

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

**RECEIVED**

AUG 19 2019

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

---

W.C.C. File No.: 1105628

---

Ex Parte: Christine Bradley, Surviving Spouse, ..... Appellant,

v.

Southern Industrial Constructors, Inc., Employer,  
and Zurich American Insurance Company  
c/o Zurich North America, Carrier, ..... Respondents.

---

**INITIAL BRIEF OF RESPONDENTS**

---

McANGUS GOUDELOCK & COURIE, LLC  
Jason W. Lockhart  
P.O. Box 12519, Capitol Station  
Columbia, South Carolina 29211-2519  
(803) 779-2300

Helen F. Hiser  
P.O. Box 650007  
Mount Pleasant, South Carolina 29465  
(843) 576-2900

*Attorneys for Respondents Southern Industrial  
Constructors, Inc., Employer, and Zurich American  
Insurance Company c/o Zurich North America,  
Carrier*

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES..... ii

STATEMENT OF ISSUES ON APPEAL ..... iv

STATEMENT OF THE CASE .....1

STANDARD OF REVIEW .....11

ARGUMENTS .....12

    I.    The Commission properly found that Respondents conducted a  
        good faith dependency investigation .....13

    II.   The Commission properly awarded Appellant the balance of  
        the outstanding benefits due to Claimant, as well as funeral  
        expenses, and ruled that funds remaining in the account  
        maintained by the Guardian ad Litem be paid to the personal  
        representative of Claimant’s estate or, if none, to the Lee  
        County Clerk of Court .....16

    III.  Appellant’s remaining issues are not preserved for appellate  
        review and/or are not properly the subject of a Commission  
        hearing .....18

        A.  Appointment of a Guardian ad Litem for Claimant.....18

        B.  Payment to family members for providing care to Claimant  
            and alleged outstanding medical bills.....21

        C.  Proof of Decedent’s cause of death .....22

        D.  Spousal benefits .....23

        E.  Appellant’s assertions of denial of benefits .....24

CONCLUSION.....27

**TABLE OF AUTHORITIES**

**CASES**

<u>Brunson v. American Koyo Bearings,</u> 367 S.C. 161, 623 S.E.2d 870 (Ct. App. 2005).....	19
<u>Clark v. Aiken County,</u> 366 S.C. 102, 620 S.E.2d 99 (Ct. App. 2005).....	19
<u>Clear Channel Outdoor v. City of Myrtle Beach,</u> 372 S.C. 230, 642 S.E.2d 565 (2007) .....	20
<u>Jones v. South Carolina Dept. of Health &amp; Env't'l Control,</u> 384 S.C. 295, 682 S.E.2d 282 (Ct. App. 2009).....	20
<u>Lark v. Bi-Lo, Inc.,</u> 276 S.C. 130, 276 S.E.2d 304 (1981) .....	11
<u>McGuffin v. Schlumberger-Sangamo,</u> 307 S.C. 184, 414 S.E.2d 162 (1992) .....	12
<u>Medical Soc'y v. Medical Univ. of S.C.,</u> 334 S.C. 270, 513 S.E.2d 352 (1999) .....	23
<u>Nationwide Mut. Ins. Co. v. Eagle Window &amp; Door, Inc.,</u> 424 S.C. 256, 818 S.E.2d 447 (2018) .....	12
<u>Nunn v. Noodles &amp; Co.,</u> 674 F.3d 910 (8th Cir. 2012) .....	26
<u>Nunn v. Noodles &amp; Co., Civ. No. 09-1286 (JNE/JJK),</u> 2010 U.S. Dist. LEXIS 124367 (D. Minn. Nov. 23, 2010).....	26
<u>Pierre v. Seaside Farms, Inc.,</u> 386 S.C. 534, 689 S.E.2d 615 (2010) .....	12
<u>Price v. Peachtree Elec. Servs.,</u> 396 S.C. 403, 721 S.E.2d 461 (Ct. App. 2011).....	23
<u>Rhodes v. AIG Domestic Claims, Inc.,</u> 461 Mass. 486, 961 N.E.2d 1067 (Mass. 2012).....	26
<u>Rogers v. Kunja Knitting Mills, Inc.,</u> 312 S.C. 377, 440 S.E.2d 401 (Ct. App. 1994).....	12

**STATUTES, REGULATIONS & RULES**

S.C. Code Ann. § 1-23-380(5) (Supp. 2011).....11, 12

S.C. Code Ann. § 42-3-180.....23, 24

S.C. Code Ann. § 42-9-290.....16

S.C. Code Ann. § 42-9-301.....16

S.C. Code Ann. § 42-17-60.....19

S.C. Code Reg. § 67-607 .....19

S.C. Code Reg. § 67-613(A).....22

Rule 208(b)(1)(B), SCACR .....13

Rule 208(b)(1)(C), SCACR .....13

## STATEMENT OF ISSUES ON APPEAL

- I. Whether the Commission properly found that Respondents conducted a good faith dependency investigation?
- II. Whether the Commission properly awarded Appellant the balance of the outstanding benefits due to Claimant, as well as funeral expenses, and ruled that funds remaining in the account maintained by the Guardian ad Litem be paid to the personal representative of Claimant's estate or, if none, to the Lee County Clerk of Court?
- III. Whether Appellant's remaining issues are not preserved for appellate review and/or are not properly the subject of a Commission hearing?

## STATEMENT OF THE CASE

This claim has a long and complicated history, much of which is irrelevant to the issues properly on appeal, but which Respondents summarize as briefly as possible in order to provide the Court with a context both for the issues before it and other issues raised by Appellant Christine Bradley (herein “Mrs. Bradley” or “Appellant”). Albert Bradley (herein “Claimant” or “Decedent”) was involved in a work-related accident on May 17, 2011 that resulted in a traumatic brain injury, which arose out of and occurred within the course of his employment with Respondent Southern Industrial Constructors, Inc. (“Employer”). Employer and its workers’ compensation carrier, Zurich American Insurance Company c/o Zurich North America (jointly herein “Respondents”), accepted the claim and began providing causally-related medical care and paying weekly compensation benefits.

Appellant, Decedent’s surviving spouse, initially was appointed to serve as Guardian ad Litem for her husband in a Decision & Order signed by Commissioner Susan S. Barden. (Order Appointing Guardian ad Litem, served June 8, 2011). On November 28, 2011, Respondents filed a motion to compel Mrs. Bradley, as Claimant’s Guardian ad Litem, to sign forms authorizing Intermedical Hospital of South Carolina, a residential healthcare facility where Claimant was residing, to provide treatment. Without such authorization, necessary medical care could not be provided to Claimant. (Motion to Compel Guardian ad Litem to Consent to Execute Medical Treatment Release Forms, filed Nov. 23, 2011, with attachment). In an Administrative Order, that Motion was granted. (Administrative Order, served Dec. 7, 2011).

