THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

THE HONORABLE R. KNOX MCMAHON, CIRCUIT COURT JUDGE

CASE NUMBER: 2008-CP-32-2361

William T. Jervey, Jr., Employee.....Respondent/Petitioner,

v.

Martint Environmental, Inc., Employer, and General Casualty Insurance Company, Carrier
.....Petitioners/Respondents.

PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

Pursuant to Rules 240 and 242, SCARC, Petitioner, William T. Jervey, Jr., hereby petitions this Court to issue a Writ of Certiorari to review the Court of Appeals' decision in William T. Jervey, Jr., Employee, Respondent, v. Martint Environmental Inc., Employer, and General Casualty Insurance Company, Carrier, Appellants, Op. No. 4930. Mr. Jervey respectfully asserts the Court of Appeals erred in reversing the Circuit Court's determination that S.C. Code Ann. §42-9-260 (A) (2006) prohibited relitigation of the basic issue of liability following expiration of the 150 day investigatory period allowed by this statute.

Specifically, Mr. Jervey believes the Court of Appeals' decision misconstrues the effect of the legislature's 1996 amendment of this statute, which clearly created a 150 day limitation period, while otherwise preserving this Court's repeated rulings that payment of compensation, in accordance with a form prescribed by the South Carolina Workers' Compensation Commission, precluded retrial as to the basic issue of liability. In this regard, he further submits the Court of Appeal's analysis of §42-9-260: (a) mistakenly ignores not only the legislative history of this statute, but also the profound impact of this Court's prior rulings on the development of the current codification; (b) misapprehends several applicable rules of statutory construction, to the extent the 1996 amendment becomes a meaningless, futile act; (c) incorrectly relies upon its prior ruling in Fredrick v. Wellman, Inc., 385 S.C. 8, 682 S.E. 2d 516 (Ct. App. 2009), which necessarily hinges upon factors (fraudulent statements and lack of subject matter jurisdiction) that are not present in this claim; and (d) erroneously deprives all employees of "swift and **sure compensation**", a fundamental right granted by the South Carolina Workers'

Compensation Act. See, Parker v. Williams & Madjanik, Inc., 275 S.C. 65, 267 S.E. 2d 524, 526 (1980); Wright v. Smallwood, 308 S.C. 471, 419 S.E. 2d 219, 221 (1992).

RULE 226 (d)(1), SCARC, CERTIFICATION

Counsel for Petitioner certifies that a Petition for Rehearing was made to the Court of Appeals on February 6, 2012 and denied by the Court of Appeals on March 30, 2012.

I. QUESTIONS PRESENTED FOR REVIEW

A. Did the Court of Appeals err in reversing the Circuit Court's construction of S.C. Code Ann. §42-9-260 (2006) when a review of this statute, in light its legislative history and this Court's prior rulings relative to the payment of compensation in conjunction with the filing of a form prescribed by the South Carolina Workers' Compensation Commission, firmly establishes it: (a) affords the Employer/Carrier a 150 day grace period, during which it may conduct a "good faith investigation" to determine whether "grounds for denial of the claim" exist; (b) invokes a "waiver of any grounds for good faith denial" in the event payments are continued beyond the expiration of this investigatory period; (c) constitutes a statute of limitation; and (d) precludes relitigation of the basic issue of liability under the present circumstances (including the absence of fraudulent statements or any challenge as to the employment relationship)?

B. Did the Court of Appeals err in attempting to extend its previous ruling in Fredrick v. Wellman, Inc., 385 S.C. 8, 682 S.E. 2d 516 (Ct. App. 2009) to the current circumstances when: (a) the Fredrick decision is premised upon a material misconstruction of S.C. Code Ann. §42-9-260 (2006); (b) application of the Court of Appeals' analysis to the current circumstances not only misapprehends and/or ignores several controlling rules of statutory construction, but also transforms the 1996 amendment of §42-9-260 into a meaningless, futile act; and (c) the legal vitality/sustainability of the Fredrick ruling necessarily hinges upon factors (fraudulent statements and absence of employment relationship) that are not present in the current context?

II. STATEMENT OF THE CASE

On January 23, 2006, Mr. Jervey sustained multiple compensable injuries while throwing a segment of hose into a dumpster at a jobsite on the Camp LeJeune Marine Corps base in Onslow County, North Carolina. Specifically, this injury occurred when: (a) he (with the assistance of a co-worker) was lifting/throwing this hose; and (b) sulfuric acid spilled from the hose onto various parts of his body. (See, Record on Appeal, pp. 11 – 12, 28 and 37).

