

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION
★VOLUNTARY REMANDED ★
BY THE APPELLATE PANEL

Appellate Case No. 2019-000369
Formerly 2018-001364
W.C.C. File Nos. 1322451, 1319203, 1420487

RECEIVED
APR 29 2019
SC Court of Appeals

Terry H Capone,

Appellant,

v.

City of Columbia, Employer, and
Companion Third Party Administrator, LLC, Carrier,

Respondents,

★ **AMENED** INITIAL BRIEF OF APPELLANT ★

Terry H Capone, Pro Se Appellant.

Mr. Terry H Capone
Fire Battalion Chief-Retired
130 Summerlea Drive
Columbia, South Carolina 29203
(803) 622-6578
tcapone@liberty.edu
Pro Per, Appellant

April 27, 2019*

TABLE OF CONTENTS

Table of Authorities/ Cases.....

Statement of Issues on Appeal.....

Statement of the Case.....

Facts

Standard of Review

Arguments

EXCERPT:

1.THE SOUTH CAROLINA WORKERS' COMPENSATION SCHEME IS UNCONSTITUTIONAL, BECAUSE IT ABRIDGED THE RIGHTS OF THE APPELLANT BY DENING HIM DUE PROCESS, PROCEDURAL DUE PROCESS AND EQUAL PROTECTION UNDER THE COLOR OF LAW AND DID NOT HAVE PERSONAL OR SUBJECT JURISDICTION AS WAS OBTAINED THROUGH TRICKERY AND FRAUD UPON THE COURT AND DEVALUTION OF HIS WORKERS COMPENSATION BENEFITS IN WHICH HIM AND HIS FAMILY HAVE A PROTECTED SUBSTANTIAL PROPERTY INTEREST; ALTERED MEDICAL REPORTS/ OPINONS AND OMITTED EVIDENCE TO DENY HIS WORK RELATED DISABILITY, BUT HAS A HISTORY OF FAVORABLE FINIDNGS OF DISABILITY OUTCOMES TO WHITES/ CAUCASIANS LIKE: **TED FRAME** WHO WAS PERMANENTLY DISABLED BY HIS BI- POLAR DISORDER THAT WERE AGGRAVATED BY HIM SEEING THE MISTREATMENT OF AFRICAN AMERICANS/ BLACK WORKERS AND **CLEO N. POWELL** WHO AS RESULT OF AN ALTERCATION WITH A SUPERVISOR, WHO PUSHED A FINGER INTO HIS CHEST, CURSED HIM, CALED HIM A LIAR AND ACCUSSED POWELL OF POOR MAINTENANCE .

Conclusions -Relief Requested.....

TABLE OF AUTHORITES

CASES

The Supremacy Clause of the United States Constitution provides that “the Laws of the United States . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2. State and local laws are thus preempted when they conflict with federal law. See *National Helicopter Corp. of Am. v. City of New York*, 137 F.3d 81, 88 (2d Cir.1998).

The Fifth Amendment to the United States Constitution reads in relevant part” . . . [n]o person shall be deprived of life, liberty, or property, without due process of law.” The 14th Amendment to the United States Constitution contains similar due-process language and reads in relevant part “. . . nor shall any State deprive any person of life, liberty, or property, without due process of law.”

A judgment may not be rendered in violation of constitutional protections. The validity of a judgment may be affected by a failure to give the constitutionally required due process notice and an opportunity to be heard. *Earle v. McVeigh*, 91 US 503, 23 L Ed 398. See also Restatements, judgments 4(b). *Prather v. Loyd*, 86 Idaho 45, 382 P2d 910.

The “words used [in the statute must be] so clear, strong, and imperative that no other meaning can be annexed to them, or . . . the intention of the legislature [must be such that it] cannot be otherwise satisfied.” *U.S. Fid. & Guar. Co. v. United States*, 209 U.S. 306, 313, 314, 28 S.Ct. 537, 52 L.Ed. 804 (1908).

The Due Process Clause of the Fifth Amendment guarantees that an individual will not be deprived of life, liberty, or property without due process of law. U.S. Const. amend. V. Due process of law has been interpreted to include notice and a fair opportunity to be heard. See *Mullane v. Cent. Hanover Tr. Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950). To raise a due process question, the claimant must demonstrate a property interest entitled to such protections. *Richard v. West*, 161 F.3d 719, 723 (Fed.Cir.1998).

"Where a court failed to observe safeguards, it amounts to denial of due process of law, court is de-privèd of juris." *Merritt v. Hunter*, C.A. Kansas 170 F.2d 739 (10TH Cir. 1948)

In this regard, the appellant claimed that the Board’s consideration of the altered medical records had effectively denied him a full and fair hearing on the merits of his claim and thereby deprived him of a property interest in the VA benefits he was seeking without due process of law. *Cushman v. Shinseki* United States Court of Appeals for the Federal Circuit 576 F.3d 1290 (2009)

The United States Court of Appeals for Veterans Claims (CAVC) upheld the Board’s decision with respect to the 1977 decision. *Id.* That decision was then summarily affirmed by the United States Court of Appeals for the Federal Circuit (Federal Circuit) with the provision that the appellant would be free again to raise his previous claims. *Cushman*, 576 F.3d at 1296.

As the Supreme Court explained more than 50 years ago in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955), res judicata does not bar a suit, even if it involves the same course of wrongful conduct as alleged earlier, so long as the suit alleges new facts or a worsening of the earlier conditions. That is precisely the case here, with (1) expanded runways, including one 2000 feet closer to Plaintiffs' home; (2) new water pollution from the expansion; and (3) the revelation that the City has denoted Plaintiffs' property for acquisition because it is in runway areas where residential use is forbidden.

Similarly, res judicata does "not bar a claim that does not accrue prior to the litigation triggering the bar." *Funny Guy*, 795 S.E.2d at 900 (emphasis added). A party is not precluded from bringing a claim that he was unable to bring in the initial litigation, regardless whether that claim constitutes part of the same "conduct, transaction, or occurrence." *D'Ambrosio*, 809 S.E.2d at 628; *Funny Guy*, 795 S.E.2d at 890 ("Determining which claims should have been brought in earlier litigation largely depends on which claims could have been brought." (citation omitted)); see also *Lawlor v. Nat'l Screen Serv. Corp.*, 349 U.S. 322, 328 (1955) (explaining that although an earlier 7 judgment "precludes recovery on claims arising prior to its entry, it cannot be given the effect of extinguishing claims which did not even then exist").

§ 3. Privileges and immunities; due process; equal protection of laws. The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.) Editor's Note The present provisions of this section are identical to former § 5 of Article I as it existed prior to the 1971 revision. For similar provisions in Constitution of 1868, see Const 1868, Art I, § 12;;;MI;;;.

§ 9. Courts; speedy remedy. All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained. (1970 (56) 2684; 1971 (57) 315.) Editor's Note The present provisions of this section are identical to former § 15 of Article I as it existed prior to the 1971 revision. For similar provisions in Constitution of 1868, see Const 1868, Art I, § 15;;;MI;;;.

§ 22. Procedure before administrative agencies; judicial review. No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review. (1970 (56) 2684; 1971 (57) 315.)

§ 23. Provisions of Constitution mandatory. The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissive by its own terms. (1970 (56) 2684; 1971 (57) 315.) Editor's Note The present provisions of this section are identical to former § 29 of Article I as it existed prior to the 1971 revision.

These due process rights apply to South Carolina Workers' Compensation benefits all covered South Carolinian's have a property interest in South Carolina Workers' Compensation benefits, "we have previously recognized that entitlement to workers' compensation benefits constitutes a property interest. Orszula v. Orszula, 292 S.C. 264, 356 S.E. (2d) 114 (1987)".

Jurisdiction

"When it clearly appears that the court lacks jurisdiction, the court has no authority to reach the merits. In such a situation the action should be dismissed for want of jurisdiction." *Melo v. US*, 505 F.2d 1026 (8th Cir. 1974) "A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court". *Old Wayne Mut. L. Assoc. v. McDonough*, 204 U.S. 8, 27 S. Ct. 236 (1907). "There is no discretion to ignore lack of jurisdiction." *Joyce v. US*, 474 F.2d 215 (1973).

Res Judicata

Thus Appellant current claims based on events that occurred after the above cited litigation could not have been brought, based on a separate set of facts and occurrences that are separate distinct and did not exist.

"To answer this question, a number of other circuits have "adopted a bright-line rule

that resjudicata does not apply to events post-dating the filing of the initial complaint." *Morgan v. Covington Twp.*, 648 F.3d 172, 177-78 (3d Cir. 2011); see also *Bank of NY. v. First Millennium, Inc.*, 607 F.3d 905, 919 (2d Cir. 2010); *Smith v. Potter*, 513 F.3d 781, 783 (7th Cir. 2008); *Rawe v. Liberty Mut. Fire Ins. Co.*, 462 F.3d 521, 529-30 (6th Cir. 2006); *Mitchell v. City of Moore*, 218 F.3d 1190, 1202 (10th Cir. 2000); *Manning v. City of Auburn*, 953 F.2d 1355, 1360 (11th Cir. 1992); cf *Young-Henderson v. Spartanburg Area Mental Health Ctr.*, 945 F.2d 770, 774 (4th Cir. 1991) (suggesting without 10 *Howard v. City of Coos Bay* deciding that resjudicata need not "preclude claims that could not have been brought at the time the first complaint was filed"); 18 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 4409 (3d ed. 2017) ("Most cases rule that an action need include only the portions of the claim due at the time of commencing that action, frequently observing that the opportunity to file a supplemental complaint is not an obligation."). Indeed, the Seventh Circuit has gone so far as to call it the "federal rule," *Ellis v. CCA of Tennessee LLC*, 650 F.3d 640, 652 (7th Cir. 2011), and the Supreme Court spoke approvingly of this line of cases in *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2305 (2016)."

South Carolina courts use various tests in determining whether a claim should have been raised in a prior suit: "(1) when there is identity of the subject matter in both cases; (2) where the cases involve the same primary right held by the plaintiff and one primary wrong committed by the defendant; (3) when there is the same evidence in both cases; and recently (4) when the claims arise out of the same transaction or occurrence." *Plum Creek Development Co., Inc. v. City of Conway*, 334 S.C. 30, 512 S.E.2d 106, 109 (1999) (citing *South Carolina Civil Procedure*, pp. 649-50).

South Carolina courts have held that "[i]f the same facts or evidence would sustain both, the two actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action. If, however, the two actions rest upon different states of facts, or if different proofs would be required to sustain the two actions a judgment in one is no bar to the maintenance of the other." *Griggs v. Griggs*, 214 S.C. 177, 51 S.E.2d 622, 626 (1949) (quoting 30 Am.Jur. § 174 at 174).

However, where a medical opinion is sufficiently clear to remove any reason for the trier of fact to have to guess at the cause of the injury, that opinion is stated within a reasonable degree of medical certainty. *Huffy Service First v. Ledbetter*, 76 Ark. App. 533, 69 S.W.3d 449 (2002), citing *Howell v. Scroll Tech.*, 343 Ark. 297, 35 S.W.3d 800 (2001). However, the Commission is not free to arbitrarily disregard any expert medical opinion. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W. 3d 760 (2001).

Some personal injury victims who sustain serious traumatic brain injury are often considered by law to be of "unsound mind." A person of "unsound mind" is unable to manage his affairs or to understand his legal rights or liabilities. *Sahf v. Lake Havasu City Assn' for the Retarded*, 150 Ariz. 50, 55, 721 P.2d 1177, 1182 (1986); *Allen v. Powell's Int'l, Inc.*, 21 Ariz. App. 269, 270, 518 P.2d 588, 589 (1974).

Other courts create their own standard, to be applied either independently or in combination with their test for insanity. For example, in one case, the judge defined an unsound mind as follows: "An unsound mind exists where there is an essential privation of the reasoning faculties, or where a person is incapable of understanding and acting with discretion in the ordinary affairs of life." *Turner v. Howerton et al.*, no. 22689-VA, April 2, 1997

The South Carolina Workers's Compensation Act was tailored after the North Carolina Act and opinions of the North Carolina Supreme Court construing such Act are entitled to great weight with the appellate courts of this state. *Carter v. Penney Tire and Recapping Co.*, 261 S.C. 341, 200 S.E. (2d) 64 (1973).

I agree with the majority that decisions of North Carolina courts construing that state's workers' compensation statutes are entitled to great weight. *Nelson v. Yellow Cab Co.*, 349 S.C. 589, 564 S.E.2d 110 (2002).

An appellate court may reverse a decision of the Appellate Panel if a claimant's substantial rights "have been prejudiced because the [Appellate Panel's] findings, inferences, [or] conclusions" are "affected by other error of law," or "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." S.C. Code Ann. § 1-23-380(5) (Supp. 2010).

"Great liberality is to be exercised in allowing the introduction of evidence in workers' compensation proceedings." *Trotter v. Trane Coil Facility*, 384 S.C. 109, 116, 681 S.E.2d 36, 40 (Ct. App. 2009).

Second, hearsay evidence is admissible in workers' compensation proceedings "if corroborated by facts, circumstances, or other evidence." *Hamilton v. Bob Bennett Ford*, 339 S.C. 68, 70, 528 S.E.2d 667, 668 (2000). The testimony of Cantrell's human resources administrator was corroborated by other evidence before the Appellate Panel, including the form and a statement made by Cantrell to his physician. Accordingly, the Appellate Panel did not err in relying on the testimony.

