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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

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

Terry H Capone, Claimant.....Appellant,

v.

City of Columbia, Employer, and

Companion Third Party Administrator, LLC, Carrier,Respondents.

**NOTICE OF EMERGENCY MOTION TO VACATE VOID
JUDGMENT/ ORDER RULE 59/60 FRAUD ON THE COURT AND
OTHER VIOLATIONS OF LAW AND TO TAKE MANDATORY
JUDICIAL NOTICE IN THE ABOVE REFERENCED MATTERS**

Comes Now, Appellant Terry H Capone, In Propria Persona, Employee (hereinafter
“Appellant”), hereby declares and asserts the Rights to which he is entitled. Preliminary
understanding of the Court’s authority is basic to the assertion of rights:

EMERGENCY MOTION TO VACATE VOID JUDGMENT/ ORDER

Appellant Capone In Pro Per, hereby moves this court to vacate the Void Judgment/ Decision/
Order entered March 27, 2020 and December 2, 2015 by South Carolina Workers’
Compensation Commissioner Gene Henry McCaskill after a hearing was held August 21, 2015

SC W.C.C. File Nos. 1322451, 1319203, 1420487 and all subsequent proceedings thereafter in this matter also void based on the authorities invoked herein and for the reasons stated below.

The Court is obliged to follow precedence decisions as stated in *Faye Anastasoff vs. United States of America, 8th Circuit Court, 2000*: “It is on this account that our law is deemed certain, and founded in permanent principles, and not dependant on the caprice or will of judges. A more alarming doctrine could not be promulgated by any American court, than that it was at liberty to disregard all former rules and decisions, and to decide for itself, without reference to the settled course of antecedent principles.”

“However late this objection has been made, or may be made in any cause, in an inferior or appellate court of the United States, it must be considered and decided, before any court can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction. Jurisdiction is the power to hear and determine the subject matter in controversy between parties to a suit, to adjudicate or exercise any judicial power over them; the question is, whether on the case before a court, their action is judicial or extra-judicial; with or without the authority of law, to render a judgment or decree upon the rights of the litigant parties.” *State of Rhode Island v. Com. of Massachusetts, 37 U.S. 657, 718 (1838)*.

“Judgments entered where court lacked either subject matter or personal jurisdiction, or that were otherwise entered in violation of due process of law, must be set aside”, *Jaffe and Asher v. Van Brunt, S.D.N.Y.1994. 158 F.R.D. 278*.

“Lack of subject matter jurisdiction is a non-waivable defect which may be raised at any stage of the proceedings.” *State v. LaPier, 961 P.2d 1274, 289 Mont. 392, 1998 MT 174 (1998)*.

“Irrespective of whether a party moves to vacate a judgment, the courts have inherent authority to vacate a void judgment.” Patton v. Diemer (1988), 35 Ohio St.3d 68.

“Where a void judgment has been rendered and the record in the cause, or judgment roll, reflects the vice, then the court has not only the power but the duty and even after the expiration of the term to set aside such judgment.” Harrison v. Whiteley, Tex.Com.App., 6 S.W.2d 89.

“Courts are constituted by authority and they cannot act beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are [254 U.S. 348, 354] not voidable, but simply void, and this even prior to reversal.” Elliot v. Piersol, 1 Pet. 328, 340; Old Wayne Life Ass’n v. McDonough, 204 U.S. 8 , 27 Sup. Ct. 236.

“A trial court has no discretion when faced with a void judgment, and must vacate the judgment “whenever the lack of jurisdiction comes to light”.” Mitchell v. Kitsap County, 59 Wash. App. 177, 180-81, 797 P.2d 516 (1990).

“Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice.” Davis v. Wechsler, 263 U.S. 22, 24 (1923). “It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution.” Frost v. Railroad Commission of California, 271 U.S. 583.

Marbury v. Madison, 5 US 137: “The Constitution of these United States is the supreme law of the land. Any law that is repugnant to the Constitution is null and void of law.”

U.S. Const. Art.IV, § 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Defective affidavits, hearsay as evidence and no stated damages are but a few elements that rob the court of subject matter jurisdiction (at last count there are 22 elements that deprive the court of SMJ). Some of the elements are: denial of due process, denial of meaningful access to court, fraud upon the court, and fraud upon the court by the court.

Subject matter jurisdiction fails: if a judge does not follow statutory procedure, and where the judge does not act impartially, *Armstrong v Oucino*, 300 Ill 140, 143 (1921), *Bracy v. Warden*, U.S. Supreme Court No. 96-6133 (June 9, 1997).