Per Form 12-A completed on January 24, 2006, Martint: (a) provided all requested information relative to the nature and consequences of Mr. Jervey's accident; while (b) specifically alleging he had been "asked not" to engage in the activity he was performing at the time the accident occurred ("victim was dismantling pump & hose containing residual sulfuric acid . . . Employee was asked not to touch or dismantle the sulfuric acid system"). (See, Record on Appeal, pp. 12, 28, 37, 142, 213 - 217).

This document was, in turn, delivered (via facsimile) to General Casualty Insurance Company, which: (a) received it on January 25, 2006; and (b) electronically filed the Form 12-A with the Commission on January 26, 2006. (Id.).

Approximately one week later, General Casualty generated a Form 15(I), which: (a) confirmed temporary total disability compensation had commenced effective January 24, 2006; and (b) was received/processed by the Commission on February 9, 2006. (See, Record on Appeal, pp. 13, 28 – 29, 37 – 38 and 143). In this regard, a review of the "W/C Disability Benefit Payment Log" generated by General Casualty establishes these compensation payments have continued, without interruption, since the January 24, 2006 initiation date. (See, Record on Appeal, pp. 144 and 230 - 232).

During the ensuing months, General Casualty engaged in various activities which the Commission specifically found:

> . . . reflected an informed and voluntary acknowledgement of liability for Mr. Jervey's claim, including: (a) instructing its nurse case manager to "remind . . . [him] that if he does not comply with medical treatment . . . [,] his benefits could be stopped" (See, April 7, 2006 fax communication from "Kathy Crews (GBO claims)"); (b) instructing this agent to attend a medical appointment and "have . . . [the] Dr. note how his treatment is related to WC of 1/23/06" (See, April 12, 2006 e-mail transmission of Kathy Crews); (c) authorizing treatment (See, June 19, 2006 and July 21, 2006 e-mail transmissions of Kathy Crews); (d) advising that at least one course of treatment was authorized to prevent Mr. Jervey from "sitting doing nothing while . . . [it was] paying him" (See, June 19, 2006 e-mail transmission of Kathy Crews); (e) repeatedly seeking medical opinions relative to Mr. Jervey's capacity to return to work, as well as the anticipated date of maximum medical improvement (See, April 25, 2006, June 16, 2006 and October 4, 2006 e-mail transmissions of Kathy Crews); and (f) admonishing Mr. Jervey's counsel, through the nurse case manager, that it "ha[d] . . . control of the medical & who. . . [he] should treat . . . with" - - a communication which was generated approximately one year post-accident. . . . (See, Record on Appeal, pp. 13 – 14, 29, 38, 219 and 221 - 228).

The Commission further found:

> Martint Environmental, Inc. similarly verified an obvious understanding: (a) Mr. Jervey was "being treated by a psychologist for problems claimed to be related to the accident"; (b) he "remain[ed] . . . out of work" due to injury components attributed to his January 23, 2006 accident; and (c) his resulting receipt of compensation and medical benefits was "adding to the volume of the claim." (See, Record on Appeal, pp. 14, 29 – 30, 38 and 220).

By Form 50 dated June 29, 2007, Mr. Jervey: (a) sought further medical benefits for various symptoms stemming from a cervical disc herniation, which had been attributed to the consequences of his accident; while (b) maintaining he remained temporarily totally disabled. (See, Record on Appeal, pp. 54 - 55). Subsequently, pursuant to a Form 51 dated July 27, 2007, Martint/General Casualty: (a) generally

denied Mr. Jervey had sustained a compensable accident "[p]ending investigation"; and (b) asserted a number of "special and affirmative defenses. . . ." (See, Record on Appeal, pp. 56).

After completion of discovery, Mr. Jervey timely served Martint's/General Casualty's counsel with a W.C.C. Form 58 (Pre-Hearing Brief), alleging:

> ...Additionally, we submit Defendants' belated/untimely attempt to deny this claim: (a) has no credible factual basis; (b) is barred by several legal doctrines, including waiver, estoppel and laches; and (c) appears to be a punitive response to Mr. Jervey's efforts to seek treatment for his cervical injury component, particularly in view of the circumstances surrounding assertion of their current position. (See, Record on Appeal, pp. 148 - 151).

