

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
APPELLATE PANEL

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

Terry Capone, ..... Appellant,

v.

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

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★ APPELLANT'S REPLY BRIEF ★

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Terry H Capone, Pro Se Appellant

**RECEIVED**

AUG 13 2019

SC Court of Appeals

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PRO PER APPELLANT

★ August 12, 2019

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STATEMENT OF ISSUES ON APPEAL

- I. THE DOCTRINE OF RES JUDICATA DOES NOT BAR FURTHER REVIEW OF A VOID JUDGMENT [ ORDER / DECISION] AND SCHEME TO DEFRAUD APPELLANT OF BENEFITS ARISING OUT OF HIS INJURIES UNDISPUTED BY EVIDENCE THAT ALSO PROVES ARE WORK-RELATED. AS THESE ARE MATTERS IN EQUITY AND THE APPELLATE MAINTAINS HIS COMMON LAW RIGHTS, EXTRAORDINARY CIRCUMSTANCES EXIST.
  
- II. THE TRIBUNAL HAS INHERENT POWER TO SET ASIDE ONE OF ITS JUDGMENTS ARISING OUT OF COMMON LAW AND EQUITY. MOTIONS TO ALTER OR AMEND PURSUANT TO RULE 60 OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE ARE PROPER BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION BECAUSE SOUTH CAROLINA TRIBUNALSS , AND APPELLANT'S RULE 60 MOTION WAS TIMELY. DUE TO DISABILTY AND UNSOUND MIND AND OTHER GROUNDS TO INCLUDE EQUITABLE GROUNDS OF TOLLING.
  
- III. APPELLANT'S BRIEF RAISED ISSUES THAT WERE PRESENTED BELOW AND NON-FRIVOLOUS AND WAS GIVEN NO CONSIDERATION BY THE COMMISSION TO INCLUDE DURING THE VOLUNTARILY REMANDED FROM THE SOUTH CAROLINA COURT OF APPEALS- REVESTMENT BY THE SOUTH CAROLINA WORKERS COMPENSATION AND DEFENDANTS. NO RIGHTS CAN BE LOST WITHOUT OPPORTUNITY TO BE HEARD BEFORE A DECISION MAKER THAT IS NOT IMPARTIAL AND NEURTRAL

## STATEMENT OF THE CASE

Appellant Terry Capone ("Capone") developed the Coexistence of multiple disease processes and a cascade of multiple illnesses, a "cascade effect" can describe the multiple problems, due to his work related injuries and exposures and he gave required notification 10/25/2013 and then on filed the proper injury/illness reports with his immediate supervisors and Employer & Employers Carrier and was due Workers Compensation benefits for several separate claims directly caused or aggravated by his work as a City of Columbia Fire Battalion Chief – Firefighter at various levels over a 17 ½ year period and three of the claims are as follows:

(1) Form 50 Amended 6/25/2015 WCC File 1319203 for a re-injury to his hands/wrist/Arms/Elbows and Lower back and Brain injured on October 12, 2013- Further grounds or unusual aspects of claim: Claimant was being treated and release 1/14/2014 despite still suffering and symptoms have worsened and continue to effect me daily and my quality of life.

(2) Form 50 Amended 6/24/2015 WCC File 1322451 for Aggravation of PTSD, Depression, Anxiety, Migraines Headaches and secondary associated injured on November 7, 2013- Further grounds or unusual aspects of claim: "Being amended based on Pysch eval conducted 4/3/2015 Medical opinion given by Dr.Lind Post Trauma Resources;

(3) Form 50 Amended 6/24/ 2015 WCC File Number 1420487 for Toes nails injured on June 24 , 2013 Mold & Mildew @ fire stations, Foot wear issued & constant wet environment od occupation, Toe nail fungus redeveloped

The Employers Workers adjuster "Companion" accepted and issued workers Compensation for the WCC File 1319203 for Oct 12, 2013 injuries to his hands and wrist on or about 12/06/2013 until sometime in 1/06/2014, at which time the carrier stopped Workers Compensation payments, and was an illegal taking, a WCC Form#15 was filed the 04/11/2014, as Appellant Capone has a property right/ interest in not only the application, but the receipt and every other aspects that stems from his Workers Compensation benefits, and was disability retired March 28, 2014 as a result of his work-related injuries and as a Disabled Fire Fighter protected by the United States and South Carolina Constitution.

