable body part and refutes Claimant's alleged back injury claim. Tr. p. 10, ll. 12 – 16. UEF further asserted that any future treatment should be limited to medical and not chiropractic care. Tr. p. 10, ll. 16 – 19.

During the testimony of Tamara Tindal, counsel for the Claimant objected to the inclusion of the Esteban's APA Submission Number Two (2), Donald R. Myers Report and Photos. The undersigned allowed into evidence only the portions of that report from February 19, 2018, and thereafter, as Ms. Tindal was only able to authenticate the materials from those dates.

## EVIDENCE OF THE CASE

### A. MEDICAL EVIDENCE

Claimant went to Conway Medical Center on June 5, 2017. Claimant's APA p. 3. Claimant's occupation is listed as "self-employed". *Id.* It is noted: "Patient states: *Fell about 10 feet off of a roof and injured right knee.*" *Id.* (emphasis in original). The only musculoskeletal problem noted at that point was, "Swelling present in right knee." Claimant's APA p. 4. Patient was discharged and left the Emergency Room one hour and thirty-three minutes after arrival. Claimant's APA pp. 4 – 5.

In the Physician Documentation from that same visit, it's noted that Claimant "presents to E[mergency] D[epartment] with complaints of Knee Injury." Claimant's APA p. 7. (emphasis in original). It is further noted, "The complaints affect the right knee. (15:40) Context: resulted from the patient falling, off roof, 10 feet, landed on right leg which gave out." Claimant's APA p. 7 (emphasis in original). Claimant underwent x-rays of the right knee, which found "possibl[e] avulsion fracture/anterior patellar tendon injury with patella alto", "[s]oft tissue swelling", and "[n]o other evidence of fracture." Claimant's APA p. 11. The impression at discharge was, "Rupture Patellar Tendon - /ligament, Internal Derangement of Knee." Claimant's APA p. 9.

Claimant went to Coastal Orthopedics on June 6, 2017. Claimant's APA p. 34. At that time, it's noted that Claimant had "no [j]oint pain, no [p]ain in lower back, no [p]ain in upper back, no [m]uscle aches, no [m]uscle weakness, [and] no [s]welling in extremities". *Id.* Dr. Todd Tupis noted that Claimant had undergone MRIs of the right knee, and these revealed "complete rupture of the patellar tendon". *Id.* The history is given as follows: "New patient presents today with right knee pain. Presents with sister who serves as a translator who says

patient fell yesterday 6/5/17 at work, unsure if it's a work comp case. Fell from 9 f[oo]t high roof onto grass." Claimant's APA p. 35.

The Claimant underwent an MRI of the right knee on June 7, 2017. Claimant's APA p. 38.

Claimant returned to Conway Medical Center for surgery on June 12, 2017. Claimant's APA p. 14. The procedure he underwent was primary repair of right patellar tendon and primary repair of right knee medial collateral ligament. Id. The procedure was completed with "no complications." Claimant's APA p. 15. Claimant was discharged home by Dr. Ramsey with instructions including no driving for 30 days and that he use assistive devices (crutches, cane, and walker). Claimant's APA p. 27, 29.

Claimant was referred for physical therapy on June 22, 2017. Claimant's APA p. 40. It was again noted that Claimant had "no [j]oint pain, no [p]ain in lower back, no [p]ain in upper back, no [m]uscle aches, no [m]uscle weakness, [and] no [s]welling in extremities". Id. It was also noted that Claimant's "pain is controlled" and that he had "no complaints today." Claimant's APA p. 44.

Claimant returned to Coastal Orthopedics on September 7, 2017. Claimant's APA p. 43. At that time, it was noted Claimant still had "no [j]oint pain, no [p]ain in lower back, no [p]ain in upper back, no [m]uscle aches, no [m]uscle weakness, [and] no [s]welling in extremities". Id.; Claimant's APA p. 50, 52. Dr. Ramsey noted a well-healed incision and that Claimant was "making good progress with his physical therapy." Id. The doctor recommended Claimant continue therapy. Id. It is noted that Claimant "is in physical therapy and states his knee is doing better but still complains of pain. He is still using the crutches to ambulate." Claimant's APA p. 50.

Claimant returned to Coastal Orthopedics on September 21, 2017. Claimant's APA p. 53. At that appointment, it was noted that Claimant "states that he is still in a lot of pain. Cannot stand without crutches. Still going to PT and is only helping a little. Would like to get a work note to stay out of work until he is better. [R]eports with his sister today as a translator, they are still in litigation seeking Workers' Compensation coverage for this case." Id. It is once again noted that Claimant was experiencing "no [j]oint pain, no [p]ain in lower back, no [p]ain in upper back, no [m]uscle aches, no [m]uscle weakness, [and] no [s]welling in extremities". Claimant's APA p. 54. The doctor indicated that Claimant could return to work at that time; however, he was restricted to "ground work only." Id. At that time, Claimant was given a retroactive out-of-work slip, taking him out of work from June 12, 2017, through September 8, 2017. Claimant's APA p. 55.

Claimant's attorney sent Dr. Ramsey a letter dated October 25, 2017. Claimant's APA p. 59. In the letter, Claimant's attorney represented to Dr. Ramsey the following:

Upon complete review of your own medical notes regarding Mr. Solano-Pulido, I ask that you please answer the following questions and that your answer be given according to a reasonable degree of medical certainty. Unless otherwise stated, we are also working off the understanding that all conditions under discussions originate from the fall of June 5, 2017.

... 2. As a result of this fall, Mr. Solano-Pulido has experienced and continues to experience persistent pain and discomfort in his left shoulder and back. Would you recommend an orthopaedic consultation to have these two body parts examined and/or treated?

... If warranted, please state any relevant comments here . . . .

Claimant's APA pp. 59 – 60 (emphasis added).

Dr. Ramsey answered question two (2), above, as follows: "Yes." Claimant's APA p. 60. He also added the following relevant comments: "An orthopedic/spine specialist is reasonable to determine causality." Id.

Claimant also treated with a chiropractor for his right knee injury. Claimant's APA pp. 62 – 66. No other body part is referenced in the chiropractor's notes. Id.

The UEF submitted medical evidence pre-dating the date of accident. Claimant went to Conway Medical Center on March 29, 2016, following an auto accident. UEF APA p. 96. At that time, he was diagnosed with a neck sprain, back sprain, and a left knee contusion. UEF APA pp. 101, 105, 112. He also injured his right shoulder. UEF APA p. 106.

#### **B. TESTIMONY OF CLAIMANT**

The Claimant testified through a translator. Claimant's full name is Placido-Solano Pulido. Tr. p. 12, l. 10. He is from Mexico. Tr. p. 14, l. 25 – p. 15, l. 1. Claimant had nine years of formal education in Mexico. Tr. p. 15, l. 11. The Claimant testified that he does not understand English, and then modified his testimony to say he understands "very little" English. Tr. p. 12, l. 13. Claimant testified he is 33 years-old. Tr. p. 13, l. 20. Claimant is married, and his wife works in a light bulb factory. Tr. p. 14, ll. 9 – 11. Claimant has two minor children. Tr. p. 14, ll. 1 – 5. Although she provides all the financial support since the accident, Claimant does not know the name of his wife's employer. Tr. p. 45, ll. 19 – 22. Claimant testified he is unable to perform yardwork at home due to his injuries. Tr. p. 14, ll. 16 – 24.

Claimant testified that after leaving school, he performed some agricultural work in Mexico. Tr. p. 15, ll. 14 – 16. He immigrated to the United States when he was 18 years-old. Tr. p. 15, ll. 17 – 19. Since coming to the U.S., Claimant's work has been limited to construction. Tr. p. 15, ll. 20 – 23. Claimant testified he had no physical limitations preventing him from working before June 5, 2017. Tr. p. 16, ll. 6 – 9. On cross-examination, Claimant testified he is not a U.S. Citizen and came to the U.S. illegally. Tr. p. 36, ll. 6 – 9. When asked how he crossed the border, Claimant responded: "I don't remember very well." Tr. p. 36, l. 15.