This document similarly indicated: (a) Martint/General Casualty had paid temporary total disability compensation for approximately 15 months; and (b) these payments occurred with "full knowledge of all relevant facts." (Id.).

A hearing relative to this matter was held on October 15, 2007. Significantly, review of the resulting transcript establishes Mr. Jervey maintained the denial of his claim "comes more than 150 days after defense entered into a Form 15 agreement", which, through application of S.C. Code Ann. Section 42-9-260 (A) (2006), prohibited Martint/General Casualty from denying basic liability for his claim. (See, Record on Appeal, pp. 87, 91 – 92).

After reviewing the evidence, the single commissioner specifically found:

> (a) Martint Environmental, Inc. was notified of Mr. Jervey's compensable injuries on January 23, 2006; (b) on January 24, 2006, this Employer generated a Form 12-A, which alleged this injury occurred while Mr. Jervey was performing an activity he "was asked not" to do; (c) General Casualty Insurance Company was formally notified of not only the circumstances surrounding Mr. Jervey's injury, but also this allegation, by no later than January 25, 2006; (d) on February 2, 2006, this Carrier

> commenced the payment of temporary total disability compensation (effective January 24, 2006), while filing a Form 15 (I) with this Commission; (e) during the 150 day period commencing on January 23, 2006, both Employer and Carrier engaged in activities which were reflective of the knowing/informed/voluntary acceptance of liability for Mr. Jervey's injuries per the Act; (f) their course of conduct after the expiration of this 150 day period (i.e., payment of disability compensation, authorization of medical care and declaration that "we have control of the medical & who. . . [Mr. Jervey] treats with") is likewise wholly consistent with their continued acceptance of liability for his claim; (g) Defendants did not attempt to disclaim this liability until April 17, 2007, approximately 450 days after they were notified of Mr. Jervey's injury; and (h) their attempted denial stems from the same allegation ("Employee was asked not . . . [to] touch or dismantle the sulfuric acid system") contained on the face of the January 24, 2006 Form 12-A. (See, Record on Appeal, pp. 16, 30 – 31 and 39 - 40).

In this regard, he concluded: (a) Section 42-9-260 "afforded a 150 day grace period, during which . . . [the Employer/Carrier was allowed to] conduct 'a good faith investigation' to determine whether any 'grounds for denial of the claim' exist[ed]"; (b) this statute "invokes a 'waiver of any grounds for good faith denial' in the event payments are continued beyond expiration of this grace period"; (c) as Martint/General Casualty had not raised a known defense during the 150 day period, they were "legally barred from contesting their basic/underlying liability for Mr. Jervey's claim"; and (d) allowing Martint/General Casualty to disclaim liability at this stage of the proceedings was "particularly inappropriate where, as here, [they]. . . have engaged in a course of conduct which unquestionably satisfies the criteria for both waiver and laches. . . ." (See, Record on Appeal, pp. 20 – 21 and 40).

Pursuant to a Form 30 ("Request for Commission Review") dated December 5, 2007, Martint/General Casualty appealed the single commissioner's rulings, including his

construction of Section 42-9-260, to an Appellate Panel of the Full Commission. While the Appellate Panel agreed Mr. Jervey remained entitled to temporary total disability compensation and causally related medical benefits, it: (a) vacated the single commissioner's rulings relative to the impact of the rule of repose/statute of limitation contained in Section 42-9-260; and (b) premised the rejection of Martint's/General Casualty's attempt to disclaim basic liability in this instance on the doctrines of waiver and laches. (See, Record on Appeal, pp. 33 - 34).

By Petition for Review filed June 5, 2008, Mr. Jervey challenged the Appellate Panel's construction of §42-9-260 (A). Shortly thereafter, per Petition filed June 9, 2008, Martint/General Casualty raised 23 exceptions to the Panel's Order, several of which sought to advance arguments which had not been raised to either the single commissioner or the Appellate Panel.

After considering extensive argument, the Circuit Court: (a) concluded Martint/General Casualty had not properly/adequately preserved certain issues for appellate review; and (b) affirmed the Appellate Panel's findings as to waiver and laches. However, the Circuit Court reversed the Panel's construction of §42-9-260, determining the statute precluded relitigation of the basic issue of liability where, as here, payment of compensation per a duly filed Form 15 continued following expiration of the 150 investigatory period.

