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OCT 14 2019

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2019-001254
WCC File No. 1506114

Frankie Padgett, Claimant..... Respondent/Appellant,

V.

Cast & Crew Entertainment Services, Inc., Employer,
and American Zurich Insurance Company, Carrier,Appellants/Respondents.

**NOTICE OF MOTION AND MOTION AND MOTION TO DISMISS APPEAL OF
FRANKIE PADGETT, RESPONDENT/APPELLANT.**

**TO: THE HONORABLE JENNY ABBOTT KITCHINGS, CLERK OF COURT OF THE
SOUTH CAROLINA COURT OF APPEALS; AND STEPHEN BENJAMIN SAMUELS,
ESQUIRE, ATTORNEY FOR FRANKIE PADGETT, RESPONDENT/ APPELLANT.**

Appellants Cast & Crew Entertainment Services, Inc., the employer, and American Zurich Insurance Company, the workers' compensation insurance carrier, hereby move to dismiss the appeal of Frankie Padgett, [hereinafter "Padgett" or "Respondent"] in the above referenced matter, with prejudice, pursuant to Rules 203 and 262, SCACR and S. C. Code Ann. § 1-23-380 (2018).

The decision and order of the Appellate Panel of the South Carolina Workers' Compensation Full Commission dated July 3, 2019, that is the subject of this appeal, was not served on the parties as is required until September 12, 2019. A timely filed cross appeal by Respondent was due on or before August 8, 2019. Prior to Respondent's letter dated September 12, 2019, 35 days later serving the Notice of Appeal, the undersigned had not received a copy of the appeal. (Exhibit 1). The initial proof of service dated August 2, 2019, reflects the Notice of Appeal was served on the undersigned at the incorrect law firm, address and city. (Exhibit 2).

Prior to Respondent's attorney providing the undersigned with his Notice of Appeal by letter dated September 12, 2019, requests were made for a copy of the notice of appeal. Specifically, an email was sent by the undersigned's paralegal to Respondent's office on August 16, 2019 requesting a copy of the appeal. (Exhibit 3). After not receiving a response, the undersigned sent an email to Respondent's attorney seeking a copy of the cross appeal on September 4, 2019. (Exhibit 4). Thereafter, the corrected Notice of Appeal was provided to the undersigned. (Exhibit 1).

Respondent's letter dated September 12, 2019 acknowledges that the Notice of Appeal was not served properly upon the undersigned. The undersigned's receipt of the Notice of Appeal is more than 65 days after receipt of the Commission's decision and order.

Section 1-23-380 of the South Carolina Administrative Procedure Act provides, in pertinent part, that proceedings for appellate review of a commission decision "are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency... Copies of the notice of appeal **must be served upon the agency and all parties of record.**" *S.C. Code Ann. §1-23-380(1)(2018)*. (*Emphasis added*).

Additionally, Rule 203 of the Appellate Court Rules provides that an appeal to the Supreme Court or the Court of Appeals, "the notice of appeal **shall be served** on the agency... and all parties of record within 30 days after receipt of the decision." Rule 203 (b)(6), SCACR. (*Emphasis added*).

The Notice of Appeal must be filed within the time required under Rule 203 and must be accompanied by proof of service showing that the notice has been served on the agency and all parties of record. Rule 203 (b)(6), SCACR. It should be noted that because Respondent filed a Cross Appeal, an additional five days after receipt of Appellants' Notice of Appeal is permitted. Respondent admits that he received Cast & Crews Notice of Appeal on July 29, 2019. Nonetheless, even with the additional five days, Respondent's appeal is more than 60 days late.

It is anticipated Respondent will argue that his failure to comply with the law and the Appellate Court Rules is because of clerical error; and thus, the appellate court should not be deprived of subject matter jurisdiction. This argument is without merit in this case. Respondent could have remedied his failure by promptly replying to the August 16, 2019 email from the undersigned's paralegal. (Exhibit 3). Rather, Respondent ignored the request. Respondent ignored the undersigned's second request for a copy of the appeal sent via email on September 4, 2019, before finally responding eight days later. (Exhibits 1 & 4).

Respondent's failure to properly serve Appellants is not a mere clerical error. Respondent failed to serve the appeal upon the undersigned and refused to simply provide the undersigned with a copy of such within the 35 day timeframe. To this end, the undersigned expended additional resources and time for which Appellants have to pay with respect to contacting Respondent's attorney and the Clerk of Court about obtaining a copy of the appeal. These unnecessary actions are certainly prejudicial to Appellants in terms of an insufficient recovery of attorneys fees if it prevails or payment of unwarranted litigation costs and expenses to the undersigned if it does not prevail on appeal.