Extension of Limitation Period

South Carolina Code 15-3-40 (2013) Exceptions as to person under disability If a person entitled to bring an action mentioned in Article 5 of this chapter or an action under Chapter 78 of this title, except for a penalty or forfeiture or against a sheriff or other officer for an escape, is at the time the cause of action accrued either:

(1) within the age of eighteen years; or

(2) insane;

the time of the disability is not a part of the time limited for the commencement of the action, except that the period within which the action must be brought cannot be extended:

(a) more than five years by any such disability, except infancy; nor

(b) in any case longer than one year after the disability ceases. SECTION 15-3-60. Effect of two or more disabilities.

When two or more disabilities shall coexist at the time the right of action accrues the limitation shall not attach until they all be removed.

Section 15-3-50 Disability must exist when right accrued.- "No person shall avail himself of a disability unless it existed when his right of action accrued.

Statutes: 15-3-640 15-3-670 Real Property- Area of Law Action based upon defective or unsafe condition of improvement to real property

(8) years (statue establishes an outside limitation of 8 years after substantial completion of the improvement during which normal statutes of limitation continue to run) (Limitation period may not be asserted by (1) defendant in personal injury or wrongful death action

Who was in possession of property and knew or should have known of defect; (2) defendant who engaged in fraud, gross negligence, or reckless misconduct in connection with the improvements or who concealed any cause of action; (3) defendants in personal injury or wrongful death action (a) if the injury, by its nature, was not discoverable in the exercise of reasonable diligence at the time of its occurrence, and (b) the injury was the result of exposure to a toxic or other harmful substance overtime, instead of the result of a sudden and fortuitous trauma

Fraud Upon The Court

Brenda Goff v. Ford Motor Company, Case No. 2:97-0341 (March 15, 2001). This conspiracy between Ford and its former employee, a conspiracy facilitated by Ford's defense counsel, was first exposed to the public eye by the plaintiffs in the ***Cammack*** trial, discussed *supra*. Three months later, the South Carolina Court of Appeals concluded that the conspiracy

between Ford and its former employee through which Ford knowingly purchased and used false testimony might constitute "fraud on the court." *Chewing v. Ford Motor Company*, 550 S.E.2d 584 (S.C.App. 2001).

Fraud upon the court is "fraud which . . . subvert[s] the integrity of the Court itself, *or is a fraud perpetrated by officers of the court* so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Evans v. Gunter*, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct. App. 1988) (emphasis added) (quoting *Lightsey & Flanagan*, supra, at 408). It has also been defined as "fraud that does, or at least attempts to, defile the court itself . . ." 12 Moore's Federal Practice § 60.21[4][a] (3d. ed. 2000). Historically, after the period to claim relief under Rule 60(b)(1) through (3), SCRPC, has expired, courts have required a showing of extrinsic fraud to vacate a judgment. See *Hagy v. Pruitt*, 339 S.C. 425, 430, 529 S.E.2d 714, 717 (2000); *Evans*, 294 S.C. at 529, 366 S.E.2d at 46.

Fraud upon the court is a narrow and invidious species of fraud that "subverts[s] the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Chewing v. Ford Motor Co.*, 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003). Like all other types of fraud, proving fraud upon the court requires showing that the perpetrator acted with the intent to defraud, for there is no such thing as accidental fraud. See *Chewing*, 354 S.C. at 78, 579 S.E.2d at 608 ("'Fraud upon the court,' whatever else it embodies, requires a showing that one has acted with an intent to deceive or defraud the court."); *Black's Law Dictionary* 660 (6th ed. 1990) ("As distinguished from negligence, [fraud] is always positive, intentional.").

Fraud upon the court in obtaining a complaint, information, or indictment invalidates all orders of the court and causes the case to be null and void *ab initio*. "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p.512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

It is also clear and well-settled Illinois law that any attempt to commit "fraud upon the court" vitiates the entire proceeding. *People v. Sterling*, 357 Ill. 354; 192 N.E. 229 (1934) ("The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions."); *Moore v. Sievers*, 336 Ill. 316; 168 N.E. 259 (1929) ("The maxim that fraud vitiates every transaction into which it enters . . ."); *In re Village of Willowbrook*, 37 Ill.App.2d 393 (1962) ("It is axiomatic that fraud vitiates everything."); *Dunham v. Dunham*, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896); *Skelly Oil Co. v. Universal Oil Products Co.*, 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949); *Stasel v. The American Home Security Corporation*, 362 Ill. 350; 199 N.E. 798 (1935). Under Illinois and Federal law, when any officer of the court has committed "fraud upon the court", the orders and judgment resulting from such fraud on that court are void, of no legal force or effect. In *Kupferman v. Consolidated Research & Manufacturing Corp*, 200 the court stated that [w]hile an attorney "should represent his client with singular loyalty that loyalty obviously does not demand that he act dishonestly or fraudulently; on the contrary his loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court." And when he departs from that standard in the conduct of a case he perpetrates a fraud upon the court.201

In other words, “[s]ince attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court.”²⁰² In order to establish fraud on the court, some courts require the movant to prove by clear and convincing evidence intentional fraudulent conduct specifically directed at the court itself.²⁰³

Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action. *Chewing v. Ford Motor Co.*, 354 S.C. 72, 80, 579 S.E.2d 605, 610 (2003) (quoting *Hilton Head Ctr. of South Carolina v. Public Serv. Comm’n*, 294 S.C. 9, 11, 362

Other circuits have adopted more general standards.

See, e.g., *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989) (fraud upon the court is an “unconscionable scheme calculated to interfere with the judicial system’s ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party’s claim or defense”); *Gleason v. Jandrucko*, 860 F.2d 556, 559 (2^d Cir. 1989) (“fraud which seriously affects the integrity of the normal process of adjudication”); *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir. 1978) (“only the most egregious conduct, such as bribery of a judge or members of the jury, or the fabrication of evidence by a party in which an attorney is implicated”); *Oxford Clothes XX, Inc. v. Expeditors Int’l, Inc.*, 127 F.3d 574, 578 (7th Cir. 1997) (“conduct that might be thought to corrupt the judicial process itself, as where a party bribes a judge or inserts bogus documents into the record”); *Greiner v. City of Champlin*, 152 F.3d 787, 789 (8th Cir. 1998) (“egregious misconduct directed to the court itself”); *Dixon v. Commissioner*, No. 00-70858, 2003 U.S. App. LEXIS 4831, at *11-12 (9th Cir. Mar. 18, 2003), amending 316 F.3d 1041 (9th Cir. 2003) (“unconscionable plan or scheme which is designed to improperly influence the court in its decision”).

Doctrine of Equitable Tolling

Equitable tolling is judicially created; it stems from the judiciary’s inherent power to formulate rules of procedure where justice demands it. *Rodriguez v. Superior Court*, 98 Cal. Rptr. 3d 728 (Ct. App. 2009). “Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period ‘to ensure fundamental practicality and fairness.’” *Id.* at 736 (citation omitted).

“The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other.” *Hausman v. Hausman*, 199 S.W.3d 38, 42 (Tex. App. 2006). Equitable tolling may be applied where it is justified under all the circumstances.

In addition to these statutory tolling mechanisms, however, “[i]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations.” 54 C.J.S. *Limitations of Actions* § 115 (2005). “Equitable tolling is a nonstatutory tolling theory which suspends a limitations period.” *Ocana v. Am. Furniture Co.*, 91 P.3d 58, 66 (N.M. 2004).

Tolling & Doctrine of Unclean Hands

The doctrine of unclean hands “precludes a plaintiff from recovering **in equity** if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.” *Ingram v. Kasey’s Assocs.*, 340 S.C. 98, 107 n.2, 531 S.E.2d 287, 292 n.2, (2000) (emphasis added). The equitable doctrine of

unclean hands; however, has no application to an action at law. E.g., Holmes v. Henderson, 549 S.E.2d 81 (Ga. 2001); Ellwood v. Mid States Commodities, Inc., 404 N.W.2d 174, 184 (Iowa 1987).

South Carolina law provides for tolling of the applicable limitations period by statute in certain circumstances. See S.C. Code Ann. § 15-3-30 (2005) (stating exceptions to the running of the statute of limitations when the defendant is out of the state); *id.* § 15-3-40 (providing exceptions for persons under a disability, including being underage or insane).

In addition to these statutory tolling mechanisms, however, “[i]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations.” 54 C.J.S. Limitations of Actions § 115 (2005). “Equitable tolling is a nonstatutory tolling theory which suspends a limitations period.” *Ocana v. Am. Furniture Co.*, 91 P.3d 58, 66 (N.M. 2004).

Tolling & The Doctrine of Imposition

The Doctrine of imposition allows the commission to render decisions based on justice “shown by the total circumstances even though no fraud, mistake or concealment has been shown. *Avon Products, Inc. v. Ross*, 14 Va. App. 1, 7, 456 S.E.2d 140, 143 (1995).

Reliance on the doctrine of imposition requires a threshold showing of unfairness (i.e. the employer uses superior knowledge, experience, or economic advantage to cause an “unjust deprivation to the employee of benefits provided under the Act.” *Strong v. Old Dominion Power Co.*, 35 Va. App. 119, 126, 543 S.E.2d 598, 601 (2001). The doctrine will not be applied where the carrier’s actions are consistent with an endeavor to comply with the Act. *Hampton Inn v. King*, 58 Va. App. 286, 708 S.E.2d 450 (May 17, 2011)

See Rule, 11(a), SCRCP (stating “[e]very pleading, motion[,] or other paper represented by an attorney shall be signed in his individual name by at least one attorney of record,” and the signature “constitutes a certificate by [the attorney] that he has read the pleading, motion[,] or other paper; that to the best of his knowledge, information[,] and belief there is good ground to support it; and that it is not interposed for delay”); *Gregory*, 378 S.C. at 437, 663 S.E.2d at 50 (interpreting Rule 11(a) as allowing sanctions against a party or party’s attorney “for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments”(citing *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996))).

STATEMENT OF ISSUES ON APPEAL

1. Res judicata bars a second suit where (1) it involves the same parties as the first suit; (2) the first suit resulted in a final judgment on the merits; (3) the second suit raises claims based on the same transaction or occurrence as the first suit; and (4) the claims in the second suit were raised or could have been raised in the first suit. The Appellant was dismissed with prejudice in his first suit, and his second suit relies on several occurrences not in existence during from the first suit: worsening conditions from occupational exposures, 2016 Social Security Disability Determination PTSD, Anxiety, Major Depression and Irritable Bowel Syndrome IBS-D are severe and Appellant is totally disabled; 2017 Post Traumatic Stress Disorder diagnosed as an Occupational Disease; City of Columbia released the Appellants Employee Medical records; City of Columbia released documents proving exposure to toxic mold(fungus); Richland County released documents proving exposures to toxic mold(fungus); U.S. Department of Veterans Affairs determination PTSD is a result of Marines and Fire Service, the Appellant was "insane" during the time of events leading to discharge, his character of discharge has been determined to be honorable for U.S. Department of Veterans Affairs Purposes, and He has been provided with 4 Compensation and Pensions exams to determine disabilities related to his military service. Can the South Carolina Workers' Compensation Commission & Defendants meet its burden to establish all four elements of res judicata to bar the second suit?

"To answer this question, a number of other circuits have "adopted a bright-line rule

that resjudicata does not apply to events post-dating the filing of the initial complaint." *Morgan v. Covington Twp.*, 648 F.3d 172, 177-78 (3d Cir. 2011); see also *Bank of NY. v. First Millennium, Inc.*, 607 F.3d 905, 919 (2d Cir. 2010); *Smith v. Potter*, 513 F.3d 781, 783 (7th Cir. 2008); *Rawe v. Liberty Mut. Fire Ins. Co.*, 462 F.3d 521, 529-30 (6th Cir. 2006); *Mitchell v. City of Moore*, 218 F.3d 1190, 1202 (10th Cir. 2000); *Manning v. City of Auburn*, 953 F.2d 1355, 1360 (11th Cir. 1992); cf *Young-Henderson v. Spartanburg Area Mental Health Ctr.*, 945 F.2d 770, 774 (4th Cir. 1991) (suggesting without 10 *Howard v. City of Coos Bay* deciding that resjudicata need not "preclude claims that could not have been brought at the time the first complaint was filed"); 18 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 4409 (3d ed. 2017) ("Most cases rule that an action need include only the portions of the claim due at the time of commencing that action, frequently observing that the opportunity to file a supplemental complaint is not an obligation."). Indeed, the Seventh Circuit has gone so far as to call it the "federal rule," *Ellis v. CCA of Tennessee LLC*, 650 F.3d 640, 652 (7th Cir. 2011), and the Supreme Court spoke approvingly of this line of cases in *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2305 (2016)."

2. Commissioner Gene Henry McCaskill Denied Mr. Capone Procedural Due process committing Fraud UponThe Court, when he altered the medical opinion, then quoted it as, a FINDINGS OF FACT – #18. Commissioner Gene McCaskill states:

"As to the Claimant's Post Traumatic Stress Disorder claim being casually related to his employment, there is nothing in the record, other than the subjective complaints of the Claimant, that establish the origin or aggravation of the Claimant's Post Traumatic Stress Disorder"... #19. "That is not to say that the Claimant does not suffer from Post Traumatic Stress Disorder. However, it appears from the notes of both Dr. Nicholas Lind and Sheryl Mims- Williams, both of whom have a professional specialization to the Mind to the mind, that the Claimant does not suffer from Post Traumatic Stress Disorder which is casually related to his employment with the City.