Pursuant to its January 25, 2012 Opinion, the Court of Appeals affirmed the Circuit Court's rulings as to waiver/laches, but reversed the determination §42-9-260 (A) imposed a time bar for contesting the basic issue of liability. In this connection, the Court of Appeals held the language of §42-9-260 (F), which had been added through a

1974 amendment to a prior codification of this statute, "permits an employer to terminate benefits for any cause after the expiration of the 150 days. . . ."

III. ARGUMENTS

I. THE COURT OF APPEALS ERRED IN REVERSING THE CIRCUIT COURT'S CONSTRUCTION OF S.C. CODE ANN. §42-9-260 (2006) BECAUSE A REVIEW OF THIS STATUTE CLEARLY ESTABLISHES IT: (A) AFFORDS THE EMPLOYER/CARRIER A 150 DAY GRACE PERIOD, DURING WHICH IT MAY CONDUCT A "GOOD FAITH INVESTIGATION" TO DETERMINE WHETHER "GROUNDS FOR DENIAL OF THE CLAIM" EXIST; (B) INVOKES A "WAIVER OF ANY GROUNDS FOR GOOD FAITH DENIAL" IN THE EVENT PAYMENTS ARE CONTINUED BEYOND THE EXPIRATION OF THIS INVESTIGATORY PERIOD; (C) CONSTITUTES A STATUTE OF LIMITATION; AND (D) PRECLUDES RELITIGATION OF THE BASIC ISSUE OF LIABILITY UNDER THE PRESENT CIRCUMSTANCES (INCLUDING THE ABSENCE OF FRAUDULENT STATEMENTS OR ANY CHALLENGE AS TO SUBJECT MATTER JURISDICTION).

Section 42-9-260 provides in pertinent part:

> (A) When an employee has been out of work due to a reported work-related injury or occupational disease for eight days, an employer may start temporary disability payments immediately and **may continue these payments for up to one hundred fifty days from the date the injury or disease is reported without waiver of any grounds for good faith denial**. Upon making the first payment, the employer immediately shall notify the commission, in accordance with a form prescribed by the commission, that payment of compensation has begun. (Emphasis added).

This statute further prescribes:

> (B) Once temporary disability payments are commenced, the payments may be terminated or suspended immediately at any time within the **one hundred fifty days if**:
>
> . . .
>
> (3) **a good faith investigation by the employer reveals grounds for denial of the claim;**
>
> . . .
>
> (F) after the one-hundred-fifty-day period has expired, the commission shall provide by regulation the method and procedure by which benefits may be suspended or terminated for any cause, but the regulation must provide for an evidentiary

> hearing and commission approval prior to termination or suspension unless such prior hearing is expressly waived in writing by the recipient or the circumstances identified in Section 42-9-260 (B) (1) or (B) (2) are present. (Emphasis added).

A review of the rather explicit language of §42-9-260 (A) clearly establishes that an Employer/Carrier: (a) "may start temporary disability payments . . . [once] an employee has been out of work due to a work-related injury . . . for eight days"; (b) is afforded a 150 day grace period, during which it may conduct "a good faith investigation" to determine whether any "grounds for denial of the claim" exist; and (c) does not "waive . . . any grounds for good faith denial", provided the defense is raised within the prescribed period. This language likewise: (a) limits the grace period to "one hundred fifty days from the date the injury . . . is reported"; and (b) invokes a "waiver of any grounds for good faith denial" in the event payments are continued beyond expiration of the grace period.

While Subsection (A) certainly constitutes a statute of limitation which creates a "time bar", the Court of Appeals concluded Subsection (F) was instead controlling and "permit[ed]. . . an employer to terminate benefits **for any cause after the expiration of the 150 days. . . .**" However, a review of this statute's legislative history and this Court's decisions relative to the binding impact of the payment of compensation in conjunction with the filing of a Commission-approved form, in light of several applicable rules of statutory construction, conclusively establishes that the Court of Appeals' analysis is legally untenable.

The mechanism through which an employer was obliged to notify the Commission as to the commencement of compensation payments to an employee was

implemented in 1936 and later codified as §7035-21 of the 1942 code. This statute provided in pertinent part:

> (c) Upon making the first payment, and upon suspension of payment for any cause, the employer shall immediately notify the commission, in accordance with a form prescribed by the commission, that payment of compensation has begun or has been suspended, as the case may be.