## FACTS

Appellant Capone Filed Form 50's, requesting a hearing on the three claims Single Commissioner Henry Gene McCaskill on August 21, 2015, and his Decision and Order denying benefits was filed December 2, 2015. Recognizing Capone's pro se status, disability and unsoundmind the defendants, Defendants Attorney, Commission and Commissioner McCaskill went to great lengths to commit fraud upon the Court/ Tribunal and Appellant Capone by omitting evidence /altering medical opinions and concealing the toxic mold/fugus in the Fire Stations and submitting incorrect average weekly wage amount to deny and devalue Workers Compensation benefits that are constitutionally and statutorily mandated. See, May 21, 2019, Appellants Return to Motion to Dismiss filed with this Court P.#15-16 Exhibits #1-8 (2-5). Suffering from the continued "cascade effect" of multiple physical and psychological injuries and multiple medication regiments being under disability and unsoundmind succumbing to those work related illness/ injuries and disease processes was unable to appeal the Void Judgment until a time when the "cascade effect" of his work related illnesses/ injuries and medication therapy began to level out and Appellant Capone sought redress before the Commission and filed the following:

(1) Form 50 Amended 12/30/2017 WCC File 1319203 for a re-injury to his Hands/Arms/Elbows, Knees, Bilateral Feet, Head, Perineal and Lower back injured on October 12, 2013- Further grounds or unusual aspects of claim: OSHA 301 Sent via Email to HSO OWUSU, Fire Chief and Admin Additionally missing Military Medical records sent via email and USPS (OA) 9/18/2017

(2) Form 50 Amended 12/30/2017 WCC File 1322451 for Aggravation of PTSD symptoms, Depression, Anxiety, Headaches from repeated work related injuries- injured on November 7, 2013- Further grounds or unusual aspects of claim: OSHA 301 Sent via Email to HSO OWUSU, Fire Chief and Admin Additionally missing Military Medical records sent via email and USPS (OA) 9/18/2017

(3) Form 50 Amended 1/12/2017 (ADDENDUM/FRAUD)WCC File Number 1420487 for BODY and Bilateral FEET Due to toxic Mold/(Fungus) "Chaetomium" and others-Exposed to TOXIC MOLD (FUNGUS) in Fire Stations Toes nails injured on June 24 , 2013 Mold & Mildew @ fire stations/ Dept Never measured Feet caused Major foot problems- Further grounds or unusual aspects of claim: Insurance Fraud and Fraud on the court by the City of Columbia denied the Mold(Fungus) on my body was work- related also found in Fire Stations All where denied by the Single Commissioner Wilkerson as res judicata and then on appeal

to the Full Commission appeal was dismissed as Interlocutory, although the Constitutional question was raised due to affecting fundamental and other rights and It was only after the 9/5/2018 Voluntary remand –Revestment- by SC Workers Compensation Commission, this Court dismissed the July 23, 2018 appealed Interlocutory order affecting substantial rights of Appellant Capone, excerpts "Because a final order has not been issued by the Appellant panel and this case remains pending below".

#### ARGUMENT

Capone's presented undisputed evidence to this court of fraud and continues to seek justice by appellate review of the Void December 2, 2015 Decision and Order of the single commissioner are not futile, and that order is Void and nothing can make it valid and should be set aside. First, because it is undisputed the Single Commissioner committed Fraud Upon the Court and the Appellant Capone who was under legal disability and unsound mind, The single commission by omitting and altering the medical report and then basing his opinion on that medical report, creating a result that is incompatible under the laws of equity, common law, Constitutional law, and statutorily mandated provisions under the South Carolina Workers Compensation Act, and in egregious clear violation of public policy.

Because the Commissioner and Full Commission incorrectly determined the December 2, 2013 Void Decision and Order was not timely appealed and. There can be no law of the case of a void judgment, this Court Should deny all actions that arose out of the that Void Decision and Order obtained by the fraud upon the court and Appellant Capone, and fraudulent acts of the Commissioners and Defendants.

I. THE DOCTRINE OF RES JUDICATA DOES NOT BAR FURTHER REVIEW OF A VOID JUDGMENT [ ORDER / DECISION] AND SCHEME TO DEFRAUD APPELLANT OF BENEFITS ARISING OUT OF HIS INJURIES UNDISPUTED BY EVIDENCE THAT ALSO PROVES ARE WORK-RELATED. AS THESE ARE MATTERS IN EQUITY AND THE APPELLATE MAINTAINS HIS COMMON LAW RIGHTS, EXTRAORDINARY CIRCUMSTANCES EXIST.