Actual Unaltered opinion: Page #2, Dr. Nicholas Lind notes,"His PTSD were aggravated in 2013 when as a firefighter, he responded to a traumatic call, which resulted in his retirement."(Post Trauma Resources 3 April 2015).

This Single Commissioner and Commission relied on altered medical records (specifically Dr. Linds medical opinion) in its decision to deny / devalue benefits and such reliance was prejudicial to Appellants/ Claimants claim, the Single C commissioner Gene Henry McCaskill in his Workers Compensation scheme has violated Mr. Capone's due process rights to a fair impartial hearing by 1. Altering the opinion

Then relying on the altered medical opinion and other "omitted" medical documents in SC Workers' Compensation Commission's conclusion to deny and devalue benefits, in which Mr. Capone and the Capone family, have a substantial property interest and was clearly fraud Upon the Court. *Cushman v. Shinseki*, 576 F.3d 1290 (Fed. Cir. 2009).

3. In order for Firefighter -Fire Battalion Chief Terry H Capone, Disability Retired, to practice life safety, Incident stabilization and property conservation, he had to be certified through multiple agencies to make decisions on the life and death decisions in regards to citizens and non citizens of the United States , and South Carolina, how then do this Commission justify allowing Commissioner Gene Henry McCaskill, and who you name a Chairman, to illegally practice law without state license, making life and death decisions in regards to Mr Capone's life and or any other Natural Born Citizens in the United States, without consent, and notification that he was is not a lawyer, and has no license to practice law in the State of South Carolina, he had no authority, no standing and no jurisdiction to take a right provided by common law or under the UNITED STATES or the United States of American, that is Constitutionally protected.

4. As a Firefighter-Fire Battalion Chief Terry H Capone, Disability Retired, it doesn't matter during a firefighters shift, 1 call or 20 calls as an example, the reports have to be compelled after an incident to document the event. Commissioner McCaskill didn't even complete the write up for the decision, he had the Defendants Attorney's office complete it, so the order didn't not even a pair fair or impartial or was this also done because the commissioner hold no license to practice law in the state? If he can not practice law, and he can't write law, how then can he make competent decisions of law and statues without advising those that come before the Tribunal he has not right to do so? This is Fraud Upon the Court, and acting outside authority, jurisdiction and an abuse of discretion, no right was implied or given

5. See Notice of Judicial Notice attached with this mailing

6. The Commission did error or abuse their discretion by dismissing the appeal as Interlocutory although, "extraordinary circumstances was shown to exist and Substantial rights are prejudiced?"

7. The Commission did deprive the Claimant of "substantial rights" are prejudiced? Benefits(property interest)

8. Did "Extraordinary circumstances" Exist in the Claimant case that the Commission ignored?

9. Did the Commissions administrative findings, inferences, conclusions, or decisions: violate constitutional or statutory provisions: exceeds statutory authority of the agency; is made upon unlawful procedure; is affected by other error of law; is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion citing?

10. Did the Commission and Commissioners error or abuse their discretion by denying my motion to Alter, Amend, Set Aside Final Judgment, Order or Proceeding Decided December 2, 2015 Under Rule 60 (A) Oversights and Omissions?

11. Did the Commissioner and Commissioner error or abuse their discretion by denying my motion to Alter, Amend, Set Aside Final Judgment, Order or Proceeding Decided December 2, 2015 Under Rule 60 (B) (1) Newly Discovered Evidence which by Due Diligence Could Not have Been Discovered In Time To Move For A New Trial Under Rule 59 (B)?

12. Did the Commission and Commissioner error or abuse their discretion by denying my motion to Alter, Amend, Set Aside Final Judgment, Order or Proceeding Decided December 2, 2015 Under Rule 60 (B) (3) Fraud on the Court and That is Still Ongoing and states: Can the commission(a) entertain an independent action or relieve a party from judgment, order, or proceeding; or (B) set aside a judgment for fraud on the court

13. Did the Commission and Commissioner error or abuse their discretion by denying my motion to Alter, Amend, Set Aside Final Judgment, Order or Proceeding Decided December 2, 2015 Under Rule 60 (B) (4) The Judgment is Void or by where it acted in a manner inconsistent with Due Process of Law?

14. Did the Commission and Commissioner error or abuse their discretion by denying my motion to Alter, Amend, Set Aside Final Judgment, Order or Proceeding Decided December 2, 2015 Under Rule 60 (B) (5) It is based on an earlier judgment that applying it prospectively is no longer equitable; Or

15. Did the Commission and Commissioner error or abuse his discretion by denying my motion to Alter, Amend, Set Aside Final Judgment, Order or Proceeding Decided December 2, 2015 Under Rule 60 (B) (6) Any other reason that justifies relief from operation of A judgment?; To include But not limited to (a) In The Interest of Justice and or (b) Irregularities In agency Actions

16. Did the Commission and Commissioner error or abuse his discretion by denying my motion to Alter, Amend, Set Aside Final Judgment, Order or Proceeding Decided December 2, 2015 Under SC Code §1-23-380 (2013) (A) in violation of constitutional or statutory provisions?

17. Did the Commission and Commissioner error or abuse his discretion by denying my motion to Alter, Amend, Set Aside Final Judgment, Order or Proceeding Decided December 2, 2015 Under SC Code §1-23-380 (2013) (B) in excess of the statutory authority of the agency?

18. Did the Commission and Commissioner error or abuse his discretion by denying my motion to Alter, Amend, Set Aside Final Judgment, Order or Proceeding Decided December 2, 2015 Under SC Code §1-23-380 (2013) (C) made upon unlawful procedures?

19. Did the Commission and Commissioner error or abuse his discretion by denying my motion to Alter, Amend, Set Aside Final Judgment, Order or Proceeding Decided December 2, 2015 Under SC Code §1-23-380 (2013) (D) affected by other error of law?

20. Did the Commission and Commissioner error or abuse his discretion by denying my motion to Alter, Amend, Set Aside Final Judgment, Order or Proceeding Decided December 2, 2015 Under SC Code §1-23-380 (2013) (E) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole records?

21. Did the Commissioner and Commissioner error or abuse his discretion by denying my motion to Alter, Amend, Set Aside Final Judgment, Order or Proceeding Decided December 2, 2015 Under SC Code §1-23-380 (2013) (F) arbitrarily or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?

22.. The South Carolina Workers Compensation scheme “the Act”, is unconstitutional.

STATEMENT OF THE CASE- The Pledge

The State of South Carolina Workers' Compensation Commission is Unconstitutional. This is based on The State of South Carolina Workers' Compensation Commission and this Court's Long history & practicing racism (White Supremacy) which functions in all areas of human activity Labor, Law, Economics, Education, Entertainment, Politics, Religion, Sex and War, failure to appropriately investigate; Obstruction of Justice; Fraud Upon the Court; False Statements; Incompetence; Unfair & Unequal Treatment; Double Standards based on race and a denial of procedural & substantive due process, the devaluation of Workers Compensation Benefits (Property) I and my family have a substantial property- interest in. The decisions had disparate impacts, because despite all irrefutable evidence provided to the South Carolina Workers Compensation Commission, the State of South Carolina failed to provide equal protection under the color of law, there is a history of favorable outcomes to Whites/ Caucasians under your system of misogyny and racism (White Supremacy).

The South Carolina Workers Compensation Commission is Unconstitutional because it deprived Mr. Capone of Equal Protection and Procedural Due Process Under The Color of Law devaluation of South Carolina Workers' Compensation benefits that he and The Capone family hold a property interest in, that was supposed to be "automatic"," no fault" and "guaranteed". Under the 5th & 14 Amendments. "Fundamental Rights" and "substantial rights" are prejudiced and because the administrative findings, inferences, conclusions, or decisions: violates constitutional or statutory provisions; exceeds statutory authority of the agency; is made upon unlawful procedure; is affected by other error of law; is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, otherwise not in accordance with law. While it provided South Carolina Workers' Compensation benefits to similarly situated whites/ Caucasians, See:

Ted Frame and Resort Services Incorporated

It is not within the reviewing court's province to reverse findings of the Appellate Panel which are supported by substantial evidence if your White/ Caucasian. Frame v. Resort Servs., Inc., 357 S.C. 520, 528, 593 S.E.2d 491, 495 (Ct.App.2004)

Cleo N. Powell v. Vulcan Material Co.

See, Powell v. Vulcan Materials, Co., 299 S.C. 325, 384 S.E.2d 725 (1989).

Citing. "We have previously recognized that entitlement to workers' compensation benefits constitutes a property interest. Orszula v. Orszula, 292 S.C. 264, 356 S.E. (2d) 114 (1987)."

The State of South Carolina Workers' Compensation Commission employs Commissioners who are licensed as practicing attorneys and dully competent and qualified as administrative law judges to decide cases, and whose names are found on the Directory Members of attorneys in The State of South Carolina. The State of South Carolina Workers' Compensation Commission "The State" allowed my claim to be heard and decided by biased (Caucasian/White Males) unlicensed Commissioners Wilkerson, Jr , McCaskill, and Campbell, who are NOT dully competent or qualified, their names were not found on the Directory Member of attorneys in The State of South Carolina and are paid same sum of about \$124,000.00 (plus free car and per diem possible \$10,000) as the duly qualified by the State of South Carolina and some secretaries (Caucasian/ White) \$50,000.00 shows White Privilege and racism (White Supremacy) which is misogynistic and systemic.

In my case without an opportunity as a Pro Per litigant to decide/ "object"; be heard and then to have mix (unqualified/qualified) again and who are biased, cycle themselves in and out continuously denying the appeals from the very decisions complained of, reinvesting by voluntary remanding the case, "never being heard a new", in furtherance of racism (White Supremacy). In addition to the above aforementioned Constitutional and statutory provisions- Crime Fraud Exceptions, Active Concealment For Fraud In Real Property 15-3-670 (C) (1) (2) And Others regarding the above-referenced matters. The Workers' Compensation Commission's decisions were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. Sec. 706 (1977). The standard of review of the court is instructive. The court is to set aside the South Carolina Workers Compensation action if it finds it to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. Sec. 706 (1977). I am not a lawyer. Also enclosed are the original and seven copies of the Proof of Service. Thank you for your assistance with this matter, please contact me if you have any questions.

FACTS- PROCEDURAL HISTORY- The Turn

Mr. Terry H Capone (Capone), a Natural Born America Citizen of African-Decent, Fire Battalion Chief- Disability Retired, from the City of Columbia Fire Department , located in (RICHLAND COUNTY), Columbia, South Carolina as a Firefighter who is permanently and totally disabled as a result of firefighting service related disabilities, in (RICHLAND COUNTY), Columbia, South Carolina by (4) State and multiple Federal agencies requested leave from the South Carolina Court of Appeals, where Mr. Capone appealed an Interlocutory order from the “Full Commission” , “Extraordinary Circumstances Exist”, that continued the deprivation of Fundamental Rights, and deprivation of Substantial Rights are prejudiced from the continued denials and Devaluation of his Workers’ Compensation Benefits, in which Mr. Capone and the Capone family hold a substantial “property interest” to the minimum sum of \$1736.06, his stated Average Weekly Wage (AWW) x 500 Weeks totaling \$868,030.00. He continues to argue that the Single Commissioners committed Fraud Upon the Court by altering a medical opinion and then stating it as “fact” and omitting other medical evidence with Defendants Attorney Dana M Thye and others working in concert, that also included frivolous and fraudulent pleadings (Wire Fraud and Mail fraud) designed to deny and devalue the Workers Compensation claim; Full Commission erred in continuing the Fraud Upon the Court by:

1. Affirming a Void December, 2015 decision, were evidence shows a diagnosis on June 24, 2013, and injury to his toe (WCC File 1420487) and others; on October 12, 2013, in which he re-injured his bilateral hands/ wrist (WCC File No. 1319203) and other; and on November 7, 2013(Wcc File No. 1322451), where evidence shows his post traumatic stress disorder (PTSD) was an aggravation of a psychological injury that arose out of an August 21, 2015, hearing before Single Commissioner decisions finding his injuries were not work-related.
2. Single Commissioner denying the appeals based on res judicata.
3. Single Commissioner and Full Commission denying Capone’s motion to set aside a void judgment obtained by Fraud on The Court, Constitutional and other violations under SC R. Civ. P. Rule 60 (B)(4)(5)(6) and South Carolina Code Ann. § 1-23-380. This is based on 1. Fraud Upon The Court 2. Crime Fraud Exception 3. “Active Concealment” of Fraud in Real Property” 15-3-670 (c) (1)(2) 8 year statute of limitations
4. Violations of Constitutional Protected Rights to include Procedural Due Process and Equal Protection
5. Violations under the Racketeer Influenced and Corrupt Organizations Act (RICO) to include the use of Mail Fraud and Wire Fraud in the devaluation of Workers Compensation Benefits (property, property interest). Because the administrative findings, inferences, conclusions, or decisions: violates constitutional or statutory provisions; exceeds statutory authority of the agency; is made upon unlawful procedure; is affected by other error of law; is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion and “VOID” and should be set aside. Due to Fraud Upon the Court
6. The Commission denied request for medical evidence from Companion, TPA “Co-Defendant ”, preventing a fair and impartial hearing and continued abuse of discovery.

7. Any and All others that are applicable to grant authority and that may or may not be stated in greater detail below without prejudice.

