

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS COMPENSATION COMMISSION  
★VOLUNTARY REMANDED ★  
BY THE APPELLATE PANEL

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**RECEIVED**  
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SC Court of Appeals

Appellate Case No. 2019-000369  
Formerly 2018-001364  
W.C.C. File Nos. 1322451, 1319203, 1420487

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Terry H Capone,

Appellant,

v.

City of Columbia, Employer, and  
Companion Third Party Administrator, LLC, Carrier,

Respondents,

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★ FINAL BRIEF OF APPELLANT ★

---

Terry H Capone, Pro Se Appellant.

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July 10, 2020\*

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### EXCERPTS:

- I. THE SOUTH CAROLINA WORKERS' COMPENSATION SCHEME IS UNCONSTITUTIONAL, BECAUSE IT ABRIDGED THE RIGHTS OF THE APPELLANT BY DENING HIM DUE PROCESS, PROCEDURAL DUE PROCESS, SUBSTANTIVE JUSTICE AND EQUAL PROTECTION UNDER THE COLOR OF LAW AND OTHER VIOLATIONS OF LAW AND THE APA. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND COMMISSIONERS DID NOT HAVE PERSONAL OR SUBJECT MATTER JURISDICTION AS WAS OBTAINED THROUGH TRICKERY AND FRAUD UPON THE COURT AND DEVALUATION OF HIS WORKERS COMPENSATION BENEFITS (AN ECONOMIC LYNCHING) IN WHICH HE AND HIS FAMILY HAVE A PROTECTED SUBSTANTIAL PROPERTY INTEREST; ALTERED MEDICAL REPORTS/ OPINIONS AND OMITTED EVIDENCE TO DENY HIS WORK RELATED DISABILITY, BUT HAS A HISTORY OF IRREGULAR JUDGMENTS AND FAVORABLE FINIDNGS OF DISABILITY OUTCOMES TO WHITES/ CAUCASIANS LIKE: 1.U.S.ARMY VETERAN **CLEO N. POWELL** WHO AS RESULT OF AN ALTERCATION WITH A SUPERVISOR, WHO PUSHED A FINGER INTO HIS CHEST, CURSED HIM, CALLED HIM A LIAR AND ACCUSED POWELL OF POOR MAINTENANCE 2. **THEODORE ABNER "TED" FRAME** WHO WAS PERMANENTLY DISABLED BY HIS BI- POLAR DISORDER THAT WERE AGGRAVATED BY HIM SEEING THE MISTREATMENT OF AFRICAN AMERICANS/ BLACK WORKERS 3. **JARROD SELLERS'** WHO AS A RESULT OF A MVA AT 16 YEARS OF AGE IN HIGH SCHOOL WAS RENEDEDERED A PARAPLEGIC. THE SC WORKERS' COMPENSATION COMMISSION ADJUSTED HIS AVERAGE WEEKLY WAGE AND COMPENSATION RATE BASED ON HIS FUTURE EARNING CAPACITY AS AN ELECTRICIAN, THE SC COURT OF APPEALS AFFIRMED.

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“All laws which are repugnant to the Constitution are null and void. “Marbury v. Madison, 5 U.S. 37 (1803)

The Supremacy Clause of the United States Constitution provides that “the Laws of the United States . shall be the supreme Law of the Land . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2. State and local laws are thus preempted when they conflict with federal law. See National Helicopter Corp. of Am. v. City of New York, 137 F.3d 81, 88 (2d Cir.1998).

The Fifth Amendment to the United States Constitution reads in relevant part” . . . [n]o 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 any person of life, liberty, or property, without due process of law.”

A judgment may not be rendered in violation of constitutional protections. The validity of a judgment may be affected by a failure to give the constitutionally required due process notice and an opportunity to be heard. *Earle v. McVeigh*, 91 US 503, 23 L Ed 398. See also Restatements, judgments 4(b). *Prather vLoyd*, 86 Idaho 45, 382 P2d 910.

The “words used [in the statute must be] so clear, strong, and imperative that no other meaning can be annexed to them, or . . . the intention of the legislature [must be such that it] cannot be otherwise satisfied.” *U.S. Fid. & Guar. Co. v. United States*, 209 U.S. 306, 313, 314, 28 S.Ct. 537, 52 L.Ed. 804 (1908).

The Due Process Clause of the Fifth Amendment guarantees that an individual will not be deprived of life, liberty, or property without due process of law. U.S. Const. amend. V. Due process of law has been interpreted to include notice and a fair opportunity to be heard. See *Mullane v. Cent. Hanover Tr. Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950). To raise a due process question, the claimant must demonstrate a property interest entitled to such protections. *Richard v. West*, 161 F.3d 719, 723 (Fed.Cir.1998).

"Where a court failed to observe safeguards, it amounts to denial of due process of law, court is de-prived ofjuris." *Merritt v. Hunter*, C.A. Kansas 170 F.2d 739 (10TH Cir. 1948)

In this regard, the appellant claimed that the Board’s consideration of the altered medical records had effectively denied him a full and fair hearing on the merits of his claim and thereby deprived him of a property interest in the VA benefits he was seeking without due process of law. *Cushman v. Shinseki* United States Court of Appeals for the Federal Circuit 576 F.3d 1290 (2009)

The United States Court of Appeals for Veterans Claims (CAVC) upheld the Board’s decision with respect to the 1977 decision. *Id.* That decision was then summarily affirmed by the United States Court of Appeals for the Federal Circuit (Federal Circuit) with the provision that the appellant would be free again to raise his previous claims. *Cushman*, 576 F.3d at 1296.

As the Supreme Court explained more than 50 years ago in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955), *res judicata* does not bar a suit, even if it involves the same course of wrongful conduct as alleged earlier, so long as the suit alleges new facts or a worsening of the earlier conditions. That is precisely the case here, with (1) expanded runways, including one 2000 feet closer to Plaintiffs’ home; (2) new water pollution from the expansion; and (3) the revelation that the City has denoted Plaintiffs’ property for acquisition because it is in runway areas where residential use is forbidden.

Similarly, *res judicata* does “not bar a claim that does not accrue prior to the litigation triggering the bar.” *Funny Guy*, 795 S.E.2d at 900 (emphasis added). A party is not precluded from bringing a claim that he was unable to bring in the initial litigation, regardless whether that claim constitutes part of the same “conduct, transaction, or occurrence.” *D’Ambrosio*, 809 S.E.2d at 628; *Funny Guy*, 795 S.E.2d at 890 (“Determining which claims should have been brought in earlier litigation largely depends on which claims could have been brought.” (citation omitted)); see also *Lawlor v. Nat’l Screen Serv. Corp.*, 349 U.S. 322, 328 (1955) (explaining that although an earlier 7 judgment “precludes recovery on claims arising prior to its entry, it cannot be given the effect of extinguishing claims which did not even then exist”).