Finally, while the time for performing many actions under the Appellate Court Rules may be extended, the "time for serving the notice of appeal under Rule 203" is an exception and cannot be extended. Rule 263(b), SCACR. Hence, Respondent's failure to serve the undersigned within 35 days from receipt of the Commission's decision and order deprives this court of appellate jurisdiction. As a result, Respondent's appeal should be dismissed with prejudice.

This motion conforms with Rules 240 and 267, SCACR.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC

A handwritten signature in black ink, appearing to read "Vernon F. Dunbar", written over a horizontal line.

Vernon F. Dunbar

Post Office Box 2980

55 East Camperdown Way, Suite 300 (29601)

Greenville, South Carolina 29602

(864) 239-4000

Attorney for Appellants

October 11, 2019



STEPHEN B. SAMUELS
P. JASON REYNOLDS
ATTORNEYS AT LAW

September 12, 2019

Vernon F. Dunbar, Esq.
McAngus Goudelock & Courie, LLC
P.O. Box 2980
55 East Camperdown Way, Suite 300 (29601)
Greenville, SC 29602

RE: Frankie Padgett v. Cast & Crew Entertainment Services, Inc. and American
Zurich Insurance Company c/o Zurich North America
W.C.C. File Number: 1506114

Dear Mr. Dunbar:

Enclosed please find a **Notice of Appeal** in the above referenced case. Service was previously attempted, but due to a clerical error was sent to the wrong address.

Please let me know if you have any questions or concerns.

Respectfully,

A handwritten signature in black ink, appearing to read "Daniela P. Corona".

Daniela P. Corona
Secretary for Stephen B. Samuels

/dpc

Enclosure(s) as stated

cc: Amy Bracy, Judicial Director for SCWCC
Clerk, Court of Appeals



WE WORK FOR THE PEOPLE WHO WORK.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

WCC File No. 1506114

Frankie Padgett, Respondent/Appellant,

v.

Cast and Crew Entertainment Services, Inc., Employer,
and American Zurich Insurance Company, Carrier, Appellants/Respondents.

NOTICE OF APPEAL

Frankie Padgett cross-appeals the Appellate Panel Decision and Order of the South Carolina Workers' Compensation Commission dated July 3, 2019. Respondent/Appellant received the Notice of Appeal of Appellants/Respondents on July 29, 2019.

July 30, 2019



Stephen B. Samuels
SAMUELS LAW FIRM, LLC
1320 Richland Street
Columbia, SC 29201
(803) 779-4000
stephen@samuelslawfirm.net
Counsel for the Respondent/Appellant

Other Counsel of Record:

Vernon F. Dunbar, Esq.
MCANGUS GOUDELCK & COURIE, LLC
P.O. Box 2980
55 East Camperdown Way, Suite 300 (29601)
Greenville, SC 29602
(864) 239-6735
Vernon.Dunbar@mgclaw.com
Counsel for the Appellants/Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

WCC File No. 1506114

Frankie Padgett, Respondent/Appellant,

v.

Cast and Crew Entertainment Services, Inc., Employer,
and American Zurich Insurance Company, Carrier, Appellants/Respondents.

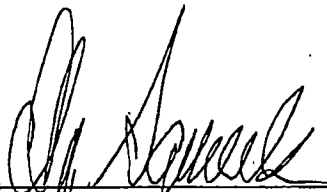
PROOF OF SERVICE

I certify that I, Angi Samuels, paralegal for the Samuels Law Firm, LLC, have served the **Notice of Appeal** upon counsel for the Appellants/Respondents and the South Carolina Workers' Compensation Commission by depositing a copy of it in the United States Mail, postage prepaid, on August 2, 2019, addressed as follows:

Vernon F. Dunbar, Esquire
Trask & Howell, LLC
Post Office Box 2167
Mt. Pleasant, South Carolina 29465

Amy Bracy, Judicial Director
SC Workers' Compensation Comm.
Post Office Box 1715
Columbia, SC 29202-1715

August 2, 2019



Angi R. Samuels
SAMUELS LAW FIRM, LLC
1320 Richland Street
Columbia, SC 29201
(803) 779-4000

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AUG 05 2019
SC Court of Appeals



Vernon Dunbar

From: Rebecca Looper
Sent: Friday, August 16, 2019 3:43 PM
To: 'Angi Samuels'
Subject: Frankie Padgett v. Cast & Crew Entertainment Services, Inc. (Claim No.: 2840202414)

Good afternoon Angi,

Will you please send me a copy of Mr. Samuels's appeal for the above-referenced claim? I hope you have a great weekend!