On February 8, 2012, Respondents again moved to compel Mrs. Bradley to cooperate with the administration of authorized causally related medical treatment which, at that time, was being provided in Claimant's home by BrightStar Care of Gastonia, North Carolina. (Motion to Compel Guardian ad Litem to Cooperate with the Administration of Causally Related Medical Treatment, filed Feb. 8, 2012). After a hearing before Commissioner T. Scott Beck on March 14, 2012, which Mrs. Bradley failed to attend, the Commissioner ordered that "the Claimant's Guardian ad Litem, Christine Bradley, is statutorily required to acquiesce in and not interfere with the administration of causally related medical treatment." (Decision & Order, filed April 6, 2012, pp. 3-4). That Decision & Order was not appealed.

On March 23, 2012, Respondents moved to have Mrs. Bradley removed as Guardian ad Litem for Decedent due to repeated reports that she was "interfering with the administration of authorized causally related medical treatment." (Motion to Remove Guardian ad Litem and Request for Commission Appointment of Guardian ad Litem, filed March 23, 2012, with Exh. A, 4-page Chronological Index of Medical Treatment). Following a hearing on July 18, 2012, at which Claimant's daughter, Lavare Seltun testified, (Tr. of July 18, 2012 Hearing), Mrs. Bradley was removed as Guardian ad Litem in an Decision & Order issued by Commissioner Beck. Ms. Seltun, was appointed as Guardian ad Litem and was ordered to cooperate with and not interfere with the administration of necessary medical treatment. (Decision & Order, filed Aug. 16, 2012, pp. 4-5).<sup>1</sup> That Decision & Order was not appealed.

---

<sup>1</sup> Up until this point in time, Claimant's interests were represented by counsel who, by Order of the Commission, was allowed to withdraw as legal counsel as of September 28, 2012. (Order Relieving Counsel, filed Sept. 28, 2012).

On October 18, 2012, Respondents sent Commissioner Beck a letter requesting a hearing on the basis that they were concerned that Claimant's Guardian ad Litem was interfering with the administration of medical treatment. (Letter from J. Lockhart to Commissioner Beck, dated Oct. 18, 2012). After a hearing on January 25, 2013, attended by Ms. Seltun, Commissioner Beck issued an Order removing her as Guardian ad Litem and appointing Attorney Michael A. Farry as Claimant's Guardian ad Litem. In addition, based on the receipt of additional information concerning Claimant's concurrent employment on the date of the May 2011 accident, his average weekly wage was adjusted to the maximum compensation rate for 2011 of \$704.92. Commissioner Beck retained jurisdiction over this claim. (Decision & Order, filed Feb. 11, 2013, pp. 5-6). That Decision & Order was not appealed.

On September 9, 2013, Respondents again moved the Commission "to compel the Claimant's wife and daughter to cease any and all activity that has or shall inhibit the provision of causally related medical treatment by the Claimant's authorized medical providers, home health services providers, and nurse case management." Following a telephone conference with Decedent's Guardian ad Litem, Michael A. Farry and counsel for Respondents, Commissioner Beck issued an order noting the family's interference including, but not limited to, "Claimant's family's levying of accusations against Unifour Nursing of physical injury to the Claimant ... that were later determined to be false accusations against Unifour Nursing." Commissioner Beck ordered Claimant's family to cooperate with the administration of medical treatment and cautioned that "if the behavior of the Claimant's wife, Christine Bradley, continues to interfere with the administration of authorized causally-related medical treatment, then such interference

may result in consideration of placement of the Claimant in a residential facility.” (Decision & Order, filed Oct. 10, 2013, p. 3). That Decision & Order was not appealed.

Michael Farry, Claimant’s Guardian ad Litem, requested a hearing to determine, among other things, whether Respondents should be required to pay for modifications to Claimant’s home in Mayesville, South Carolina and/or for Claimant’s living expenses since the date of the accident to present, as well as whether Respondents should be held responsible for paying Mrs. Bradley for attendant care she had provided to Claimant. (Form 50, dated Aug. 14, 2014). Respondents filed a Form 58 Pre-Hearing Brief, again raising the issue of interference by the family with the administration of authorized causally-related medical treatment and noting that Claimant’s family had continually rejected Respondents’ offers to place him in a long-term health care facility. (Defendants’ Form 58 Pre-Hearing Brief, dated Sept. 29, 2014).

Commissioner Beck held a hearing on October 8, 2014, which was attended by both Mrs. Bradley and Ms. Seltun. In an order filed June 5, 2015, Commissioner Beck denied the request for full modification/completion of the home in Mayesville, South Carolina because it was not habitable either at the time of Claimant’s injury or at the time of the hearing. The request for payment to Mrs. Bradley and Ms. Seltun for past in-home care was denied based on the “continual interference by the Claimant’s family with providers and even instances in which the family refused acceptance of in-home attendant care.” The request for payment for future in-home care by Mrs. Bradley was approved in part, limited to four hours per day at \$10.00 per hour. Respondents’ offer for Claimant be placed in a long-term residential facility was denied, finding that “it is in Claimant’s best interest to be with his family so long as it does not interfere with the proper

application of medical care.” Commissioner Beck further noted that “the personalities of the Claimant’s family members have been conducive to conflict and that must stop,” and that “any further verifiable interference with medical providers by the Claimant’s family, however slight, will not be condoned by the undersigned Commissioner and will be grounds to re-address the Defendants’ request for long term residential placement.” (Amended Decision & Order, filed June 5, 2015, pp. 15-26).<sup>2</sup> That Decision & Order was not appealed.

On August 21, 2015, Commissioner Beck issued an Order responding to various correspondence received by the Commission from Mrs. Bradley raising concerns as to whether Claimant was receiving “the most appropriate and best treatment and causally related medical care possible.” In order to assess the status of the medical care being provided to Claimant, Commissioner Beck appointed a “dispassionate third party expert,” Jennifer Browning of Browning Geriatric Consultants, to make a “full and complete detailed assessment of the medical needs of Claimant as well as the issues raised” in Mrs. Bradley’s letters. (Order, filed Aug. 21, 2015).