§ 3. Privileges and immunities; due process; equal protection of laws. The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.) Editor's Note The present provisions of this section are identical to former § 5 of Article I as it existed prior to the 1971 revision. For similar provisions in Constitution of 1868, see Const 1868, Art I, § 12;;;MI;;;.

§ 9. Courts; speedy remedy. All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained. (1970 (56) 2684; 1971 (57) 315.) Editor's Note The present provisions of this section are identical to former § 15 of Article I as it existed prior to the 1971 revision. For similar provisions in Constitution of 1868, see Const 1868, Art I, § 15;;;MI;;;.

§ 22. Procedure before administrative agencies; judicial review. No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review. (1970 (56) 2684; 1971 (57) 315.)

§ 23. Provisions of Constitution mandatory. The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissive by its own terms. (1970 (56) 2684; 1971 (57) 315.) Editor's Note The present provisions of this section are identical to former § 29 of Article I as it existed prior to the 1971 revision.

These due process rights apply to South Carolina Workers' Compensation benefits all covered South Carolinian's have a property interest in South Carolina Workers' Compensation benefits, “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)”.

### **EXCLUSIVE REMEDY DOCTRINE**

Personal injury. The statute of limitations for personal injury is three (3) years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action. See S.C. CODE ANN. § 15-3-530 (2015).

Under the “exclusivity rule,” workers’ compensation is the exclusive remedy for personal injury to an employee arising out of and in the course of employment. S.C. Code Ann. § 42-1-540 (1985); Poch v. Bayshore Concrete Prod./S.C., Inc., 405 S.C. 359, 747 S.E.2d 757 (2013); F. PATRICK HUBBARD & ROBERT L. FELIX, SOUTH CAROLINA LAW OF TORTS 212 (3d ed. 1990).

In most situations, a tort action by an employee against an employer or against a co-employee is barred, and exclusive jurisdiction rests with the Workers’ Compensation Commission. HUBBARD & FELIX, supra. This is a defense to a tort suit that is waived if it is not raised in the

The very purpose of the Act is to assure the employee of redress for his injuries, if the facts show that he is entitled thereto, and to relieve him of the uncertainties of a trial in suit for damages. Riddle v. Fairforest Finishing Co. (S.C. 1942) 198 S.C.419, 18 S.E.2d 341  
The purpose of the section {Code 1962 § 72-11} is to make the “owner”, the person who is interested in having the work done, liable to the employee so injured. Marchbanks v. Duke Power Co. (S.C.1939) 190 S.C.336, 2 S.E.2d 444.

Any doubts as to a worker’s status should be resolved in favor of including him or her under the Workers’ Compensation Act. Poch v. Bayshore Concrete Products/South Carolina, Inc. (S.C. 2013) 405 S.C. 359, 747 S.E.2d 757.

Workers’ Compensation 51 Workers’ Compensation Act should be construed in favor of coverage, and any reasonable doubts as to construction of the Act should be resolved in favor of the claimant. Hall v. Desert Aire, Inc (S.C.App 2007) 376 S.C.338, 656 S.E.2d 753, rehearing denied. Workers Compensation 52

The court is committed to a liberal construction of the Compensation Act to include injured workmen within its protection rather than exclude them. Cagle v Clinton Cotton Mills (1949) 216 SC 93, 56 SE2d 747. Bailey v Santee River Hardwood Co. (1944) 205 SC 433, 32 SE2d 365.

The Statute is to be construed liberally for the protection of the injured employee-to promote the purpose of its enactment. Murdaugh v Robert Lee Const. Co.(1937) 185 SC 497, 194 SE 447. Ham v Mullins Lbr. Co. (1940) 193 SC 66, 7 SE2d 712. Cokely v Robert Lee, Inc. (1941) 197 SC 157, 14 SE2d 889. Pate v Plymouth Mfg. Co. (1941) 198 SC 159, 17 SE2d 146.

The Workers’ Compensation Act has to be construed liberally in favor of coverage, and doubtful cases should be resolved in favor of the injured employee. Douglas v. Spartan Mills, Startex division (S.C. 1965) 245 S.C. 265, 140 S.E.2d 173.

### **UNDER DISABILITY /UN SOUND MIND/ INSANE**

#### **Tolling.**

Generally persons who are (1) under the age of 18, (2) insane, or (3) imprisoned for a term less than life at the time the cause of action accrues may avoid the effect of the statute of limitations applicable to their claims. See S.C. CODE ANN. § 15-3-40 (2015). The statute of limitations

may also be subject to equitable tolling. See *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009).

Where a latent or quiescent weakened, but not disabling, condition resulting in disease is by accidental injury in the course of the scope of employment, aggravated, accelerated or activated, with resulting disability, such disability is compensable. *Glover v. Columbia Hospital of Richland County* (1960) 236 SC 410, 114 SE2d 565. *Gordon v. E. I. Du Pont de Nemours & Co.*, (1955) 228 SC 67, 88 SE2d 844.

An injury is unexpected, bringing it within the category of accident, if the workers' compensation claimant did not intend it or expect it would result from what he was doing; therefore, if an injury is unexpected from the claimant's point of view, it qualifies as an injury by accident. *Landry v. Carolinas Healthcare Systems* (S.C.App. 2011) 396 S.C. 149, 719 S.E.2d 288, rehearing denied. Workers' Compensation 515

Where a previously existing condition or disease is aggravated by injury or accident arising out of or in the course of employment and this results in disability, there is a compensable injury. *Arnold v. Benjamin Booth Co.* (S.C. 1971) 257 S.C. 337, 185 S.E.2d 830. Workers' Compensation 554.

Disability in compensation cases is to be measured by loss of earning capacity. *Wynn v. People Natural Gas Co. of S.C.* (S.C.1961) 238 S.C. 1, 118 S.E.2d 812. Workers Compensation 880.5 Under the economic model of workers' compensation, the Workers' Compensation Commission may predicate a finding of total disability on the claimant's complete loss of earning capacity as a result of a work-related injury. *Simmons v. City of Charleston* (S.C.App. 2002) 349 S.C. 64 562 S.E.2d 476, rehearing denied, certiorari dismissed. Workers' Compensation 880.3

Where an injury aggravates a pre-existing condition or disease so that the disability is continued for a longer period than would normally result from the injury alone, such disability is nevertheless compensable. *Cole v. State Highway Department* (S.C. 1939) 190 S.C. 142, 2 S.E.2d 490. Workers Compensation 554 Compensation is not awarded for the physical injury as such, but for "disability" produced by such injury. The disability is to be measured by the employee's capacity or incapacity to earn the wages which he was receiving at the time of his injury. *Keeter v. Clifton Mfg. Co.* (1954) 225

### **LACK OF JURISDCITION**

When the plaintiffs appealed to the court of common pleas from the adverse ruling of the Commission, such Commission had no further jurisdiction over the controversy pending the appeal. *Greer v. Greenville County* (S.C.1965) 245 S.C. 442, 141 S.E.2d 91.