Aoude v. Mobil Oil, 892 F.2d 1115, 1118 (1st Cir. 1989), on which Capone heavily relied, described the appellate court's role in applying the abuse of discretion standard of review: While broad, the trial court's discretion is not unlimited. The [trial] judge must consider the proper mix of factors and juxtapose them reasonably. "Abuse occurs when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed, but the court makes a serious mistake in weighing them." *Independent Oil and Chemical Workers of Quincy, Inc. v. Procter & Gamble Mfg. Co.*, 864 F.2d 927, 929 (1st Cir. 1988); see also *Anderson v. Cryovac, Inc.*, 862 F.2d 910, 923 (1st Cir. 1988) (to warrant reversal for abuse of discretion, it must "plainly appear[] that the court below committed a meaningful error in judgment")

Savino v. Fla. Drive In Theatre Mgmt., 697 So. 2d 1011, 1012 (Fla. 4th DCA 1997)

Where a trial court determines that a party's conduct "amounted to a scheme calculated to interfere with the court's ability to impartially adjudicate [the] claim," a sanction as severe as dismissal or default judgment is appropriate. ;see also Bob Montgomery Real Estate v. Djokic, 858 So. 2d 371, 375 (Fla. 4th DCA 2003) ("dismissal is properly utilized where a party knowingly misleads the other party, thereby interfering with the other side's ability to defend (or prosecute) by a knowing deception intended to prevent the essential discovery.").

MANDATORY JUDICIAL NOTICE

1) FURTHER NOTICE, CHANGE IN LAW AND STATUS, US Department of Veterans Affairs Administration September 25, 2019 has determined Terry H Capone service in the US Marines is Honorable for VA purposes, Disabled Veteran, Totally and Permanently, Unemployable and compensated at 100%, Effective: February 3, 2014.

2) FURTHER NOTICE, The Court must liberally construe the factual allegations of the complaint because *pro se* pleadings, "however inartfully pleaded, must be held to a less stringent standard than formal pleadings drafted by lawyers." Erikson v. Pardus, 551 U.S. 89, 94 (2007) (Internal quotation omitted); Haines v. kerner, 404 U.S. 519, 520 (1972). In addition, the court should "apply the applicable law, irrespective of whether a pro se litigant has mentioned it by name." Higgins v. Beyer, 293 F.3d 683, 688 (3d Cir. 2002) (quoting Holley v. Dep't of Veterans Affairs, 165 F.3d 244, 247-48 (3d Cir.1999)).

All officers of the court, are hereby placed on notice under authority of the supremacy and equal protection clauses of the United States Constitution, the South Carolina Constitution, and the common law authorities of *Haines v Kerner*, 404 U.S. 519-421, *Platsky v. C.I.A.* 953 F.2d. 25, and *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000) relying on *Willy v. Coastal Corp.*, 503 U.S. 131, 135 (1992), "*United States v. International Business Machines Corp.*, 517 U.S.843, 856 (1996), quoting *Payne v. Tennessee*, 501 U.S. 808, 842 (1991) (Souter, J., concurring).*Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647, *American Red Cross v. Community Blood Center of the Ozarks*, 257 F.3d 859 (8th Cir. 07/25/2001), and Local Rules of the court, pro se litigants are held to less stringent pleading standards than bar licensed attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims. In re *Platsky*: court errs if court dismisses the pro se litigant without instruction of how pleadings are deficient and how to repair pleadings. In re *Anastasoff*: litigants' constitutional rights are violated when courts depart from precedent where parties are similarly situated. All litigants have a constitutional right to have their claims adjudicated according the rule of precedent. See *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000). Statements of counsel, in their briefs or their arguments are not sufficient for a motion to dismiss or for summary judgment, *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647. This court is also noticed on the following point of law: Prevailing party on default judgment of liability must still prove damages, *American Red Cross v. Community Blood Center of the Ozarks*, 257 F.3d 859 (8th Cir. 07/25/2001). This court is further noticed on U.S.C.A. Const. Amend. 5 – *Triad Energy Corp. v. McNell* 110 F.R.D. 382 (S.D.N.Y. 1986), Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A., U.S.C.A. *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985), *State v. Blankenship* 675 N.E. 2d 1303, (Ohio App. 9 Dist. 1996), *Graff v. Kelly*, 814 P.2d 489 (Okla. 1991), *Capital Federal Savings Bank v. Bewley*, 795 P.2d 1051 (Okla. 1990), *Com. V. Miller*, 150 A.2d 585 (Pa. Super. 1959). and *Reider v. Sonotone Corp.* 422 US 330, (1979), all discussed and relied upon *infra*. Pro se pleadings are to be considered without regard to technicality. Pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers. Pro se litigants are to be given reasonable opportunity to remedy the defects in their pleadings. See *Picking v. Pennsylvania R. Co.* 151 Fed, 2nd 240; *Pucket v. Cox*, 456 2nd 233; *Platsky v. C.I.A.*, 953 F. 2d 25; *Reynoldson v. Shillinger*, 907 F. 2d 124, 126 (10th Cir. 1990) and *Jaxon v. Circle K Corp.*, 773 F. 2d 1138, 1140 (10th Cir. 1985).