Ms. Browning conducted an assessment on September 14, 2015. Her 17-page report and timeline of events was attached to a Form 58 Pre-Hearing Brief submitted by the Guardian ad Litem, Michael Farry, on November 20, 2015. In the Form 58 Pre-Hearing Brief, Mr. Farry listed one of the issues for resolution to be the “determination of

---

<sup>2</sup> An earlier Decision and Order, filed February 12, 2015 was appealed by Claimant’s Guardian ad Litem, Mr. Farry. (Form 30, dated Feb. 24, 2015). The Commission subsequently set a due date of April 15, 2015 for Appellant to file his Brief with the Full Commission. (Form 31 Briefing Schedule & Notice of Appellate Hearing, served March 16, 2015). Appellant failed to timely file his brief and, consequently, the appeal was dismissed. (Administrative Order, served June 10, 2015). In the meantime, however, an Amended Decision & Order was filed on June 5, 2015.

appropriate medically qualified guardian ad litem appointment for Claimant going forward.” Ms. Browning’s Summary Findings and Recommendations Report (“Browning Report”), provides a detailed background of Claimant’s injury and treatment to that point in time, including the family’s repeated refusal of and interference with medical treatment. The Browning Report concludes that, “[d]ue to past conflicts with Mrs. Bradley being extremely uncooperative, insisting on non-standard protocols of care, being resistive to medical recommendation and education, and making accusations of abuse by service providers, the option of 24/7 HHC services, would not be an option for the long-term-care of Mr. Bradley.” The Browning Report further recommended that “a Certified and Licensed Geriatric Care Manager with experience in long-term-care needs and family mediation” be appointed as Claimant’s Guardian ad Litem, and recommended Victoria Lichtenberger, MPS, CMC, Geriatric Care Man[a]ger, be appointed. The Browning Report also recommended that Claimant “be transitioned to a long-term-care facility for 24/7 care and continuity of care.” Finally, the Browning Report recommended that, “[d]ue to the past conflicts, non-compliance, and disruptions to Mr. Bradley’s care by Mrs. Bradley, some level of supervised and structured visitation is recommended.” (GAL Form 58, dated Nov. 20, 2015, with 17-page attachment).

Following a hearing on December 7, 2015, Commissioner Beck issued a Decision & Order relieving Michael A. Farry, Esquire, as Guardian ad Litem and appointing Victoria Lichtenberger as Guardian ad Litem for Claimant. Commissioner Beck also found that it was in Claimant’s best interest to be placed in a long-term residential care facility located in North Carolina, where he was living at the time. Claimant’s weekly compensation benefits were to be paid to the Guardian ad Litem, Ms. Lichtenberger, who

was ordered to maintain an account for those funds. (Decision & Order, filed Dec. 18, 2015, pp. 6-13). That Decision & Order was not appealed.

In response to a July 19, 2016 letter from Mrs. Bradley alleging that her husband had been kidnapped and mistreated, Gary M. Cannon, Executive Director of the Workers' Compensation Commission, advised Mrs. Bradley that, pursuant to Commissioner Beck's December 18, 2015 Decision & Order, Claimant had been ordered placed in a long-term care facility and that his weekly workers' compensation checks were being sent to Ms. Lichtenberger as the Guardian ad Litem. (Letter from Gary M. Cannon to Mrs. Christine Bradley, dated Aug. 23, 2016).

Claimant passed away on February 5, 2017. The Certificate of Death from Mecklenburg County, attached to Respondents' Form 58 Pre-Hearing Brief, (Defendants' Form 58, Pre-Hearing Brief, filed Sept. 1, 2017, with APA attachments, pp. 1-41), indicates that the immediate cause of death was acute respiratory failure. (APA p. 1). The autopsy report indicated "acute bronchopneumonia" at the time of death. (APA pp. 3-4).

After conducting a good faith dependency investigation, Respondents filed a Form 21 seeking a determination as to payment of the unpaid balance of benefits and death benefits. (Form 21, filed June 13, 2017). Respondents provided the report of Christopher L. Tuten of Tuten Insurance Services Corporation, who had been engaged to perform a dependency investigation on this claim. Mr. Tuten reported that, when he contacted Mrs. Bradley on February 24, 2017, she refused to cooperate, advising him "that she did not wish to cooperate with the insurance carrier regarding the completion of the dependency investigation." Mr. Tuten subsequently sent Mrs. Bradley, per her

request, a letter, (APA p. 17), explaining Tuten's role in the dependency investigation and requesting her to respond. Mr. Tuten attempted to contact Mrs. Bradley on two other occasions in April 2017. (APA p. 8). On April 10, 2017, Mr. Tuten received a letter from Mrs. Bradley asking him to explain all aspects and the nature of the dependency investigation he was conducting. (APA p. 19). Tuten responded in a letter dated April 17, 2017, again fully explaining his role and copying Commissioner Beck. (APA pp. 20-22). As of the date of Tuten's report, he had heard nothing back from Mrs. Bradley.

Mr. Tuten also attempted to contact two of Decedent's children, Derwin Bradley and Lavere Seltun, by telephone on April 3 and April 5, 2017, and sent all three children letters on April 6, 2017. (APA p. 8). In addition, Mr. Tuten contacted prior counsel for Derwin Bradley in another matter and requested that he put Mr. Tuten in contact with Derwin Bradley. Mr. Tuten was advised that Derwin Bradley was not returning his prior counsel's calls. Mr. Tuten reported that Mrs. Bradley refused to cooperate and had requested that he not contact any of her children, even though he had already left messages for Ms. Seltun and Mr. Bradley. He concluded that there was "little investigation left that we can perform regarding this dependency investigation without cooperation from either the claimant's children or his wife, Christine." (APA pp. 10-11, 23).

On November 29, 2017, Mrs. Bradley wrote to Commissioner Beck requesting "all legal documents that were submitted at the said pre-hearing briefing to include APA submissions." At the December 6, 2017 hearing,<sup>3</sup> counsel for Respondents advised

---

<sup>3</sup> A hearing initially was scheduled for September 13, 2017 but was postponed in order to allow Mrs. Bradley and the other potential beneficiaries time to retain legal counsel. (Order, served Sept. 14, 2017).

Commissioner Beck that they had provided Mrs. Bradley with a copy of their APA submissions per his directive. (Tr. p. 4, line 25 – p. 5, line 7). In response to her assertion that she had not received anything, Commissioner Beck advised that he “personally had that mailed to you and have Ms. Seltun’s signature as recipient of that file that I sent to you.” Ms. Seltun acknowledged that she had received the Commission file but asserted there were some things she had been looking for that were not in the file. (Tr. p. 5, line 23 – p. 7, line 5; *see also* p. 8, lines 13-15 (Ms. Seltun reminding Mrs. Bradley that they had agreed to have the files sent to Ms. Seltun’s address)). Mrs. Bradley insisted she had never seen the file but advised Commissioner Beck, “[b]ut you may go ahead and proceed if you see fit.” (Tr. p. 7, lines 19-22).

Mr. Tuten testified as to his attempts to conduct a good faith dependency investigation. (Tr. p. 12, line 2 – p. 22, line 25). Ms. Lichtenberger testified to her role as Guardian ad Litem for Decedent, explaining that she had opened and maintained a bank account on his behalf into which she deposited his weekly compensation benefits and out of which she paid for “any needs associated with Mr. Bradley’s treatment and care ...” She testified that the account had a balance of \$10,133.07. (Tr. p. 26, line 22 – p. 29, line 4). When Mrs. Bradley questioned Ms. Lichtenberger’s appointment, Commissioner Beck advised that he had appointed Ms. Lichtenberger as Guardian ad Litem. (Tr. p. 30, line 2 – p. 31, line 16). Mrs. Bradley asked to have Decedent’s “clothes, his shoes, his shaving stuff,” that he was using at the long-term residential facility returned to the family. In response, Ms. Lichtenberger explained that, in her role as Guardian ad Litem, she had purchased some clothing, some toiletries, and some things

for Decedent's room and, following his passing, "those things were donated." (Tr. p. 43, line 15 – p. 45, line 2).