At that point in time, the "Agreement as to compensation" referenced in §7035-59 of the 1942 code constituted the "form prescribed by the Commission," through which the requisite notice was provided. This document was designated by the Commission as "Form No. 15". See, Lowther v. Standard Oil Co. of New Jersey, 206 S.C. 286, 33 S.E. 2d 889 (1945).

In Allen v. Benson Outdoor Advertising Company, 236 S.C. 22, 112 S.E. 2d 722, 723 (1960) this Court ruled the payment of compensation through a duly filed "Agreement as to compensation" prohibited an employer/carrier from "retry[ing]. . . the basic issue of liability." Several months later, this Court similarly concluded the payment of weekly temporary total disability compensation in conjunction with the filing of an "Industrial Commission Form 15, . . . was as binding on the parties as an order, decision or award of the Commission unappealed from, or an award of the Commission affirmed upon appeal." See, Singleton v. Young Lumbar Company, 236 S.C. 454, 114 S.E. 2d 837, 841 (1960).

While filing of the Form 15 was universally recognized as the vehicle through which the Commission received notice "that payment of compensation ha[d]. . . begun", the code did not adequately address the manner in which compensation payments could be discontinued. This omission prompted a 1974 amendment to §72-177 of the 1962

code (a subsequent codification of §7035-21), which instructed the Commission to "provide by rule the method and procedure by which benefits may be suspended or terminated for any cause. . . ." (See, 1974 Act No. 1059, Section 10). Significantly, the 1974 amendment was passed with the knowledge this Court had previously construed the "form prescribed by the Commission" (Form 15) to be an essentially irrevocable acceptance of liability.

In response to this directive, the Commission implemented a regulation which governed the termination of weekly compensation. See, Commission Rule 67-10 (1976) (which is attached to Respondent's Reply to Appellants' Return to Petition for Rehearing). See also, Adams v. Rice Services, 313 S.C. 488, 443 S.E. 2d 391, 392 (1994) ("Rule 67-10 was adopted pursuant to. . . [§42-9-260, which] authorizes the Commission to 'provide by rule the method and procedure by which benefits may be suspended or terminated. . . .'").

Approximately sixteen years following insertion of this language ("by which benefits may be suspended or terminated **for any cause**"), this Court reiterated its prior holdings in Allen and Singleton, concluding compliance with the procedure prescribed by §77-177 (which had been recodified as §42-9-260 of the 1976 code) prevented retrial of "the factual issue of liability under the Act. . . ." McCreery v. Covenant Presbyterian Church, 303 S.C. 271, 400 S.E. 2d 130, 131 (1990). Interestingly, this ruling: (a) neither construed §42-9-260 to allow an employer/carrier to seek termination of compensation "for any cause" (despite an alleged lack of subject matter jurisdiction); nor (b) provoked any legislative reaction to the Court's adherence to longstanding precedent.

The "Court's primary consideration in interpreting a statute is finding the intent of the legislature." Grazia v. South Carolina State Plastering, LLC, 390 S.C. 562, 703 S.E. 2d 197, 201 (2010). In order to accomplish this objective, the statutory language should be read as a whole, subject to applicable rules of construction, in a manner which promotes "harmonization". (Id.).

"[T]here is a basic presumption that the legislature has knowledge of previous legislation as well as judicial decisions construing that legislation when later statutes are enacted concerning related subjects." Whitner v. State, 328 S.C. 1, 492 S.E. 2d 777, 779 (1997); Lexington Law Firm v. South Carolina Department of Consumer Affairs, 382 S.C. 580, 677 S.E. 2d 591, 594 (2009). A similar presumption exists that the General Assembly "enact[s]. . . legislation with reference to existing law. . . [and the intention] to achieve a consistent body of law." See, Abba Equipment, Inc. v. Thomason, 335 S.C. 477, 517 S.E. 2d 235, 238 (Ct. App. 1999); State v. Ramsey, 311 S.C. 555, 430 S.E. 2d 511, 516 (1993).