3) A void judgment is not void when ruled void by a court; a void judgment is void *ab initio*. The Supreme Court of South Carolina was correct in ruling and determining that a void judgment is no judgment at all. A void judgment is, in legal effect, no judgment at all. By it no rights are divested; from it no rights can be obtained. Being worthless, in itself, all proceedings founded upon it are necessarily equally worthless, and have no effect whatever upon the parties or matters in question

4) Binding Supreme Court precedent holds that when a judgment is entered without affording an individual notice and an opportunity to be heard, the only constitutionally adequate remedy is to vacate that judgment and require that the proceedings begin anew. *Peralta v. Heights Medical Center*, 485 U.S. at 87; *Armstrong v. Manzo*, 380 U.S. 545 (1965).

Providing some alternative in which only one of the relevant issues can be litigated is not sufficient. Only by setting aside the judgment and considering the case anew can the due process violation be remedied. *Peralta*, 485 U.S. at 87; *Armstrong*, 380 U.S. at 552.

The United States Supreme Court's decisions in *Armstrong v. Manzo*, 380 U.S. 545 (1965) and *Peralta v. Heights Medical Center*, 485 U.S. 80 (1988), speak directly to these points. They hold that where an individual is denied adequate notice and, hence, an opportunity to be heard, the only constitutionally adequate remedy is to "restore[] the petitioner to the position he would have occupied had due process of law been accorded him in the first place." *Armstrong*, 380 U.S. at 552; *Peralta*, 485 U.S. at 86-87 (holding that default judgment entered without notice and opportunity to be heard must be set aside even where, as in that case, defendant has no meritorious defense). No alternative remedy is sufficient.

It is precisely because burdens of proof may change, or opportunities to assert one's rights in other ways are lost, that the constitution requires "wip[ing] the slate clean" by setting aside the earlier judgment and considering the case anew. *Armstrong*, 380 U.S. at 551-52; *Peralta*, 485 U.S. at 85; see also *Falahati v. Kondo*, 127 Cal. App. 4th 823, 832-33 (2005) ("A deprivation of due process is no less a deprivation merely because the person deprived has a remedy. *Kondo* had a statutory and due process right to respond to the complaint before a default was entered. *Kondo* was denied this right and no post hoc remedy can change that fact.").

5) Jurisdiction is essential to give validity to the determination of administrative agencies; without jurisdiction, their acts are void and open to collateral attack. *Doolan v. Carr*, 125 US 618, 31 L Ed 844, 8 S Ct 1228; *Findlay v. Board of Sup'rs*, 72 Ariz 58, 230 P2d 526, 24 ALR2d 841; *Nicolai v. Board of Adjustment*, 55 Ariz 283, 101 P2d 199; *City Street Improv. Co. v. Pearson*, 181 Cal 640, 185 P 962, 20 ALR 1317 (ovrld on other grounds by *Hoffman v. Red Bluff*, 63 Cal 2d 584, 47 Cal Rpte 553, 407 P2d 857); *Johnson v. Mortenson*, 110 Conn 221, 147 A 705, 66 ALR 1428; *Mitchell v. Delaware Alcoholic Beverage Control Com.* (Super) 56 Del 260, 193 A2d 294, revd on other grounds (Sup) 57 Del 103, 196 A2d 410; *Antrim v. Civil Service Com.*, 261 Iowa 396, 154 NW2d 711; *State ex rel. Spruck v. Civil Service Board*, 226 Minn 240, 32 NW2d 574; *Oliphant v. Carthage Bank*, 224 Miss 386, 80 So 2d 63; *Foy v. Schechter*, 1 NY2d 604, 154 NYS2d 927, 136 NE2d 883, reh den 2 NY2d 774 and motion den 2 NY2d 774; *Lee v. Board of Adjustments*, 226 NC 107, 37 SE2d 128, 168 ALR 1; *Di Palma v. Zoning Board of Review*, 72 RI 286, 50 A2d 779, 175 ALR 399; *State Dept. of Public Safety v. Cox (Tex Civ App Dallas)* 279 SW2d 661, writ ref n r e; *State ex rel. Anderton v. Sommers*, 242 Wis 484, 8 NW2d 263, 145 ALR 1324.