8. S.C. R.Civ.P. Rule: 41(B) Grants The authority to set-aside a judgment obtained by Fraud Upon The Court, omitting of evidence, abuse of discovery and frivolous pleading, false statements, use of Mail Fraud and Wire Fraud, and others

1. December 2, 2015 Decision or Order from the SCWCC hearing held August 21, 2015 is Void having no effect, Commissioner Gene Henry McCaskill committed Fraud Upon The Court and violated my Constitutional right to due process protected by the 5th and 14th Amendments, when he altered the medical records, specifically the medical opinion of Dr. Nicholas Lind, to deny and the devaluation of my South Carolina Workers Compensation disability benefits which myself and my family have a substantial protected property interest in.

The South Carolina Workers Compensation Commission Commissioner Gene McCaskill committed Fraud upon the Court and violated the Constitutional rights of Mr. Terry H Capone when he altered the medical opinion April 3, 2015, Dr. Nicholas Lind , Post Trauma Resources, stating that”

Decision 2, 2015, page 17 FINDINGS OF FACT – #18. Commissioner Gene McCaskill states:”As to the Claimant’s Post Traumatic Stress Disorder claim being casually related to his employment, there is nothing in the record, other than the subjective complaints of the Claimant, that establish the origin or aggravation of the Claimant’s Post Traumatic Stress Disorder”... #19. “That is not to say that the

Claimant does not suffer from Post Traumatic Stress Disorder. However, it appears from the notes of both Dr. Nicholas Lind and Sheryl Mims- Williams, both of whom have a professional specialization to the Mind to the mind, that the Claimant does not suffer from Post Traumatic Stress Disorder which is casually related to his employment with the City.

Capone argument stems out of an Aug 15, 2015 decision, reconsideration hearing on February 21, 2018, by Commissioner Avery Wilkerson, Jr . Although, “substantial rights” where violated and “extraordinary circumstances” exist that substantiated the fraud and omitting of substantial evidence by the South Carolina Workers Compensation Commission Judicial Department and Commissioner McCaskill (Caucasian), Deputy City Attorney Dana Thye (Caucasian) working in concert and others, was instrumental in “Law and Motion Watz” an ultimately omitted and withheld Critical Material Evidence submitted prior in requested form 58’s from being admitted on my behalf in this workers’ compensation scheme, certified on December 2, 2015, determining, “that the Claimant is not entitled to any additional benefits for these claims under the Act. All three claims are dismissed with prejudice”. This is based on several here noted violations, by single commissioner Henry Gene McCaskill, Attorney Dana M. Thye and others, complicit in the Fraud which the Defendants, Defendants Attorneys and Commission continue to perpetrate to Devaluation of Workers Compensation Benefits, in which Mr. Capone and The Capone family have a substantial “property interest”. We have previously recognized that entitlement to workers' compensation benefits constitutes a property interest. Orszula v. Orszula, 292 S.C. 264, 356 S.E. (2d) 114 (1987). Fraud upon the court is “fraud which...subvert[s] the

integrity of the Court itself, or is a fraud perpetuated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.” Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct. App. 1988) (emphasis added)(quoting Lightsey & Flanagan, supra, at 408). It has also been defined as “fraud that does, or at least attempts to, defile the court itself...” 12 Moore’s Federal Practices §60.21 [4][a] (3d. ed.2000). The requisite fraud on the court occurs where “it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial systems ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party’s claim or defense”. Aoude v. Mobile Oil Corp., 892 F.2d 1115, 1118(1st Cir.1989).

The concept of “interest of justice” is not limited to any particular litigant or a pro se litigant, but rather must encompass a sense of overall justice in the case. The application of this standard requires the Commission to consider not only the interest of all parties, but the goals and objectives of the Workers’ Compensation Act, and integrity of the adjudicatory process before the Commission. Implicit in the requirement of justice is that no rule of the Industrial Commission may compel a result incompatible with the fundamental rights of any party. *See Handy v. PPG Indus.*, 154 N.C. App. 311, 571 S.E.2d 853 (2002) (emphasizing the importance of neutrality and impartiality of any tribunal in maintaining the integrity of our judicial and quasi-judicial processes).

Industrial Commission Rule 801, provide that:

In the interest of justice, these rules *may* be *waived* by the Industrial Commission. The rights of any unrepresented plaintiff will be given special consideration in this regard, to the end that a plaintiff without an attorney shall not be prejudiced by mere failure to strictly comply with any one of these rules.

D. Disciplinary Responsibilities.

- (1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of the Code should take appropriate action. A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question as to the other judges fitness for office shall inform the appropriate authority.*
- (2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct contained in Rule 407, SCACR, should take appropriate action. A judge having knowledge* that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.* To include notification of violations to of acts committed by Paralegals shall be given to proper Authority, to include the SC Ethics Commission, SC Bar Association, Insurance Fraud Investigators under South Carolina law.
- (3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Section 3D (1) and 3D (2) are part of a judge’s judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

E. Disqualification.

- (1) A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to insurances where:

On December 20, 2017, I received notification of a hearing to be held January 25, 2018, and included a new request for "Attorney's must file a form 58 with proof of service". I requested before I be made to submit a new form 58 to this Commission, and a hearing is held. I asked In The Interest of Justice the Commission vacate it's previous voided decision in the above captioned SC WCC case based on previous submitted form 58's omitted and concealed through fraud and perjury upon the court (Commission). It would be a mockery to uphold a decision obtained by such a fraud. This Commission has inherent power and in the Interest of Justice to annul the decision made by such means as those resorted to by Henry Gene McCaskill, and others and Dana M. Thye, and others. This complaint is being brought on firm ground. I declare the season of their lies is over, and their lies have no place in the future. The following people were provided evidence through medical opinion that my post traumatic stress disorder (PTSD) condition were aggravated and the result of my employment in the Columbia Fire Department, RE: Files 1420487, 1319203, 1322451.

Notification began June 21-24, 2015- The SC Workers' Compensation Commission, Kellie Lindler, Amy A Bracey, Judicial Department and City of Columbia Human Resources, City of Columbia Attorney Dana M. Thye, Paralegal Wendy M. James

In *Danos v. BMW Group Financial Services Canada*, 2014 ONSC 2060, the Ontario Superior Court of Justice dealt with a summary judgment motion brought by the defendants to dismiss the plaintiffs' claims that it forged their signatures on car leasing documents. The plaintiffs had leased a luxury car from the defendants but failed to keep up with the lease payments. The defendants took steps to repossess the car and commenced an action to recover its losses. After receiving the defendants' productions, the plaintiffs' allegedly discovered that their signatures were forged on a number of leasing documents, and commenced a fresh action claiming damages arising from the alleged fraud. The defendants brought a summary judgment motion to dismiss the action. The Supreme Court of Canada in *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, recently summarized the elements of the tort of civil fraud as follows: (1) a false representation made by the defendants; (2) some level of knowledge of the falsehood of the representation on the part of the defendants (whether through knowledge or recklessness); (3) the false representation caused the plaintiffs to act; (4) the plaintiffs' actions resulted in a loss.

3. However, the statute further provides that the court may reverse or modify the decision of the Commission "Corporation" if the substantial rights of party have been prejudiced because the administrative findings, inferences, conclusions or decisions are

a) In violation of constitutional or statutory provisions;

Violated my constitutional Fifth Amendment rights, Due Process-Clause [No State shall] deprive any person of life, liberty, or property, without due process of law. *Cushman*, 576 F.3d at 1296. Denial of Procedural Due process under 42 U.S.C. § 1983 in the United States 5th and contrary to the command of the Fourteenth Amendment for Denial of Equal Protection, Civil Rights Act 1866 and 1981 Denial of Equal Justice Under law (RACE) African Decent see DNA results. To prove the denial of due process, a party must also show that it has been substantially prejudiced by the administrative process. *Palmetto Alliance, Inc. v. S. C. Public Service Comm'n.*, 282 S.C. 430, 319 S.E.2d 695 (1984)

By the laws applied and decision made and certified on December 2, 2015 Decision in my SC Workers' Compensation Commission, Gene McCaskill, as a matter of Law:

“3. I find that the Claimant has not established a casual connection to the dates of injury pled and, thus has not met the burden necessary for compensability using the standard of a preponderance of the evidence or more likely than not. S.C. Code Ann. 42-1-16 and 42-9-35.”

“5. It is unlikely that a firefighter seeing a burned body [or] (**emphasis added**)other injuries [or] (**emphasis added**) events associated with the profession to include vehicle extrication, can be viewed as neither extraordinary nor unusual pursuant to S.C. Code Ann. 42-1-160 (37) **DSIMISSED WITH PREJUDICE.**

By Single Commissioner Gene McCaskill “omitting key evidence” in his possession and creating a “New Law” in his December 2, 2015 decision that is ambiguous, while acting as the Commission he violated the above Constitutional Rights, as stated.

The Judicial department and others despite receipt of credible evidence chose and remained silent. As U.S. Senator Cory Booker stated “When ignorance and bigotry is alive with power, it’s a dangerous force in our country”... ”silence and amnesia is complicity”. They discriminated against me based on my race, and their prejudices and those acts that lead them to conspire against me could and would have lead to my death, if not for my well grounded belief in God, my wife’s providing me with Blue Cross /Blue shield Health coverage and my team of physicians. That’s has continued through a hearing held by Commission Avery Wilkerson, Jr filed March 27, 2018 stated: “I find no medical evidence to suggest that the claimant had a then existing mental condition which prohibited him from filing a timely appeal” ...”as such, I find that res judicata applies”. In an appeal requested to the Full Commission then Dismissed as Interlocutory dated June 18, 2018, without receipt of a certificate of service, as with the others dated June 20, 2018. I have been unable to submit my present appeals and other pending matters, because besides the suffering form those what I am disabled by, I have been suffering additional complications from pain in my shoulders arms, hands and stomach with included finding blood in my stole as since June 2018, and was finally able to obtain a colonoscopy 1:00pm on July 18, 2018, and on that afternoon, once the anesthesia wore off enough I placed a letter in the U.S. Mail certified stating: please let this notice and enclosed payment \$100 (U.S. Postal money order #25023655350), serve as notice that I would like to appeal the attached SC WCC Judicial Conference Decision and Order date June 18, 2018 T Scott Back, to the South Carolina Court of Appeals Attn: Clerk of Court certified mail receipt#7016 1370 0000 8657 7253 and a copy to defendants counsel Attorney Cynthia C. Dooley certified mail receipt# 7016 1370 0000 8657 7260. On this date 7/18/2018, I followed up with an email at about 6:26 pm to submit the same information addressed to: Deller, Valerie VDeller@wcc.sc.gov;Hollmon, Eugenia EHollmon@wcc.sc.gov Cc:Thye, Dana dmthye@columbiasc.net ;James, Wendy M wmjames@columbiasc.net;Dooley, Cindy C.CDooley@TurnerPadget.com cindydooley-group@turnerpadget.com, who I know to be the Judicial Department of SC Workers Compensation Commission, Deputy City Attorney and Assistant to and Attorney Representing the Defendants.

I was denied benefits due as a result of injuries I sustained after serving the City of Columbia, Richland County and State of South Carolina as Firefighter-Fire Battalion Chief 17 years career. From 03/10/1997 as a recruit firefighter through 03/28/2104, being disability retired as a Firefighter-Fire Battalion Chief. While a I was disabled, extremely vulnerable during and after my hearing in 8/ 2015; which would be back dated to 10/21/2013 the shift I was unable to work and in 2016 was backed dated to such by the Social Security Disability Determination. I was unable to appeal due to a cascade effect on multiple body systems, and as a result of severe side effects of the medications I was being prescribed, later determined in 2017 that my PTSD is an occupational disease. I requested a new hearing/reconsideration when I

obtained additional medical records in 2016 that were not available to me at the 2015 hearing. In 2017 then found that the City of Columbia although denied my claims had actually found mold (fungus) in the Fire stations of the type that were found on my body and known to be toxic. I also found that the commission, judicial department and City of Columbia all knew of the doctors opinion that my PTSD was aggravated by my employment with the City of Columbia, but they left me to die just like to so many others. I found Justice unobtainable as a person of African-decent who served the City of Columbia, Richland County, State of South Carolina and Country with Honor.

I was denied equal protection It has been my experience that the SC Workers' Compensation Commission Scheme, all stakeholders are not treated fairly and equitably in a timely manner and the system is not efficient or effective, as it bestowes privileges to white men while denying those to African men and woman:

Case #1. Minne Young (African Decent/Black), filed a case with the SC Ethics Commission on May 3, 2011, who charged then WC Commissioner Avery Wilkerson, with a violation of the Judicial Code of Conduct, In which he alleged made a racially bias statement after a hearing on a matter before him. In front of three witnesses, he reportedly stated that "**black women pick up children more.**" To Ms. Young's Attorney D. Dusty Rhoads who represented the Complainant in her workers compensation hearing. She alleged Wilkerson bias caused him to rule against her claim for Carpal Tunnel. Respondent ever denied making the statement. "You should note that the other attorneys did NOT say it didn't happen. They merely essentially said they couldn't recall or hear it at the time. (Sure...they were sitting on either side of me)", wrote Attorney D. Dusty Rhoades of Charleston, SC.

CASE #2. CLEO N. POWELL v. VULCAN MATERIALS Co. (Caucasian/ white) MENTAL INJURY

POWELL, a Caucasian, a national guard veteran, As a result of an altercation with a supervisor, who pushed a finger into his chest, cursed him, called him a liar and accused POWELL of poor maintenance. The hearing commissioner found in its Scheme found that POWELL suffered an accidental mental injury arising out of an in the course of his employment. He ordered Vulcan to make weekly payments of \$268.99 for 500 weeks, to pay medical expenses retroactive to march 21, 1984, and to pay future lifetime medical care.It was determined a totally disabling and compensable "mental, emotional, and psychological injury" this was unusual, extraordinary condition. The circuit court's affirming the Commission is herby Affirmed. GREGORY, C.J.,and CHANDLER and FINNEY,JJ., concur.