This Court has also repeatedly recognized that "[h]owever plain the ordinary meaning of the words used in a statute may be, the courts will reject that the meaning when to accept it would lead to a result so plainly absurd that it could not possibly be intended by the Legislature or would defeat the plain legislative intention." Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 440 S.E. 2d 364, 366 (1994); New York Times Co. v. Spartanburg County School District No. 7, 374 S.C. 307, 649 S.E. 2d 28, 30 (2007); Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E. 2d 1, 4 (2009). Further, this court must "presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something." Denene Inc. v. City of Charleston, 352

S.C. 208, 574 S.E. 2d 196, 198 (2002); Ellison v. Frigidaire Home Products, 371 S.C. 159, 638 S.E. 2d 664, 666 (2006). Finally, should a true "repugnancy between the two statutory provisions. . . [exist], the subsequent provision of the statute should prevail over a prior one, the later being the last in point of time or order of arrangement." Jolly v. Atlantic Greyhound Corporation, 207 S.C. 1, 35 S.E. 2d 42, 44 (1945); Ramsey v. County of McCormick, 306 S.C. 393, 412 S.E. 2d 408, 410 (1991).

Given the applicability of these rules it must presumed that at the time it amended §42-9-260 in 1996, the legislature was quite aware: (a) this statute regulated not only the commencement, but also the termination of all compensation payments made in accordance with the Act; (b) this Court had consistently recognized an employee's receipt of "swift and **sure** compensation" as a fundamental right afforded by the South Carolina Workers' Compensation law (Parker v. Williams & Madjanik, Inc., 275 S.C. 65, 267 S.E. 2d 524, 526 (1980); Wright v. Smallwood, 308 S.C. 471, 419 S.E. 2d 219, 221 (1992); Harrell v. Pineland Plantation, LTD., 337 S.C. 313, 523 S.E. 2d 766, 772 (1999)); (c) an employer/carrier's basic liability to provide this compensation could not be relitigated following the commencement of payments "in accordance with a form prescribed by the Commission"; and (d) the Court's adherence to this rule in McCreery, notwithstanding the 1974 amendment requiring the Commission to implement rules outlining "the method and procedure by which benefits may be suspended or terminated for any cause. . . ."

In this connection, had the legislature intended the 1974 amendment to authorize the termination of compensation at any stage of the proceedings "for any cause", it would have hardly deemed it necessary to include the 150 day grace period embodied in Subsection (A) of the 1996 amendment. Given this fact, the legislature's use of

clear/unambiguous language ("up to one hundred fifty days. . . without waiver of any grounds for good faith denial") that was certainly consistent with prior practice is reflective of an intent to: (a) allow the employer/carrier **only a finite period** to engage in "a good faith investigation" prior to effectively "buying" the claim; while (b) retaining the finality as to basic liability secured by payment of compensation pursuant to Commission Form 15, consistent with this Court's prior rulings. This construction is bolstered by the legislature's "inactivity on the issue over the" approximately 38 years which has transpired since insertion of the "for any cause" language through passage of the 1974 amendment. See, Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 580 S.E. 2d 100, 105 (2003); McLeod v. Starnes, _____ S.C. _____, 723 S.E. 2d 198, 205 (2012). It is also unquestionably supported by the legislature's last word on the subject.

"Where a statute has been revised, the construction given the original statute will be applied to the revised statute, unless the language of the revised statute plainly requires a change of construction." Chestnut v. South Carolina Farm Bureau Mutual Insurance Company, 298 S.C. 151, 378 S.E. 2d 613, 615 (Ct. App. 1989); See also, Town of Forest Acres v. Seigler, 224 S.C. 166, 77 S.E. 2d 900 (1953). In view of the legislature's obvious adherence to this Court's prior rulings relative to the binding nature of payment of compensation in conjunction with the filing of a Form 15, Mr. Jervey respectfully submits: (a) the application of Subsection (F) must be restricted to the termination of compensation in admittedly compensable claims (a transformation which occurs through payment of temporary total disability compensation) in accordance with a Form 15 following expiration of the 150 day investigatory period; and (b) this longstanding construction is wholly consistent with the legislature's explicit actions.

As recognized by this Court in a different context:

> . . .The public interest demands an end to the litigation of the same issue. Principals of finality, certainty and the proper administration of justice suggest that. . . [once an issue is adjudicated, it] should stand unless some compelling countervailing consideration necessitate relitigation." Shelton v. Oscar Mayer Foods Corporation, 325 S.C. 248, 481 S.E. 2d 706, 708 (1997), citing Beall v. Doe, 281 S.C. 363, 315 S.E. 2d 186, 189 (Ct. App. 1984).