Following the hearing, Mrs. Bradley sent a letter to Commissioner Beck alleging that certain "monies have been excluded from this calculation to include social security payments for 11 months, SC state retirement benefits for 3 months, and weekly workers' compensation payments from January 2016 until February 5, 2017," and referring to "spousal income" she had not received following Decedent's injury. (Letter from Mrs. Bradley to Commissioner T. Scott Beck, dated Dec. 7, 2017).

Commissioner Beck issued a Decision & Order on January 22, 2018, finding that Respondents had conducted a good faith dependency investigation and ordering that, as the surviving spouse, Mrs. Bradley receive the balance of unpaid workers' compensation benefits, as well as \$2,500.00 for funeral expenses. The Guardian ad Litem was ordered to pay the balance of the account she had maintained on Decedent's behalf to the personal representative of his estate (or, alternatively, to the Lee County Clerk of Court if no personal representative of Decedent's estate was appointed) and, once that payment had been certified along with an accounting, would be relieved of her duties as Guardian ad Litem. (Decision & Order, filed Jan. 22, 2018, pp. 6-14).

On February 2, 2018, Mrs. Bradley filed a Form 30 Request for Commission Review, alleging various issues questioning the cause of death, appointment of a guardian ad litem, the dependency investigation and seeking "all medical records, guardianship court orders and all orders, financial statements, and the entire the SC Workers' Compensation Commission file pertaining to Albert Bradley for his entire claim period." (Form 30 Request for Commission Review, filed Feb. 2, 2018, with attachment).

The parties filed appellate briefs with the Full Commission, (Appellant Christine Bradley's Brief, dated April 11, 2018) (Respondents' Brief, dated April 20, 2018), and were heard by an Appellate Panel of the Full Commission on May 21, 2018, which issued its Decision & Order on July 26, 2018. The Commission concluded, as had Commissioner Beck, that Respondents had conducted a good faith dependency investigation; that Mrs. Bradley was entitled to the balance of the unpaid compensation and benefits in the amount of \$136,977.59 as Decedent's surviving spouse; that Mrs. Bradley also was entitled to funeral expenses in the amount of \$2,500.00; that the Guardian ad Litem was to pay the balance of the account she had been maintaining for Claimant's needs, which totaled \$10,133.07, to the personal representative of Decedent's estate or, if none was appointed, to the Lee County Clerk of Court; and that, once she had verified the payment and provided an accounting of the balance of the account she had maintained on Decedent's behalf, the Guardian ad Litem would be discharged of all further responsibilities relating to the guardianship. (Full Commission Decision & Order, filed July 26, 2018, pp. 12-20) ("Commission Decision").

Mrs. Bradley timely appealed to this Court.

#### **STANDARD OF REVIEW**

Judicial review of a Commission decision is directed by the substantial evidence rule of the Administrative Procedures Act, S.C. Code Ann. § 1-23-380(5) (Supp. 2011). Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). A reviewing court should affirm the decision of the Full Commission unless it is clearly erroneous in view of the substantial evidence of the whole record. Lark, 276 S.C. at 136, 276 S.E.2d at 307. The reviewing court may not substitute its own judgment for that of the Full Commission as

to the weight of the evidence on a question of fact, but may reverse if the decision is affected by an error of law. S.C. Code Ann. § 1-23-380(5). The Administrative Procedures Act “mandates that the commission take the evidence, judge the credibility and weight of that evidence, and from that judgment determine the facts of the case.” Rogers v. Kunja Knitting Mills, Inc., 312 S.C. 377, 381, 440 S.E.2d 401, 403 (Ct. App. 1994).

The findings of the Full Commission are presumed correct and can be set aside only if unsupported by substantial evidence or based on an error of law. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 186, 414 S.E.2d 162, 163 (1992). Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion the administrative agency reached in order to justify its action. Pierre v. Seaside Farms, Inc., 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010).

### **ARGUMENTS**

It is difficult to ascertain exactly what arguments Mrs. Bradley is asserting on appeal. While she lists six separate arguments in the Table of Contents/Statement of the Issues portion of her Brief, the Arguments section of her Brief does not correspond to those issues. Instead, the Arguments section of Appellant’s Brief is a nearly verbatim copy of her Brief to the Full Commission. (*Compare* App. Br. pp. 8-11, *with* Appellant Christine Bradley’s Brief, dated April 11, 2018). As a result, Mrs. Bradley has failed to present arguments to this Court to support the issues listed in her Statement of the Issues, rendering those arguments abandoned on appeal. Nationwide Mut. Ins. Co. v. Eagle

Window & Door, Inc., 424 S.C. 256, 270, 818 S.E.2d 447, 455 (2018) (explaining that South Carolina “appellate jurisprudence has clearly established that ‘[a]n issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court’”). Conversely, to the extent her substantive arguments are not set forth in the Statement of the Issues, this Court should not consider them. See Rule 208(b)(1)(B), SCACR (“[o]rdinarily, no point will be considered which is not set forth in the statement of the issues on appeal”).

In addition, the Standard of Review portion of Appellant’s Brief contains little more than an unsupported attack on Zurich American Insurance Company (“Zurich”) and unsubstantiated allegations of a denial of due process. Respondents are not advocating an overly-strict application of this Court’s rules or identifying a mere technical violation for the sake of faultfinding; instead, the fact that the Brief of Appellant does not contain issues that match her arguments, and visa-versa, and fails to properly set out the standard of review applicable to this case, makes it difficult for Respondents to know exactly what Appellant is alleging on appeal.<sup>4</sup> However, Respondents address each of Appellant’s arguments, as best as they can be ascertained, regardless of where or in what form they are contained in the Brief of Appellant.

**I. The Commission properly found that Respondents conducted a good faith dependency investigation.**

The only issues properly before this Court are whether the Commission properly found that Respondents had conducted a good faith dependency investigation and to whom the remaining balance of workers’ compensation benefits, accumulated paid

---

<sup>4</sup> In addition, contrary to Rule 208(b)(1)(C), SCACR, Appellant’s Statement of the Case includes numerous “contested matters” which, to the extent they conflict with the Statement of the Case set forth above, Respondents categorically deny.

benefits maintained by the Guardian ad Litem, and death benefits should be paid. Appellant argues that Respondents did not conduct a good faith dependency investigation because “[a]ll family members were not contacted,” and “[d]ocumentation was not provided to the court to show beneficiaries of the claimant held through all employers.” Her assertions lack any merit.