Claimant admitted to having prior injuries to his left ankle, left knee, his neck, and his back. Tr. p. 17, l. 15; Tr. p. 18, l. 10. However, he testified he was able to return to work without restrictions. Tr. p. 18, ll. 17 – 19.

Claimant testified Esteban hired him approximately three years before the accident. Tr. p. 19, ll. 1 – 6. Esteban was his boss and immediate supervisor. Tr. p. 19, ll. 10 – 12. Claimant testified he was paid \$22.00 per hour. Tr. p. 19, l. 19. Claimant testified he worked between 45 and 50 hours per week. Tr. p. 22, l. 17. On cross-examination, he admitted that he didn't record his time and admitted that he didn't work in the rain. Tr. p. 59, ll. 1 – 10. He was paid in cash. Tr. p. 22, l. 19. He testified he made, on average, \$1,000.00 per week. Tr. p. 23, l. 3. On cross-examination, he admitted that he kept no records of his income. Tr. p. 39, ll. 18 – 20. He testified he worked from 7:00 a.m. to 6:00 p.m. each day, and that he also worked weekends. Tr. p. 23, ll. 4 – 9.

He was a framer. Tr. p. 19, ll. 20 – 22. Claimant testified he had his own hand tools. Tr. p. 19, l. 23 – p. 20, l. 14. Claimant testified Esteban provided lumber, building materials, extension cords, ladders, scaffolds, nail guns, and generators. Tr. p. 20, l. 21 – p. 22, l. 5; Tr. p. 28, l. 19 – p. 29, l. 3. On cross-examination, Claimant admitted that Esteban didn't provide building materials, and claimed that he "was talking about the tools" despite specific questions from his attorney on direct. Tr. p. 59, ll. 11 – 24. Claimant testified he never paid anyone to perform work for Esteban. Tr. p. 21, ll. 6 – 10. Claimant testified Esteban told him when to arrive and when to leave. Tr. p. 21, ll. 6 – 16. Claimant testified that Esteban told him what work to perform each day. Tr. p. 21, l. 25 – p. 22, l. 2. Claimant testified Esteban bid on jobs and Claimant did not. Tr. p. 22, ll. 3 – 11. Claimant testified Esteban could have fired him. Tr. p. 21, ll. 17 – 18.

Claimant testified that, “as of June 5<sup>th</sup>, 2017,” Lillian Casannera, “Jose, Tony, and Rodrigo” were working for Esteban. Tr. p. 23, ll. 10 – 22. He further testified these individuals were employed “on/or about June 5<sup>th</sup> of 2017”. Tr. p. 23, ll. 20 – 21. Claimant testified Esteban gave him a 1099 for monies earned in 2015. Tr. p. 34, ll. 23 – 25. He testified he received no 1099 for 2016 or 2017. Tr. p. 35, ll. 1 – 6. Claimant testified that the last time he filed income taxes in the U.S. was when Esteban last gave him a 1099. Tr. p. 37, ll. 19 – 24. Claimant testified that he never worked for anyone else during the time he worked for Esteban. Tr. p. 53, l. 23 – p. 54, l. 1.

Claimant testified he was working for Esteban at the time of the fall on June 5, 2017. Tr. p. 24, l. 23. Claimant identified the photograph at page 68 of his APA Submissions as the home upon which he was working when he fell. Tr. p. 25, ll. 15 – 22. Claimant indicated the address for the job site was 8613 Hopper Court. Tr. p. 26, l. 4 – p. 27, l. 3.

Claimant testified that, on the date of accident, he was “putting the paper and [he] slipped.” Tr. p. 27, l. 14. He explained that he was putting paper on the roof and fell to the dirt ground. Tr. p. 27, ll. 15 – 20. He testified his fall was “[m]ore or less about 12 feet.” Tr. p. 27, l. 23. When asked what body part made contact with the ground after the fall, he testified, “All of my right knee.” Tr. p. 28, l.4. Claimant testified a coworker, Tony, took him to the hospital. Tr. p. 28, ll. 12 –14. At the hospital, he received x-rays of his right knee, an MRI of his right knee, and surgery on the right knee. Tr. p. 29, ll. 6 – 19.

Claimant testified that, currently, he is experiencing pain in his “back, [his] spine and all on the front shoulder, the right shoulder and going towards the back. Going towards the back.” Tr. p. 29, l. 25 – p. 30, l. 2. When asked by his lawyer if he has “stated to doctors that these other body parts are hurting,” Claimant responded: “When I went to my last appointment I told him.” Tr. p. 30, ll. 3 – 6.

Claimant testified he hasn't worked for anyone else since the date of accident. Tr. p. 24, l. 5.

Claimant initially testified that he has not received any money from Esteban since the accident. Tr. p. 30, ll. 18 – 20. However, his attorney asked him, "Did [Esteban] not pay you approximately \$1,900 since the time of the accident?" Tr. p. 30, ll. 21 – 22. To this question, Claimant responded: "Three weeks. Three weeks he paid me for. Nothing else." Tr. p. 30, ll. 23 – 24. On cross-examination, Claimant confirmed that he received money from Esteban since the accident. Tr. p. 44, ll. 16 – 25.

Claimant testified he continues to have pain in his right leg, and that he is unable to run, to hop, and to kneel. Tr. p. 30, l. 25 – p. 31, l. 13. Claimant testified he now experiences pain in his back and neck, and these problems were not present prior to the subject accident. Tr. p. 21, ll. 1 – 10. Even though he has seen a chiropractor since the accident, the chiropractor did not treat his back. Tr. p. 43, l. 24 – p. 44, l. 1 ("No. He was treating my knee."). Claimant admitted that he has had no treatment for the back, according to his testimony, ". . . because it started hurting after." Tr. p. 44, l. 4. Claimant testified that his back pain developed "[a]bout a month and a half after" the accident. Tr. p. 57, l. 20.

Claimant testified he now experiences pain in his right shoulder. Tr. p. 32, ll. 11 – 16. On cross-examination, he admitted he hasn't seen a doctor for his right shoulder. Tr. p. 43, ll. 21 – 23. Claimant denied hurting his right shoulder in an automobile accident prior to the subject workers' compensation accident. Tr. p. 46, ll. 20 – 23. In fact, he testified that, as far as treatment was concerned for the prior MVA, ". . . they took x-rays of my head and I cut my left ear but nothing else." Tr. p. 46, ll. 20 – 21. At this point, counsel for Gerald Builders cross-examined Claimant, using page 8 of his deposition testimony. At his deposition on November 8, 2017, Claimant was asked if he had "even been in any car wrecks that were significant to require

medical treatment”. Tr. p. 46, l. 24 – p. 49, l. 22; Depo. of Claimant p. 8, ll. 13 – 15. At the hearing, his answer was “Medical treatment, no.” Tr. p. 51, ll. 1 – 4. When shown medical records from his visit to the emergency room on March 29, 2016, following an automobile accident, Claimant testified that he didn’t previously testify that he didn’t require medical treatment:

Q. Okay. On March 29, 2016 you got in a car wreck and you did go to the hospital, didn’t you?

A. Yes, 2016.

Q. Did you testify that you didn’t need medical treatment as a result of that?

A. No.

Tr. p. 57, ll. 1 – 7.

