

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1516717

RECEIVED
OCT 10 2019
SC Court of Appeals

Gary Clark, Jr., Claimant, Appellant,

vs.

Horry County, Employer, and SC Association of
Counties, Carrier, Respondents.

**APPELLANT'S REPLY TO RESPONDENTS'
MEMORANDUM ADDRESSING APPEALABILITY**

STEPHEN J. WUKELA
ATTORNEY FOR APPELLANT
WUKELA LAW FIRM
PO BOX 13057
FLORENCE SC 29504
843-669-5634

The Appellant replies herein to Respondents' Memorandum Addressing Appealability as follows:

As to Respondents' Arguments I and II, the Appellant relies on his Memorandum Addressing Appealability.

In Argument III, the Respondents argue that "Appellant's appeal of the Appellate Panel's denial of his motion to set aside the subrogation claim was not ripe because the parties had not conducted mandatory mediation." (Resp. Memo. Add. Appealability, p. 4).

First, neither the Single Commissioner, nor the Appellate Panel, made any mention of mediation in their Orders. In fact, the Commission's failure to set out with particularity the factual and legal basis for their decisions as required by the Administrative Procedures Act, S.C. Code §1-23-350, is, as argued in the Appellant's Memorandum Addressing Appealability, one of the grounds of the Appeal.

Moreover, even if the Court were to assume that mandatory mediation formed the basis for the Commission's decisions, the Appellant would argue that such a basis would be erroneous.

First, mediation in the underlying Workers' Compensation claim was conducted, as reflected in the record of the Commission, on October 2, 2018, by a qualified mediator, Samuel T. Brunson.¹ At that mediation, the question of the resolution of the underlying Workers' Compensation claim, and any resulting third-party liens, was negotiated. The mediation resulted in an impasse and the case

¹The Appellant recognizes that there is no record before the Court at this point. However, given Respondents' argument, the Appellant has no alternative but to respond by referring to evidence not yet before this Court.

was set for hearing before the Workers' Compensation Commission to determine the Claimant's permanency. Prior to that hearing, the parties continued to negotiate the resolution of the Workers' Compensation claim including the issue of any resulting Workers' Compensation liens on the third-party case. The parties were ultimately able to settle the issue of permanency and were not able to settle the issue of the lien, as reflected by the settlement documents filed with the Workers' Compensation Commission.

Further, the record of the hearing before the Single Commissioner reflects that the Claimant requested that the Commission order the Workers' Compensation Carrier to participate in mediation of the third-party case and the Carrier took the position that the Commission did not have that authority.

Finally, the third-party case was mediated to an impasse on October 3, 2019. The Workers' Compensation Carrier did participate in that mediation, albeit unsuccessfully.

Again, as argued in the Appellant's Memorandum Addressing Appealability, the unresolved issue as to the existence or absence of this Workers' Compensation lien has presented obstacles to the resolution of the third-party case which, to this point, have been unsurmountable. If the Appellant is unable to obtain a determination of that issue, and, as a result, the Appellant is forced to decline offers by the third-party to resolve the third-party case, the Appellant will suffer harm that will not

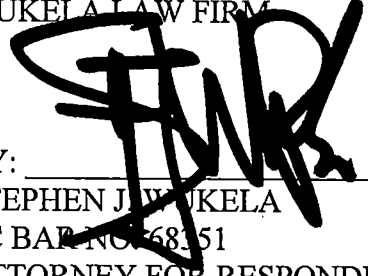
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be capable of remedy by a determination of the Commission of the lien at some indefinite point in the future. Therefore, the Commission's refusal to decide the issue is immediately appealable here.

Respectfully submitted,

October 11, 2019

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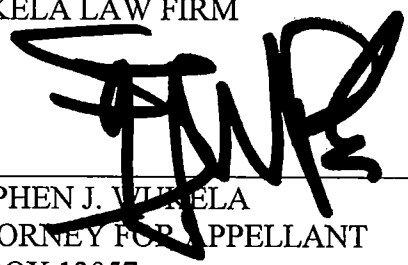
vs.

Horry County, Employer, and SC Association of
Counties, Carrier, Respondents.

PROOF OF SERVICE

I certify that I have served the Appellant's Reply to Respondents' Memorandum Addressing Appealability on the Respondents, by depositing a copy of it in the United States Mail, postage prepaid, on October 9, 2019, addressed to their attorney of record, William H. Lyon, Esquire, Attorney at Law, 421 Wando Park Boulevard, Suite 100, Mt. Pleasant SC 29464.

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October 9, 2019

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211

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OCT 10 2019
SC Court of Appeals

Re: Gary Clark, Jr. vs. Horry County and SC Association
of Counties
Workers' Compensation File No. 1516717

Dear Ms. Kitchings:

With regard to the above, enclosed for filing please find the Appellant's Reply to Respondents' Memorandum Addressing Appealability, along with Proof of Service.

By copy of this letter, I am serving Respondents with a copy of the Reply.

With kind regards, I am

Yours truly,

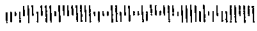
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STEPHEN J. WUKELA

SJW:jpb

Enclosure

cc: William H. Lyon, Esquire



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