6) Jurisdiction, although once obtained, may be lost, and in such a case proceedings cannot be validly continued beyond the point at which jurisdiction ceases. *Lahoma Oil Co. v. State Industrial Com.*, 71 Okla 160, 175 P336, 15 ALR 817 (ovrld on other grounds by *Western Indem. Co. v. State Industrial Com.*, 96 Okla 100, 219 P 147, 29 ALR 1419). A void judgment is, in legal effect, no judgment at all. By it no rights are divested; from it no rights can be obtained. Being worthless, in itself, all proceedings founded upon it are necessarily equally worthless, and have no effect whatever upon the parties or matters in question

7) FURTHER NOTICE, two of its own records from *Terry Capone v. City of Columbia*,

Employer, and Companion Third Party Administrator, LLC, Carrier, Respondent. Case Information: 2019-000369 Lower Court or Tribunal: 1322451, 1319203, 1420487 on file with the court and available Publicly on its website South Carolina Appellant Case Management Systems.

8) FURTHER NOTICE, December 23, 2019 Appellants Motion for Judicial Notice Appellate Case No: 2019-000369 W.C.C. File 132451, 1319203, 1420487 and the entirety of its contents.

9) FURTHER NOTICE, Exhibit #1 March 20, 2020 Encounter Report Document. Dr. Conigliaro Jones, MD TLM Medical Services, LLC Excerpts: Chief Complaint- Referral to gastroenterologist, Hemorrhoids, IBS “He has frequent heart burn symptoms and dysphagia. He has chronic constipation bleeding and diarrhea symptoms that continue about 4-6 times daily and has lost 20 lbs since his last office visit about 35 days ago. He has sharp pain in the epigastric area that occurs several times a day for 1-2 hours at a time. He says he is having a flare up of his IBS and Hemorrhoids. He says GERD is flaring up and he is having issues with his digestion bother him more significantly lately. He is retired in 2014 partly due to his IBS and GERD and has not worked since. He has had significant loss in stamina, weakness, and fatigue. His ADLs were moderately affected in the areas of bathing, dressing, toileting, and grooming. He has moderate issues with chores, shopping, and feeding himself. His GERD and IBS symptoms are worsened when PTSD symptoms are active. Hemorrhoids are worsened by constipation and IBS. He is currently followed by Dr. George Jenkins at Carolina Digestive Disease.

10) FURTHER NOTICE, Exhibit #2 March 25, 2020 Carolina Digestive Disease Dr. George AJenkins III, Diagnosis: Hemorrhoids, IBS, GERD, Dysphagia, Weight loss.

11) FURTHER NOTICE, Exhibit #3 March 26, 2020 Palmetto Endoscopy Suite Dr. George A

Jenkins III, Findings: Small hiatus hernia, Gastritis. Biopsied, A single gastric polp, Duodenitis.

12)

13) FURTHER NOTICE, Stare Decisis “[T]his court is not bound by its prior assumptions***.” Lopez v. Monterey County, 525 U.S. 266, 281 (1999).

14) FURTHER NOTICE, We have previously recognized that entitlement to workers' compensation benefits constitutes a property interest. Orszula v. Orszula, 292 S.C. 264, 356 S.E. (2d) 114 (1987).

FURTHER NOTICE, “The equitable power of a Court is not bound by cast-iron rules but exist to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other”. Hausman v. Hausman, 1999 S. W.3d 38, 42 (Tex. App. 2006).

Equitable tolling may be applied where it is justified under all the circumstances.

FURTHER NOTICE, God has made it so, The VA has determined I am a Veteran, my PTSD was caused by my service in Marines and Fire Service, I am totally and permanently disabled Effective February 3, 2014, under the law and eligible for all benefits.

FUTHER NOTICE, I am disabled under the law, the statute of limitations are tolled.