At his deposition, Claimant was asked what he injured, and he testified, “[H]is left knee, [his] neck, and [his] shoulder.” Depo. of Claimant, p. 8, l. 19. Contrastingly, at the hearing, the following exchange occurred:

Q. Did you injure your shoulder in a car wreck in 2016?

A. Shoulder? I don’t remember well. I remember I hurt my left knee and my neck and my head.

Q. Do you remember testifying on Line 19 [of Page 8] on November 8<sup>th</sup>, 2017 that you hurt your shoulder in that car wreck?

A. I don’t remember well, but like I said, my left knee and the back of my head.

Tr. p. 52, l. 24 – p. 53, l. 7.

On further cross-examination, Claimant was pointed to page ten of the deposition, wherein he was asked: “Which shoulder was it that you hurt in the car wreck?” Tr. p. 55, ll. 19 – 23; Depo. of Claimant, p. 10, ll. 10 – 11. His answer at the depositions was, “The right one.” Tr. p. 56, ll. 1 – 20; Depo. of Claimant, p. 10, l. 12. During that exchange at the hearing, after

previously denying he injured his shoulder, Claimant further testified, “I don’t remember exactly what shoulder it was.” Tr. p. 56, ll. 7 – 8.

Claimant testified he now experiences pain in his scapula and clavicle. Tr. p. 32, l. 24 – p. 33, l. 1. Claimant testified that he has problems bending his knee completely and has difficulty with balance. Tr. p. 31, l. 17 – 21. However, he does not use assistive devices to walk. Tr. p. 31, l. 23. Claimant testified he cannot work on his car now due to his injuries; however, he also testified he only did that “[v]ery little” prior to the accident. Tr. p. 33, ll. 7 – 12.

Claimant testified that Esteban has made no offers of employment since the accident. Tr. p. 33, l. 21. On cross-examination, Claimant admitted that he never told Esteban that he could return to work at light duty. Tr. p. 45, ll. 23 – 15. And, despite being put back to work at light duty by the physician he has requested be the authorized treating physician, Claimant testified he is completely incapacitated from work, as he is not able to “bend [his] knee correctly.” Tr. p. 42, l. 3; Claimant’s APA p. 54. Further, he testified he disagreed with his doctor’s medical opinion that Claimant could return to work “because I couldn’t walk.” Tr. p. 42, l. 16. When asked why he hasn’t sought work despite being released to light duty, he replied, “How when in every job that you have you have to move around and my knee – it’s not stable.” Tr. p. 46, ll. 10 – 11.

Claimant testified he has not worked with his brother-in-law in the last three years. Tr. p. 34, l. 20.

Claimant testified his brother-in-law drives a white pickup truck. Tr. p. 34, l. 17.

### **C. TESTIMONY OF TAMARA TINDAL**

Esteban called Tamara Tindal to testify. Ms. Tindal testified that she is an accountant and a private investigator. Tr. p. 63, ll. 17 – 18. She has been licensed as a private investigator for over 20 years. Tr. p. 63, l. 21. She holds a South Carolina private investigator’s license. Tr. p. 63, l. 24. She is employed by 10-4 PI and works for Don Myers. Tr. p. 64, l. 4.

Ms. Tindal testified she surveilled Claimant for one week. Tr. p. 64, l. 23; Tr. p. 65, l. 7 – 10. She began surveillance on February 17, 2018. Tr. p. 65, ll. 9 – 10. Ms. Tindal testified that, every morning, Claimant would exit his residence, drive his children to a school bus stop, drive back to his residence, go inside, and then a female would come outside get in the van and drive off. Tr. p. 66, ll. 8 – 16. Claimant would leave his residence in a pickup truck each day between 7:30 a.m. and 8:30 a.m. (one day at almost 11:00 a.m.). Tr. p. 66, ll. 18 – 25; Tr. p. 67, ll. 1 – 5.

Ms. Tindal testified that she observed Claimant riding in a pickup truck with other individuals to a house where construction work was being performed. Tr. p. 68, l. 8 – p. 69, l. 1.

Ms. Tindal testified that Claimant would return home each day around 2:00 p.m., just before the children returned home from school. Tr. p. 69, ll. 17 – 20.

On cross-examination, Ms. Tindal testified she did not write the report that was generated following the surveillance, but that her boss, Don Myers, did. Tr. p. 71, ll. 3 – 18. She admitted that she did not personally observe the Claimant leave his home on February 14, and that she couldn't testify as to Claimant's whereabouts on that day. Tr. p. 72, ll. 7 – 15. She further admitted that she made no personal observations of Claimant from February 14 through February 18. Tr. p. 73, l. 23 – p. 74, l. 1. Ms. Tindal testified she did not personally observe Claimant actually performing any type of work. Tr. p. 74, ll. 3 – 5. She testified she didn't know who was performing the construction work at the site where she watched Claimant ride to in a pickup truck with other men. Tr. p. 74, ll. 6 – 15.

Ms. Tindal testified she was able to observe Claimant walking. Tr. p. 74, ll. 22 – 25. She also testified she saw him carrying a "rope/chain or like tie-down stuff" one morning. Tr. p. 76, ll. 13 – 21.

#### **D. TESTIMONY OF ESTEBAN REYES**

Esteban Reyes testified on his own behalf. Esteban testified through a translator, as he understood only “[l]ittle much” English. Tr. p. 82, l. 1.

Esteban owns Esteban Construction. Tr. p. 84, l. 15. He testified he has worked with Claimant. Tr. p. 84, ll. 23 – 24. Esteban Claimant has, in the past, been self-employed and worked for other people aside from Esteban, as well. Tr. p. 85, ll. 2 – 6.

Esteban testified that Claimant told him that he wasn’t going to work for him on the day Claimant allegedly was injured. Tr. p. 85, ll. 17 – 24. Esteban testified he paid Claimant \$5,600.00 after the fall because he mistakenly believed that Claimant fell on his job site. Tr. p. 86, ll. 14 – p. 16. Esteban testified that Claimant never called to ask him for work after being released to light duty, and that he would have offered him ground level work. Tr. p. 88, ll. 13 – 24. Esteban testified that there are many light duty jobs in the business of framing, including drilling holes and installing anchors and metal clips. Tr. p. 106, l. 19 – p. 107, l. 4. He testified that he would have given Claimant a light duty job but Claimant. Tr. p. 107, ll. 9 – 12.

Esteban testified that, on June 5, 2017, he was working for Mitchell Gerald. Tr. p. 89, ll. 16 – 25. He testified that Mr. Gerald hired him to perform the work on the site where Claimant was injured. Tr. p. 90, ll. 1 – 6. Esteban testified he was a subcontractor for Mr. Gerald’s company on the jobsite where Claimant fell. Tr. p. 90, ll. 11 – 17.

Esteban testified that a man named Tony worked for him two days during the week of June 5, 2017. Tr. p. 90, l. 23 – p. 91, l. 1. Esteban testified that men named Rodrigo and Jose also worked for him. Tr. p. 91, l. 8 – p. 92, l. 4. Esteban testified he sometimes paid these individuals by the hour and sometimes on “contract” or by “percentage.” Tr. p. 91, ll. 19 – 22; Tr. p. 92, ll. 1 – 4. Esteban also testified that a woman named Lillian was his employee during the week of June 5, 2017. Tr. p. 92, ll. 12 – 15. Esteban testified the Claimant worked for him

“on or about” June 5, 2017. Tr. p. 92, ll. 19 – 22. Esteban testified that Claimant was working for someone else on June 3 and June 4 of 2017. Tr. p. 93, ll. 14 – 17. Esteban testified he has no personal knowledge of whether Claimant actually fell on his jobsite. Tr. p. 93, ll. 16 – 17.