While Mr. Jervey recognizes there are limited instances (more fully discussed in Argument II) where the finality of compensation payments pursuant to a Form 15 may be challenged, none of these factors are present in this instance. As a consequence, this notation of finality, which is essential to an employee's receipt of the "sure" compensation envisioned by the Act, should prevail.

In this connection, Mr. Jervey finally submits that failure to reverse the Court of Appeals' holding necessarily/unquestionably: (a) renders the 1996 amendment to §42-9-260 a futile/meaningless act; (b) deprives all employees of a fundamental element of the quid pro quo "right to swift and **sure** compensation" guaranteed by the Act; and (c) will exponentially increase litigation in the workers' compensation context, as the employer/carrier will now be allowed to contest basic liability throughout the life of every claim.

Accordingly, Mr. Jervey respectfully requests that the Court grant his Petition, review the Court of Appeals' decision, permit oral argument and issue a decision finding that the provisions of §42-9-260 (A) prevent Martint/General Casualty from relitigating the basic issue of liability following their payment of temporary total disability compensation, in conjunction with the previously filed Form 15, beyond the 150 day investigatory grace period authorized by this statute.

II. THE COURT OF APPEALS ERRED IN ATTEMPTING TO EXTEND ITS PREVIOUS RULING IN FREDRICK V. WELLMAN, INC., 385 S.C. 8, 682 S.E. 2D 516 (CT. APP. 2009) TO THE CURRENT CIRCUMSTANCES WHEN: (A) THE WELLMAN DECISION IS PREMISED UPON A MATERIAL MISCONSTRUCTION OF S.C. CODE ANN. §42-9-260 (2006); (B) APPLICATION OF THE COURT OF APPEAL'S ANALYSIS TO THE CURRENT CIRCUMSTANCES NOT ONLY MISAPPREHENDS AND/OR IGNORES SEVERAL CONTROLLING RULES OF STATUTORY CONSTRUCTION, BUT ALSO TRANSFORMS THE 1996 AMENDMENT OF §42-9-260 INTO A MEANINGLESS, FUTILE ACT; AND (C) THE LEGAL VITALITY/SUSTAINABILITY OF THE FREDRICK RULING NECESSARILY HINGES UPON FACTORS (FRAUDULENT STATEMENTS AND LACK OF SUBJECT MATTER JURISDICTION) THAT ARE NOT PRESENT IN THE CURRENT CONTEXT.

While the Court of Appeals concluded its holding in Fredrick was dispositive of the relitigation issue, Fredrick is distinguishable in several respects. Specifically, Fredrick involved a post-150 day attempt to deny basic liability due to the presence of a fraudulent misrepresentation in the employee's employment application.

In this regard, it has been consistently held: (a) "before the provisions of the. . . Act become applicable, the relationship of master and servant or employer and employee must exist" (Cooper v. McDevitt & Street Co., 260 S.C. 463, 196 S.E. 2d 833, 834 (1973); Pikaart v. A & A Taxi, Inc., 393 S.C. 312, 713 S.E. 2d 267, 270 (2011)); (b) "the relationship of employment [is]. . . a jurisdictional issue for purposes of work[ers'] compensation benefits" (Givens v. Steel Structures, Inc., 279 S.C. 12, 301 S.C. 2d 545, 546 (1983); Gray v. Club Group, LTD., 339 S.C. 173, 528 S.E. 2d 435, 440 (Ct. App. 2000)); (c) fraud in the application (as established in Fredrick) vitiates the employment relationship (Vines v. Champion Building Products, 315 S.C. 13, 431 S.E. 2d 585 (1993); Brayboy v. Workforce, 383 S.C. 463, 681 S.E. 2d 567, 569 (2009)); and (d) "[l]ack of subject matter jurisdiction can be raised at any time" (Lake v. Reeder Construction Co., 330 S.C. 242, 498 S.E. 2d 650, 653 (Ct. App. 1998); In re: Matthews, 345 S.C. 638, 550

S.E. 2d 311, 313 (2001); See also, McCreery, 400 S.E. 2d at 131 (apparently recognizing the presence of fraud would have allowed collateral attack based upon lack of subject matter jurisdiction)).

It should also be noted that judicial decrees (to which this Court equated the Form 15 in the Allen – Singleton – McCreery line of cases) have traditionally not been subject to collateral attack "except upon proof of fraud or want of jurisdiction." First Carolinas Joint Stock Land Bank of Columbia v. Knotts, 191 S.C. 384, 1 S.E. 2d 797, 805 (1939); Singleton v. Mullins Lumbar Company, 234 S.C. 330, 108 S.E. 2d 414, 420 (1959).