POWELL died May 2, 2016, Manner of death: Natural

See, Powell v. Vulcan Materials, Co., 299 S.C. 325, 384 S.E.2d 725 (1989).

Case# 3. Ted Frame CASE #2. TED FRAME v. RSI Caucasian\ White Male MENTAL INJURY
FRAME, a Caucasian, was often troubled by the dishonorable treatment of African-American employees under his charge from upper management, exacerbated by comments and admitted to never actually witnessing intimate sexual relations. The psychiatrist and psychologist agree (1) that Frame suffers from a bipolar type psychosis; (2) on the day in question he experienced what is known as a "decompensation" (a

mental breakdown); (3) there is a certain genetic predisposition to this kind of psychosis; (4) this “decompensation” was the result of job-related stress; and (5) it was in no way certain that Frame would experience such a mental collapse regardless of exterior stimuli (i.e., his job). According to the psychiatrist and psychologist, Frame is not currently capable of full-time work.

In the SC Workers Compensation Commission Scheme, A hearing before a single commissioner resulted in an order granting Frame full benefits. The order of the single commissioner reads:

1. The Claimant was predisposed to mental illness, although it is unclear whether the predisposition was a result of genetics or something else. The basis of the predisposition is not relevant.
2. The Claimant’s work stress was a contributing factor to the decomposition and was the major contributing factor .
3. Particular stressors in the workplace included: answering to “five bosses”; the constant anxiety resulting from escalating pressure associated with being on call. Other examples were trying to cut cost without cooperation, insufficient fire extinguishers to put out fires in the plant, conflict with DOT standards or regulations, lack of cooperation from mechanics and drivers, etc.

Note: In regards to above “FRAME”, the record is absent that Frame ever “did anything to help African-American people, only that it so troubled him along with other stress that he was made disabled. Disabled by Bipolar Disorder that often runs in families (Hereditary) and inherent parts appear to be part of the mobile genetic elements; of those with this mood disorder (Genetics).

See, It is not within the reviewing court's province to reverse findings of the Appellate Panel which are supported by substantial evidence if your White/ Caucasian. Frame v. Resort Servs., Inc., 357 S.C. 520, 528, 593 S.E.2d 491, 495 (Ct.App.2004)

Violation of my Civil Rights, afforded to me by Civil Rights Act of 1866 and 1981 Equal Justice Under law (RACE) African Decent. I assert my African Decent.

- a) In excess of the statutory authority of the agency;

No Authority to commit fraud Upon the Court or create laws that are contrary to the agency

- b) Made upon unlawful procedure;

Civil RICO (18 U.S.C § 1962 Prohibited Activities (c))

(C) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt.

Conspiracy to Commit Civil RICO (18 U.S.C § 1962 Prohibited Activities (d))

(D) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

SC CODE Title 16-Crimes and Offense Chapter 9 –Offenses Against Public Justice Article 1-Perjury

Section 16-9-10, Perjury and subornation of perjury.

(A)(1) It is unlawful for a person to willfully give false, misleading, or incomplete testimony under oath in any court or record, judicial, administrative, or regulatory proceeding in this State.

(2) It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

(B)(1) A person who violates the provisions of this subsection (A)(1) is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

(2) A person who violates the provisions of subsection (A)(2) is guilty of a misdemeanor and upon conviction, must be imprisoned not more than six months or fined not less than one hundred dollars, or both.

SECTION 16-9-30. False swearing before persons authorized to administer oaths.

It is unlawful for a person to willfully and knowingly swear falsely in taking any oath required by law that is administered by a person directed or permitted by law to administer such oath.

A person who violates the provision of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both

SC law provides civil and criminal penalties (up to \$15,000, ten (10) years imprisonment, and restitution) for anyone convicted of workers' compensation fraud. The definition of fraud under SC law includes the filing of a false claim, as well as, any false statements or misrepresentations related to an accepted claim.

Violate Civil RICO (18 U.S.C § 1962 Prohibited Activities (c))

Violates Conspiracy to Commit Civil RICO (18 U.S.C § 1962 Prohibited Activities (d))

(RICO) Racketeer Influenced and Corrupt Organizations Act: Mail Fraud and Wire Fraud explained

KEY PLAYERS IN THE SCHEME: "Hands of One is Hands of All"

Companion Co-Defendants

Doris McCubbins Carrrier Co-Defendant

“ “

“ “

“ “

City of Columbia Co-Defendant

Health & Safety Officer Albert Owusu

Attorney Dan M Thye City of Columbia

Paralegal Wendy M James

Attorney For Defendants-

Was hired to continue to fraudulent scheme, fraud Upon the Court to continue the denial & devaluation of Mr. Capone's workers compensation benefits (property interest) , frivolous, false pleadings , C.B.H. Resources, Inc. v. Mars Forging Co., 98 F.R.D. 564, 569 (W.D. Pa. 1983) (dismissing under Fed. R. Civ. P. 41(b) where party's fraudulent scheme, including use of a bogus subpoena, was "totally at odds with the . . . notions of fairness central to our system of litigation"). Mail fraud and Wire Fraud. In another case, *In re Estrada*,⁶² the lawyer—who was representing a pharmacy in a personal injury action resulting from a pharmacist accidentally filling a child's prescription with methadone—misled the court by falsely denying the plaintiff's request for admission of fact. *Id.* at 735.

Attorney Cynthia Dooley

Christie P Young,

Laura S Ragland, Billing Secretary

Tierney N. Rimel,

SC Workers Compensation Commission Co-Defendants

Single Commissioner Henry Gene McCaskill

Kellie Lindler,

WHO KNEW ABOUT IT?

1. SC Workers Compensation Judicial Department
2. SC Workers Compensation Commissioners
3. City of Columbia Mayor
4. City of Columbia City Manager
5. Members of City of Columbia City Council
6. Office of the City of Columbia Attorney
7. City of Columbia Fire Chief

The Fraudulent Scheme is designed for the sole purpose of the devaluation of South Carolina Workers Compensation Benefits (Property/ Property Interest) for which the Appellate/ Claimant and his family holds a substantial Interest and it is being done with impunity to persons of African Descent. The conspiracy is carried out by mail fraud, wire fraud, false pleadings, altered medical opinions and omitted evidence, and others and is taking place in such a manner described below. South Carolina Workers Compensation is Unconstitutional; it has mutated

1. The City of Columbia Fire Department, has conducted Fire fighter physicals in accordance with standards, which are to include recording findings and trends. When I was employed an issue arose that where clearly work -related, I was ordered to go to my primary care provider pushing the, calculated cost, incurred to carrier and employer on the employee other health care providers.

2. When a I as a Firefighter (Emergency First Responder) respond to injured citizens, I conduct what is termed a "Head to toe" assessment, when the same firefighter is injured, the career in the devaluation of my workers compensation benefits (my property/ which I hold a substantial property Interest), instead of the "head to toe" method of assessment, only then makes the decision to provide treatment for that which is complained of , if they decide to do that, even though under the Law of the constitution , it is "automatic", "guaranteed" and "no fault"

3. City of Columbia Health and Safety Officer Albert Owusu,(Defendant) was put in place with no formal training to handle workers compensation claims, that he stalls and are time sensitive. Uses Mail Fraud and Wire Fraud to transmit incorrect filled forms.

4. Claim adjuster Doris McCubbins, Companion (Defendants) workers in concert to stall and deny/ in the Devaluation of legitimate Workers Compensation Benefits (property/ Property interest), under the "Act" which are "automatic"; guaranteed, and "no fault"

Discussion:

Traditionally, workers' compensation benefits have been an employee's exclusive remedy available against his or her employer for injuries arising out of and in the course of employment. However, in the recently decided case of *Brown v. Cassens Transport Company*, 675 F.3d 946 (2012), the Sixth Circuit Court of Appeals held that the Workers' Disability Compensation Act (WDCA) does not preempt the Racketeer Influenced and Corrupt Organizations Act (RICO).

In *Brown*, the plaintiffs sued their employer, The plaintiffs alleged the conspiracy was carried out by mail or wire.

The court in *Brown* determined "Michigan does not have the authority to declare a state remedy exclusive of federal remedies." Further, the court indicated "[a] federal civil RICO claim and a state claim for workers' compensation are legally distinct, even though they share factual underpinnings." Therefore, an employee may bring a RICO claim in federal court.

RICO makes it illegal for any person employed by or associated with any organization engaged in or affecting interstate or foreign commerce to participate in racketeering activity in the company's name.

The court in *Brown* found "no reason under RICO to distinguish between property entitlements that accrue as a result of a personal injury from those that do not." The court cited the fact that RICO is to be read broadly.

The court held the devaluation of either an expectancy of or claim for workers' compensation benefits amounts to a property interest. An injured employee has an expectancy of benefits because the WDCA indicates an injured employee "shall be paid" compensation and the compensation to be paid is calculated according to a rigid schedule. The court did not find the employer's ability to dispute payment negated the employee's property interest. Additionally, an employee's claim for workers' compensation benefits is a property interest regardless of whether the employee has obtained an interest in the underlying benefits themselves. The court further determined "losing or settling a case due to fraudulent medical reports does not extinguish the plaintiffs' property interest in bringing a claim free of fraud."

Based on the decision in *Brown*, an employee may bring a law suit for an alleged RICO violation in federal court.

The below listed individuals play a vital role in the Fraudulent scheme to deny and devalue SC Workers Compensation Benefits(property interest) They violated RICO Wire Fraud and Mail Fraud conducted solely for the devaluation of Mr. Capone's SC Workers Compensation benefits, and have deployed various means to do so, Wire and mail Fraud.

5. Attorney Dana Thye- Is guilty of committing Fraud Upon The Court, see: Fraudulent email, frivolous filings, defending a work-related injury that had already been decided by (4) state agency's and used mail fraud and wire fraud in the furtherance to include fraudulent concealment in real property law of repose, crime fraud exception, active concealment of fraud in real property, omitting material evidence , abuse of discovery, false pleading in average weekly wage in the furtherance of their crimes with the sole purpose of the devaluation South Carolina Workers Compensation Benefits (Pr0perty/ Property Interest) assisted by paralegal Wendy M James.

5. Single Commissioner Gene McCaskill on behalf of the Commission committed Fraud Upon the Court and acted with fraudulent intent conspiring against the Court and Appellant Claimant Terry H Capone by altering/ omitting the medical opinion of Dr. Nicholas Lind making false statements and misrepresentation with the sole purpose of the devaluation SC Worker's Compensation Benefits for which is the Appellate/ Claimant Property / which Capone and the Capone family hold a substantial property interest in to the minimum sum of approx \$1739.06 x 500 weeks totaling \$869,530 promised under the Act, breach of contract, Fraud, with malice and Willful and Wanton Conduct, that was perpetrated with the assistance of Kellie Lindler.

6. Attorney Cythia Dooley, was retained (paid) by the Defendants to continue Fraud Upon The Court and Fraudulent scheme with the sole intent of the devaluation of Mr. Capone's South Carolina Workers Compensation Benefits (Property) which Appellate/Claimant and the Capone family has a substantial property-Interest, and having deployed the use of Wire Fraud, Mail Fraud , Frivolous and fraudulent pleadings, papers documents, bogus subpoenas that are unlawful and invalid continues in the conspiracy to Deny, the Devaluation of Appellants / Claimants South Carolina Workers Compensation Benefits (property) which he hold s a substantial property interest in several additional claims that sit before the South Carolina Workers Compensation Commission WCC File: WCC File No.: 1719990, 1423445, 1322789, 1519702, 1503655. Despite Mr. Capone's objections, and objections violations of the laws the South Carolina Workers Compensation Commission the conspiracy and unlawful Wire Fraud and Mail Fraud, used in the devaluation of S.C. Workers Compensation Benefits (Substantial Property / Substantial Property Interest) of Mr. Capone, through Fraud Upon The Court and other violations of law are allowed

and continue, Cynthia Dooley was aided and abetted by Christie P Young, Laura S Ragland, Tierney N. Rimel and others working in concert.

Fraudulent intent is "a condition of the mind beyond the reach of the senses," which is "usually kept secret, and can only be proved by unguarded expressions, conduct and circumstances generally." State v. Jordan, 255 S.C. 86, 90, 177 S.E.2d 464, 465 (1970). As a general rule, any act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt. State v. McDowell, 266 S.C. 508, 224 S.E.2d 889 (1976). "Fraud may be deduced not only from deceptive or false representations, but from facts, incidents, and circumstances which may be trivial in themselves, but decisive in a given case of fraudulent design." Cook v. Metropolitan Life Ins. Co., 186 S.C. 77, 84, 194 S.E. 636, 639 (1938).

By making several references to Dr. Linds April 2015, medical opinion that he had been provided on several occasions, but altering it by excluding the part, the very part that he stated did not exist in the notes/records. By omitting and other key evidence provided in the records, that Commissioner Gene McCaskill stated" Mr. Capone did not need to read into the record, because he has to read it himself"

City Attorney Dana Thye committed Fraud on behalf of the City of Columbia; upon the Commission; upon Terry H Capone (Claimant) by making false statements and misrepresentations to deny/ devaluation of his SC Workers Compensation claim under the Act, breach of contract, Fraud, with Malice and Willful and Wanton Conduct.