First, Mr. Tuten’s June 8, 2017 report chronicles his attempts to contact Mrs. Bradley and her three children. Mr. Tuten first called Mrs. Bradley on February 24, 2017 at which time she advised that “she did not wish to cooperate with the insurance carrier regarding the completion of the dependency investigation.” (APA p. 8). Mr. Tuten subsequently sent Mrs. Bradley, per her request, a letter, (APA p. 17), explaining Tuten’s role in the dependency investigation and requesting her to respond. Mr. Tuten attempted to contact Mrs. Bradley on two other occasions in April 2017. (APA p. 8). On April 10, 2017, Mr. Tuten received a letter from Mrs. Bradley asking him to explain all aspects and the nature of the dependency investigation he was conducting. (APA p. 19). Tuten responded in a letter dated April 17, 2017, again fully explaining his role and copying Commissioner Beck. (APA pp. 20-22). As of the date of Tuten’s report, he had heard nothing back from Mrs. Bradley. (*See also* Tr. p. 16, line 13 – p. 19, line 15 (Mr. Tuten testifying about attempts to contact Mrs. Bradley); p. 20, lines 16-18 (Mr. Tuten testifying that when he “spoke with Mrs. Bradley, she specifically requested that we no longer attempt contact with any of her children”)).

Mr. Tuten also attempted to contact two of Decedent’s children, Derwin Bradley and Lavere Seltun, by telephone on April 3 and April 5, 2017, and sent all three children letters on April 6, 2017. (APA p. 8). In addition, Mr. Tuten contacted prior counsel for

Derwin Bradley in another matter and requested that he put Mr. Tuten in contact with Derwin Bradley. Mr. Tuten was advised that Derwin Bradley was not returning his prior counsel's calls. Mr. Tuten reported that Mrs. Bradley refused to cooperate and had requested that he not contact any of her children, even though he had already left messages for Ms. Seltun and Mr. Bradley. He concluded that there was "little investigation left that we can perform regarding this dependency investigation without cooperation from either the claimant's children or his wife, Christine." (APA pp. 10-11, 23) (*see also* Tr. 19, line 16 – p. 20, line 18 (Mr. Tuten testifying about attempts to contact Mrs. Bradley's children)). In short, Respondents (through Mr. Tuten) performed as thorough and as good faith dependency investigation as was possible, given the lack of cooperation from Mrs. Bradley and the three adult children.<sup>5</sup>

Second, as to Appellant's assertion that, "[d]ocumentation was not provided to the court to show beneficiaries of the claimant held through all employers," it is somewhat unclear what she is alleging. The only issue before the Commission concerned Decedent's beneficiaries with regard to workers' compensation benefits pursuant to the South Carolina Workers' Compensation Act. As is discussed in more detail below, any entitlement to other forms of benefits or proceeds was not before the Commission and, therefore, is irrelevant to this appeal.

This Court should affirm that Respondents performed a good faith dependency investigation.

---

<sup>5</sup> With regard to Appellant's allegation that she was not provided with APA submissions prior to the hearing, defense counsel confirmed at the December 6, 2017 hearing that those documents had been sent to her pursuant to Commissioner Beck's directives. (Tr. p. 4, line 25 – p. 5, line 15). Commissioner Beck stated that he personally had mailed Mrs. Bradley a copy of the Commission file, which was signed for by Ms. Seltun. (Tr. p. 6, line 2 – p. 7, line 6; p. 8, lines 3-17). There simply is no merit to this assertion.

**II. The Commission properly awarded Appellant the balance of the outstanding benefits due to Claimant, as well as funeral expenses, and ruled that funds remaining in the account maintained by the Guardian ad Litem be paid to the personal representative of Claimant's estate or, if none, to the Lee County Clerk of Court.**

The Commission properly found that Appellant "is entitled to receive the balance of unpaid compensation and benefits as the surviving spouse" and ordered a lump sum payment in the amount of \$136,977.59. (Commission Decision, pp. 13-14, 16-17). Appellant also was awarded funeral expenses in the amount of \$2,500.00. (*Id.* pp. 15, 18).

Referencing Sections 42-9-280 and 42-9-290, the Commission awarded Appellant the remaining amount of benefits due to Claimant upon his death. Section 42-9-290 provides, in pertinent part, that "[i]f death results proximately from an accident and ... while total disability still continues and within six years after the accident, the employer shall pay or cause to be paid ... to the dependents of the employee wholly dependent upon his earnings for support at the time of the accident, a weekly payment equal to sixty-six and two-thirds percent of his average weekly wages ... for a period of five hundred weeks from the date of the injury, and burial expenses up to but not exceeding twenty-five hundred dollars .... When weekly payments have been made to an injured employee before his death, the compensation to dependents begins from the date of the last of such payments but does not continue more than five hundred weeks from the date of the injury .... The provisions of this section may not be construed to prohibit lump-sum payments to surviving spouses. Provisions for lump-sum settlement may be retroactive." S.C. Code Ann. § 42-9-290. Section 42-9-301, in turn, provides for lump sum payments. Thus, pursuant to Sections 42-9-290 and 42-9-301, the Commission

properly awarded Appellant, as the surviving spouse, the balance of the weekly benefits due to Claimant upon his death to be paid in a lump sum. Appellant has pointed out no error in this finding by the Commission, which should be upheld.

As to the balance of the account that Ms. Lichtenberger maintained, she testified at the hearing that, after her appointment as Guardian ad Litem, she deposited all weekly benefit payments into a bank account, on Claimant's behalf, to be used to provide for or pay for any needs associated with Claimant's treatment and care. Upon Claimant's death, the account remained open. (Tr. p. 27, line 25 – p. 28, line 25). Commissioner Beck ordered, and the Commission affirmed, that the balance of the funds remaining in the account maintained by Ms. Lichtenberger was to be paid to the personal representative of Claimant's estate or, if none was appointed, to the Lee County Clerk of Court. Furthermore, Ms. Lichtenberger was ordered to provide both an accounting and a certification of payment to Commissioner Beck. (Commission Decision, pp. 14-15, 17-18). Appellant has raised no cogent argument why this order with regard to the balance of the account maintained on Claimant's behalf by the Guardian ad Litem is in error. It is fully supported by the provisions of the Workers' Compensation Act, (S.C. Code Ann. § 42-9-220 (“[c]ompensation under this Title shall be paid periodically, promptly and directly to the person entitled thereto, *unless otherwise specifically provided*”) (emphasis added)), prior orders in this case, (Decision & Order, filed Dec. 18, 2015, pp. 7-8, 10-12), and testimony of Ms. Lichtenberger (Tr. p. 27, line 25 – p. 28, line 25), and, therefore, should be upheld on appeal.

This Court should hold that the Commission properly awarded Appellant the balance of the outstanding benefits due to Claimant, as well as funeral expenses, and

ruled that funds remaining in the account maintained by the Guardian ad Litem, Ms. Lichtenberger, be paid to the personal representative of Claimant's estate or, if none, to the Lee County Clerk of Court.