In its March 1, 2019 Decision and Order, the Appellate Panel of the Full Commission incorrectly determined that the doctrine of res judicata bars further appellate review of Capone's claims in this case, this Court should not affirm that decision, because the Decision and Order are also Void. "Res judicata consequences will not be applied to a void judgment which is one which, from its inception, is a complete nullity and without legal effect" Allcock v. Allcock 437 N.E. 2d 392 (Ill. App. 3 Dist. 1982). (underline emphasis) In addition, the case was voluntarily remanded- Revestment- by the South Carolina Workers Compensation Commission, thereby jurisdiction was obtained by fraud and Trickery and not one of the Appellants Capone's non-frivolous issues were addressed and these actions were arbitrary on their face and continued to violate safe-guards that are Constitutionally protected to include Due Process, Procedural and Substantive Due Process and Equal protection under the color of law to include an opportunity to be heard, strict Scrutiny applies and this Court maintains Jurisdiction. "A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere. Pennoyer v. Neff, 95 U.S. 714, 732-733 (1878)." [World-Wide Volkswagen Corp. v. Woodson, 444 U.S. \ 286 (1980)

A "void" judgment, as we all know, grounds no rights, forms no defense to actions taken thereunder, and is vulnerable to any manner of collateral attack (thus here, by). No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not res judicata, and years later, when the memories may have grown dim and rights long been

regarded as vested, any disgruntled litigant may reopen old wound and once more probe its depths. And it is then as though trial and adjudication had never been. *Fritts v. Krugh*, Supreme Court of Michigan, 92 N.W.2d 604, 354 Mich. 97 (10/13/58).

Time limitation does not apply where the judgment is based on a fraudulent return. (*Washko v. Stewart*, supra, p. 318; *Richert v. Benson Lbr. Co.*, supra, p. 677.).

In *Halbach v. Halbach*, 259 Wis. 329, 331, 48 N.W.2d 617 (1951), the *void judgment* was challenged ten years after entry. The court stated that laches did not apply even if the plaintiff had been dilatory or lackadaisical in his efforts to overturn the judgment. "It is the duty of the court to annul an invalid judgment."

### **South Carolina**

A *void judgment* is one that, from its inception, is a complete nullity and is without legal effect." *Thomas & Howard Co. v. T.W. Graham and Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995). The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996). It is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are to be affected." *Tyron Fed. Sav. & Loan Ass'n v. Phelps*, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992). Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property. The requirements of due process not only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review. *Grannis v. Ordean*, 234 U.S. 385, 394 (1914) ("The fundamental requisite of due process of law is the

opportunity to be heard."); *S.C. Dep't of Soc. Servs. v. Holden*, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995).

"Obviously a judgment, though final and on the merits, has no binding force and is subject to collateral attack if it is wholly void for lack of jurisdiction of the subject matter or person, and perhaps for excess of jurisdiction, or where it is obtained by extrinsic fraud. [Citations.]" (7 Witkin, *Cal. Procedure*, supra, Judgment, § 286, p. 828.

II. THE TRIBUNAL HAS INHERENT POWER TO SET ASIDE ONE OF ITS JUDGMENTS ARISING OUT OF COMMON LAW AND EQUITY. MOTIONS TO ALTER OR AMEND PURSUANT TO RULE 60 OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE ARE PROPER BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION BECAUSE SOUTH CAROLINA TRIBUNALSS, AND APPELLANT'S RULE 60 MOTION WAS TIMELY. DUE TO DISABILTY AND UNSOUND MIND AND OTHER GROUNDS TO INCLUDE EQUITABLE GROUNDS OF TOLLING

As previously stated by this court: we would note other South Carolina tribunals have the inherent power to reopen agreements and judgments procured by fraud. See Raby Const., L.L.P. v. Orr, 358 S.C. 10, 18, 594 S.E.2d 478, 482 (2004) (citing Bryan v. Bryan, 220 S.C. 164, 66 S.E.2d 609 (1951); see also Greenfield v. Greenfield, 245 S.C. 604, 141 S.E.2d 920 (1965) (holding "the inherent powers of a court, which are essential to its existence and protection and to the due administration of justice within the scope of the jurisdiction expressly conferred, do not depend upon express constitutional or legislative grant"). Spivey ex rel. Spivey v. Carolina Crawler, 367 S.C. 154, 159, 624 S.E.2d 435, 437 (Ct. App. 2005). This Court upon advice to other Appellants/Claimants to seek redress through the commission, the tribunal has wielded this exact inherent power even in situations that are not

as egregious as the facts of the Appellant Capone's case see, *Spivey ex rel. Spivey v. Carolina Crawler*, 367 S.C. 154, 159, 624 S.E.2d 435, 437 (Ct. App. 2005).