Esteban testified he could “send . . . home” the aforementioned individuals if they were using drugs on his jobsite. Tr. p. 93, ll. 18 – 22. Esteban testified that he could ask the aforementioned individuals not to return to his jobsite if they do a job “very poorly, very ugly,” and which requires him “to put insurance . . . .” (sic). Tr. p. 94, ll. 3 – 7. Esteban testified he paid these individuals at the end of the week. Tr. p. 96, ll. 17 – 22. Esteban testified he provided ladders, nail guns, compressors, and scaffolding to the employees. Tr. p. 97, ll. 2 – 7.

Esteban confirmed that, at the time his deposition was taken by Claimant’s attorney in this matter, he could not give Claimant’s attorney the phone numbers of the aforementioned individuals. Tr. p. 95, ll. 2 – 23.

Esteban confirmed that Claimant was able to physically perform the functions of his job prior to June 5, 2017. Tr. p. 97, l. 11 – 98, l. 13.

Esteban testified he subcontracted a roof to Claimant in 2015 for \$4,000.00. Tr. p. 98, ll. 21 – 25. Esteban testified that, in 2017, he ended up paying Claimant \$22.00 per hour. Tr. p. 99, ll. 9 – 11. Esteban testified that Claimant made, on average, \$1,000.00 per week. Tr. p. 99, ll. 17 – 19.

Esteban testified that he worked for other contractors other than Mr. Mitchell. Tr. p. 103, ll. 14 – 16. He testified he contracts with Mr. Mitchell, although there are no paper contracts between them. Tr. p. 103, ll. 21 – 25. He testified that he received a 1099 from Gerald Builders. Tr. p. 104, ll. 1 – 2.

Esteban testified that, because it was raining on June 5, 2017, Claimant did not have permission to be on the roof at that time. Tr. p. 105, ll. 3 – 18.

## **E. DEPOSITION TESTIMONY OF MITCHELL GERALD**

The testimony of Mitchell Gerald was submitted, without objection, by deposition testimony. The deposition was taken on November 8, 2017. Mr. Mitchell testified he is employed in residential construction and cabinetry. Depo. Tr. p. 12, l. 21. He has two businesses: G&H Cabinets and Gerald Builders of Conway, Inc. Depo. Tr. p. 12, ll. 22 – 24; Depo. Tr. p. 13, ll. 20 – 22.

Mr. Gerald owns Gerald Builders with his two brothers, Jimmy and Michael Gerald. Depo. Tr. p. 13, ll. 4 – 12. Gerald Builders performs residential construction. Depo. Tr. p. 14, l. 15. Mr. Gerald testified that, other than the Gerald brothers, there are no employees of Gerald Builders. Depo. Tr. p. 14, l. 16 – p. 15, l. 1. The Gerald brothers are officers of the corporation. Depo. Tr. p. 30, ll. 18 – 25. Gerald Builders utilizes subcontractors in the performance of their work. Depo. Tr. p. 15, ll. 2 – 4.

Mr. Gerald testified that, as of January 1, 2017, the company was using at least ten subcontractors. Depo. Tr. p. 15, l. 20 – p. 16, l. 4. As of January 1, 2017, Esteban was one of his company's subcontractors and performs framing. Depo. Tr. p. 16, ll. 19 – 25; Depo. Tr. p. 21, ll. 12 – 18.

Gerald Builders typically accepts certificates of insurance from its subcontractors on an annual basis. Depo. Tr. p. 15, ll. 8 – 11. Mr. Gerald testified that he did not receive proof of workers' compensation insurance coverage from Esteban for the job being performed on June 5, 2017. Depo. Tr. p. 17, ll. 5 – 25. In fact, Mr. Gerald testified he never received proof of workers' compensation insurance from Esteban. Depo. Tr. p. 33, ll. 1 – 6.

Mr. Gerald testified that Esteban was, as a subcontractor, framing a home for his company on June 5, 2017. Depo. Tr. p. 22, ll. 8 – 11. Mr. Gerald testified that Esteban had “[m]aybe three to four” people working with him on the jobsite where Claimant was injured.

Depo. Tr. p. 25, l. 22. However, Mr. Gerald also testified that he didn't know the business relationships of those people with Esteban. Depo. Tr. p. 25, l. 23 – P. 26, l. 5.

Mr. Gerald testified that the price of the job was negotiated only with Esteban Reyes-Vera. Depo. Tr. p. 27, l. 25 – p. 28, l. 9.

**F. DONALD R. MYERS REPORT AND PHOTOS (redacted to exclude all materials prior to 2/19/18)**

On Monday, February 19, 2018, the private investigator noted that Claimant was picked up by a person driving a blue pickup truck (extended cab with a black tool box) at 8:50 a.m. The investigator determined this vehicle is registered to Juan Vergara, Claimant's brother-in-law. The two men went to a convenience store and then to a residential house. Upon arrival, there was no construction debris in the yard. Esteban's APA Submission, p. 4.

On Tuesday, February 20, 2018, the private investigator noted that Claimant was picked up by a person driving a white pickup truck (extended wheelbase) at 7:52 a.m. The investigator went to the home where the Claimant went on February 19, where the investigator observed construction debris (insulation) at the side of the house. See Esteban's APA p. 9. Later that day, the investigator observed that the debris had been moved to the curb. Id.; see Esteban's APA p. 10.

On Wednesday, February 21, 2018, the investigator observed the same white truck arrive at Claimant's home. The bed of the white truck was filled with construction debris (insulation). The driver left and took the truck to the recycling station to empty the debris alone. The blue truck arrived at Claimant's home at 7:59 a.m. The Claimant got in the truck and left home. Esteban's APA Submission, p. 5.

On Thursday, February 22, 2018, the investigator observed Claimant and his wife drive away from home in their van. At 9:00 a.m., the investigator noted shingle tables on the porch railing at the home. At 11:15 a.m., after the investigator returned to the home, the investigator

noted that shingle tabs were no longer present. Shortly thereafter, a man driving a large white truck pulling a long flat bed trailer arrived at the Claimant's home. The trailer was loaded with two commercial lawn mowers and "perhaps other landscaping equipment." Claimant entered the truck and the driver drove away from the home. Id.

The investigator noted that, "Based on the investigation and surveillance conducted thus far it is believed [Claimant] does not appear to have any problem walking, climbing steps to his porch or driving." Id.

### **FINDINGS OF FACT**

The undersigned Commissioner has thoroughly reviewed all of the testimony and evidence contained in the record and, after due consideration of the claim and defenses, the following Findings of Fact, as required under § 42-17-40, South Carolina Code of Laws, 1976, as amended, are set forth:

1. The Claimant alleges that he suffered an injury by accident arising out of and within the course and scope of his employment on June 5, 2017.
2. Based on the totality of the evidence, the Claimant was the direct employee of Esteban Reyes Vera d/b/a Esteban Construction at the time of the accident and was working for him on June 5, 2017.
3. Based on the totality of the evidence, Esteban Reyes d/b/a Esteban Construction employed more than four employees and was subject to the South Carolina Workers' Compensation Act.
4. Based on the totality of the evidence, Esteban Reyes d/b/a Esteban Construction did not have workers' compensation insurance at the time of the accident.
5. At the time of the accident on June 5, 2017, Esteban Reyes d/b/a Esteban Construction was operating as a subcontractor for Gerald Builders of Conway, Inc.

Placido Solano-Pulido v. Esteban Reyes Vera and Gerald Builders of Conway, Inc.

WCC No. 1711399

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6. As such, the Claimant becomes a statutory employee of Gerald Builders of Conway.

7. Mitchell Gerald who is one of the principals in Gerald Builders of Conway, Inc. testified that he was “. . . informed he had coverage, but come to find out, he only had liability.” (deposition of Mitchell Gerald, p. 17, ll. 14 – 15). In response to the question, “. . . So, the DEC page given to you only concerned liability coverage.” His answer, “Correct.” (deposition of Mitchell Gerald, p. 17, ll. 23 – 25).

