

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
T. Scott Beck, Commissioner

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**Jun 26 2020**

**SC Court of Appeals**

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W.C.C. 1012533  
Appellate Case No. 2017-001764

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Chisolm Frampton, Employee,.....Appellant,

v.

SC Department of Natural Resources, Employer, and  
South Carolina State Accident Fund, Carrier,.....Respondents.

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**RESPONDENTS' SURRESPONSE TO APPELLANTS'  
MOTION TO SUPPLEMENT RECORD ON APPEAL**

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The Respondents, the South Carolina Department of Natural Resources, and the South Carolina State Accident Fund, hereby respectfully request that the Court of Appeals DENY the Appellant's Motion to Supplement the Record on Appeal in support of his Petition for Rehearing, based upon the following:

1. Frampton's Reply to the Appellant's Return to his Motion to Supplement the Record on Appeal references and contains documents not contained in the Record on Appeal, nor considered by the Workers' Compensation Commission, nor referenced in the Frampton's Brief to the Court of Appeals.

2. Frampton's Reply further makes impertinent and otherwise baseless allegations that the Respondents have made misrepresentations of fact.
3. The Respondents respectfully contend that without leave to file a Surreponse, they will be without any opportunity to defend against these spurious accusations or to respond to this new evidence, as is their right under the Due Process Clause of the South Carolina Constitution, the South Carolina Workers' Compensation Act, and the Administrative Procedures Act. Strait v. City of Rock Hill, 104 S.C. 116, 88 S.E. 469 (1916).
4. On September 21, 2010, Respondents issued notified Frampton that his claim for benefits under the Workers' Compensation Act was denied and filed a Form 19 with the Workers' Compensation Commission formally confirming that the claim was denied. (See attached, Exhibit 3).
5. Frampton underwent surgery on March 21, 2011, more than six months after the Respondents denied his workers' compensation claim and this surgery was not authorized by the Respondents, but by his group health provider, the Blue Cross State Health Plan.
6. Any treatment occurring between September 28, 2010 and July 8, 2011, was not provided by the Respondents, as his claim was denied and administratively closed, as referenced on the Form 19. (See attached Exhibit 3).
7. Therefore, any statement to the effect that Frampton's surgery was covered-by, or paid-for, by the BCBS State Health Plan is factually correct.
8. The Respondents have never misled the Court, nor made any misstatement of fact with regard to Frampton's medical treatment, as it has always been acknowledged that the Respondents subsequently paid medical expenses on Frampton's behalf

after he alleged two additional work accidents, including a motor vehicle while driving a State vehicle, as discussed in the Courts' opinion.

9. In addition, in his Reply, Frampton includes additional exhibits, ostensibly in support of his argument; however, these exhibits were not introduced into evidence before the Workers' Compensation Commission, are not included in the Record on Appeal, and has made no Frampton timely, or proper, motion to have them included in the Record on Appeal.
10. If Frampton desired the documents identified as exhibits in his Reply to be included in the Record on Appeal, or otherwise considered by the Court of Appeals, it was incumbent upon him to first introduce these documents into evidence before the Commission, to include the same in his Designation of Matter to be included in the Record on Appeal, and to reference these documents in arguments actually preserved for his appeal and contained in his Brief to the Court of Appeals.
11. Because these documents were obviously not germane to the arguments actually raised by Frampton and preserved for appeal, they are not properly referenced for the first time in a Motion to Supplement the Record on Appeal in support of a Petition for Rehearing, or in a Reply to a Return thereto.
12. Because the documents identified as exhibits in Frampton's Reply relate to arguments that were not previously raised in his Brief to the Court of Appeal, nor preserved for review, they, are not properly before the Court for the first time after the Appellant has filed a Petition for Rehearing.
13. Further, as set forth in their Return, the Respondents respectfully contend that it is improper for Frampton raise these issues or to introduce new evidence into the Record for the first time in a post-judgment motion. See Wilder Corp. v. Wilke, 330

S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.") (internal citations omitted).