Lack of subject matter jurisdiction cannot be waived and an appellant court may raise it ex mero motu. *McCreery v. Covenant Presbyterian Church* (S.C.App. 1989) 299 S.C. 218, 383 S.E.2d 264, reversed 303 S.C.271, 400 S.E.2d 130. Appeal And Error 23

When an issue involves jurisdiction of the Workers' Compensation Commission, the appellate court can take its own view of the preponderance of the evidence. *Simmons v. SC STRONG* (S.C.App. 2013) 402 S.C. 166, 739 S.E.2d 631, rehearing denied, certiorari denied. Workers' Comepnsation1 1939.11(g)

"When it clearly appears that the court lacks jurisdiction, the court has no authority to reach the merits. In such a situation the action should be dismissed for want of jurisdiction." *Melo v. US*, 505 F.2d 1026 (8th Cir. 1974) "A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court". *Old Wayne Mut. L. Assoc. v. McDonough*, 204 U.S. 8, 27 S. Ct. 236 (1907). "*There is no discretion to ignore lack of jurisdiction.*" *Joyce v. US*, 474 F.2d 215 (1973).

The Court of Appeals may correct errors of law in both legal and equity actions. *South Carolina Dept. of Transp. V. M& T Enterprise of Mt.Pleasant, LLC* (S.C.App.2008) 379 S.C. 645, 667 S.E.2d 7. Appeal And Error 846(1); Appeal And Error 847(1)

A court may reverse or modify the Workers' Compensation Commission's decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are effected by other error of law. *Etheredge v. Monsanto Co.* (S.C.App. 2002) 349 S.C. 451, 562 S.E.2d 679 rehearing denied. Workers' Compensation 1945; Workers' Compensation 1946

If the evidence is all one way, or if the findings of the Commission are based on surmise, speculation or conjecture, then the issue becomes one of law for the court and not of fact for the Commission. *Herndon v. Morgan Mills, Inc.* (S.C.) 1965) 246 S.C.201, 143 S.E.2d 376.

Findings of fact by the Commission relative to jurisdiction are not conclusive on appeal and both Supreme Court and circuit court have power and duty to review the record and decide jurisdictional question in accord with preponderance of the evidence. *Allen v. Phinney Oil Co.* (S.C. 1962) 241 S.C. 173, 127 S.E.2d 448. Workers' Compensation 1939.11(3)

Jurisdiction cannot be acquired by Commission by estoppels. *Allen v. Phinney Oil Co.*(S.C. 1962) 241S.C 173, 127 S.E.2d 448.

## **THE DOCTRINE OF RES JUDICATA IS INAPPLICABLE TO A VOID JUDGEMENT**

Thus Appellant current claims based on events that occurred after the above cited litigation could not have been brought, based on a separate set of facts and occurrences that are separate distinct and did not exist.

"To answer this question, a number of other circuits have "adopted a bright-line rule that resjudicata does not apply to events post-dating the filing of the initial complaint." *Morgan v. Covington Twp.*, 648 F.3d 172, 177-78 (3d Cir. 2011); see also *Bank of NY. v. First Millennium, Inc.*, 607 F.3d 905, 919 (2d Cir. 2010); *Smith v. Potter*, 513 F.3d 781, 783 (7th Cir. 2008); *Rawe v. Liberty Mut. Fire Ins. Co.*, 462 F.3d 521, 529-30 (6th Cir. 2006); *Mitchell v. City of Moore*, 218 F.3d 1190, 1202 (10th Cir. 2000); *Manning v. City of Auburn*, 953 F.2d 1355, 1360 (11th

Cir. 1992); cf *Young-Henderson v. Spartanburg Area Mental Health Ctr.*, 945 F.2d 770, 774 (4th Cir. 1991) (suggesting without 10 Howard v. City of Coos Bay deciding that resjudicata need not "preclude claims that could not have been brought at the time the first complaint was filed"); 18 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 4409 (3d ed. 2017) ("Most cases rule that an action need include only the portions of the claim due at the time of commencing that action, frequently observing that the opportunity to file a supplemental complaint is not an obligation.").

Indeed, the Seventh Circuit has gone so far as to call it the "federal rule," *Ellis v. CCA of Tennessee LLC*, 650 F.3d 640, 652 (7th Cir. 2011), and the Supreme Court spoke approvingly of this line of cases in *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2305 (2016)."

South Carolina courts use various tests in determining whether a claim should have been raised in a prior suit: "(1) when there is identity of the subject matter in both cases; (2) where the cases involve the same primary right held by the plaintiff and one primary wrong committed by the defendant; (3) when there is the same evidence in both cases; and recently (4) when the claims arise out of the same transaction or occurrence." *Plum Creek Development Co., Inc. v. City of Conway*, 334 S.C. 30, 512 S.E.2d 106, 109 (1999) (citing *South Carolina Civil Procedure*, pp. 649-50). South Carolina courts have held that "[i]f the same facts or evidence would sustain both, the two actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action.

If, however, the two actions rest upon different states of facts, or if different proofs would be required to sustain the two actions a judgment in one is no bar to the maintenance of the other." *Griggs v. Griggs*, 214 S.C. 177, 51 S.E.2d 622, 626 (1949) (quoting 30 Am.Jur. § 174 at 174).

However, where a medical opinion is sufficiently clear to remove any reason for the trier of fact to have to guess at the cause of the injury, that opinion is stated within a reasonable degree of medical certainty. *Huffy Service First v. Ledbetter*, 76 Ark. App. 533, 69 S.W.3d 449 (2002), citing *Howell v. Scroll Tech.*, 343 Ark. 297, 35 S.W.3d 800 (2001). However, the Commission is not free to arbitrarily disregard any expert medical opinion. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W. 3d 760 (2001).

Some personal injury victims who sustain serious traumatic brain injury are often considered by law to be of "unsound mind." A person of "unsound mind" is unable to manage his affairs or to understand his legal rights or liabilities. *Sahf v. Lake Havasu City Assn' for the Retarded*, 150 Ariz. 50, 55, 721 P.2d 1177, 1182 (1986); *Allen v. Powell's Int'l, Inc.*, 21 Ariz. App. 269, 270, 518 P.2d 588, 589 (1974). Other courts create their own standard, to be applied either independently or in combination with their test for insanity. For example, in one case, the judge defined an unsound mind as follows: "An unsound mind exists where there is an essential privation of the reasoning faculties, or where a person is incapable of understanding and acting with discretion in the ordinary affairs of life." *Turner v. Howerton et al.*, no. 22689-VA, April 2, 1997

The South Carolina Workers's Compensation Act was tailored after the North Carolina Act and opinions of the North Carolina Supreme Court construing such Act are entitled to great weight with the appellate courts of this state. *Carter v. Penney Tire and Recapping Co.*, 261 S.C. 341, 200 S.E. (2d) 64 (1973). I agree with the majority that decisions of North Carolina courts construing that state's workers' compensation statutes are entitled to great weight. *Nelson v. Yellow Cab Co.*, 349 S.C. 589, 564 S.E.2d 110 (2002).