8. Based on the totality of the evidence, Gerald Builders of Conway, Inc. did not have workers' compensation insurance at the time of the accident.

9. Based on the totality of the evidence, Claimant suffered a compensable work-related injury to his right leg on June 5, 2017.

10. Based on the totality of the evidence, Claimant is also entitled to an evaluation of his back and right shoulder with a physician(s) of the Defendants' choosing who has or have an expertise to the back and/or to the upper extremity to determine if he suffered any causally-related injuries to those body parts in the work-related accident of June 5, 2017. Should that or those physician(s) determine that the Claimant does have causally-related injuries to those body parts, the Claimant will be entitled to medical care and treatment for those body parts.

11. Based on the totality of the evidence, Claimant is not entitled to treatment or an evaluation of his right arm.

12. Claimant is entitled to payment for any past causally-related medical bills.

13. Claimant is entitled to medical care and treatment to his right leg with a physician of the Defendants' choosing.

14. The Claimant is not at Maximum Medical Improvement (MMI).

15. As to average weekly wage, based on a review of the totality of the evidence, the Claimant has an average weekly wage of \$950.00 and a corresponding compensation rate of \$633.65.

16. The Employers have not offered the Claimant any work to Claimant within his light duty restrictions since the date of the accident.

17. Claimant is entitled to Temporary Total Disability (TTD) from the date of the accident to the present and continuing. The Defendants are entitled to a credit of \$2,100.00 toward TTD due. Esteban paid the Claimant \$700.00 in cash per week for the first three weeks following his accident. The Claimant has stipulated that this credit is due against TTD owed.

18. Gerald Builders cannot transfer the claim to the UEF under § 42-1-415. Esteban Reyes and Gerald Builders are responsible for the medical care and treatment of the Claimant, as well as any compensation due the Claimant. If Esteban Reyes and Gerald Builders is/are unable or unwilling to pay this Award, the South Carolina Uninsured Employers' Fund is required to pay the same. The Fund will make payment with all rights of indemnification and reimbursement as prescribed by statute or otherwise. It is expressly understood by all parties that nothing contained in this Order, explicit or implied, shall limit any claim the South Carolina Uninsured Employers' Fund has against the Employers pursuant to § 42-7-200.

19. For benefits payable to Claimant, Gerald Builders is entitled to indemnity from Esteban Reyes under § 42-1-440.

### **CONCLUSIONS OF LAW**

Accordingly, as provided in § 42-17-40, South Carolina Code of Laws, 1976, as amended, it is the determination of the undersigned Commissioner as follows:

1. That S.C. Code Ann. § 42-3-180 defines the authority of this Commission to determine all questions arising from the Workers' Compensation Act;

2. That S.C. Code Ann. § 42-1-160 is applicable in defining injury.
3. That S.C. Code Ann. § 42-1-160(F) is applicable in defining accident.
4. That S.C. Code Ann. § 42-1-160(G) is applicable in governing medical evidence.
5. That S.C. Code Ann. § 42-1-40 is applicable in defining Average Weekly Wage.
6. That S.C. Code Ann. § 42-1-130 is applicable in defining Employee.
7. That S.C. Code Ann. § 42-1-140 is applicable in defining Employer.
8. That S.C. Code Ann. § 42-1-150 is applicable in defining employment.
9. That S.C. Code Ann. §42-1-60 sets forth periods during which medical benefits and treatment should be provided;
10. That S.C. Code Ann. § 42-17-40 is applicable in governing the conduct of hearings and the rendering of awards;
11. Under S.C. Code Ann § 41-1-160, the Claimant sustained an injury to her left knee in an accident arising out of the course and scope of her employment on September 8, 2016;
12. Under S.C. Code Ann § 42-1-130, the Employee/Claimant was a covered employee under the Act and, under § 42-1-140, the Employer was subject to the Act at the time in question;
13. Sections 42-1-400, et seq., are applicable in defining the statutory employment doctrine; and
14. Section 42-1-40 establishes the appropriate means of determining an injured employee's average weekly wage and compensation rate;
15. Under § 42-15-20, proper notice was provided to the Employer;
16. Under § 42-15-60, the Claimant is entitled to all medical care, treatment, therapy, consultations, diagnostic studies, rehabilitation, injections, hospitalizations, surgeries and

prescription medications related to his injuries which tend to effect a cure, provide relief and/or tends to lessen the extent of disability; and

17. Under § 42-15-60, the Claimant is entitled to reimbursement for all past causally-related medical expenses.

**ORDER**

Based on the above Findings of Fact and Conclusions of Law, it is hereby,

**ORDERED, ADJUDGED AND DECREED** that the Claimant, Placido Solano-Pulido, sustained compensable injuries to his left knee, in the course and scope of his employment with Employers, Gerald Builders of Conway, Inc. and Esteban Vera d/b/a Estaban Construction, on June 5, 2017; and it is further

**ORDERED, ADJUDGED AND DECREED** that the Claimant shall be reimbursed for all past causally-related medical treatment since the date of accident, including reimbursement to the Claimant for treatment-related mileage and prescription medications, surgeries, physical therapy, injections, hospitalizations, medications, consultations, diagnostic procedures, rehabilitation and other attendant care, if any; and it is further

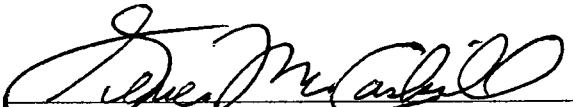
**ORDERED, ADJUGED AND DECREED** that Claimant is entitled to Temporary Total Disability from the date of the accident to the present and continuing. The Defendants are entitled to a credit of \$2,100.00 toward TTD due. Esteban paid the Claimant \$700.00 in cash per week for the first three weeks following his accident. The Claimant has stipulated that this credit is due against TTD owed; and it is further

**ORDERED, ADJUDGED AND DECREED** that the Claimant is entitled to causally-related medical treatment, including prescription medications, future physical therapy, future injections, and future surgeries if indicated or warranted; and it is further

**ORDERED, ADJUDGED AND DECREED** that Claimant is entitled to an evaluation of his back and right shoulder with a physician(s) of the Defendants' choosing who has or have an expertise to the back and/or to the upper extremity to determine if he suffered any causally-related injuries to those body parts in the work-related accident of June 5, 2017. Should that or those physician(s) determine that the Claimant does have causally-related injuries to those body parts, the Claimant will be entitled to medical care and treatment for those body parts.

No hearing costs are assessed in this matter.

**AND IT IS SO ORDERED!**



Commissioner Gene McCaskill

Columbia, South Carolina  
August 7, 2018

**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.

August 7, 2018

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

# EXHIBIT 2



Claimant's Name: Placido Solano-Pulido SSN: \_\_\_\_\_ Employer's Name: Esteban Vera dba Esteban Construction  
Address: \_\_\_\_\_ Address: 650 West Pine Village Dr., Lot 19  
City: Myrtle Beach State: SC Zip: 29588 City: Myrtle Beach State: SC Zip: 29577  
Home Phone: ( ) - Work Phone: ( ) - Insurance Carrier: SC Uninsured Employer's Fund  
Preparer's Name: Gene M. Connell, Jr. Law Firm: Kelagher, Connell & Connor, P.C. Preparer's Phone #: (843) 238 - 5648

**REQUEST FOR COMMISSION REVIEW**

Request for Commission Review by  Claimant  Employer (check one) Date of Injury or Illness: 6/5/17

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).