FURTHER NOTICE, These things before us having been decided, the controversy is over, the

FURTHER NOTICE, This Court is a Judicial, and not an administrative proceeding, and it is governed by Equity Jurisprudence, against public officers in their individual capacity, and

FURTHER NOTICE, This Court *shall* take Mandatory Judicial Notice of the Maxims governing Equity Jurisprudence. [1] They lie at the foundation of universal justice, and have been worthily and

aptly called *legume leges*-the laws of the laws.[2] See, “A Treatise On Suits in Chancery” by Henry

R. Gibson, §§31-64 (1907), incorporated herein by reference.

1. *Maxime ita dicta quia maxima est ejus dignitas et certissima auctoritas, atque quod maxime omnibus probetur.* A maxim is so called because its dignity is greatest and its authority is the most certain, and because it is approved most by all.

2. Kent’s Comm., 553. So fundamental are these maxims that he who disputes their authority is regarded as beyond the reach of reason.

FURTHER NOTICE, Equity will undo what fraud has done.Fraud[3] in the sight of a Court of Equity, vitiates every contract or transaction into which it enters, at the election of the injured party,[4] and The Court will not only undo what fraud has done, but will treat acts as done which fraud prevented from being done.

3. *Boni judicis est ampliare jurisdictionem.*

It is the duty of a good judge to amplify his jurisdiction, when necessary to do full justice.

4. This maxim in its operation is similar to the maxim, when Chancery has jurisdiction for one purpose, it will take jurisdiction for all purposes. See Ante,

FURTHER NOTICE, *Jus respicit aequita.*(Law regards equity.)

FURTHER NOTICE, *Lex orbis, insanis, et pauperibus, pro tutore atque pa-rente est*

(The law is the father and guardian of orphans, the insane, and the poor.)

FURTHER NOTICE, 22 *Ridley v. Halliday*, 22 Pick., 607. It is the peculiar province of the Court of Equity to give all needed and appropriate relief in case of infants whose rights have been sacrificed. *Couy v. Roane Iron Co.*, 21 Pick., 515. The Chancery Court acts as guardian for all persons under disability; and proper application, will protect them from the cupidity of

faithless guardians and relatives, and the rapacity of unscrupulous strangers. But while accorded full protection they are not entitled to have technicalities staid in their behalf, especially against a stranger guilty of no unconscientious conduct.

FURTHER NOTICE, We find no occasion to make any extended examination of the law governing Such cases, but it may be properly observed that, for the assumption or continued maintenance of Control by a court of chancery over the person and estate of one alleged to be of unsound mind, proof of the entire absence of reason, understanding, or memory is not required. In Colgate D. Owings Case, 1 Bland, 386, 17 Am. Dec. 311, the chancellor said: “Under the generic legal term ‘non compos mentis’ is comprehended every species of mental de rangement which incapacitates a man from assenting to, or making a legal contract.” And in Greenwade v. Greenwade, 43 Md.315, this court said:

“The term ‘non compos mentis’ used by the Code, embraces not only lunatics and idiots, but all persons of unsound mind.” In all jurisdictions, both in England and in this country the disposition of the courts is towards the establishment of a rule, which, whilst jealously guarding against the invasion of rights of person and property under the guise of such proceedings, will afford protection to the person himself and to his family dependent upon him, where any species of mental unsoundness is clearly shown to incapacitate him from protecting him and them against his Own Weakness Or the artifice of others.

FURTHER NOTICE, It is plaintiffs' claim that proof of adjudication of incompetency presupposes lack of mental capacity to understand the nature and effect of the ward's acts, is conclusive as a matter of law, not subject to an indirect attack, and until a legal decree is obtained restoring him to legal competency such condition is conclusively presumed to exist, citing such authority as Hellman Commercial T. & S. Bank v. Alden, 206 Cal. 592 [275 P. 794]; Carroll v. Carroll, 16 Cal. 2d 761, 767 [108 P.2d 420]; Gibson v. Westoby, 115 Cal. App. 2d 273 [251 P.2d 1003].

See also 27 California Jurisprudence 2d page 359, section 35, where it is said:

"A person of unsound mind whose incapacity has been [169 Cal. App. 2d 500] judicially determined cannot make a contract or delegate any power until his restoration to capacity. Such an adjudication constitutes notice 'to all the world' of the incapacity. It amounts to an adjudication in rem, conclusive as such. Whenever it is binding on any person, it is equally binding on all persons, though they have constructive notice only. Hence, where mental incapacity has been adjudged, no further evidence of mental incapacity is required while the decree remains in full force and effect; proof of the adjudication of incompetency amounts to proof of lack of mental capacity to understand the nature and effect of the transaction involved. This is true regardless of whether the person involved was adjudicated insane or incompetent, and regardless of the character or degree of mental derangement involved." (See also Condee, California Probate Court Practice, vol. II, p. 219.)

