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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE WORKERS COMPENSATION COMMISSION

Gene McCaskill, Commissioner
T. Scott Beck, Commissioner
Susan S. Barden, Commissioner

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JUN 30 2017

SC Court of Appeals

WCC File No. 1510187
Appellate Case No. 2016-002297

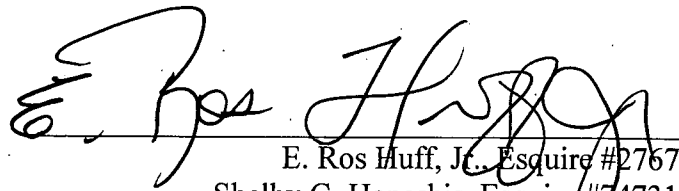
Shawn Wier, Employee, Claimant, Respondent,

v.

AGY Holdings Corporation, Employer, and Great American Alliance Insurance Company,
Carrier, Appellants.

FINAL REPLY BRIEF OF APPELLANTS

June 30, 2017



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2 **The Commission erred in finding as fact, concluding as a matter of law and ordering that Dr. Plymale coordinate treatment, the error being that the defendants have the right to direct medical treatment in this instance.** 4

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In reply to Claimant/Respondent's Brief, Defendants/Appellants, argue the following:

ARGUMENT I

The Commission erred in finding as fact, concluding as a matter of law and ordering that the claimant sustained an injury by accident, thus entitling him to workers compensation benefits, the error being that this ruling is not supported by the evidence and the claimant did not meet his burden of proof.

The claimant's attorney contends that the record supports an injury by accident because the medical records and testimony of Dr. Plymale support the finding, however, this is an unwitnessed accident. While the claimant testified as to the mechanism of injury, the medical evidence shows that the claimant's testimony was wholly inconsistent. The only evidence of any sort of an incident is that the claimant suffered from a contusion to the elbow. This is in the records at Aiken Regional and at Dr. Plymale's office. The claimant was then seen at the clinic onsite at AGY where the nurse noted no swelling and normal range of motion in the hands or fingers. The claimant's complaints to Dr. Plymale, as well as throughout the record, were refuted by surveillance of the claimant at a swimming pool playing with and throwing his children with his allegedly injured upper extremity.

ARGUMENT II

The Commission erred in finding as fact, concluding as a matter of law and ordering that Dr. Plymale coordinate treatment, the error being that the defendants have the right to direct medical treatment in this instance.

The Workers Compensation Commission committed an error of law when they appointed Dr. Plymale as the authorized treating physician. Due to a scrivener's error in appellants initial brief, appellants listed Southeastern Spine as the treating facility, however, there is still no basis for Dr. Plymale to be appointed the authorized treating physician. Claimant contends that since Dr. Plymale treated the claimant before, he should be allowed to treat the claimant now. This is a denied case and Dr. Plymale saw the claimant prior to the denial. This is

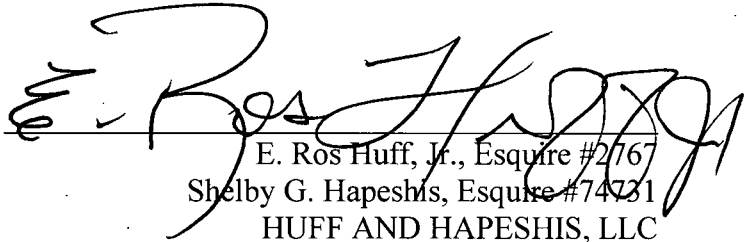
not a situation under S.C. Code Ann. Section 42-15-60(a), which calls for the Commission to appoint a treating physician because this was a denied case. This court addressed the issue of the employer's right to choose a physician. *McKinney v. Kimberly Clark Corp*, 658 S.E.2d 112 (App. 2008). The Employer did not fail to provide medical care as specified in this section because they were not obligated to do so under the statute. However, the Employer in this instance did not choose a provider. Therefore, there is no reason for the commission to now order treatment by a specific physician.

CONCLUSION

Based on the above cited arguments, the Defendants would respectfully request that the Order of South Carolina Workers Compensation Appellate Panel be reversed in its entirety.

Respectfully Submitted,

June 30, 2017



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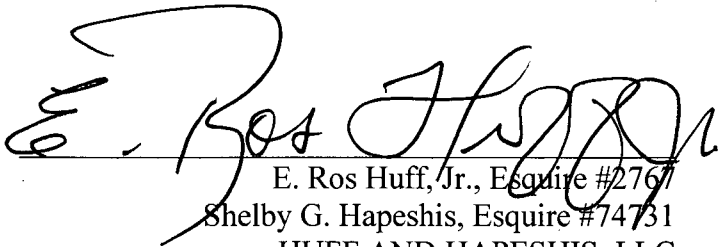
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CERTIFICATE OF COUNSEL

In compliance with Rule 211, the Appellant's Final Reply Brief is identical to the brief previously served under Rule 208 with the exception that it now contains references to the record.

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