Given this limited exception, the Court of Appeals may have reached the proper result in Fredrick. However, its reliance on §42-9-260 (F) as the rationale for allowing relitigation of the basic liability issue was legally erroneous for the various reasons referenced in Argument I.

Additionally, the legislature's approximately 36 year acquiescence in the particular "method and procedure" initially adopted by the Commission through passage of Rule 67-10 (as well as subsequent regulations) further validates the Circuit Court's determinations that:

> (a) subsection (F) relates solely to claims for which liability is admitted/acknowledge; (b) the Commission's regulations adequately outline "the method and procedure for which benefits may be suspended or terminated" in the context of an admitted liability claim; and (c) this construction is wholly consistent with the Legislature's continued recognition of the binding impact/effect of the payment of compensation.

Accordingly, Mr. Jervey respectfully requests that the Court grant his Petition, review the Court of Appeals' decision, permit oral argument and issue a decision finding that the Court of Appeals' rationale for reversing the Circuit Court's construction of §42-

9-260 (focus on Subsection (F) and reliance on Fredrick ruling): (a) constitutes legal error; (b) must be reversed; and (c) misconstrues the legislative intent prohibiting retrial of the basic liability issue once temporary total disability compensation has been paid, per a duly filed Form 15, beyond the 150 day investigatory grace period prescribed by Subsection (A).

Respectfully submitted,

Andrew N. Safran, Esquire
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689
Attorney for Respondent

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

THE HONORABLE R. KNOX MCMAHON, CIRCUIT COURT JUDGE

CASE NUMBER: 2008-CP-32-2361

William T. Jervey, Jr., Employee .....Respondent/Petitioner,

v.

Martint Environmental, Inc., Employer, and General Casualty Insurance Company, Carrier .....Petitioners/Respondents.

CERTIFICATE OF SERVICE

I, Roxanne R. Moorer, legal assistant for Andrew N. Safran, Esquire, Attorney for Petitioner, do hereby certify that on the 30th day of April, 2012 I caused to be filed, via first class mail, the original and six (6) copies of the Petitioner's Petition for Writ of Certiorari, with the Clerk of the South Carolina Supreme Court. One (1) copy of the Petitioner's Petition for Writ of Certiorari was furnished to counsel for Respondents via first class mail at the following address:

E. Ros Huff, Jr., Esquire
HUFF LAW FIRM, LLC
Post Office Box 1935
Irmo, South Carolina 29063
Attorney for Appellants

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

Roxanne R. Moorer
Roxanne R. Moorer
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Columbia, South Carolina 29211
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April 30, 2012

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COLUMBIA, SOUTH CAROLINA 29211

April 30, 2012

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: William T. Jervey, Jr. v. Martint Environmental, Inc. and General Casualty Insurance Company
Civil Action Number: 2008-CP-32-2361

Dear Mr. Shearouse:

Enclosed please find an original and eight copies of a Petition for Certiorari, as well as two Appendices, relative to the above-captioned matter. I have also enclosed a third partial Appendix (which does not include the Record on Appeal and Briefs which were filed with the Court of Appeals). Additionally, I have enclosed our firm's check in the amount of $100.00 in satisfaction of your filing fee. At this time, I would greatly appreciate your filing these documents. I will retrieve two clocked copies of the Petition, as well as a clocked copy of the partial Appendix from the Court this week.

By copy of this letter, I am serving a copy of the Petition and a partial Appendix on Ros Huff, counsel for Respondents. I am also serving a copy of the Petition on the Honorable Jenny Abbott Kitchings, Clerk of Court for the South Carolina Court of Appeals. As always, in the event they have any questions or comments concerning this matter, I invite them to contact me.

Thank you for your cooperation.

With kindest regards, I am

Very truly yours,

Andrew N. Safran

Check #8806
$100.00

ANS/rrm

Enclosures

cc: E. Ros Huff, Jr., Esquire
Honorable Jenny Abbott Kitchings

The Supreme Court of South Carolina

Andrew N. Safran

05/04/2012

RECEIPT #64094

Fee Type:	Case Initiation Fee
Amount:	$100.00
Payment Type:	Check
Reference No:	8806
Check/Money Order Date:	04/30/2012
Comments:	Jervey v. Martint

Deposited