FURTHER NOTICE, Wards of court. Infants and persons of unsound mind placed by the court under the care of a guardian. *Davis Committee v. Loney*, 290 Ky. 644, 162 S.W. 2d. 189, 190.

Their rights must be guarded jealously. *Montgomery v. Erie R. Co.*, C.C.A.N.J., 97 F, 2d 289, 292. Blacks Law Dictionary, 4th Edition, Page 1755

FURTHER NOTICE, This pressure exerted by the strong against the weak is felt to destroy the free volition which is a prerequisite to the existence of a valid contract.⁸ "This kind of duress consists in imposition, oppression, undue influence, or the taking of undue advantage of the business or financial stress or the extreme necessities or weakness of another, whereby his free agency is overcome." *Pittsburgh Steel Co. v. Hollingshead*, 202 Ill. App. 177, 178 (1916)

FURTHER NOTICE, The Fifth Amendment to the United States Constitution reads in relevant part "...[no] person shall be deprived of life, liberty, or property, without due process of law".

The 14th Amendment to the United States Constitution contains similar due-process language and reads in relevant part "...nor shall any state deprive and person of life, liberty, or property, or due process of law".

FURTHER NOTICE, Fraudulent Concealment: Fraudulent Concealment is founded on the principle of estoppels. A defendant/ Respondent should not be able to invoke the statute of limitations if through fraud or concealment, “he causes the plaintiff to relax his vigilance or deviate from his right of inquiry in the facts”.*Fine v. Checcio*, 870 A.2d 850, 860 (Pa.2005)`

FURTHER NOTICE, *Crescente militia, crescere debet et poena*. (While wickedness increases, punishment ought also to increase.)

FURTHER NOTICE, *Arbitrio domini res aestimari debet*. (Property ought to be valued at the will of the owner.)

FURTHER NOTICE, *Equitas rem oppignoratae redemptionibus favet*. (Equity considers the matter itself, less anxious about the form and circumstance.)

FURTHER NOTICE, The suppression of a fact, takes away equity

FURTHER NOTICE, *Effectus sequitur causam*.(The effect follows the cause.)

FURTHER NOTICE, *Fraus aequitati praejudicat*.(Fraud is prejudicial to equity)

FURTHER NOTICE, *Fraus est celare fraudem*. (To conceal fraud is fraud)

FURTHER NOTICE, *Injuria servi dominium pertingit*. (The master is liable for the damage done by his servant.)

FURTHER NOTICE, *Actus servi in iis quibus opera ejus communiter adhibita est, actus domini habetur*. (An act of a servant in those things in which he is commonly employed with others, is

considered the act of his master.)

FURTHER NOTICE, *Injuria non praesumitur*. (Injury is not anticipated)

FURTHER NOTICE, *Bonus judex secundum aequum et bonum judicat, et aequitatem stricti juri praefert*. (A good judge decides according to what is just and good; and prefers equity to strict law.)

FURTHER NOTICE, *Equitas est convenientia rerum quae cuncta eo aequiparat, et quae, in paribus rationibus, paria jura et judicia desiderat*. (Equity is the suitableness of circumstances, which equalizes all things, and which in similar matters, requires similar laws and judgments.)

FURTHER NOTICE, *Equity Powers of Federal Courts*: “Substantially, then, the equity jurisdiction of the federal courts is the jurisdiction in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act, 1789

(1 Stat. 73).” Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308, 318

(1999) (quoting A. Dobie, *Handbook of Federal Jurisdiction and Procedure* 660 (1928)).

FURTHER NOTICE, "Fraud on the court" consists of conduct: (1) on part of officer of the court, (2) that is directed to judicial machinery itself, (3) that is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth, that is positive averment or is concealment when one is under duty to disclose, that deceives court. (*Demjanjuk v.*

Petrovsky, 10 F.3d 338, rehearing and suggestion for rehearing denied, certiorari denied

Rison v. Demjanjuk, 115 S.Ct. 295, 513 U.S. 914, 130 L.Ed.2d 205 (Ohio) 1993.—*Fed Civ Proc*

2654. “. . . errors are so prejudicial and fundamental that expenditure of further time and expense would be wasteful, if not futile.” (*Salvatore v. State of Florida*, 366 So. 2d 745 [Fla. 1978], *cert. denied*, 444 U.S. 885, 100 S. Ct. 177, 62 L. Ed. 2d 115 [1979]).