**III. Appellant's remaining issues are not preserved for appellate review and/or are not properly the subject of a Commission hearing.**

The remaining issues in Appellant's Brief are not preserved for appellate review by this Court and/or are issues the Commission has no authority to address in the first place. As a result, the remaining issues and arguments raised by Appellant provide no grounds for this Court to reverse the Commission Decision, which should be affirmed.

A. Appointment of a Guardian ad Litem for Claimant.

Appellant asserts the Commission acted in bad faith in appointing a Guardian ad Litem, presumably Ms. Lichtenberger. Appellant states that Claimant's family members, particularly Mrs. Bradley and Ms. Seltun, were providing care for him for which they were not compensated. She also asserts that Claimant's and/or the family's due process and/or civil procedure rights were violated because they were not given notice of the hearing in which Ms. Lichtenberger was appointed as Guardian ad Litem for Claimant.

The Decision & Order appointing Ms. Lichtenberger as Guardian ad Litem for Claimant was filed on December 18, 2015 following a hearing that took place on December 7, 2015. The then-current Guardian ad Litem, Michael A. Farry, Esquire, was notified of and present at the December 7, 2015 hearing on Claimant's behalf. (*See* Notice of Dec. 7, 2015 Hearing, dated Nov. 6, 2015 (served on Michael A. Farry); Decision & Order filed Dec. 18, 2015 (noting appearance of Michael A. Farry as Claimant's representative)). Because neither Mrs. Bradley nor any other family member was serving as Claimant's Guardian ad Litem at that time, they were not parties to the

matter and the Commission was not obligated to notify them of the December 7, 2015 hearing. *See* S.C. Code Reg. § 67-607 (requiring 30-day notice to all parties but not family members in general). The Commission committed no due process or civil procedure violation by notifying the properly-appointed Guardian ad Litem, but not the family members in general, of the hearing in which Ms. Lichtenberger was appointed as Claimant's Guardian ad Litem.<sup>6</sup>

In addition, the time to appeal the December 18, 2015 Decision & Order ran in January 2016. Because it was not appealed to the Full Commission, it is a final decision no longer subject to appeal and is the law of this case. *See, e.g.*, S.C. Code Ann. § 42-17-60; Clark v. Aiken County, 366 S.C. 102, 108, 620 S.E.2d 99, 102 (Ct. App. 2005) (any issue not raised in a timely application for review to the Full Commission is not preserved for appellate review); Brunson v. American Koyo Bearings, 367 S.C. 161, 165-66, 623 S.E.2d 870, 872 (Ct. App. 2005) (“[t]he findings of fact and law by the hearing commissioner become and are the law of the case, unless within the scope of the appellant's exception to the full commission ....”). For the same reason, because the orders removing Mrs. Bradley as Guardian ad Litem and appointing Ms. Seltun, and then

---

<sup>6</sup> To the extent Appellant is suggesting that Ms. Lichtenberger represented the interests of Respondents and not that of Claimant, she has presented no evidence to support such an allegation, which is simply incorrect. Instead, Commissioner Beck appointed Jennifer Browning of Browning Geriatric Consultants to make a “full and complete detailed assessment of the medical needs of Claimant as well as the issues raised” in letters Mrs. Bradley had sent to him. (Order, filed Aug. 21, 2015). The Browning Report chronicled Claimant's injury and treatment up to the evaluation in September 2015, recommended that Claimant be transitioned to a long-term care facility, and recommended that Victoria Lichtenberger be appointed as Guardian ad Litem for Claimant. After reviewing Ms. Browning's report and recommendations, Commissioner Beck ordered the change in Guardian ad Litem and the transition to a long-term residential care facility. (Decision & Order, filed Dec. 18, 2015).

later removing Ms. Seltun as Guardian ad Litem were never appealed, they are final orders no longer subject to appellate review.

Furthermore, neither Claimant nor Appellant have been denied any due process rights. Procedural due process “is flexible and calls for such procedural protections as the particular situation demands.” Jones v. South Carolina Dept. of Health & Env’tl Control, 384 S.C. 295, 316, 682 S.E.2d 282, 294 (Ct. App. 2009). Due process “requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses.” Clear Channel Outdoor v. City of Myrtle Beach, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007). When Mrs. Bradley was removed as Guardian ad Litem in 2012, Claimant was represented by counsel and the Hearing Notice was properly served on his counsel. (*See* Notice of July 18, 2012 Hearing, served May 22, 2012 (served on J. Olin McDougall, II, Esq.); August 16, 2012 Decision & Order, noting appearance of Mrs. Bradley, represented by J. Olin McDougall, II, Esq.). Ms. Seltun was properly served with notice of the January 25, 2013 hearing that resulted in her removal as Guardian ad Litem and Michael Farry’s appointment as same. (*See* Notice of Jan. 25, 2013 Hearing, served Dec. 7, 2012 (noting service on Lavare Seltun); Decision & Order, filed Feb. 11, 2013 (noting appearance of Lavare Seltun as Claimant’s representative). Thus, Appellant and/or the then-current Guardian ad Litem for Claimant received proper notice of and the opportunity to attend and to present evidence and participate fully at the relevant hearings. There is no evidence otherwise.

B. Payment to family members for providing care to Claimant and alleged outstanding medical bills.

As to payment for the care Mrs. Bradley and/or Ms. Seltun provided to Claimant, their request for “back pay” specifically was rejected in 2015 due to the “continual interference by the Claimant’s family with providers and even instances in which the family refused acceptance of in-home attendant care.” Commissioner Beck found that “to now have the Claimant’s family be reimbursed for services that have continually been offered by the Defendants is disingenuous and self-serving.” And, while Commissioner Beck did award payments to Mrs. Bradley (but not to Ms. Seltun) for future care for four hours per day at a rate of \$10.00 per hour, (Decision & Order, filed June 5, 2015, pp. 16-17), Appellant did not raise this issue before Commissioner Beck. Mrs. Bradley and her adult children were provided timely notice of the hearing to determine “to whom benefits are payable and in what amount.” (Notice of Hearing scheduled for Sept. 13, 2017, served on Mrs. Bradley, Derwin Bradley, Lavare Seltun and Christy James on July 3, 2017). Prior to commencement of the hearing, the family advised Commissioner Beck that they wanted an opportunity to retain legal counsel, and the hearing, initially scheduled for September was postponed to December. (Order, served Sept. 14, 2017). The same family members were provided notice of the December 6, 2017 hearing. (Notice of Hearing scheduled for Dec. 6, 2017, served on Mrs. Bradley, Derwin Bradley, Lavare Seltun and Christy James on Oct. 18, 2017). Thus, Appellant had adequate notice of and time to prepare for the hearing in this matter. The time to raise any issues as to unpaid attendant care time, or any other allegedly unpaid causally-related medical bills, was at the December 6, 2017 hearing before Commissioner Beck. Appellant’s failure to do so, (Tr.), means it is not preserved for further review.