14. Because no issue regarding these new documents was raised before the Workers' Compensation Commission or Court of Appeals, Frampton's Motion to Supplement the Record on Appeal and his subsequent attempts to color the record with exhibits to his Reply, which have never been submitted into evidence for any purpose, should be denied.
15. Plainly, the documents with which Frampton is now attempting to supplement the record are not properly before the Court.
16. The Respondents have an absolute right to respond to new evidence proffered for the first time since the hearing on July 15, 2015, after the Record was closed; however, the Respondents have no adequate opportunity to do so having already filed a Return to the Appellant's Petition for Rehearing.
17. Therefore, should the Court permit the Appellant to supplement the Record on Appeal pursuant to their Motion, the Respondents respectfully request that – at a minimum – the Court should permit the documents referenced in the Return as Exhibit 1 and Exhibit 2, in addition to the documents attached hereto as Exhibit 3, be included in the Record on Appeal, pursuant to Rule 212(b), S.C.A.C.R.
18. Should the Court of Appeals accept the documents proffered by Frampton without the additional context provided by the Exhibits to the Respondents' Return and Exhibit 3 hereto, neither the Court, nor the Respondents will be able to fully contextualize, much less address, the new arguments raised for the first time in Frampton's Motion and Reply and the Respondents will otherwise be wholly unable

to defend against Frampton's new assertions, as is their statutory and constitutional right.

Therefore, the Respondents respectfully request that the Motion for Leave to file a Surreponse be granted and that Frampton's Motion to Supplement the Record on Appeal be denied, as the documents are not relevant to any issue properly before the Court of Appeals, nor is there any danger of the Court "misapprehending" any fact without these documents. Furthermore, if Frampton is permitted to supplement the Record on Appeal at this juncture, the Respondents are without any legal vehicle to address these new documents or arguments relating thereto, having already filed their Return to the Appellant's Petition for Rehearing. Should the Court permit Frampton to supplement the Record on Appeal, the Respondents respectfully request, at a minimum, that the documents identified as Exhibits 1 and 2 to the Respondent's Return and the documents identified as Exhibit 3 to the Surreponse also be added to the Record on Appeal in accordance with Rule 212(b), S.C.A.C.R. Without the additional context provided these exhibits, the Court will not have the full context in which the documents that Frampton seeks to include should be considered.

Respectfully submitted,

*/s/ Kirsten Leslie Barr*

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Kirsten Leslie Barr  
SC Bar #15525  
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Mt. Pleasant, SC 29465  
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kbarr@trask-howell.com  
Attorneys for Respondents

June 26, 2020

# **EXHIBIT 3**

# SOUTH CAROLINA STATE ACCIDENT FUND

HARRY B. GREGORY, JR., Director

9/21/2010

Chisolm A Frampton  
5296 Dixie Plantation Road  
Hollywood, SC 29449

RE: Chisolm A Frampton vs. DEPT OF NATURAL RESOURCES  
WCC #: 1012533  
SF #: 2010-003478  
D/A: 09/04/2010

Dear Mr. Frampton:

We have received from your employer a First Report of Injury (ACORD Form) relating to the above referenced incident. To qualify for workers' compensation benefits you must have either received an accident injury to your body or contracted an occupational disease arising out of and in the course of your employment. Additionally, the claim for benefits must have been reported and filed within the time and manner provided by the workers' compensation law.

Our review indicates that your case does not meet these requirements. Injury not arising out of or through the course of employment.

If you believe this decision is wrong we invite you to write to the Director pointing out any error you believe we have made and any fact we need to reconsider.

You should ask your employer's benefits coordinator about other possible coverage for your claim such as group insurance. Please feel free to call us at (803) 896-5924 if you have questions or if we can assist you further.