An appellate court may reverse a decision of the Appellate Panel if a claimant's substantial rights "have been prejudiced because the [Appellate Panel's] findings, inferences, [or] conclusions" are "affected by other error of law," or "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." S.C. Code Ann. § 1-23-380(5) (Supp. 2010).

"Great liberality is to be exercised in allowing the introduction of evidence in workers' compensation proceedings." *Trotter v. Trane Coil Facility*, 384 S.C. 109, 116, 681 S.E.2d 36, 40 (Ct. App. 2009). Second, hearsay evidence is admissible in workers' compensation proceedings "if corroborated by facts, circumstances, or other evidence." *Hamilton v. Bob Bennett Ford*, 339 S.C. 68, 70, 528 S.E.2d 667, 668 (2000).

The testimony of Cantrell's human resources administrator was corroborated by other evidence before the Appellate Panel, including the form and a statement made by Cantrell to his physician. Accordingly, the Appellate Panel did not err in relying on the testimony.

### **EXTENSION OF LIMITATION PERIOD**

#### **Statute of Repose**

No actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property may be brought more than eight years after substantial completion of the improvement. S.C. CODE ANN. § 15-3-640 (Supp. 2014). The 2005 amendment substituted "eight years" for "thirteen years" and became effective July 1, 2005 and applies to improvements to real property for which certificates of occupancy are issued by a county or municipality or completion of a final inspection by the responsible local building official after the effective date. The thirteen year period applies to the improvements that reached certificates of occupancy prior to July 1, 2005.

The limitations provided by § 15-3-640 are not available as a defense to any person guilty of fraud, gross negligence, or recklessness in providing components in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, planning, supervision, testing or observation of construction, construction of, or land surveying, in connection with such an improvement, or to any person who conceals any such cause of action. S.C. CODE ANN. § 15-3-670 (Supp. 2014).

South Carolina Code 15-3-40 (2013) Exceptions as to person under disability If a person entitled to bring an action mentioned in Article 5 of this chapter or an action under Chapter 78 of this title, except for a penalty or forfeiture or against a sheriff or other officer for an escape, is at the time the cause of action accrued either:

(1) within the age of eighteen years; or

(2) insane;

the time of the disability is not a part of the time limited for the commencement of the action, except that the period within which the action must be brought cannot be extended:

(a) more than five years by any such disability, except infancy; nor

(b) in any case longer than one year after the disability ceases. SECTION 15-3-60. Effect of two or more disabilities.

When two or more disabilities shall coexist at the time the right of action accrues the limitation shall not attach until they all be removed.

Section 15-3-50 Disability must exist when right accrued.- "No person shall avail himself of a disability unless it existed when his right of action accrued.

**Statutes: 15-3-640 15-3-670** Real Property- Area of Law Action based upon defective or unsafe condition of improvement to real property

(8) years (statue establishes an outside limitation of 8 years after substantial completion of the improvement during which normal statutes of limitation continue to run) (Limitation period may not be asserted by (1) defendant in personal injury or wrongful death action

Who was in possession of property and knew or should have known of defect; (2) defendant who engaged in fraud, gross negligence, or reckless misconduct in connection with the improvements or who concealed any cause of action; (3) defendants in personal injury or wrongful death action (a) if the injury, by its nature, was not discoverable in the exercise of reasonable diligence at the time of its occurrence, and (b) the injury was the result of exposure to a toxic or other harmful substance overtime, instead of the result of a sudden and fortuitous trauma

### FRAUD ON THE COURT

Fraud. The statute of limitations for fraud is three (3) years. See S.C. CODE ANN. § 15- 3-530(7) (2015)

Employment. The statute of limitations for employment actions is generally one (1) year. See S.C. CODE ANN. §§ 15-3-560, 41-1-80.

**Brenda Goff v. Ford Motor Company**, Case No. 2:97-0341 (March 15, 2001). This conspiracy between Ford and its former employee, a conspiracy facilitated by Ford's defense counsel, was first exposed to the public eye by the plaintiffs in the **Cammack** trial, discussed *supra*. Three months later, the South Carolina Court of Appeals concluded that the conspiracy between Ford and its former employee through which Ford knowingly purchased and used false testimony might constitute "fraud on the court." **Chewing v. Ford Motor Company**, 550 S.E.2d 584 (S.C.App. 2001).

Fraud upon the court is "fraud which . . . subvert[s] the integrity of 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." *Evans v. Gunter*, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct. App. 1988) (emphasis added) (quoting *Lightsey & Flanagan, supra*, at 408). It has also been defined as "fraud that does, or at least attempts to, defile the court itself . . ." 12 Moore's Federal Practice § 60.21[4][a] (3d. ed. 2000). Historically, after the period to claim relief under Rule 60(b)(1) through (3), SCRCP, has expired, courts have required a showing of extrinsic fraud to vacate a judgment. See *Hagy v. Pruitt*, 339 S.C. 425, 430, 529 S.E.2d 714, 717 (2000); *Evans*, 294 S.C. at 529, 366 S.E.2d at 46.

Fraud upon the court is a narrow and invidious species of fraud that "subverts[s] the integrity of 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." *Chewing v. Ford Motor Co.*, 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003). Like all other types of fraud, proving fraud upon the court requires showing that the perpetrator acted with the intent to defraud, for there is no such thing as accidental fraud. See *Chewing*, 354 S.C. at 78, 579 S.E.2d at 608 ("Fraud upon the court, whatever else it embodies, requires a showing that one has acted with an intent to deceive or defraud the court."); *Black's Law Dictionary* 660 (6th ed. 1990) ("As distinguished from negligence, [fraud] is always positive, intentional.").

Fraud upon the court in obtaining a complaint, information, or indictment invalidates all orders of the court and causes the case to be null and void *ab initio*. "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 can not 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."