See Email from: Capone, Terry[<mailto:tcapone@liberty.edu>] Sent: Tuesday , July 14, 2015 11:12 AM To: Hollmon, Eugenia; Bracy, Amy; Lindler, Kellie; Roberts, Keith, Cc: Thye, Dana; james; Wendy M; WCC-Judicial_ Email Subject: Asisstance TCAPONE request for records Files 1420487, 1319203, 1322451

See Email from: Thye Dana[dmthye@columbiasc.net] Sent Monday, August 10, 2015 9:14 AM To: Capone, Terry (Claimant) RE: TCAPONE WCC File Nos: 1319203, 1322451 Disagree with form 58 Pre hearing Brief submitted by the City of Columbia, states:

"Mr.Capone, I strongly urge you to continue seeking representation. An attorney can assist you in organizing your claims. **It would be the City's intention to attempt settlement of the wrist/arm claim(s)** but that is made difficult by the combining of that claim with so many other issues related to your psychiatric claims. If you are interested in separating that aspect from all your other allegations, please let me know and can discuss options."

See Email From: Thye Dana [dmthye@columbiasc.net] Sent: Tuesday, August 11, 2015 2:07 PM To: Capone, Terry, Subject: RE: TCAPONE Fire Department records, as Thye states:

"But Workers Compensation benefits can only go so far. They can only provide you medical [or] money. Looking at your three claims scheduled for the 21st, I will try to address them separately. 1) You appear to relate your toe fungus claim back to a previous injury to your toe casued by something falling on it. But I've not seen any medical record that relates that and toe fungus is commonly occurring condition. 2) **Your wrist injury is accepted and has been.** Are you seeking additional treatment such as surgery [or] are you interested in settling additional treatment such as surgery [or] Are you interested in settling out the claim based upon the impairment to your wrist? 3)You've alleged psychiatric injury related to every fire you're ever responded to apparently, and I'm not convinced that it's not Really related to your on-going conflict with the City in general. But I'm willing to explore away to work that out. But I need guidance from you. Are you in need of medical care or are you looking for a money settlement? I always

try to be reasonable in approaching these things. **I have not seen anything that links the toe fungus to a work-related injury**".

See Email From Capone, Terry (Claimant) Tues 8/11/2015 6:14 PM, To: Thye, Dana
dmthye@columbiasc.net RE: TCAPONE cooperation in settlement process, as Claimant states:

"Greetings Attorney Thye, I apologize for not getting the evidence to your office. A lack of information, can cause a lack of understanding in matters. I am in a continuous process of locating, and compiling evidence so that you can receive everything. I'm not well, lost health care with the City, and the totality of ailments relative to my over 17 years of employment has and will effect me for the rest of my life. If possible I will continue to cooperate to settle all concerns".

See Email from Capone, Terry (Claimant) Fri 8/14/2015 2:15PM, To: Luther J.Battiste,
IIIBAT@jtbpa.com
Cc Melisa McClurkinmelisam@jtbpa.com imporatance; High, as Claimant states:

"Dear Attorney Battiste, Sir, I would like to know if your office can assist me with negotiating a settlement with the City of Columbia to protect my interest and i'd like to resolve "ALL" issues on the table and pending. Attorney Thye with the City of Columbia said she would be willing to put together a settle for the WCC claim.

I forwarded her my military medical records, RFC forms from doctors and dropped the other evidence binders off yesterday. I advised her I would like a settlement, in addition to lost wagers and medical benefits for my work related injuries. Please advise-Sent from Terry H Capone's Verizon Wirless 4G LTE smartphone"

See Email From Capone, Terry (Claimant) Monday, August 17, 2015 11:22 AM TO: Thye, Dana
Importance: High and States:" Attorney Thye, I received the subpoena request the other day; this confused me. I had not went forward with the subpoena request and provided the evidence based on the email from you, with the understanding that I was fully cooperating to reach a settlement agreement.
Respectfully, Terry Capone Fire Battalion Chief-Retired-

See Email From Thye, Dana[dmthye@columbiasc.net] Sent: Monday, August 17, 2015 1:02 To: Capone, Terry (Claimant) Subject: RE: Follow up: TCAPONE-Please advise, She states: "Mr. Capone, I do not understand your email. You requested the WC Commission issue a subpoena for records and I believe you were instructed how to go about filling that form out and getting it served. I issued several subpoenas for witnesses to attend the hearing and give testimony on the City's behalf. You were copied on that subpoena. Nothing is required of you with regard to those last subpoenas. Dana M. Thye Sr. Assistant City Attorney"

See Email from Capone, Terry (Claimant) Monday, August 17, 2015 1:48 PM To: Thye, Dana[dmthye@columbiasc.net] states:" Attorney Thye, I am responding again based on the email you sent me August 11, 2015, under the heading [TCAPONE Fire Department Records] where you spoke of putting together a settlement and you stated at the end:" I appreciate that this a lot to consider so respond at your convience". I responded a requested twice, honestly describing my concerns and reassuring I would fully cooperate with reaching a settlement of all issues. At which point I did not request any records/persons and provided what I had to your office which took as being honest; my only concern was to cooperate to settle. Respectfully Terry Capone Fire Battalion Chief-Retired".

See SC WCC WCC# No.1319203, 1322451, & 1420487 Transcripts of proceedings, August 21, 2015 P. 6 #3-4:"Ms.Thye: I have my APAs that we submitted to Mr.Capone. I have not heard anything from him."

b) Affected by other errors of law;

The single Commissioner decision December 2, 2015, was an error or law when he stated:

d-2. I find and conclude that the Claimants average weekly wage was 1023.51 and compensation rate was \$682.68

d-3. I find the Claimant has not established a casual connection to the dates of injury pled and, thus, has not met the burden necessary for compensability using the standard of a preponderance of evidence or more likely than not. S.C. Code Ann. §42-1-160 and §42-9-35.

d-4. There is no opinion in the record establishing the medical foundation necessary to promulgate a repet "Additionally, as a matter of law, it is unlikely that a firefighter seeing a burned body [or] other injuries [or] events associated with that profession to include vehicle extrication, can be viewed as neither extraordinary nor unusual pursuant to S.C. Code Ann. §42-1-160 (37).

* And any other granting authority

c) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

Decision 2, 2015, page 17 FINDINGS OF FACT – #18. Commissioner Gene McCaskill states: "As to the Claimant's Post Traumatic Stress Disorder claim being casually related to his employment, there is nothing in the record, other than the subjective complaints of the Claimant, that establish the origin or aggravation of the Claimant's Post Traumatic Stress Disorder"... #19. "That is not to say that the Claimant does not suffer from Post Traumatic Stress Disorder. However, it appears from the notes of both Dr. Nicholas Lind and Sheryl Mims- Williams, both of whom have a professional specialization to the Mind to the mind, that the Claimant does not suffer from Post Traumatic Stress Disorder which is casually related to his employment with the City.

Page #2, Dr. Nicholas Lind notes, "His PTSD were aggravated in 2013 when as a firefighter, he responded to a traumatic call, which resulted in his retirement." (Post Trauma Resources 3 April 2015).

See also June 22, 2015 from Terry Capone (Claimant) RE: Files 1420487, 1319203, 1322451 Email to Dana Thye City of Columbia Attorney, WMJAMES, and Commission Lindler Kellie, WCC- Judicial Email, "I received a medical psych evaluation and opinion from Post Trauma Resources Dr. Lind (which I forwarded to the Commission), that my PTSD was "aggravated by the Fire Service" and although not diagnosed at the time, was originally linked to my injury and trauma from the Marines."

See also Aug 12, 2015 addressed to Commissioner Gene McCaskill-Addendum to 8/10/2015- Additional Information provided-Disagree with the form 58 Pre Hearing Brief submitted by the City of Columbia.

Page 2. 4/3/2015-Post Trauma Resources- Nicholas A Lind, PsyD "**His PTSD were aggravated in 2013 when, as a firefighter he responded to a traumatic call, which ultimately resulted in his retirement**"

4/2/2015- Envision Wellness Medical Group- Tiona Praylow, MD- Patient has a diagnosis of PTSD which impairs his function in occupational and social settings. PT reports unpredictable and labile moods accompanied by thoughts of feeling unable to control response to triggers make maintain stable

employment difficult and untenable. This represents a change from previous baseline given pt with many years of optimal functioning prior to **developing symptoms related to PTSD as a result of Occupational exposures.**

3/6/2014- Disability Rational South Carolina Retirement System- Rational- **“The evidence documents continued treatment for PTSD symptoms associated with multiple events and work related stressors”...”He does not retain the function capacity to perform duties of his past work as a firefighter” Page 1**

See SC WCC WCC# No.1319203, 1322451, & 1420487 Transcripts of proceedings, August 21, 2015 P.46 #11-16:CROSS EXAMINATION BY MR.CAPONE Q “Chief, I would like to ask you, Chief Tinley, is the deposition a normal, usual occurrence in our occupation?. A. A deposition? Q. Giving a deposition, is that something that’s usual or normal? A. Within the scope of our duties, no, sir. him.”

P.49.#14-16-Q “It is normal? Is that normal for a crew to go in for a fire attack and on the way of going in, the firefighter stays outside with the hose? #14 A. I would have to say based on the training that we do, it would not be normal for you to be without your crew or in a pair of twos”.

P.49#18-20 Q Is it a normal course of employment for an employee to be catapulted off a ladder during fire attack? #20 A. Is it normal? That would not be normal.”

P.50#1- REDIRECT EXAMINATION BY MS.THYE:Q Although it’s not normal,those things are not unheard of; is that correct? Folks have fallen off of ladders before? A. Well, yeah. When you use the word “catapult,” that puts a visual in my head. That’s different.”

P.52#18-22 “Anything else, Ms.Thye? Ms.THYE: No. Commissioner, I do have a question about all he’s handing up as APAs. I have two—I have two notebooks, on and two.”

There is newly discovered evidence or New Medical opinions:

NEW)December 19, 2017- Retaliation Complaint filed – October 2017 Notified The City of Columbia failed to process OSHA 301 Injury Reports as required under the SC Workers Compensation Act-

(NEW) December 28, 2017-EEOC Notice of Suit Rights Given-

(NEW) Although I was not made aware until on or about December 2017, City was aware of MOLD(FUNGUS) in Fire Stations because a published article dated: Thursday, May 21st 2015, 10:34 WISTV.COM-Local Leaders say mold problem in Richland Co. fire Station. Article states: “Firefighters moved back in station 27, located at 9651 Farrow Rd, about two weeks ago”... WIS first told you about the fire station mold issue march 20”....”A memo was sent March 18 from CFD Occupational Health and Safety Chief Albert Owusu and mold” at Station 27... “You spend on-third of your life in that station”, said Chief Aubrey Jenkins. “That’s your home the firefighters have a proper, nice place to dwell in”...”Additionally, On March 10, Bertolini sent an email to Hixon and Gibson showing that air quality Resources, Inc. Showed two types: ASpergillus/Penicillium and **Chaetomium**”. **The same mold determined in my lab results 6/2013.**

(NEW)1/25/2017- WISTV.COM ARTICLE: CFD Temporarily closes Shandon-“Columbia Fire Chief Aubrey Jenkins said he temporarily closed Station #9 on Devine Street Tuesday Showed slightly elevated levels of mold inside the building””This is the second fire station in about two years that’s had mold issue. In March 2015, Fire Station treated. Chief Jenkins says he is inspecting each station to see when repairs are needed”.

(NEW) 4/19/2017- SC (WIS)- Columbia Fire hoping for \$500K for largest Overhaul to date-“That included things like... mold reediation”...Shandon was closed due to mold earlier this year. And while station 11 off Two Notch Road is closed...low levels of mold that need to be treated”.

(NEW) September 2017 -International Association of Fire Fighters-Nationally addresses Mold (FUNGUS) in Fire Stations

(NEW) 11/21/2017- Envision Wellness Medical Group- Tiona Praylow, MD-Mental Health Opinion-

PTSD an Occupational Disease: “Mr. Capone, who was an Enlisted Marine and Firefighter-Fire Battalion Chief, is suffering from Post Traumatic Stress Disorder and occupational disease, arising from prolonged work-related stress that was ongoing and caused him to deviate from his normal method of behavior”...”In my opinion based on a reasonable degree of medical certainty that is deeply rooted in his Marine service of over 5 years, as Enlisted Personnel, MOS 6541 Aviation Ordnance Technician, Hazardous Waste Coordinator and intimately connected to his employment with the City of Columbia Fire Department of over 17 years as a Firefighter-Fire Battalion Chief, Hazardous Material Technician”...”Mr. Capone was referred for additional psychological evaluations, Dr. Nicholas Lind, Post Trauma Resources 4/2015, opined that: “His PTSD were aggravated in 2013 when, as a firefighter, he responded to a traumatic call”; I concur, and after him giving a deposition in a discrimination lawsuit against his employer where he felt “invisible”...”It is well-documented in psychological literature that emergency service workers and military enlisted personnel are at increased risk of post-traumatic stress disorder, and there is some evidence indicating that the longer the exposure, the more severe the reaction. First responders and military personnel work in physically demanding settings characterized by traumatic events and personal danger, often coupled with environmental and occupational stressors. Possibly, as a consequence of ongoing exposure to traumatic events, first responders and military personnel experience relatively high levels of depression and post traumatic stress disorder”...”Mr. Capone had a long career in the City of Columbia Fire Department with multiple traumatic events where he sustained injuries, feared for his life and suffered exposure to numerous critical incidents”...”Mr. Capone’s exposure to traumatic and critical incidents, or stressors beyond the range of normal human experience resulted in “neurochemical alterations in multiple neurotransmitter systems”...”PTSD appears to be associated with a significant disturbance of multiple neurobiological systems”...”“as a result of responding to numerous critical incidents and traumatic events, and during the prime of his career became aggravated and disabling, Mr. Capone’s Post Traumatic Stress Disorder an occupational disease, is chronic and cumulative, along with Anxiety, Major Depression, Insomnia, Chronic Pain, Irritable Bowel Syndrome-Diarrhea, and Neurocognitive impairment has permanently disabled him”(see complete opinion).