1. Did the Commissioner err in finding that the Claimant was unable to perform light work? \_\_\_\_\_
2. Did the Commissioner err in failing to find the Claimant was working? \_\_\_\_\_
3. Did the Commissioner err in redacting the private investigator report? (Esteban Exhibit 2) \_\_\_\_\_
4. Did the Commissioner err in ordering additional medical treatment for the back and right shoulder? \_\_\_\_\_
5. Did the Commissioner err in ordering additional treatment to the right leg? (Claimant's Exhibits 2 and 3-Dr. Peter Ramsey Reports; Esteban Exhibit 2 Private Investigator report) \_\_\_\_\_
6. Did the Commissioner err in finding that the Claimant was unable to work? \_\_\_\_\_
7. Did the Commissioner err in finding that the Claimant was on the job when he was injured? \_\_\_\_\_
8. Did the Commissioner err in finding that the Employer had four or more employees and was thus subject to the Workers' Compensation Act? \_\_\_\_\_

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](mailto:mediation@wcc.sc.gov).

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to See attached Proof of Service address \_\_\_\_\_ on the 17<sup>th</sup> day of August, 2018, by  first class postage  certified mail  personal service.

Preparer's Signature: [Signature] Attorney for Employer: \_\_\_\_\_ Title: \_\_\_\_\_ Email: gconnell@classactlaw.net Date: 8-17-18

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](mailto: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. 67-05 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.

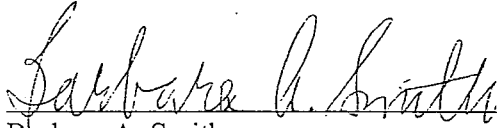
**PROOF OF SERVICE**

I, the undersigned, do hereby certify that I have served a copy of the Request for Commission Review on August 17, 2018 by personally depositing in a United States Postal Service mail box, postage prepaid, addressed to the Attorneys for the Claimant and Carrier indicated below:

Jonathan J. Shanks, Esq.  
Jonathan J. Shanks, P.A.  
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Timothy B. Killen, Esq.  
Holder Padgett Littlejohn & Prickett, LLC  
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Natasha M Hanna, Esq.  
Law Office of Natasha M. Hanna, P.C.  
4712 Jenn Drive, Suite A  
Myrtle Beach, SC 29577

  
\_\_\_\_\_  
Barbara A. Smith

Surfside Beach, SC  
August 17, 2018

# EXHIBIT 3

# South Carolina Workers' Compensation Commission

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



WCC File #: 1711399

Carrier File #:

September 25, 2018

## NOTICE OF APPELLATE HEARING

### RESET

PLACIDO SOLANO-PULIDO v Esteban Vera dba Esteban Construction, et al

**Subject:** Set on Review.  
**Date:** 11/27/18 at 02:30 PM  
**Location:** South Carolina Workers' Compensation Commission  
1333 Main Street, Suite 500  
Columbia, SC 29201

South Carolina Regulations 67-701 through 67-711 govern appeals 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.

Briefs are due according to prior notice and are governed by Regulation 67-705. For questions regarding this matter, please visit eCase Status at [www.wcc.sc.gov](http://www.wcc.sc.gov) or contact the Judicial Department of the South Carolina Workers' Compensation Commission at (803) 737-5739 or [appeals@wcc.sc.gov](mailto:appeals@wcc.sc.gov).

The Commission requests your presence thirty minutes prior to your scheduled oral argument.

This matter is set before: Panel A

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. Unrepresented parties were served by United States Postal Service first class postage.

By: Eugenia Hollmon, SC Workers' Compensation, September 25, 2018

Party

Employee: PLACIDO SOLANO-PULIDO

Attorney

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Party

Employer: GERALD BUILDERS OF CONWAY

Employer: Esteban Vera dba Esteban Construction

Attorney

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Gene M. Connell, Jr  
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843-238-5648

# EXHIBIT 4

# South Carolina Workers' Compensation Commission

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



WCC File #: 1711399

Carrier File #:

October 15, 2018

## NOTICE OF APPELLATE HEARING

### POSTPONEMENT

PLACIDO SOLANO-PULIDO v Esteban Vera dba Esteban Construction, et al

**Subject:** Set on Review.

**Date:** 11/27/18 at 02:30 PM

**Location:** South Carolina Workers' Compensation Commission  
1333 Main Street, Suite 500  
Columbia, SC 29201

South Carolina Regulations 67-701 through 67-711 govern appeals 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.

Briefs are due according to prior notice and are governed by Regulation 67-705. For questions regarding this matter, please visit eCase Status at [www.wcc.sc.gov](http://www.wcc.sc.gov) or contact the Judicial Department of the South Carolina Workers' Compensation Commission at (803) 737-5739 or [appeals@wcc.sc.gov](mailto:appeals@wcc.sc.gov).

The Commission requests your presence thirty minutes prior to your scheduled oral argument.

This matter is set before: Panel A

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. Unrepresented parties were served by United States Postal Service first class postage.

By: Eugenia Hollmon, SC Workers' Compensation, October 15, 2018

Party

Employee: PLACIDO SOLANO-PULIDO

Carrier: SC Workers Compensation Uninsured Employers Fund

Carrier: SC Workers Compensation Uninsured Employers Fund

Attorney

Jonathan J. Shanks  
[jshanks@jonathanshankslaw.com](mailto:jshanks@jonathanshankslaw.com)  
843-238-2694

Timothy B. Killen  
[tkillen@hplplaw.com](mailto:tkillen@hplplaw.com)  
843-277-0826

Lisa C. Glover  
[lglover@saf.sc.gov](mailto:lglover@saf.sc.gov)  
803-896-5898

Party

Employer: GERALD BUILDERS OF CONWAY

Employer: Esteban Vera dba Esteban Construction

Attorney

Natasha M Hanna  
natasha@nhannalaw.com  
843-839-8002

Gene M. Connell, Jr  
GConnell@classactlaw.net  
843-238-5648

# EXHIBIT 5

**South Carolina Workers' Compensation Commission**

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



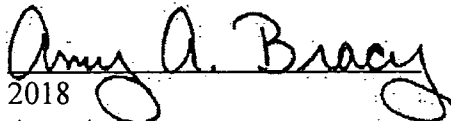
WCC File #: 1711399

Date of Injury: 06/05/2017

**ADMINISTRATIVE  
ORDER**

PLACIDO SOLANO-PULIDO v. GERALD BUILDERS OF CONWAY et al  
WCC File No: 1711399

The Request for Commission Reviews in the above captioned case are dismissed. The appellant briefs were not timely filed pursuant to R.67-705 H(3). The order is dismissing all three appeals pending appeals.

  
2018  
Amy A. Bracy  
Judicial Director

Date: October 29,

**CERTIFICATE OF SERVICE**

I hereby certify on October 29, 2018, I served this document on the parties listed below by electronic mail or depositing a copy hereof, postage prepaid, in the United States mail and addressed as follows:

Jonathan J. Shanks  
Jonathan J. Shanks. P.A.  
P O Box 14889  
Surfside Beach, SC 29587

Natasha M Hanna  
Law Office of Natasha M. Hanna, P.C.  
4712 Jenn Drive, Suite A  
Myrtle Beach, SC 29577

Timothy B. Killen  
Holder Padgett Littlejohn & Prickett, LLC  
349 West Coleman Blvd., Suite 300  
Mount Pleasant, SC 29464

Gene M. Connell, Jr  
Kelaher, Connell & Connor, PC  
P O Drawer 14547  
Surfside Beach, SC 29587

Lisa C. Glover  
P.O. Box 210039  
COLUMBIA, SC 29221-0039

By: Eugenia C. Hollmon, Judicial Department

# EXHIBIT 6

STATE OF SOUTH CAROLINA	)	BEFORE THE
	)	SOUTH CAROLINA
COUNTY OF Horry	)	WORKERS' COMPENSATION COMMISSION
	)	W.C.C. FILE NO.: 1711399
Placido Solano-Pulido,	)	
Claimant,	)	
	)	
vs.	)	
	)	<b>MOTION TO REINSTATE APPEAL</b>
Esteban Vera d/b/a Esteban,	)	
Construction,	)	
Employer/Appellant	)	
	)	
And	)	
	)	
SC Uninsured Employers' Fund,	)	
Carrier,	)	
Defendants.	)	
_____	)	

You will please take notice that the undersigned moves the Commission for an order reinstating the appeal in this case. The basis of this motion is as follows. Appellant timely filed a Request for Commission Review. When Appellant received the date for Commission review Appellant immediately asked for a continuance to another date.