It is also clear and well-settled Illinois law that any attempt to commit "fraud upon the court" vitiates the entire proceeding. *People v. Sterling*, 357 Ill. 354; 192 N.E. 229 (1934) ("The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions."); *Moore v. Sievers*, 336 Ill. 316; 168 N.E. 259 (1929)

“The maxim that fraud vitiates every transaction into which it enters ...”); In re Village of Willowbrook, 37 Ill.App.2d 393 (1962) (“It is axiomatic that fraud vitiates everything.”); Dunham v. Dunham, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896); Skelly Oil Co. v. Universal Oil Products Co., 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949); Stasel v. The American Home Security Corporation, 362 Ill. 350; 199 N.E. 798 (1935). Under Illinois and Federal law, when any officer of the court has committed “fraud upon the court”, the orders and judgment resulting from such fraud on that court are void, of no legal force or effect.

In *Kupferman v. Consolidated Research & Manufacturing Corp*, 200 the court stated that [w]hile an attorney “should represent his client with singular loyalty that loyalty obviously does not demand that he act dishonestly or fraudulently; on the contrary his loyalty to the

court, as an officer thereof, demands integrity and honest dealing with the court.” And when he departs from that standard in the conduct of a case he perpetrates a fraud upon the court.<sup>201</sup> In other words, “[s]ince attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court.”<sup>202</sup> In order to establish fraud on the court, some courts require the movant to prove by clear and convincing evidence intentional fraudulent conduct specifically directed at the court itself.<sup>203</sup>

Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action. *Chewning v. Ford Motor Co.*, 354 S.C. 72, 80, 579 S.E.2d 605, 610 (2003) (quoting *Hilton Head Ctr. of South Carolina v. Public Serv. Comm’n*, 294 S.C. 9, 11, 362

Other circuits have adopted more general standards.

See, e.g., *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1<sup>st</sup> Cir. 1989) (fraud upon the court is an “unconscionable scheme calculated to interfere with the judicial system’s ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party’s claim or defense”); *Gleason v. Jandrucko*, 860 F.2d 556, 559 (2<sup>d</sup> Cir. 1989) (“fraud which seriously affects the integrity of the normal process of adjudication”); *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5<sup>th</sup> Cir. 1978) (“only the most egregious conduct, such as bribery of a judge or members of the jury, or the fabrication of evidence by a party in which an attorney is implicated”); *Oxford Clothes XX, Inc. v. Expeditors Int’l, Inc.*, 127 F.3d 574, 578 (7<sup>th</sup> Cir. 1997) (“conduct that might be thought to corrupt the judicial process itself, as where a party bribes a judge or inserts bogus documents into the record”); *Greiner v. City of Champlin*, 152 F.3d 787, 789 (8<sup>th</sup> Cir. 1998) (“egregious misconduct directed to the court itself”); *Dixon v. Commissioner*, No. 00-70858, 2003 U.S. App. LEXIS 4831, at \*11-12 (9<sup>th</sup> Cir. Mar. 18, 2003), amending 316 F.3d 1041 (9<sup>th</sup> Cir. 2003) (“unconscionable plan or scheme which is designed to improperly influence the court in its decision”).

## Doctrine of Equitable Tolling

Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. *Rodriguez v. Superior Court*, 98 Cal. Rptr. 3d 728 (Ct. App. 2009). "Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period 'to ensure fundamental practicality and fairness.'" *Id.* at 736 (citation omitted).

"The equitable power of a court is not bound by cast-iron rules but exists 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*, 199 S.W.3d 38, 42 (Tex. App. 2006). Equitable tolling may be applied where it is justified under all the circumstances.

In addition to these statutory tolling mechanisms, however, "[i]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations." 54 C.J.S. *Limitations of Actions* § 115 (2005). "Equitable tolling is a nonstatutory tolling theory which suspends a limitations period." *Ocana v. Am. Furniture Co.*, 91 P.3d 58, 66 (N.M. 2004).

## Tolling & Doctrine of Unclean Hands

The doctrine of unclean hands "precludes a plaintiff from recovering **in equity** if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107 n.2, 531 S.E.2d 287, 292 n.2, (2000) (emphasis added). The equitable doctrine of unclean hands, however, has no application to an action at law. *E.g.*, *Holmes v. Henderson*, 549 S.E.2d 81 (Ga. 2001); *Ellwood v. Mid States Commodities, Inc.*, 404 N.W.2d 174, 184 (Iowa 1987).

South Carolina law provides for tolling of the applicable limitations period by statute in certain circumstances. See S.C. Code Ann. § 15-3-30 (2005) (stating exceptions to the running of the statute of limitations when the defendant is out of the state); *id.* § 15-3-40 (providing exceptions for persons under a disability, including being underage or insane).

In addition to these statutory tolling mechanisms, however, "[i]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations." 54 C.J.S. *Limitations of Actions* § 115 (2005). "Equitable tolling is a nonstatutory tolling theory which suspends a limitations period." *Ocana v. Am. Furniture Co.*, 91 P.3d 58, 66 (N.M. 2004).

### **Tolling & The Doctrine of Imposition**

The Doctrine of imposition allows the commission to render decisions based on justice “shown by the total circumstances even though no fraud, mistake or concealment has been shown.

Avon Products, Inc. v. Ross, 14 Va. App. 1, 7, 456 S.E.2d 140, 143 (1995).

Reliance on the doctrine of imposition requires a threshold showing of unfairness (i.e. the employer uses superior knowledge, experience, or economic advantage to cause an “unjust deprivation to the employee of benefits provided under the Act.” Strong v. Old Dominion Power

Co., 35 Va. App. 119, 126, 543 S.E.2d 598, 601 (2001). The doctrine will not be applied where the carrier’s actions are consistent with an endeavor to comply with the Act. Hampton Inn v. King, 58 Va. App. 286, 708 S.E.2d 450 (May 17, 2011)

See Rule, 11(a), SCRPC (stating “[e]very pleading, motion[,] or other paper represented by an attorney shall be signed in his individual name by at least one attorney of record,” and the signature “constitutes a certificate by [the attorney] that he has read the pleading, motion[,] or other paper; that to the best of his knowledge, information[,] and belief there is good ground to support it; and that it is not interposed for delay”); Gregory, 378 S.C. at 437, 663 S.E.2d at 50 (interpreting Rule 11(a) as allowing sanctions against a party or party’s attorney “for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments”(citing Runyon v. Wright, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996))).