The South Carolina Workers' 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).

In *Hogan v. Cone Mills Corp.*, 315 N.C. 127, 337 S.E.2d 477 (1985), The North Carolina Supreme Court stated:

The Rules of Civil Procedure are not strictly applicable to proceedings under the Worker's Compensation Act, *see* N.C. R. Civ. P. 1, and we find no counterpart to Rule 60(b)(6) in the Act or the Rules of the Industrial Commission. We believe the Industrial Commission, nevertheless, has inherent power to set aside one of its former judgments. Although this power is analogous to that conferred upon the courts by N.C. R. Civ. P. 60(b)(6), it arises from a different source. We conclude the statutes creating the Industrial Commission have by implication clothed the Commission with the power to provide this remedy, a remedy related to that traditionally available at common law and equity and codified by Rule 60(b). This power inheres in the judicial power conferred on the Commission by the legislature and is necessary to enable the Commission to supervise its own judgments.

*Id.* at 137, 337 S.E.2d at 483 (footnote omitted). The Court went on to note that it had previously held that "the Commission's judicial power includes the power to set aside a

former judgment on the grounds of mutual mistake, misrepresentation, or fraud," *id.* at 138, 337 S.E.2d at 483, *citing Neal v. Clary*, 259 N.C. 163, 130 S.E.2d 39 (1963), and "also includes the power to order a rehearing on the basis of newly discovered evidence," *id.*, *citing Butts v. Montague Bros .*, 208 N.C. 186, 179 S.E. 799 (1935).

Under the APA, circuit courts may review final decisions of the full commission to determine if the decision was affected by an error of law in view of the evidence on the whole record. *Shealy v. Aiken County*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000)

"The 'catch all' provision of clause (6) of Rule 60(b) allows a trial court to grant relief from a judgment for 'any other reason justifying relief.' *Barnett v. Ivey*, 559 So.2d 1082, 1084 (Ala.1990). "Relief under Rule 60(b)(6) is reserved for extraordinary circumstances, and is available only in cases of extreme hardship or injustice." *Chambers County Comm'rs v. Walker*, 459 So.2d 861, 866 (Ala.1984) (quoting *Douglass v. Capital City Church of the Nazarene*, 443 So.2d 917, 920 (Ala.1983)).

2 Rule 60(b)(1)—(3) provide relief for the following reasons: "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); [and] (3) fraud, misrepresentation, or other misconduct of an adverse party. . . ." The remaining grounds for relief provided for in Rule 60(b) are not at issue in these proceedings.

The workers' compensation statutory scheme does not contemplate a motion to reconsider, or There is no delay in seeking relief of a Void judgment, combined with the Commissions violations of Constitutional safe guards/ rights and Fraud upon the Court and failure to follow established procedural requirements by the South Carolina Workers Compensation Commission, In any case the Commission voluntary remand –Revestment- of the case as it sat before the South Carolina Court of Appeals- Jurisdiction was obtained by trickery and fraud this Court maintains appellate jurisdiction to consider any and all error on the part of the single commissioner and the full commissions in denying his claims. This Court should not dismiss Capone's appeal because the Judgment is void.