The basis of the continuance was Appellant's counsel already had other matters set, including an all-day, court-ordered mediation (previously cancelled) the same day as the Commission review on November 27, 2018.

Appellant thought that his brief would not be due since the Commission granted the postponement until such time as the Commission Review was re-set.

The Appellant received an Administrative Order dismissing the appeal on October 29, 2018. Appellant immediately called Amy Bracy, Judicial Director, and requested guidance.

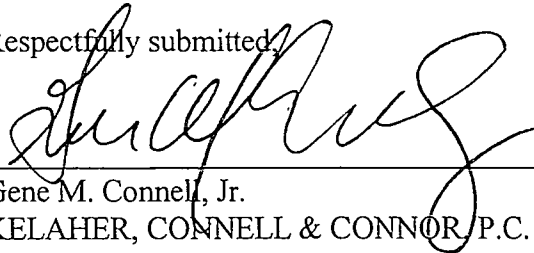
Bracy advised Appellant's counsel to discuss the matter with Eugenia Hollmon, who advised Appellant's counsel that the postponement had been granted but that Appellant's brief was

still due. Appellant indicated he was unaware of such a rule and thought that he would receive additional time once the matter was re-set.

Appellant believes that he has reasonable cause to request that the Commission Review be re-set and that Appellant's appeal be reinstated.

Accordingly, Appellant moves the Commission for an order reinstating the appeal, setting the date of the hearing and allowing Appellant to provide his brief within ten (10) days of the date of the Commission's Order reinstating Appellant's appeal.

Respectfully submitted,



---

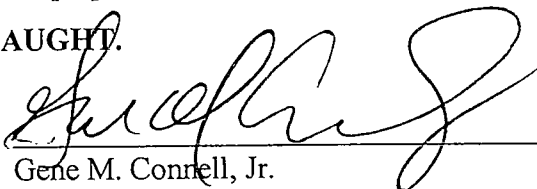
Gene M. Connell, Jr.  
KELAHER, CONNELL & CONNOR, P.C.  
P.O. Drawer 14547  
Surfside Beach, SC 29587  
(843) 238-5648  
Attorney for Appellant/Employer

STATE OF SOUTH CAROLINA	)	BEFORE THE
	)	SOUTH CAROLINA
COUNTY OF Horry	)	WORKERS' COMPENSATION COMMISSION
	)	W.C.C. FILE NO.: 1711399
Placido Solano-Pulido,	)	
Claimant,	)	
	)	
vs.	)	
	)	<b>AFFIDAVIT OF GENE M. CONNELL, JR.</b>
Esteban Vera d/b/a Esteban,	)	
Construction,	)	
Employer/Appellant	)	
	)	
And	)	
	)	
SC Uninsured Employers' Fund,	)	
Carrier,	)	
Defendants.	)	
_____	)	

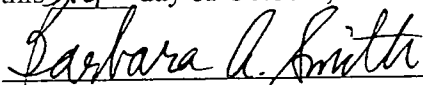
PERSONALLY appeared before me Gene M. Connell, Jr., who swears and states as follows:

1. I am counsel for Employer/Appellant in the above-captioned matter. I timely filed a Request for Commission Review. When I received the notice from the Commission as to the date of the hearing, I immediately requested a continuance due to other court hearings on that date.
2. After the Commission granted my postponement of the Commission hearing, I thought that the brief would not be due until I got a new notice in which the Commission set a new date for hearing.
3. I was unaware until I received the Administrative Order of dismissal that a postponement did not include the postponement of the filing of the briefs.
4. I respectfully request that the Commission reinstate the appeal, set the time for Commission review and allow additional time to prepare the brief in this matter.

**FURTHER AFFIANT SAYETH NAUGHT.**

  
 \_\_\_\_\_  
 Gene M. Connell, Jr.

SWORN AND SUBSCRIBED before me,  
 this 31st day of October, 2018.

  
 \_\_\_\_\_  
 Notary Public for South Carolina  
 My Commission Expires: 3-12-24

STATE OF SOUTH CAROLINA )  
COUNTY OF Horry )  
Placido Solano-Pulido, )  
Claimant, )  
vs. )  
Esteban Vera d/b/a Esteban, )  
Construction, )  
Employer/Appellant )  
And )  
SC Uninsured Employers' Fund, )  
Carrier, )  
Defendants. )

BEFORE THE  
SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
W.C.C. FILE NO.: 1711399

AFFIDAVIT OF SERVICE BY MAIL

PERSONALLY appeared before me, Barbara A. Smith, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P. C., Attorneys at Law, and that she has mailed, on the date set forth below, a copy of the document described below, in the above entitled action to the following with proper postage affixed thereto:

TO:

Jonathan J. Shanks, Esq.  
Jonathan J. Shanks, P.A.  
P.O. Box 14889  
Surfside Beach, SC 29587

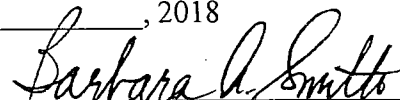
Natasha M Hanna, Esq.  
Law Office of Natasha M. Hanna, P.C.  
4712 Jenn Drive, Suite A  
Myrtle Beach, SC 29577

Timothy B. Killen, Esq.  
Holder Padgett Littlejohn & Prickett, LLC  
349 West Coleman Blvd., Suite 300  
Mount Pleasant, SC 29464

Lisa C. Glover, Esq.  
South Carolina State Accident Fund  
P.O. Box 210039  
Columbia, SC 29221-0039

DOCUMENT: Motion to Reinstate Appeal

DATE OF MAILING: October 31, 2018

  
Barbara A. Smith

SWORN AND SUBSCRIBED before me,  
this 31<sup>st</sup> day of October, 2018.

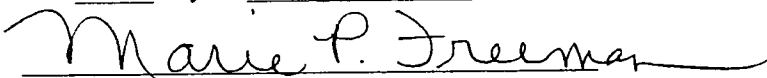
  
Notary Public for South Carolina  
My Commission Expires: 6/11/24

EXHIBIT 7

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**  
**JUDICIAL CONFERENCE DECISION AND ORDER**

**Placido Solano-Pulido v Esteban Vera dba Estaban Constructions**  
**SCWCC: 1711399**  
**Commissioner: McCaskill**

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on a **Motion to Reinstate Appeal (Connell)**. The Commissioners considered the matter and ordered the matter handled in the following manner:

**IT IS, THEREFORE, ORDERED** the pending appeal of the Administrative Order of the Commission is hereby;  
 \_\_\_\_\_ Dismissed as Interlocutory. \_\_\_\_\_ Set for Oral Argument.