### **Irregular judgments**

The Commission is given broad discretionary powers with respect to taking of additional testimony Firefighter was not required to offer medical evidence demonstrating that he was disabled in order to recover for total disability, after firefighter’s leg was amputated due to complications from a spider bite; evidence that firefighter suffered a substantial impairment to his earning capacity was unable to compete in the job market was sufficient to recover total disability benefits. Simmons v. City of Charleston (S.C.App. 2002) 349 S.C. 64, 562 S.E.2d 476, rehearing denied, certiorari dismissed. Workers’ Compensation 1417; Workers’ Compensation 1627.17(2); Workers’ Compensation 1646.14 Firefighter was not required to demonstrate a “greater risk” of an injury from a spider bite, which ultimately led to amputation of firefighter’s left leg, than the general public’s risk, when seeking workers’ Compensation benefits; brown recluse spider was in the firefighter’s boot and but firefighter in right leg, which, die to diabetes and hypertension, led to complications in firefighters leg. Simmons v. City of Chareston (S.C.App 2002) 349 S.C. 64, 562 S.E.2d 476, rehearing denied, certiorari dismissed. Workers Compensation 623

The objective of wage calculation is to arrive at a fair approximation of the workers' compensation claimant's probable future earning capacity. *Brown v. Peoplease Corp.* (S.C.App. 2013) 402 S.C. 476, 741 S.E.2d 761, certiorari denied. Workers' Compensation 816  
Loss of earning capacity alone is the criterion for compensation under the Act and medical opinion as to the extent of physical disability can have no probative value against actual earnings. *Outlaw v. Johnson Service Co.* (S.C.1970) 254 S.C.486, 176 S.E.2d 152.

Under the "increased risk doctrine" for workers' compensation purposes, an injury arises out of the employment if some risk inherent to the employment was a contributing cause of the injury; the risk must be one to which the general public would not be equally exposed. *Simmons v. City of Charleston* (S.C.App. 2002) 349 S.C. 64, 562 S.E.2d 476, rehearing denied, certiorari dismissed. Workers' Compensation 610.

The disability of a workers' compensation claimant reaches into the future, not the past; his loss as a result of injury must be thought of in terms of its impact on probable future earnings, for purposes of calculating the claimant's average weekly wage. *Sellers v. Pinedale Residential Center* (S.C.App. 2002) 350 S.C. 183, 564 S.E.2d 694. Workers' Compensation 835  
The criterion of an injured employee's right to compensation is whether his injury lessened his earning capacity and deprived him wholly or partly of power to obtain employment. *Ingle v Mills* (1944) 204 SC 505, 30 SE2d 301. *Wynn Peoples Natural Gas Co.* (1961) 238 SC 1, 118 SE2d 812.

The lay testimony of the employee himself unsupported by any medical evidence was sufficient to support the finding of casual connection between the accident and the disability suffered by him. *Arnold v. Benjamin Booth Co.* (S.C. 1971) 257 S.C.337, 185 S.E.2d 830.

Beginning with enactment of the Administrative Procedures Act, S.C. Code Ann. Sec. 1-23-10 *et seq.*, however, the General Assembly has sought to impose a comprehensive System of procedures for state agencies, boards and commissions to follow in their decision-making. As our Supreme Court stated in *Lark v. Bi-Lo*, 276 S.C.130, 276 S.E.2d 305 (1981)

[t]he Administration Procedures Act...was originally enacted  
In 1977. It purports to provide uniform procedures before  
State Boards and Commissions and for judicial review after  
The exhaustion of administrative remedies.

S.C. Code § 8-1-40 (1976 Code, as mended) States:

Any public officer whose authority is limited to a single election or judicial district  
Who is guilty of any official misconduct, habitual negligence, habitual drunkenness,  
corruption, fraud, or oppression shall be liable to indictment and, upon conviction  
thereof, shall be fined not more than one thousand dollars and imprisoned not more  
than one year.

Further, a crime of moral turpitude is defined by the Supreme Court of South Carolina as:

...an act of baseness, vileness or depravity in the private and social duties that a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man.

State v. Smith, 194 S.C. 247, 259, 9 S.E.2d 584 (1940); State v. Horton, 271 S.C. 413, 238 S.E.2d 263 (1978); State v. Lilly, Supreme Court of South Carolina, Op. No. 21840 (January 4, 1983). Usually, a crime of moral turpitude is an offense mala in se, i.e., 'immoral in itself', as opposed to one which is mala prohibita, prohibited by law. State v. Horton, *supra*; Op. Atty.Gen.(March 18, 1983, letter to the Honorable Richard W. Riley).

Art III § 26. Oath of office. Members of the General Assembly, and all officers, before they enter upon the duties of their respective offices, and all members of the bar, before they enter upon the practice of their profession, shall take and subscribe the following oath: "I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been elected, (or appointed), and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the Constitution of this State and of the United States. So help me God." (1954 (48) 1852; 1955 (49) 23.)

SC Code § 42-3-140 (2016)

The commission or any member thereof, or any person deputized by it, may, for the purpose of this title, subpoena witnesses, administer or cause to be administered oaths and examine or cause to be examined such parts of the books and records of the parties to proceedings as relate to questions in dispute.

"Where it is claimed the findings are not supported by the evidence . . . abuse of discretion is established if the court determined that the findings are not supported by substantial evidence in light of the whole record" (Ibid.; emphasis added).

In the instant case, the findings set forth in the SC WCC December 2, 2015 Order and Decision are not supported by substantial evidence in light of the whole record. Moreover, in Lucas v. Southern Pacific Company, et al. (1971) 19 Cal.App.3d 124 [96 Cal.Rptr. 356], at page 136, the court noted:

"Substantial evidence" must be of ponderable legal significance. Obviously, the word cannot be deemed synonymous with 'any' evidence. It must be reasonable in nature, credible, of solid value; it must actually be 'substantial' proof of the essentials which the law required in a particular case." (People v. Bassett (1968) 69 Cal.2d 122, ...<sup>1</sup> Cal.Rptr. 193, 443 P.2d 777), quoting from Estate of Teed (1952) 112 Cal.App.2d 638, 644 [247 P.2d 54]; also, Yancey v. State Personnel Board (1985) 167 Cal.App.3d 478, 482 (213 Cal.Rptr. 634)).

Firefighter was not required to demonstrate a "greater risk" of an injury from a spider bite, which ultimately led to amputation of firefighters' left leg, than the general public's risk, when seeking workers' compensation benefits; brown recluse spider was in firefighter's boot and bit firefighter in right leg, which, due to diabetes and hypertension, led to complications in firefighter's left leg. Simmons v. City of Charleston (S.C. App. 2002) 349 S.C. 64, 562 S.E.2d 476, rehearing denied, certiorari dismissed.

A Decision is void on the face of judgment roll when from four corners of that roll, it may be determined that at least one of three elements of jurisdiction is absent: (1) jurisdiction over the parties, (2) jurisdiction over the subject matter, or (3) jurisdictional power to pronounce particular judgment that was rendered". B & C Investments, Inc., v. T & M Nat. Bank & Trust, 903 P.2d 339 (Okla. App. Div. 3, 1995).