Commission Regulation 67-613(A) provides that “[e]ach party shall arrange and present all evidence at the hearing,” she was required to do so. S.C. Code Reg. § 67-613(A). Appellant cannot now complain that bills and/or invoices were never paid when she has not presented them to the Commission in the first place. As noted above, the December 6, 2017 hearing initially was scheduled for September 13, 2017 but was postponed in order to allow Mrs. Bradley and the other potential beneficiaries time to retain legal counsel. (Order, served Sept. 14, 2017). They were provided ample opportunity to protect their interests and/or submit any evidence they believed was relevant at the hearing.

At the December 6, 2017 hearing, Mrs. Bradley had the opportunity to raise any questions she had regarding unpaid medical bills, transportation costs or payment for medical services provided. She did not, instead focusing on how Ms. Lichtenberger had been appointed, whether Ms. Lichtenberger was aware of the duties and responsibilities of a Guardian ad Litem, and Ms. Lichtenberger’s purported failure to communicate directly with Mrs. Bradley concerning Claimant. (Tr. p. 29, line 23 – p. 36, line 22). Because the issue of non-payment of or outstanding balances for medical treatment and/or services either was adjudicated prior to or was not properly raised during the December 2017 hearing, this issue was not preserved for later review.

C. Proof of Decedent’s cause of death.

Claimant was pronounced dead on February 5, 2017 at Carolinas Medical Center in Charlotte, North Carolina. (APA p. 1). Upon receiving authorization from Claimant’s next-of-kin, Derwin Bradley, Dr. Carol Weida conducted an autopsy on February 6, 2017 and concluded that Claimant’s cause of death was a result of complications of diffuse

acute bronchopneumonia. (APA p. 3). The autopsy report was part of the record and was provided to Mrs. Bradley as part of Defendants' APA submissions prior to the hearing. At no time during the December 6, 2018 hearing did Mrs. Bradley either dispute the validity of or object to the inclusion of this report becoming part of the record. As a result, this issue is not preserved for appellate review. Furthermore, Mrs. Bradley has presented no evidence to contradict or call into question the autopsy report.

D. Spousal benefits.

To the extent Appellant continues to maintain that she should have been awarded spousal benefits in addition to those awarded by the Commission as discussed above including, but not limited to, as a beneficiary to Claimant's insurance policies with Employer, retirement benefits, social security benefits, etc., those issues were not properly before the Commission and are not preserved for appellate review. The South Carolina Workers' Compensation Commission has jurisdiction over the parties with respect to all matters concerning Claimant's workers' compensation claim. S.C. Code Ann. § 42-3-180 (“[a]ll questions arising under this Title, if not settled by agreement of the parties interested therein with the approval of the Commission, shall be determined by the Commission, except as otherwise provided in this Title”).

However, any claims for benefits, including but not limited to, life insurance benefits, retirement benefits, social security benefits, etc., are unrelated to the South Carolina Workers' Compensation Act and, therefore, cannot be adjudicated by the Commission. “An agency created by statute has only the authority granted it by the legislature.” Medical Soc’y v. Medical Univ. of S.C., 334 S.C. 270, 275, 513 S.E.2d 352, 355 (1999); Price v. Peachtree Elec. Servs., 396 S.C. 403, 409, 721 S.E.2d 461, 464 (Ct.

App. 2011) (“the Commission’s jurisdiction and authority is circumscribed by the Workers’ Compensation Act”). And, while the Commission has broad authority over “[a]ll questions arising under” the Workers’ Compensation Act, S.C. Code Ann. § 42-3-180, it has no authority to determine or resolve other insurance benefits, retirement benefits and/or social security benefits, etc.

E. Appellant’s assertions of denial of benefits.

Appellant states that “[p]artial or temporary disability payments cannot be applied to the worker who has a brain injury and thus, is totally and permanently disabled.” She also asserts, without any evidence at all, that Claimant was “denied the right to medical care and medical services deemed necessary for the level of his injury.” Again, it is unclear what she is arguing. Since his May 16, 2011 injury, in which Claimant suffered compensable physical brain damage, he has been entitled to lifetime causally-related medical treatment and lifetime compensation pursuant to Section 42-9-10(C), which Respondents have provided.

Up until the time of his death, Claimant was provided causally-related medical care and was paid his weekly benefits at the maximum compensation rate in 2011 of \$704.92. At no time since his injury has Claimant been awarded or paid partial disability benefits nor has there been any “denial of payment of benefits to the injured worker” or denial of benefits to her as Claimant’s spouse, as Appellant suggests.<sup>7</sup>

---

<sup>7</sup> Appellant’s assertion that Claimant “even had to purchase his own wheelchair accessible van for transportation out of his own money and was never reimbursed,” is not preserved for appellate review and, furthermore, is simply incorrect. In fact, in 2015, Commissioner Beck granted Claimant’s request for reimbursement in the amount of \$8,800.00 for a handicap accessible van that had already been purchased as well as \$1,620.00 for subsequent repairs, with a stipulation that thereafter Claimant’s family would be responsible for transporting Claimant to medical appointments. (Decision &

After the appointment of Ms. Lichtenberger as Guardian ad Litem, Respondents were ordered to pay those weekly benefits directly to Guardian ad Litem who was ordered to maintain an account “into which the Claimant’s weekly temporary total disability (TTD) benefits checks will be deposited and out of which funds will be distributed, if necessary.” (Decision & Order, Dec. 18, 2015, pp. 8, 11-12).<sup>8</sup> So, while Appellant stopped receiving weekly disability payments, those payments were made on Claimant’s behalf to the Guardian ad Litem as ordered by Commissioner Beck.

Finally, the unfounded and unsupported allegations throughout Appellant’s Brief of wrong-doing on the part of Respondents are categorically denied. In fact, throughout this case, in orders which were not appealed, the Commission found that Respondents were providing Claimant with “authorized causally related medical treatment.” (*See* Decision & Order, filed April 6, 2012, p. 4; Decision & Order, filed Aug. 16, 2012, p. 4;

---

Order, filed June 5, 2015, pp. 17-18, 23). However, a July 27, 2015 letter from Mrs. Bradley to Commissioner Beck notes that she had “received a letter from Jason Lockhart stating that he has a check for me that is for the amount of the van that I purchased for Albert Bradley. Well, as I stated previously, the dilapidated van is not for sale.” (Letter from Mrs. Bradley to Commissioner Beck, dated July 27, 2015). In addition, Mrs. Bradley submitted checks she had received from Zurich to the Commission advising that she was “not accepting” them because she was “being paid less than 0.64 cents an hour.” Thus, Respondents tendered payments to Mrs. Bradley for not only the van but also for the attendant care awarded by Commissioner Beck, both of which she refused to accept. (Letter from Mrs. Bradley to Commissioner Beck, dated June 9, 2015) (*see also* copies of checks for attendant care and wheelchair accessible van sent by Mrs. Bradley to the Commission, with hand-written note dated June 13, 2015 and June 18, 2015).