Thanks,
Rebecca Looper
Paralegal to Vernon Dunbar



Vernon Dunbar

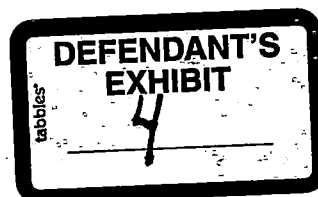
From: Vernon Dunbar
Sent: Wednesday, September 04, 2019 4:18 PM
To: Stephen Samuels; 'Angi Samuels'
Subject: Frankie Padgett

Dear Stephen and Angie,

Please send me a copy of your appeal. I never received such.

Thanks!

Vernon



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APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No. 2019-001254
WCC File No. 1506114

Frankie Padgett..... Respondent,

v.

Cast & Crew Entertainment Services, Inc.,..... Employer,

and

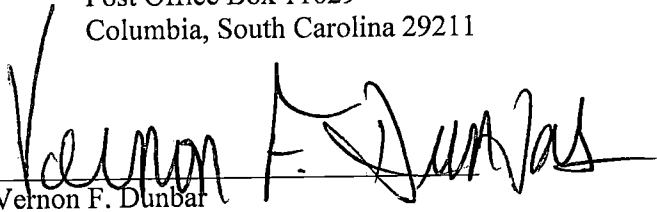
American Zurich Insurance Company c/o
Zurich North America,Appellants,

PROOF OF SERVICE

I hereby certify that I have this 11th day of October 2019, caused to be served a copy of Motion to Dismiss Appeal by mailing a copy of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

Stephen B. Samuels, Esquire
Samuels Law Firm
1320 Richland Street
Columbia, South Carolina 29201

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



Vernon F. Dunbar
McAngus, Goudelock & Courie LLC
Post Office Box 2980
55 East Camperdown Way, Suite 300 (29601)
Greenville, South Carolina 29602
(864) 239-4000
Attorneys for Appellant
October 11, 2019

Reply To

VERNON F. DUNBAR
Direct Dial: (864) 239-6735
vernon.dunbar@mgclaw.com

October 11, 2019

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

RECEIVED
OCT 14 2019
SC Court of Appeals

RE: Frankie Padgett v. Cast & Crew Entertainment Services, Inc. and American Zurich Insurance Company c/o Zurich North America
Date of Accident: May 6, 2015
WCC File No.: 1506114
Our File No.: 20216.17069
Claim No.: 2840202414

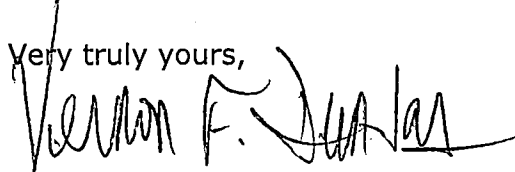
Dear Ms. Kitchings:

Please find enclosed a Notice of Motion and Motion to Dismiss Respondent's Appeal and accompanying exhibits, which are being filed on behalf of Appellants Cast & Crew Entertainment Services and American Zurich insurance Company. I am enclosing the original and 6 copies of the motion. By copy of this letter, I am also confirming that I have served a copy of such upon Stephen B. Samuel, Attorney for Frankie Padgett, Respondent/Appellant.

Last, I am enclosing the required \$50.00 in accordance with the order of the South Carolina Supreme Court dated October 9, 2018.

With kind and warm regards, I remain

Very truly yours,



Vernon F. Dunbar

VFD/_amc

cc: Stephen B. Samuels, Samuels Law Firm
Shana'e Montgomery, Zurich North America

Enclosures: Motion requesting dismissal of Respondent's Appeal, \$50.00 filing fee check and Exhibits 1-4

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- Order supplies online.*
- When used internationally, a customs declaration label may be required.
- Domestic only



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EP14F Oct 2018
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Michelle Cornes McCampus Gaudelock & Court 55 E Camperdown Way, Ste 300 Greenville SC 29601-3511		OCT 14 2013 0024
SC Court of Appeals		
B012		
THE HONORABLE JENNY ABBOTT KITCHINGS SOUTH CAROLINA COURT OF APPEALS PO BOX 11629 COLUMBIA SC 29211-1629		
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