## STATEMENT OF ISSUES ON APPEAL

- I. THE SOUTH CAROLINA WORKERS' COMPENSATION SCHEME IS UNCONSTITUTIONAL, BECAUSE IT ABRIDGED THE RIGHTS OF THE APPELLANT BY DENING HIM DUE PROCESS, PROCEDURAL DUE PROCESS, SUBSTANTIVE JUSTICE AND EQUAL PROTECTION UNDER THE COLOR OF LAW AND OTHER VIOLATIONS OF LAW AND THE APA. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND COMMISSIONERS DID NOT HAVE PERSONAL OR SUBJECT MATTER JURISDICTION AS WAS OBTAINED THROUGH TRICKERY AND FRAUD UPON THE COURT AND DEVALUATION OF HIS WORKERS' COMPENSATION BENEFITS (AN ECONOMIC LYNCHING) IN WHICH HE AND HIS FAMILY HAVE A PROTECTED SUBSTANTIAL PROPERTY INTEREST; ALTERED MEDICAL REPORTS/ OPINIONS AND OMITTED EVIDENCE TO DENY HIS WORK RELATED DISABILITY, BUT HAS A HISTORY OF **IRREGULAR JUDGMENTS AND FAVORABLE FINIDNGS OF DISABILITY OUTCOMES** TO WHITES/ CAUCASIANS LIKE: 1. **U.S.ARMY VETERAN CLEO N. POWELL** WHO AS RESULT OF AN ALTERCATION WITH A SUPERVISOR, WHO PUSHED A FINGER INTO HIS CHEST, CURSED HIM, CALLED HIM A LIAR AND ACCUSED POWELL OF POOR MAINTENANCE 2. **THEODORE ABNER "TED" FRAME** WHO WAS PERMANENTLY DISABLED BY HIS BI- POLAR DISORDER THAT WERE AGGRAVATED BY HIM SEEING THE MISTREATMENT OF AFRICAN AMERICANS/ BLACK WORKERS 3. **JARROD SELLERS'** WHO AS A RESULT OF A MVA AT 16 YEARS OF AGE IN HIGH SCHOOL WAS RENEDEDERED A PARAPLEGIC. THE SC WORKERS' COMPENSATION COMMISSION ADJUSTED HIS AVERAGE WEEKLY WAGE AND COMPENSATION RATE BASED ON HIS FUTURE EARNING CAPACITY AS AN ELECTRICIAN, THE SC COURT OF APPEALS AFFIRMED.
- II. THE NOVEMBER 2, 2018 SOUTH CAROLINA COURT OF APPEALS ORDER APPELLATE CASE NO. 2018-001364 IS A VOID JUDGMENT DECISION AND ORDER AND MUST BE SET ASIDE. THIS APPEAL WAS DISMISSED ON SEPTEMBER 20, 2018 AND THE ORDER VIOLATED THE PETIONER/ APPELLANTS/CLAIMANTS FUNDAMENTAL RIGHT TO PETITION AND ABRIDGED CONSTITUTIONAL RIGHTS BY DENYING HIM DUE PROCESS, PROCEDURAL DUE PROCESS, SUBSTANTIVE JUSTICE AND EQUAL PROTECTION UNDER THE COLOR OF LAW AND OTHER VIOLATIONS OF LAW AND THE APA.
- III. THE MARCH 1, 2019 APPELLANT PANEL DECISION AND ORDER OF THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISISON FULL COMMISSION S.C. W.C.C. FILE NOS. 1319203, 1322451, 1420487 APPELLATE PANEL REVIEW HELD IN COLUMBIA, SOUTH CAROLINA ON OCTOBER 22, 2018 AND VOLUNTARILY REMANDED/ REVESTMENT SEPTEMBER 5, 2018 FROM THE SOUTH CAROLINA COURT OF APPEALS IS A VOID JUDGMENT DECISION AND ORDER AND MUST BE SET ASIDE, BECAUSE IT VIOLATED

THE APPELLANTS/CLAIMANTS RIGHT TO DUE PROCESS, PROCEDURAL DUE PROCESS, SUBSTANTIVE JUSTICE AND EQUAL PROTECTION UNDER THE COLOR OF LAW AND OTHER VIOLATIONS OF LAW AND THE APA.

- IV. THE DOCTRINE OF RES JUDICATA DOES NOT BAR FURTHER REVIEW OF A VOID JUDGMENT [ ORDER / DECISION] THE ILLEGAL TAKING AND SCHEME TO DEFRAUD APPELLANT OF BENEFITS ARISING OUT OF HIS INJURIES UNDISPUTED BY EVIDENCE THAT ALSO PROVES ARE WORK-RELATED. AS THESE ARE MATTERS IN EQUITY AND THE APPELLATE MAINTAINS HIS COMMON LAW RIGHTS, EXTRAORDINARY CIRCUMSTANCES EXIST.

#### **STATEMENT OF THE CASE- The Pledge.**

The South Carolina Workers' Compensation Act is Unconstitutional. This is based on The State of South Carolina Workers' Compensation Commission and this Court's Long history & practicing racism (White Supremacy) which functions in all areas of human activity Labor, Law, Economics, Education, Entertainment, Politics, Religion, Sex and War, failure to appropriately investigate; Obstruction of Justice; Fraud Upon the Court; False Statements; Incompetence; Unfair & Unequal Treatment; Double Standards based on race and abridged the Constitutional and *Fundamental* Rights of the Appellant/ Claimant [*Fundamental right to be rewarded for industry*] by the denial of Due process, Procedural due process, Substantive justice and Equal protection under the Color of law and other violations of law and the APA[*strict scrutiny applies*], the devaluation of Workers Compensation Benefits (Property) I and my family have a substantial property right - interest in. The decisions had disparate impacts, because despite all irrefutable and "Substantial evidence" provided to the South Carolina Workers Compensation Commission and in the record, the State of South Carolina Workers Compensation Commission failed to provide Due process, Procedural due process, Substantive justice and Equal protection under the Color of law and uphold the law and the APA, there is a history of favorable outcomes to Whites/ Caucasians under your system of misogyny and racism (White Supremacy).

The South Carolina Workers Compensation Act is Unconstitutional because it deprived Mr. Capone of Due process, Procedural due process, Substantive justice and Equal protection under the Color of law and uphold the law and the APA, by the devaluation of South Carolina Workers' Compensation benefits that he and The Capone family hold a property interest in, that was supposed to be "automatic"," no fault" and "guaranteed". Under the 5<sup>th</sup> & 14 Amendments. "Fundamental Rights" and "substantial rights" are prejudiced and because the administrative findings, inferences, conclusions, or decisions: violates constitutional or statutory provisions; exceeds statutory authority of the agency; is made upon unlawful procedure; is affected by other error of law; is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, otherwise not in accordance with law or the APA. While it provided South Carolina Workers' Compensation benefits to similarly situated whites/ Caucasians[*Strict scrutiny applies*], See:

Ted Frame and Resort Services Incorporated

It is not within the reviewing court's province to reverse findings of the Appellate Panel which are supported by substantial evidence if your White/ Caucasian. *Frame v. Resort Servs., Inc.*, 357 S.C. 520, 528, 593 S.E.2d 491, 495 (Ct.App.2004)

Cleo N. Powell v. Vulcan Material Co.