<sup>8</sup> While the December 18, 2015 Decision & Order uses the term “temporary total disability” benefits, there has never been any assertion or finding that Claimant was entitled to anything other than lifetime benefits under S.C. Code Ann. § 42-9-10(C). (*See for example*, Defendants’ Form 58 Pre-Hearing Brief, dated Sept. 29, 2014, stating that “[t]he Claimant has sustained permanent physical brain damage, and is entitled to an award of lifetime compensation pursuant to §42-9-10 of the Act”). The key point is that Claimant was awarded and Respondents have paid lifetime total disability benefits. The use of the term “temporary” does not and has not affected the award, which has been paid as a lifetime benefits case.

Decision & Order, filed Feb. 11, 2013, p. 5; Decision & Order, filed Oct. 10, 2013, p. 3; Decision & Order, filed Dec. 18, 2015, p. 6). Conversely, throughout Claimant's treatment, Appellant repeatedly was cautioned and ordered to stop interfering with the administration of necessary causally related medical treatment. (See Decision & Order, filed April 6, 2012, p. 4; Decision & Order, filed Aug. 16, 2012, pp. 4-5; Decision & Order, filed Oct. 10, 2013, p. 3; Decision & Order, filed June 5, 2015, p. 16; Decision & Order, filed Dec. 18, 2015, p. 7).

Appellant references case law from other states involving Zurich; however, the citations are incomplete, leaving Respondents to guess which cases Appellant intends to reference. While Rhodes v. AIG Domestic Claims, Inc., 461 Mass. 486, 961 N.E.2d 1067 (Mass. 2012), involved Zurich as a primary carrier, the Massachusetts Supreme Court found in that case that the excess insurer, not Zurich, was liable on the plaintiffs' unfair settlement practices claim. Zurich had tendered its policy limits early in the history of that claim. The Eight Circuit reversed a district court's grant of summary judgment<sup>9</sup> in Nunn v. Noodles & Co., 674 F.3d 910 (8th Cir. 2012), which involved a Minnesota statute that provides an additional remedy for a workers' compensation claimant who proves an employer and/or workers' compensation insurer intentionally obstructs or delays the recovery of benefits. There, questions arose regarding whether the employer and/or insurer encouraged witnesses to change their testimony, delayed in providing witness statements and the motive behind any such actions. There is no similar fact pattern here. Finally, Respondents were unable to locate a case captioned "Floyd v. Zurich" and, because Appellant has provided no citation for this case, are unable to

---

<sup>9</sup> Nunn v. Noodles & Co., Civ. No. 09-1286 (JNE/JJK), 2010 U.S. Dist. LEXIS 124367 (D. Minn. Nov. 23, 2010).

address that case. However, here there are no issues with whether Claimant's injuries were work-related, whether he had reached maximum medical improvement or competing expert witnesses. In any event, to the extent Appellant merely is seeking to disparage Respondents, those unrelated cases add nothing. The fact is, Commissioner Beck retained jurisdiction over this case and consistently issued decisions taking into account Claimant's best interests pursuant to the South Carolina Workers' Compensation Act and the Commission's Regulations, and finding that Respondents were providing with appropriate compensation and authorized causally related medical treatment. Appellant has not presented evidence otherwise.

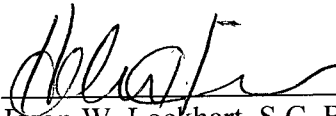
**CONCLUSION**

For all the reasons stated herein, this Court should affirm the Commission Decision and dismiss this appeal with prejudice.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC

August 14, 2019



Jason W. Lockhart, S.C. Bar No. 68612  
P.O. Box 12519, Capitol Station  
Columbia, South Carolina 29211-2519  
(803) 779-2300

Helen F. Hiser, S.C. Bar No.: 76124  
P.O. Box 650007  
Mount Pleasant, South Carolina 29465  
(843) 576-2900

*Attorneys for Respondents Southern Industrial  
Constructors, Inc., Employer, and Zurich American  
Insurance Company c/o Zurich North America,  
Carrier*

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1105628

**RECEIVED**

AUG 19 2019

SC Court of Appeals

Ex Parte: Christine Bradley, Surviving Spouse, ..... Appellant,

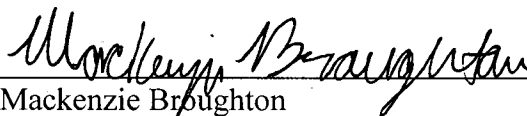
v.

Southern Industrial Constructors, Inc., Employer,  
and Zurich American Insurance Company  
c/o Zurich North America, Carrier, ..... Respondents.

**PROOF OF SERVICE**

I certify that on the 14th day of August 2019, I served the **Initial Brief of Respondents** and Respondents' **Designation of Matter** on Christine Bradley by depositing a copy of it in the United States Mail, postage prepaid, addressed as follows:

Christine Bradley  
475 Lower Lee School Rd.  
Mayesville, South Carolina 29104



Mackenzie Broughton  
Legal Assistant to Helen F. Hiser  
McAngus, Goudelock & Courie LLC  
735 Johnnie Dodds Blvd., Suite 200  
P.O. Box 650007  
Mount Pleasant, South Carolina 29465  
(843) 576-2900

*Attorneys for Respondents Southern Industrial  
Constructors, Inc., Employer, and Zurich American  
Insurance Company c/o Zurich North America,  
Carrier*

**Reply To**

HELEN F. HISER  
Direct Dial: (843) 576-2930  
helen.hiser@mgclaw.com

August 14, 2019

**RECEIVED**  
AUG 19 2019  
SC Court of Appeals

**VIA U.S. MAIL**

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

RE: Albert Bradley v. Southern Industrial Constructors and Zurich American  
Insurance Company c/o Zurich North America  
Date of Accident: May 16, 2011  
WCC File No.: 1105628  
Our File No.: 20216.11055  
Claim No.: 2800074691  
Appeal No.: 2018-001535

Dear Ms. Kitchings:

Enclosed for filing please find the following documents:

1. the original and one copy of the Initial Brief of Respondents;
2. the original and one copy of Respondents' Designation of Matter to be Included in the Record on Appeal; and
3. the original and one copy of Respondents' Proof of Service concerning items one and two.

Please file these documents and return the clocked-in copies in the enclosed, self-addressed stamped envelope.

If you have any questions, please do not hesitate to contact me.

Yours truly,



Helen F. Hiser

Attachments

cc: Christine Bradley, *Pro Se*



**mgc** | **INSURANCE  
DEFENSE**

POST OFFICE BOX 650007  
MT. PLEASANT SC 29465

**RECEIVED**  
AUG 19 2019  
**SC Court of Appeals**

**20216.11055/HFH/mtb**  
The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211