FURTHER NOTICE, "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." (*Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 *Moore's Federal Practice*, 2d ed., p. 512, ¶ 60.23). The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

FURTHER NOTICE, "Litigant commits "fraud on court" when litigant and attorney concoct some unconscionable scheme calculated to impair court's ability fairly and impartially to adjudicate dispute. (*Sandstrom v. ChemLawn Corp.*, 904 F.2d 83.—Fed Civ Proc 1741.

FURTHER NOTICE, "Fraud on the court" may occur when acts of party prevent his adversary from fully and fairly presenting his case or defense (*Abatti v. C.I.R.*, 859 F.2d 115, Me., (1990).—Fed Civ Proc 2654 . . . "Plaintiffs' fraudulent scheme of manufacturing evidence to support their business loss claim and subsequently covering-up their scheme constituted "fraud on the court" warranting sanctions. (*Derzack v. County of Allegheny, Pa.*, 173 F.R.D. 40ff affirmed 118 F.3d 1575 (Pa. 1996).—Fed Civ Proc 2791.

EMERGENCY MOTION TO VACATE VOID JUDGMENT/ ORDER

Appellant Capone In Pro Per, hereby moves this court to vacate the Void Judgment/ Decision/ Order entered March 27, 2020 and December 2, 2015 by South Carolina Workers' Compensation Commissioner Gene Henry McCaskill after a hearing was held August 21, 2015 SC W.C.C. File Nos. 1322451, 1319203, 1420487 and all subsequent proceedings thereafter in this matter also void based on the authorities invoked herein and for the reasons already stated above.

CONCLUSION AND PRAYER AND RELIEF REQUESTED

For the reasons stated supported by the affidavits, pleadings and papers on file with the Court and addressed herein, Plaintiffs request that the Court GRANT

Appellant, *pro se* Terry Capone's Notice of Appeal is timely and should not be dismissed because it would continue to deprive him of fundamental and substantial rights are affected. The Appellant alternately request the Respondent motion to dismiss be denied with prejudice, Appellant so moves. See Exhibits I-VII.

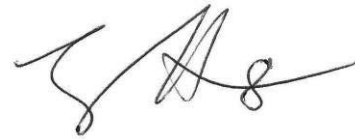
Appellant hereby asserts his right to due process under the Constitution and precedence decisions.

Appellant also asserts his right to a fair and impartial judge to make a ruling based on these facts and precedence. The cannons for a judge include: "A judge should avoid even the appearance of impropriety in all of his or her activities."

It is on these principals, in part, and finding that this court has jurisdiction, that the Appellant, Terry H Capone In Pro Se, seeks remedy from the court in the form of action vacating / set aside

the void Judgment/Decision and Order made March 27, 2020 and December 2, 2015 and all made subsequent to it thereof.

By:



APPELLANT, *pro se*

April 9, 2020

Enclosure(s) as stated

Cc: Cythia Dooley, Carmelo Sammataro
Attorney's for Respondents (w/all enclosures)

Mr. Terry H. Capone
Fire Battalion Chief-Retired
130 Summerlea Drive
Columbia, SC 29203
803.622.6578
Email: tcapone@liberty.edu

SWORN DECLARATION OF TERRY H CAPONE

STATE OF SOUTH CAROLINA §

COUNTY OF RICHLAND §

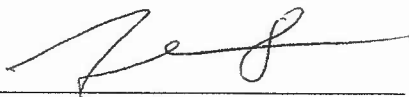
Pursuant to 28 U.S.C. 1746, I Terry H Capone, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief and In opposition, Plaintiff states as follows:

1. I am the Appellant in this unlawful action.
2. The Veterans Administration has determined I am a totally and permanently Disabled Veteran, unemployable, and my PTSD is from service in the U.S Marines and Fire Department, effective on or about February 3, 2014.
3. My combined VA disability rating is 90% and I am compensated at a rate of 100%, due to the determination I am unemployable.
4. I request that the Orders/ judgment entered in this action and all previously made be vacated with prejudice for, at least, the following reasons:
 - A. Denial of due process/ Procedural due process
 - B. Lack of subject matter jurisdiction
 - C. Lack of personal jurisdiction
 - D. Fraud Upon the Court/ Tribunal and Appellant
 - E. Irregular Judgments
 - F. Change in Law
 - G. Change in Material Facts
 - H. Change in Appellate Status
5. The South Carolina Court of Appeals has in its possession all evidence to prove that Fraud Upon the Court was committed against the above and enclosed referenced matters. All orders are Void.
6. That clearly show SC Workers Compensation Commission Altered the Medical Opinion; the

Respondents defrauded the court and lied about critical evidence material to the claim denying and violating the Appellants constitutional rights to include:

Fifth Amendment for denial of due process; Fourteenth Amendment for Denial of Equal protection; Civil Rights Act 1866 and 1981 Equal Justice Under law (RACE) African Decent; 42 U.S., Code §1983-Civil Rights for Deprivation of Rights-Intentionally Deny or Delay Medical and Dental Care-“Unnecessary and Wanton Infliction of Pain”; Eighth Amendment Cruel and Unusual Punishment Denial of Medical Treatment; Fraud, and Perjury under Oath by Judicial Officers on the Court, Irregular judgments, and other violations of law, and there has never been a fair hearing on the merits to test the claim.