**IT IS, THEREFORE, ORDERED** the pending motion be, and hereby is;  
 \_\_\_\_\_ Granted.  Denied. \_\_\_\_\_ Dismissed \_\_\_\_\_ Preserved for hearing

**BEFORE THE;**  
 \_\_\_\_\_ Hearing Comm. \_\_\_\_\_ Jurisdictional Comm. \_\_\_\_\_ Full Commission.

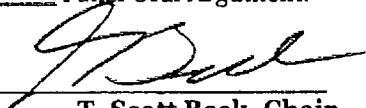
**IT IS, THEREFORE, ORDERED** this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

\_\_\_\_\_ 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.**

  
 \_\_\_\_\_  
**T. Scott Beck, Chair**  
**For the Commission**

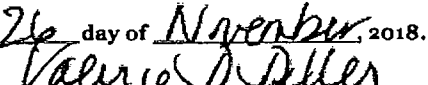
Columbia, South Carolina

11/24 2018

<b>CONCURRING:</b>	<b>NOT PARTICIPATING:</b>	<b>DISSENTING:</b>
Commissioner Susan S. Barden _____	_____	_____
Commissioner Melody James _____	_____	<input checked="" type="checkbox"/>
Commissioner Aisha Taylor _____	_____	_____
Commissioner Avery Wilkerson _____	_____	_____
Commissioner Michael Campbell _____	_____	_____
Commissioner Gene McCaskill _____	<input checked="" type="checkbox"/>	_____

**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 24 day of November, 2018.  
 By:   
 \_\_\_\_\_  
 SCWCC Judicial Department

## Barbara Smith

---

**From:** appeals@wcc.sc.gov  
**Sent:** Monday, November 26, 2018 2:33 PM  
**To:** ACASWELL@JONATHANSHANKSLAW.COM; Barbara Smith; Gene Connell;  
JSHANKS@JONATHANSHANKSLAW.COM; LGLOVER@SAF.SC.GOV;  
JDEATRICK@SAF.SC.GOV; MADAMS@HPLPLAW.COM; Frankie Odonnell;  
NATASHA@NHANNALAW.COM; SFUNK@HPLPLAW.COM;  
TAMMY@NHANNALAW.COM; TKILLEN@HPLPLAW.COM; TWILLIAMS@HPLPLAW.COM;  
APPEALS@WCC.SC.GOV  
**Subject:** Full Commission Order - WCC#:1711399 - SOLANO-PULIDO  
**Attachments:** OB53BB.pdf

Attached is the Full Commission Order for WCC#: 1711399

R08 ORD - Judicial Conference Order - 11/26/2018 - ORDER#: 78061 - WCC #: 1711399

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

---

WCC NO. 1711399

---

Placido Solano-Pulido, Employee; Gerald Builders of Conway, Inc., Employer;  
and South Carolina Uninsured Employers' Fund, Carrier

vs.

Esteban Vera Reyes d/b/a Esteban Construction, Employer ..... Appellant/Respondent

Of Which:

Placido Solano-Pulido, Employee is the ..... Respondent

and

Gerald Builders of Conway, Inc., Employer; and

South Carolina Uninsured Employers' Fund, Carrier, are the ..... Respondents/Appellants

---

PROOF OF SERVICE

---

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., and that she has served a copy of the **Petition for Rehearing and Memorandum of Law in Support of Petition for Rehearing** on the Respondents, on the 10<sup>th</sup> day of January, 2019, by depositing a copy of same in the United States Mail, postage prepaid, to:

Jonathan J. Shanks, Esquire  
Jonathan J. Shanks, P.A.  
P.O. Box 14889  
Surfside Beach, SC 29587

Natasha M. Hanna, Esquire  
Law Office of Natasha M. Hanna, P.C.  
4712 Jenn Drive, Suite A  
Myrtle Beach, SC 29577

Timothy B. Killen, Esquire  
Holder Padgett Littlejohn & Prickett, LLC  
349 West Coleman Blvd., Suite 300  
Mount Pleasant, SC 29464

Lisa C. Glover, Esquire  
P. O. Box 210039  
Columbia, SC 29221

**RECEIVED**

JAN 11 2019

SC Court of Appeals

Amy Bracy  
Judicial Director  
South Carolina Workers' Compensation  
Commission  
P. O. Box 1715  
Columbia, SC 29202-1715

Shelia Y. McCumbee  
Shelia Y. McCumbee

**SWORN AND SUBSCRIBED** before me,  
this 10<sup>th</sup> day of January, 2019.

Donna H. Hand  
Notary Public for South Carolina  
My Commission Expires: 3-28-26

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER\*  
GENE M. CONNELL, JR.  
L. SIDNEY CONNOR, IV  
LISA POE DAVIS

\* OF COUNSEL

AREA CODE 843

238-5648

FAX: 238-5050

January 10, 2019

VIA FEDERAL EXPRESS

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

RECEIVED

JAN 11 2019

SC Court of Appeals

Re: Appellate Case No. 2018-002174  
*Placido Solano-Pulido v. Gerald Builders of Conway, et al.*  
W.C.C. File No. 1711399  
Our File No. 2017-0298C

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of Appellants' **Petition for Rehearing, Memorandum of Law in Support of Petition for Rehearing and Proof of Service** of same in the above-captioned matter. I also enclose our check for \$50.00 for the filing fee. Please return a filed copy to this office in the self-addressed, stamped envelope enclosed for your convenience.

By copy of this letter, we hereby serve a copy of the above-stated document on Respondent through counsel of record.

With best regards, I am

Sincerely yours,



Gene M. Connell, Jr.

GMC,Jr.:sm

Enclosures

cc w/enc.:

Jonathan J. Shanks, Esquire

Natasha M. Hanna, Esquire

Timothy B. Killen, Esquire

Lisa C. Glover, Esquire

Amy A. Bracy, Judicial Director, S. C. Workers' Compensation Commission

00028

00100

**FedEx** Express **Package US Airbill**

FedEx Tracking Number

8131 4958 7928

MUR 1

Form ID No. 0215

Recipient's Copy

**1 From**

Date 01/10/2019

Sender's Name GENE M. CONNELL, JR.

Phone 843 238-5648

Company KELAHER CONNELL & CONNOR PC

Address 1500 HIGHWAY 17 N STE 209

Dept./Floor/Suite/Room

City SURFSIDE BEACH

State SC

ZIP 29575-6078

**2 Your Internal Billing Reference**

2017-0298C Reyes

**3 To**

Recipient's Name JENNY ABBOTT KITCHINGS

Phone 803 734-1890

Company SOUTH CAROLINA COURT OF APPEALS

Address 1220 SENATE STREET

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Dept./Floor/Suite/Room

Address

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City COLUMBIA

State SC

ZIP 29201

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For packages over 150 lbs., use the FedEx Express Freight US Airbill.

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Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless Saturday Delivery is selected.

FedEx Priority Overnight  
Next business morning.\* Friday shipments will be delivered on Monday unless Saturday Delivery is selected.

FedEx Standard Overnight  
Next business afternoon.\* Saturday Delivery NOT available.

**2 or 3 Business Days**

FedEx 2Day A.M.  
Second business morning.\* Saturday Delivery NOT available.

FedEx 2Day  
Second business afternoon.\* Thursday shipments will be delivered on Monday unless Saturday Delivery is selected.

FedEx Express Saver  
Third business afternoon.\* Saturday Delivery NOT available.

RECEIVED

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\* Declared value limit \$500.

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Tube

Other

JAN 11 2019

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NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver.

No Signature Required  
Package may be left without obtaining a signature for delivery.

Direct Signature  
Someone at recipient's address may sign for delivery.

Indirect Signature  
If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only.

**Does this shipment contain dangerous goods?**

One box must be checked.

No

Yes  
As per attached Shipper's Declaration.

Yes  
Shipper's Declaration not required.

Dry Ice  
Dry Ice, 9, UN 1845

x kg

Restrictions apply for dangerous goods — see the current FedEx Service Guide.

Cargo Aircraft Only

**7 Payment Bill to:**

Enter FedEx Acct. No. or Credit Card No. below.

Obtain recip. Acct. No.

Sender  
Acct. No. in Section 1 will be billed.

Recipient

Third Party

Credit Card

Cash/Check

Total Packages

Total Weight

Credit Card Auth.

\*Our liability is limited to US\$100 unless you declare a higher value. See the current FedEx Service Guide for details.

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fedex.com 1800.GoFedEx 1800.463.3339