Incorrect Average Weekly Wage Calculation

The disability of a workers' compensation claimant reaches into the future, not the past; his loss as a result of injury must be thought of in terms of its impact on probable future earnings, for purposes of calculating the claimant's average weekly wage. Code 1976, § 42-1-40.

“Exceptional Circumstances” exist; the defendant continues to defraud me and the commission, continuing to submit incorrect compensation rate and average weekly wage. The information submitted fails to consider all elements of my Future Earning Capacity.

S.C. Code Ann. § 42-1-40 (1985).

The statute provides an elasticity or flexibility with a view toward always achieving the ultimate objective of reflecting fairly a claimant's probable future earning loss. *Bennett v. Gary Smith Builders*, 271 S.C. 94, 98, 245 S.E.2d 129, 131 (1978). "The objective of wage calculation is to arrive at a fair approximation of the claimant's probable future earning capacity. His disability reaches into the future, not the past; his loss as a result of injury must be thought of in terms of its impact on probable future earnings." *Id.* at 98-99, 245 S.E.2d at 131; see *Stokes v. First Nat'l Bank*, 306 S.C. 46, 410 S.E.2d 248 (1991)

The wage statement will need to provide the hourly rate for each of the weeks, all hours worked with a designation as to the type of hours (i.e. Regular shift, Over Time, paid holiday, paid vacation, etc.), and other wages or bonuses paid.

When for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury. (Emphasis added). This statute squarely places upon the Commission the authority to determine if "exceptional circumstances" exist justifying a deviation.

The cases of *Boles v. Una Water Dist.*, 291 S.C. 282, 353 S.E.2d 286 (1987); *Foreman v. Jackson Minit Mkts., Inc.*, 265 S.C. 164, 217 S.E.2d 214 (1975); *McCummings v. Anderson Theater Co.*, 225 S.C. 187, 81 S.E.2d 348 (1954); and *Booth v. Midland Trane Heating & Air Cond.*, 298 S.C. 251, 379 S.E.2d 730 (Ct. App. 1989), are cited by the majority. Consistently, the holding in all the cases is that the Full Commission's factual determination of deviation due to "exceptional circumstances" is a matter left to the sound discretion of the Commission under the statute

The AWW was must be fair to both claimant and employer. S.C. Code Ann. § 42-1-40; see *Pilgrim v. Eaton*, 391 S.C. 38, 703 S.E.2d 241 (Ct. App. 2010). *Booth v. Midlands Trane Heating and Air Conditioning*, 298 S.C. 251, 379 S.E.2d 730 (S.C. App. 1989).

I Defendants submitted incorrect Average Weekly Wage (AWW) to this Commission:

The defendants were well aware of The City of Columbia violations of law in regards to Firefighters pay calculations, in an effort to correct this violation in addition the defendant made changes to the way Fire Shift Employees pay was calculated. The defendant failed to give neither the Commission nor myself notification, nor attempted to correct the fraud. In the corrected calculation, Firefighters annual salary is divided by 26 pay cycles divided by the Fed approved FLSA 106 rate for Fire Shift Employees and time and a half for every hour worked above 106 hours.

See Exhibit#134- Pages 405-413. Internal Communication dated 4/9/2014 From Carricato, James Division Chief To: "various shift personnel" Cc: Wright, Mark; Harrell, William Subject: Kronos /Pay check and Reporting Time Survey, excerpts:" In order for Kronos to process your time, you must be given a consistent hourly rate and "pay smoothing" is being done away with"... "The pay rate for all shift employees will be figured by taking you annual salary, divided by 26 pay cycles, divided by the federally approved FLSA rate of 106 hours for Fire Shift employees"... "All hours above 106 will be paid at true time and a half, as long as all hours were worked (no sick time or permissive leave taken during that time- otherwise it is simply straight time).

See Exhibit#133- Pages 403-404. 7/18/2014 S.C. Public Employee Benefit Authority PEBA RE: XXXXX- 7472 Police Officers Retirement System "AFC reflects 12 highest consecutive quarters of salary posted through your date of termination, including the dollar amount of unused annual leave as permitted by law and reported by your employer.

The disability of a workers' compensation claimant reaches into the future, not the past; his loss as a result of injury must be thought of in terms of its impact on probable future earnings, for purposes of calculating the claimant's average weekly wage. Code 1976, § 42-1-40.

Estimated Future Earnings:

\$54,688.66 Last Base Salary estimated rate \$525.86 per 24 hours See Exhibit#122 p.359

\$2460.98 Pay incentive for degree: 1.5% assoc.[**4.5% Bach**], 6.75 Mast

\$2600.00 Pay incentive for Hazardous Materials Technician training \$2600.00

\$5000 City correction of fire fighter pay

*\$13,146.50 Vacation: 25x\$525.86 (twenty five) maximum (earning 20.53 at time of retirement)

*\$2629.30 Holidays: 5 x\$525.86 (ten) paid holidays per year (City of Columbia Firefighter Packet) x

*\$ 22,086.12 Sick Leave: 11.2 per month Maximum: 42 Days (1008) 42x\$525.86

\$20,508.54 Overtime Estimate: 525.86 x 1.5 = \$788.79 x 26 days (24 hr) a year

= \$123,120.10

\$10,000.00 Estimated Promotions

= 133,120.10

\$2662.402 2% Cost of living allowance

= \$135,782.50 Estimated /52 = **Compensation rate \$2611.20 x .666= average weekly wage \$1739.06**

I obtained the education/national certifications to be a Fire Chief/ Assistant Fire Chief base salary:

\$84,321-

\$112,630.00 Pay Scale -Your pay Scale Report See Exhibit#132 p.390-402

The Act defines "average weekly wage" to mean "the earnings of the injured employee in the employment in

which he was working at the time of the injury. . . ." S.C. Code Ann. § 42-1-40 (1985 & Supp. 1999). The definition goes on to state: "Whenever allowances of any character made to an employee in lieu of wages are a

specified part of a wage contract they are deemed a part of his earnings." Id. Thus, before an allowance will be

included in the average weekly wage calculation, it must (1) be made in lieu of wages, and (2) be a specified

part of a wage contract.

STANDARD OF REVIEW

The United States Constitution

No person shall be deprived of life, liberty, or property without due process of law.

U. S. Constitution, (5th and 14th Amendments, Due Process) S.C. Constitution, Article 1, Sec 3

The South Carolina Constitution

§ 22. Procedure before administrative agencies; judicial review. No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review. (1970 (56) 2684; 1971 (57) 315.)

The Workers' Compensation Commission's decisions were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. Sec. 706 (1977). The standard of review of the court is instructive. The court is to set aside the South Carolina Workers Compensation action if it finds it to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. Sec. 706 (1977).

The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the Workers' Compensation Commission. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981); *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 599 S.E.2d 604 (Ct.App.2004). Section 1-23-380(A)(5) instructs that a reviewing court:

may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion

S.C.Code Ann. § 1-23-380(A)(5) (Act No. 387, 2006 S.C. Acts 387, eff. July 1, 2006).

(c) . With regard to asserted errors pursuant to subdivisions (1) through (4) of subsection (b) of this section, the court shall conduct its review of the final decision using the de novo standard of review. With

regard to asserted errors pursuant to subdivisions (5) and (6) of subsection (b) of this section, the court shall conduct its review of the final decision using the whole record

Rule 60. Relief from a Judgment or Order

(a) **CORRECTIONS BASED ON CLERICAL MISTAKES; OVERSIGHTS AND OMISSIONS.** The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) **GROUND FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief. (c) **TIMING AND EFFECT OF THE MOTION.**

(1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) *Effect on Finality.* The motion does not affect the judgment's finality or suspend its operation. (d)

OTHER POWERS TO GRANT RELIEF. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. §1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

ARGUMENTS

1. THE SOUTH CAROLINA WORKERS' COMPENSATION SCHEME IS UNCONSTITUTIONAL, BECAUSE IT ABRIDGED THE RIGHTS OF THE APPELLANT BY DENING HIM DUE PROCESS, PROCEDURAL DUE PROCESS AND EQUAL PROTECTION UNDER THE COLOR OF LAW AND DID NOT HAVE PERSONAL OR SUBJECT JURISDICTION AS WAS OBTAINED THROUGH TRICKERY AND FRAUD UPON THE COURT AND DEVALUTION OF HIS WORKERS COMPENSATION BENEFITS IN WHICH HIM AND HIS FAMILY HAVE A PROTECTED SUBSTANTIAL PROPERTY INTEREST; ALTERED MEDICAL REPORTS/ OPINONS AND OMITTED EVIDENCE TO DENY HIS WORK RELATED DISABILITY, BUT HAS A HISTORY OF FAVORABLE FINIDNGS OF DISABILITY OUTCOMES TO WHITES/ CAUCASIANS LIKE: **TED FRAME** WHO WAS PERMANENTLY DISABLED BY HIS BI- POLAR DISORDER THAT WERE AGGRAVATED BY HIM SEEING THE MISTREATMENT OF AFRICAN AMERICANS/ BLACK WORKERS AND **CLEO N. POWELL** WHO AS RESULT OF AN ALTERCATION WITH A SUPERVISOR, WHO PUSHED A FINGER INTO HIS CHEST, CURSED HIM, CALED HIM A LIAR AND ACCUSED POWELL OF POOR MAINTENANCE .

2. THE CAROLINA WORKERS' COMPENSATION COMMISSION, Denied the Appellant right to Due Process, Procedural due process and Equal protection under the color of law by not providing notice to him prior to the hearing of the case, that Commissioners McCaskill ,Campbell and Wilkerson where practicing law without a license in the State of South Carolina, and name are not found on the directory of members of lawyers in the State of South Carolina, and therefore did not have Subject matter or personal jurisdiction to hear or decide the claim.

3. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, FULL COMMISSIONbeing unethical, dishonest and violating known court rules and legal doctrines have by their own actions of an il-legal Removal through Voluntary Remand created a **Legal VOID OF JURISDIC-TION over the SUBJECT MATTER of Plaintiff's home, known as: 17005 NE 164th Ave.. Brush Prairie, WA 98606.** Which thus: VOIDS ALL STATE AND FEDERAL COURT ORDERS as of the date of their illegal Re-moval / Volunatry Remand of the the case from the South Carolina Court of Appeals and which jurisdiction was gained through trickery and is Fraud Upon The Court,

4. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ISN UNCONSTITUTIONAL AND SEVERLY PREJUDICED AND ABRIDGED THE APPELANTS CONSTITUTRIONAL RIGHTS TO DUE PROCESS, PROCEDURAL DUE PROCESS BY NOT INFORMING HIM THAT COMMISSIONERS McCASKILL,, CAMPBELL AND WILKERSON, Jr WHERE NOT CERTIFIDE TO PRACTICE LAW IN

THE STATE OF SOUTH CAROLINA, WHERE NOT LEGAL ATTORNEYS AND NAMES WHERE NOT FOUND ON THE DIRECTORY OF MEMBER ATTORNEYS IN THE STATE OF SOUTH CAROLINA WITHOUT AN OPPORTUNITY TO OBJECT WAS ABRITRARY , CAPRICIOUS, AN ABUSE OF DISCRETION AND NOT INACCORDANCE WITH LAW SINCE THE COMMISSION EMPLOYS CERTIFIDE ATTORNEYS AS COMMISSIONERS

5. THE APPELLANT ASSERTS THAT THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION PRESENT APPLICATION OF THE DOCTRINE OF RES JUDICATA , THIS AFTER VOLUNTARY REMANING THE CLAIMS AFTER DECIDING INTERLOCTORY WITH NO EXPLINATION AS IT SET BEFORE THE SOUTH CAROLINA COURT OF APPEALS AND HIS INABILITY DUE TO (Post Traumatic Stress Disorder now determined to be an Occupational Disease, Depression (Major), Irritable Bowel Syndrome-diarrhea (IBS-D), Neurocognitive Impairment Disorder TO ATTACK THE FIRST DENIAL AND ADDRESS THE COURTS HAS RESULTED IN A DENIAL OF THE APPELLANTS RIGHT TO DUE PROCESS UNDER THE COLOR OF LAW AS A RESULT OF RACISM (WHITE SUPREMACY)

6. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION APPELLANT PANEL ERRED WHEN IT DECIDED THE CLAIMANTS'S FORMS 50 REQUEST FOR HEARINGS IN THE ABOVE REFERENCED CLAIMS ARE DENIED AND DISMIESSED WITH PREJUDICE ON THE GROUND OF RES JUDICATA, AS THE COMMISSION FAILED TO MEET ITS BURDEN TO ESTABLISH RES JUDICATA BARS THE SUIT

7. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, SPECIFICALLY COMMISSIONER HENRY GENE McCASKILL SEVERLY PREJUDICED AND ABRIDGED THE APPELLANTS CONSTITUTIONAL RIGHT TO DUE PROCESS BY ALTERING / OMITTING THE MEDICAL REPORTS/ OPNIONS AND EVIDENCE

8. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION APPELLANT PANEL ERRED WHEN IT DECIDED THE CLAIMANTS'S FORMS 50 REQUEST FOR HEARINGS IN THE ABOVE REFERENCED CLAIMS ARE DENIED AND DISMIESSED WITH PREJUDICE ON THE GROUND OF RES JUDICATA, AS THE COMMISSION FAILED TO MEET ITS BURDEN TO ESTABLISH RES JUDICATA BARS THE SUIT

BASED ON THE FOLLOWING:

8. 1 The Case involves the same parties as the Suit in 2015

8.2 The First Dismissal On The Merits Is Void/ Invalid Transaction Controlled by Constitutional Violations, arbitrary, capricious, abuse of discretion and not in accordance with law, and made upon an unlawful procedure, Errors in law

8.3 THE CURRENT COMPLAINT RAISES NEW FACTS THAT DO NOT ARISE OUT OF THE SAME "TRANSACTION OR OCCURRENCE" D) THE NEW CLAIM RAISES THAT COULD NOT HAVE BEEN RAISED IN A PRIOR in the Prior Litigation

8.4 DOCTRINE OF REVESTMENT -THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND THE DEFENDANTS REVESTMENT IN THE CASE BY THE PREVIOUS ATTORNEY AND THE NEW LAW FIRM AND THE COMMISSIONS VOLUNTARY REMANDING (REVESTING) OF THE CASE AS IT SET BEFORE THE SOUTH CAROLINA COURT OF APPEALS

8.5 FRAUD UPON THE COURT – THE COMMISSION, THEIR COMMISSIONERS, DEFENDANTS AND THEIR ATTORNEY'S COMMITTED FRAUD UPON THE COURT AND CAN NOT REPLY ON RES JUDICATA

8.6 THE COMMISSION, THEIR COMMISSIONERS, THE DEFENDANTS OR THEIR ATTORNEYS CAN NOT RELY ON RES JUDICATA BASED ON THE ACTUAL FACTS OF THE CASE HAVE CHANGE AND RES JUDICATA DOES NOT APPLY WITH THE SUFFICIENT NEW FACTS OF THE SECOND LAW SUIT OVERCOME THE DEFENSE OF RES JUDICATA – CLAIM- PRECLUSION

8.7 THE COMMISSION, THEIR COMMISSIONERS, THE DEFENDANTS OR THEIR ATTORNEYS CAN NOT RELY ON RES JUDICATA BASED EQUITABLE ESTOPPEL

8.8 THE COMMISSION, THEIR COMMISSIONERS, THE DEFENDANTS OR THEIR ATTORNEYS CAN NOT RELY ON RES JUDICATA BASED THE CLAIMANT BEING UNDER DISABILITY AND UNSOUND MIND THE STATUE OF LIMITATIONS ARE TOLLED

8. 9 THE COMMISSION, THEIR COMMISSIONERS, THE DEFENDANTS OR THEIR ATTORNEYS CAN NOT RELY ON RES JUDICATA BECAUSE THE STATUE OF LIMITATIONS SHOULD BE TOLLED BASED ON THE EQUITABLE DEFENSE OF UNCLEAN HANDS, BECAUSE HE IS SEEKING MATTERS IN EQUITY

8.10. THE COMMISSION, THEIR COMMISSIONERS, THE DEFENDANTS OR THEIR ATTORNEYS CAN NOT RELY ON RES JUDICATA BECAUSE THE STATUTE OF LIMITATIONS SHOULD BE TOLLED BASED ON EQUITABLE TOLLING

8.11. THE COMMISSION, THEIR COMMISSIONERS, THE DEFENDANTS OR THEIR ATTORNEYS CAN NOT RELY ON RES JUDICATA BECAUSE THE STATUTE OF LIMITATIONS SHOULD BE TOLLED BASED ON STATUTE OF REPOSE : FRAUDULENT CONCEALMENT OF TOXIC MOLD

8.12 COMMISSION SEVERLY PREJUDICED AND ABRIDGED THE APPELLANT'S CONSTITUTION RIGHT TO DUE PROCESS BY VOLUNTARILY REMENDING AND REVESTING IN THE CASE AS IT SET BEFORE THE SOUTH CAROLINA COURT OF APPEALS AND THEN TAKING SIX MONTHS TO DECIDE AND NOT ADDRESS "ANY"; "NOT ONE" ARGUMENT . FAILURE BY THE WORKERS COMPENSATION COMMISSION TO ADDRESS A NON FRIVOLOUS ARGUMENT RAISED TO INCLUDE INSANITY(UN SOUND MIND) BY THE PLANTIFF IS, BY DEFAULT , ARBITRARY.

8.13 THE COMMISSION, THEIR COMMISSIONERS, THE DEFENDANTS OR THEIR ATTORNEYS SHOULD NOT BE ABLE TO RELY ON RES JUDICATA BECAUSE THE DOCTRINE OF IMPOSITION SHOULD BE APPLIED

CONCLUSION: The Prestige.

In the case sub judice, the 'cold' record proves Mr. Capone sustained an "injury by accident arising out of and in the course of his employment with City of Columbia. Succinctly put, there is no evidence to the contrary. Therefore, the Full Commission abused its discretion, continued in its complicity to perpetrate Fraud Upon the Court by voluntarily remanding (revested) in the case as it set before the South Carolina Court of Appeals and jurisdiction was gained through trickery and is Fraud Upon The Court.

1. Commission continuously has violated the Appellants right to due process, especially procedural due process of the fifth and fourteenth amendments were grossly violated for neutral decision making and was this in the administration of justice or where their actions arbitrary denial/ devaluation of his South Carolina Workers Compensation benefits in which he and his family have a substantial property interest.
2. Failed to address any of the Appellants non frivolous claims and properly adjudicate his Motion to take Judicial Notice that was 'mandatory'

This was a manifest injustice by the Commission which erred in affirming the Single Commission's unlawful denial/ devaluation of his South Carolina Workers' Compensation benefits, in which Capone and The Capone family have a Substantial Property Interest. Moreover, he is entitled to compensation because the work-related accident accelerated or aggravated his pre-existing post traumatic stress disorder (PTSD), now diagnosed as an occupational disease and injury to his bilateral hands/ wrist and toes, vertigo, headaches that include evidence of environmental exposure to toxic mold (fungus) that was fraudulently concealed. Accordingly, we request a reversal and for correction of this Manifested Injustice error of law.

For the reason stated. Claimant respectfully request the following relief:

1. In the Interest of Justice ask this Court to exercise its supervisory power and reverse all the Commissions rulings that began in 2015 to the Voluntary Remand (Revesting) of the Interleactory Decsion/ Order that affecting Substantial rights and then changed its decision to Res Judicata that made consideration of not one of the Appellants non frivolous claims or new evidence before it violating his right to equal protection and safe guards as a South Carolina permanently and totally disabled Fire fighter and U.S. Marine Veteran.
2. This Commission to vacate the voided Decision RE: Files 1420487, 1319203, 1322451 made and certified on December 2, 2015 and all that followed.
3. Order Defendants to obtain an accounting an reimburse Mrs. Demetria T. Capone (spouse) any and all monthly payments made to maintain Healthcare/Dental/Vision/Prescription coverage benefits in relation to spouse Terry H. Capone (Claimant) from 3/31/2014 to present.
4. Order Defendants to obtain an accounting and reimburse BlueCross BlueShield Federal Employee Program and affiliates, Member Name: DEMETRIA T CAPONE MEMBER ID: R58879952 Enrollment Code: 105(PPO) Effective Date: 04/30/2017 to present. Customer Service 1-800-444-0025
5. Order Defendants to obtain and accounting reimburse State of SC OPEBA State Health Plan PPO and affiliates, BlueCross BlueShield of South Carolina State Claims Processing Unit. PO Box 100605 Columbia, SC 29260. Customer Service. In Columbia 803.736.1576. Effective Date: 3/31/2014 to 1/1/2018
6. Pay the Appellate/ Claimant based on disability and loss that reaches into the "future earning capacity" the correct Compensation rate $\$2611.20 \times .666 =$ Average Weekly Wage \$1739.06, and all compensation, due with interest and immediately pay all payment up to date.
7. Order Defendants to reimburse Claimant Terry H Capone all out of pockets paid from 10/21/2013, for health/dental/vision/prescription drugs and co-payments associated with medical/dental/vision/test/labs associated with visits from 10/21/2013- present.
8. Order Defendants to obtain/issue and pay for coverage for Claimant Terry H Capone through BlueCross Blue Shield and affiliates for HEALTH/DENTAL/VISION/PRESCRIPTIONS DRUG PLAN for life.
9. The Claimant is requesting Interest, Penalties and Punitive damages of amount to be determined partly based on monies previously withheld.
10. The Claimant request to be paid past the Schedule.

11. The Claimant is requesting the Commission make a finding of Total and Permanent Disability, due to Post Traumatic Stress Disorder an occupational disease, Major Depression, Anxiety, Irritable Bowel Syndrome with Diarrhea (IBS-D), Migraine Headaches, and Carpal Tunnel, Bilateral Foot Fungus, Bi-lateral Foot pain, Brain damage to include a Traumatic Brain Injury an aggravation thereof

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION
★VOLUNTARY REMANDED ★
BY THE APPELLATE PANEL

RECEIVED

APR 29 2019

SC Court of Appeals

W.C.C. File Nos. 1322451, 1319203, 1420487
Appellate Case No.: 2018-000369 associated with 2018-001364

PROOF OF SERVICE

Terry H Capone, Claimant,

Appellant,

v.

City of Columbia, Employer, and
Companion Third Party Administrator, LLC, Carrier, Respondents.

Terry H Capone, of Richland County, Pro Se Appellant.

I certify this 27th day of April 2019 that I have served a copy of the **Amended** Initial Brief of Appellant and Designation of Matter by depositing a copy in the United States Mail, first class postage prepaid, certified or better addressed to the following:

Cynthia C. Dooley, Esquire
Carmelo Barone Sammataro, Esquire Attorneys for Respondents
TURNER PADGET GRAHAM & LANEY P.A.
P.O. Box 1473
Columbia, SC 29202

Amy Bracey
South Carolina WCC Judicial
P.O. Box 1715
Columbia, SC 29202-1715

April 27, 2019



By: _____
Mr. Terry H Capone
130 Summerlea Drive
Columbia, SC 29203
(803) 622-6578
Email: tcapone@liberty.edu
APPELLANT, PRO PER



RECEIVED
APR 29 2019
SC Court of Appeals
April 27, 2019

US MAIL DELIVERY OR PERSONAL SERVICE

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

Re: Terry Capone v. City of Columbia and Companion Third Party Administrator, LLC
Appellate Case No.: 2018-000369 associated with 2018-001364
W.C.C. File Nos. 1322451, 1319203, 1420487

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of the **AMENDED** Appellants Initial Brief – The State of South Carolina Workers’ Compensation Commission is Unconstitutional. This is based on The State of South Carolina Workers’ Compensation Commission and this Court’s Long history & practicing racism (White Supremacy) which functions in all areas of human activity Labor, Law, Economics, Education, Entertainment, Politics, Religion, Sex and War, failure to appropriately investigate; Obstruction of Justice; Fraud Upon the Court; False Statements; Incompetence; Unfair & Unequal Treatment; Double Standards based on race and a denial of procedural & substantive due process, the devaluation of Workers Compensation Benefits (Property) I and my family have a substantial property- interest in. The decisions had disparate impacts, because despite all irrefutable evidence provided to the South Carolina Workers Compensation Commission, the State of South Carolina failed to provide equal protection under the color of law, there is a history of favorable outcomes to Whites under your system of misogyny and racism (White Supremacy).

The State of South Carolina Workers’ Compensation Commission employs Commissioners who are licensed as practicing attorneys and dully competent and qualified as administrative law judges to decide cases, and whose names are found on the Directory Members of attorneys in The State of South Carolina. The State of South Carolina Workers’ Compensation Commission “The State” allowed my claim to be heard and decided by biased (Caucasian/White Males) unlicensed Commissioners Wilkerson, Jr , McCaskill, and Campbell, who are NOT dully competent or qualified, their names were not found on the Directory Member of attorneys in The State of South Carolina and are paid same sum of about \$124,000.00 (plus free car and per diem possible \$10,000) as the dully qualified by the State of South Carolina and some secretaries (Caucasian/ White) \$50,000.00 shows White Privilege and racism (White Supremacy) which is misogynistic and systemic.

In my case without an opportunity as a Pro Per litigant to decide/ “object”; be heard and then to have mix (unqualified/qualified) again and who are biased, cycle themselves in and out continuously denying the appeals from the very decisions complained of, reinvesting by voluntary remanding the case, “never being heard a new”, in furtherance of racism (White Supremacy). In addition to the above aforementioned Constitutional and

statutory provisions- Crime Fraud Exceptions, Active Concealment For Fraud In Real Property 15-3-670 (C) (1) (2) And Others regarding the above-referenced matters. The Workers' Compensation Commission's decisions were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. Sec. 706 (1977). The standard of review of the court is instructive. The court is to set aside the South Carolina Workers Compensation action if it finds it to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. Sec. 706 (1977). I am not a lawyer. Also enclosed are the original and seven copies of the Proof of Service. Thank you for your assistance with this matter, please contact me if you have any questions.

Thank you for your consideration.

With The Highest Regards,

A handwritten signature in black ink, appearing to be 'J. A. S.', written in a cursive style.

Enclosure(s) as Stated
Cc: Cynthina C Dooley
Carmelo B. Sammataro Attorney for Respondents
Amy Bracy

Mr. Terry H. Capone
Fire Battalion Chief-Retired