III. APPELLANT'S BRIEF RAISED ISSUES THAT WERE PRESENTED BELOW AND NON-FRIVOLOUS AND WAS GIVEN NO CONSIDERATION BY THE COMMISSION TO INCLUDE DURING THE VOLUNTARILY REMANDED FROM THE SOUTH CAROLINA COURT OF APPEALS- REVESTMENT BY THE SOUTH CAROLINA WORKERS COMPENSATION AND DEFENDANTS. NO RIGHTS CAN BE LOST WITHOUT OPPORTUNITY TO BE HEARD BEFORE A DECISION MAKER THAT IS NOT IMPARTIAL AND NEURTRAL

The appeal is not untimely and there is no reason for the Appellant Capone to address The merits of a void judgment, that was obtained by fraud upon the court/Tribunal and violated rights that are constitutionally protected and statutorily mandated. - contrary to the Fraudulent/ Scandalous assertions made by the defendants through attorneys pleadings in the Respondent Initial brief dated July 29, 2019, Appellant Capone's arguments regarding various violations of his Constitutional and other rights to include common law cannot be deemed abandoned, Strict Scrutiny applies to any situation, as in the this case, involving suspected classification that limits fundamental rights, the arguments are not

conculsory or assertions, are in fact very detailed and supported by discussion of legal arguments and citations to authorities. The Defendants and their Attorneys know, as does this Court that supporting detailed evidence was offered by Appellant Capone and his arguments are well founded and supported by affidavits, pleadings and papers on file with this Court, that detailed the Trickery and Fraud upon the Court/Tribunal perpetrated against him, and addressed again in the Appellants May 21, 2019 Return to Motion to May 8, 2019 Motion To Dismiss Appeal by the Defendants to which their offered no rebuttal.

Further, as previously stated the December 2, 2015 Decision and Order of the single commissioner is a void judgment and as evidence provided to this court and defendants verifies that the Appellant Capone was under disability and unsound mind due to the work related injuries. Likewise, all Decision and Orders made applying res judicata and affirming the denial of additional benefits should not be affirmed, as it was procured through fraud and other violations, extraordinary circumstances exist and this court has jurisdiction.

Capone's arguments on appeal must NOT be rejected because they have been substantiated And supported by facts, evidence that has been proffered before this Court, the Commission, Defendants and as these are matters in Equity and I maintain my Common law rights,

## CONCLUSION

For the reasons stated in the Appellants Initial Brief and herein, Capone's arguments regarding violations of various Constitutional provisions should not be deemed abandoned because God never meant for him to suffer, and it would continue to deprive him of fundamental and substantial rights are affected. Further, the Decision and Orders applying *res judicata* and affirming the denial of additional benefits should be denied, the December 2, 2015 Decision and Order of the single commissioner is a void judgment [or order], being worthless in itself, all proceedings founded upon it are equally worthless, a void order can have no preclusive effect and relief is mandatory. This Court has and continues to maintain jurisdiction.

August 12, 2019

By: 

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Pro Per, Appellant

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
APPELLATE PANEL

**RECEIVED**

AUG 13 2019

SC Court of Appeals

Appellate Case No. 2019-000369  
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Terry Capone, ..... Appellant,

v.

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

**PROOF OF SERVICE**

I certify this 13<sup>th</sup> day of August 2019 that I have served copies of the APPELLANT  
REPLY BRIEF and APPELLANTS' DESIGNATION OF MATTER TO BE INCLUDED

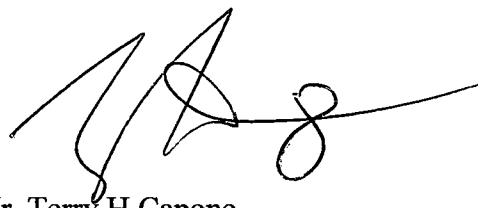
IN THE RECORD ON APPEAL by mailing same, postage prepaid in the United States mail,  
addressed to the following:

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Camelo B Sammataro Attorney  
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ATTORNEYS FOR RESPONDENTS

(Signature page to follow.)

August 12, 2019

A handwritten signature in black ink, appearing to read 'T. Capone', with a long horizontal line extending to the right.

By: Mr. Terry H Capone  
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PRO PER APPELLANT



RETIRED

August 12, 2019

US MAIL DELIVERY OR PERSONAL SERVICE

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

**RECEIVED**  
AUG 13 2019  
SC Court of Appeals

Re: Terry Capone v. City of Columbia and Companion Third Party Administrator, LLC  
Appellate Case No.: 2019-000369  
W.C.C. File Nos. 1322451, 1319203, 1420487

Dear Ms. Kitchings:

Enclosed please find the originals and one copy each of the Appellants Reply Brief, and Appellants' Designation of Matter to be included in the Record on Appeal, and Proof of Service regarding the above-referenced matter. I am not a lawyer. 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,

Enclosures

Cc: Cynthia C Dooley & Carmelo B. Sammataro

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