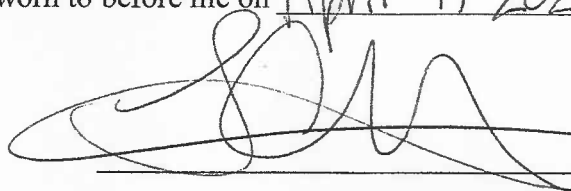
I certify under penalty of perjury under the laws of the state of South Carolina that the foregoing statement is true.

 Signature

Terry H Capone, Appellant In Pro per

Signed in Columbia, Richland County South Carolina on April 9, 2020

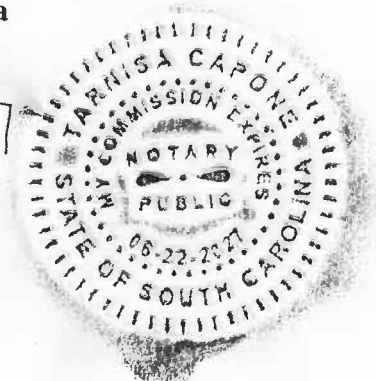
Subscribed and sworn to before me on April 9, 2020



TARNISA CAPONE
Notary Public-State of South Carolina
My Commission Expires
June 22, 2027

Notary Public in and for the State of South Carolina

My commission expires: 06/22/2027



THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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Apr 10 2020

SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Appellate Case No.: 2019-000369

PROOF OF SERVICE

Terry H Capone, Claimant.....Appellant,
v.
City of Columbia, Employer, and
Companion Third Party Administrator, LLC, Carrier,Respondents.

Terry H Capone, of Richland County, Pro Se Appellant.


I certify this 9th day of April 2020 that I have served a copy of the Appellants'

1. NOTICE OF EMERGENCY MOTION TO VACATE VOID JUDGMENT/ ORDER RULE 59/60 FRAUD
ON THE COURT AND OTHER VIOLATIONS OF LAW AND TO TAKE MANDATORY JUDICIAL
NOTICE IN THE ABOVE REFERENCED MATTERS

on the Respondents by personal service or mailing same, postage prepaid in the United States mail,
addresses to the following:

Cynthia C. Dooley, Esquire
Carmelo Barone Sammataro, Esquire
TURNER PADGET GRAHAM & LANEY P.A.
P.O. Box 1473
Columbia, SC 29202
ATTORNEYS FOR RESPONDENTS

April 9, 2020

By: 
Mr. Terry H Capone
130 Summerlea Drive
Columbia, SC 29203
(803) 622-6578
Email: tcapone@liberty.edu
APPELLANT PRO PER



RECEIVED

Apr 10 2020

SC Court of Appeals

April 9, 2020

US MAIL DELIVERY OR PERSONAL SERVICE

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

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 NOTICE OF EMERGENCY MOTION TO VACATE VOID JUDGMENT/ ORDER RULE 59/60 FRAUD ON THE COURT AND OTHER VIOLATIONS OF LAW AND TO TAKE MANDATORY JUDICIAL NOTICE IN THE ABOVE REFERENCED MATTERS 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

Mr. Terry H. Capone
Fire Battalion Chief-Retired
130 Summerlea Drive
Columbia, SC 29203
803.622.6578
Email: tcapone@liberty.edu

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Apr 10 2020

SC Court of Appeals

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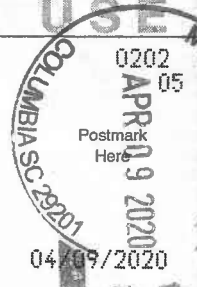
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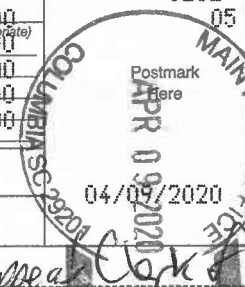
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Extra Services & Fees (check box, add fee as appropriate)	\$0.00
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<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
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