Sincerely,



Robert Peppers  
Claims Adjuster  
rpeppers@saf.sc.gov  
Fax: (803) 612-2724

cc: Mr. Greg Line, S.C. Workers' Compensation Commission, P.O. Box 1715, Columbia, South Carolina, 29202-1715

cc: DEPT OF NATURAL RESOURCES 1000 Assembly St., Rm. 249 Dennis C. Rembert Bldg. Columbia, SC 29202

**South Carolina Workers' Compensation Commission**  
P.O. Box 1715 ♦ 1612 Marion Street  
Columbia, South Carolina 29202-1715  
(803) 737-5700

WCC File # 1012533  
Carrier File # 2010-003478 ✓  
Carrier Code # 500 - SF  
Employer FEIN 570000P24

Chisolm Frampton 250-31-2858  
5296 Dixie Plantation Road, Hollywood, SC 29449  
29202

DEPT OF NATURAL RESOURCES  
1000 Assembly St., Rm. 249, Columbia, SC

(843) 571-0053 (home) ( ) - (work)

Preparer's name: Robert Peppers (803) 896-5924 State Accident Fund, Insurance Carrier

Compensation Paid	Number of Weeks	From	To	Amount
1. Number of weeks T.T.				
2. Number of weeks T.P.				
3. Number of weeks P.P.				
4. Disfigurement	No Data			
5. Agreement and Final Release				
Total Compensation Paid				
6. Total Medical Benefits* Paid				
7. Funeral Benefits				.00

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SEP 22 2010  
FRONT DESK  
SC Workers' Comp Comm

(X) Case Denied Date of Injury: 09/04/2010

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: \_\_\_\_\_ By: Robert Peppers Date: 9-21-10  
Claimant Employer's Representative

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: \_\_\_\_\_

**Report of additional Fees and Recoupment**

A. Carrier Reimbursement by Third Party	\$ .00
B. Attorney's Fee Paid by Employer	\$
C. Attorney's Fee Paid by Claimant	\$
(Non contingent fees, only)	

File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. \*Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within sixteen days of final payment of compensation. Form 19 must be filed when a claim is denied.

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W.C.C. 1012533  
Appellate Case No. 2017-001764

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Chisolm Frampton, Employee,.....Appellant,

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**PROOF OF SERVICE**

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The undersigned hereby certifies that the above-referenced Appellant, Chisolm Frampton, was served with a copy of the attached Respondents' Motion for Leave to File a Surreponse and Respondents' Surreponse to Appellant's Motion to Supplement Record on Appeal this 26th day of June, 2020 by emailing and depositing a copy of the same in the United States Mail, first class postage prepaid, addressed to each of the parties of record, as follows:

Stephen B. Samuels, Esq.  
1320 Richland Street  
Columbia, SC 29201  
[stephen@samuelsreynolds.com](mailto:stephen@samuelsreynolds.com)

John C. Land, III, Esq.  
P.O. Box 138  
Manning, SC 29102  
[john@lpwlawfirm.com](mailto:john@lpwlawfirm.com)  
[pat@lpwlawfirm.com](mailto:pat@lpwlawfirm.com)

June 26, 2020

*s/Kirsten Leslie Barr*

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Trask & Howell, L.L.C.  
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Attorneys for Respondents

TRASK  
HOWELL  
WORKERS' COMPENSATION DEFENSE

*Reply to*  
Kirsten L. Barr  
(843) 881-1027  
kbarr@trask-howell.com

June 26, 2020

**Via Email to: ctappfilings@sccourts.org and Regular Mail**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, SC 29211

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**Jun 26 2020**

**SC Court of Appeals**

Re: Chisolm Frampton v. SC Department of Natural Resources  
W.C.C. File No.: 1012533  
**Appellate Case No.: 2017-001764**  
Carrier File No.: 2010-3478  
Date of Accident: September 4, 2010

Dear Ms. Kitchings:

Enclosed herewith for filing, please find the following:

1. Respondents' Motion for Leave to File a Surreponse.
2. Check No. 58563 in the amount of \$50.00 for the Motion filing fee.
3. Respondents' Surreponse to Appellants' Motion to Supplement Record on Appeal.
4. Proof of Service to the parties.

By a copy of this correspondence, I am serving the other counsel of record with a copy of our Motion and Surreponse.

Yours very truly,

*s/Kirsten L. Barr*  
Kirsten L. Barr

KLB/ebw/les  
Enc.

cc: Lindsay Sadler, South Carolina State Accident Fund (w/enc.) (email only)  
Stephanie Welch, SC Department of Natural Resources (w/enc.) (email only)  
John C. Land, III, Esq. (w/enc.) (email/mail)  
Stephen B. Samuels, Esq. (w/enc.) (email/mail)