See, *Powell v. Vulcan Materials, Co.*, 299 S.C. 325, 384 S.E.2d 725 (1989).

*Sellers v. Pinedale Residential Center* (S.C.App. 2002) 350 S.C.183, 564 S.E.2d 694.

Citing. "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)."

The State of South Carolina Workers' Compensation Commission employs Commissioners who are licensed as practicing attorneys and dully competent and qualified as administrative law judges to decide cases, and whose names are found on the Directory Members of attorneys in The State of South Carolina. The State of South Carolina Workers' Compensation Commission "The State" allowed my claim to be heard and decided by biased (Caucasian/White Males) unlicensed Commissioners Wilkerson, Jr , McCaskill, and Campbell, who are NOT dully competent or qualified, their names were not found on the Directory Member of attorneys in The State of South Carolina and are paid same sum of about \$124,000.00 (plus free car and per diem possible \$10,000) as the duly qualified by the State of South Carolina and some secretaries (Caucasian/ White) \$50,000.00 shows White Privilege and racism (White Supremacy) which is misogynistic and systemic.

In my case without an opportunity as a Pro Per litigant to decide/ "object"; be heard and then to have mix (unqualified/qualified) again and who are biased, cycle themselves in and out continuously denying the appeals from the very decisions complained of, reinvesting by voluntary remanding the case, "never being heard a new", in furtherance of racism (White Supremacy). In addition to the above aforementioned Constitutional and statutory provisions-Crime Fraud Exceptions, Active Concealment For Fraud In Real Property 15-3-670 ( C ) (1) (2) And Others regarding the above-referenced matters. The Workers' Compensation Commission's decisions were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. Sec. 706 (1977). The standard of review of the court is instructive. The court is to set aside the South Carolina Workers Compensation action if it finds it to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. Sec. 706 (1977).

For reasons stated in greater detail, below, Appellant asserts the Notice of Appeal filed is timely, because the above entitled claim numbers that where heard before Single Commissioner Gene H McCaskill on August 21, 2015, and his Decision and Order denying benefits on these claims was

decided and filed December 2, 2015 is a Void Judgment . (Order) /Judgment (Order) that exceeded jurisdiction and was produced by Fraud Upon the Court can be attacked at any time, which in addition was rendered in violation of constitutional protections, to include but not limited to Due Process, Procedural and Substantive Due Process, Substantive Justice and Equal Protection Under the Color of law, No Opportunity to be Heard, Crime Fraud Exception, “Active Concealment For Fraud In Real Property” 15-3-670 (c ) (1) (2) and that includes but not limited to other actionable violations of Law by Defendants and as these are matters in Equity, Equitable Tolling and other grounds for Tolling of Statue of limitations applicable. See Appellants Media Disc For File Under Seal Titled: TCAPONE 10/10/2018 is “UNREDACTED” TCAPONE 10/10/2018- Pages 1-73, Exhibits 10/10/2018 pages 1-3181 Appellant Exhibits AE#1-9 and 2015 REDACTED FILES HARD COPIES Appellant Exhibits-AE#9-14.

#### **FACTS –PROCEDURAL HISTORY-THE TURN**

Appellant Terry H Capone (“Capone”) is an American Patriot of African Descent, that was forced to disability retire in 2014 as a direct result of his work as a Firefighter-Fire Battalion Chief from the City of Columbia Fire Department, located in (RICHLAND COUNTY), Columbia, South Carolina. As a Firefighter was determined permanently and totally disabled as a result of firefighting service related disabilities, in (RICHLAND COUNTY), Columbia, South Carolina by (4) South Carolina State and multiple Federal agencies, when his employer illegally and in ‘Retaliation’ changed his FMLA dates multiple times (shortened it) , stopped his Workers Compensation benefits and pay, and violations that include Insurance Fraud, Fraud on The Court, Fraudulent Concealment, concealment for fraud in real property 15-3-670 ( C) (1) (2) Civil RICO Violations, Conspiracy to commit RICO, Wire and Mail fraud, Procedural due process

and other violations of Federal law, clear crimes and *lack of humanity*. It is at the South Carolina Court of Appeals, where Mr. Capone appealed an Interlocutory order from the “Full Commission”, “Extraordinary Circumstances Exist”, that continued the deprivation of Fundamental Rights, and deprivation of Substantial Rights are prejudiced from the continued denials and Devaluation of his Workers’ Compensation Benefits, in which Mr. Capone and the Capone family hold a substantial “property interest” to the minimum sum of \$1736.06, his stated Average Weekly Wage (AWW) x 500 Weeks totaling \$868,030.00. He continues to argue that the Single Commissioners committed Fraud Upon the Court by altering a medical opinion and omitting “Substantial evidence” then stating it as “fact” and omitting medical and other evidence with Defendants Attorney Dana M Thye and others working in concert, that also included frivolous and fraudulent pleadings (Wire Fraud and Mail fraud) designed to further deny and devalue the Workers Compensation Benefits (property) claim; Full Commission erred violated Capone’s *Fundamental* and Constitutional Rights in continuing the Fraud Upon the Court by:

**“1. Affirming a Void December, 2015 decision, where evidence shows a diagnosis on June 24, 2013, and injury (physical injury) to his toe (WCC File 1420487) and “body” other; on October 12, 2013, in which he re-injured(physical Injury) to his bilateral hands/ wrist ( WCC File No. 1319203) and other; and on November 7, 2013(WCC File No. 1322451), where evidence shows his post traumatic stress disorder (PTSD) was an aggravation of a psychological injury that arose out of an August 21, 2015, hearing before Single Commissioner decisions finding his injuries were not work-related.”**

**“2. Single Commissioner denying the appeals based on res judicata.”**

**“3. Single Commissioner and Full Commission denying Capone’s motion to set aside a void judgment obtained by Fraud on The Court, Constitutional and other violations under SC R. Civ. P. Rule 60 (B)(4)(5)(6) and South Carolina Code Ann. § 1-23-380. This is based on 1. Fraud Upon The Court 2. Crime Fraud Exception 3. “Active Concealment” of Fraud in Real Property” 15-3-670 (c) (1)(2) 8 year statute of limitations”**

**“4. Violations of Constitutional Protected Rights to include Procedural Due Process and Equal Protection”**

**“5. Violations under the Racketeer Influenced and Corrupt Organizations Act (RICO) to include the use of Mail Fraud and Wire Fraud in the devaluation of Workers Compensation Benefits (property, property interest). Because the administrative findings, inferences, conclusions, or decisions: violates constitutional or statutory provisions; exceeds statutory authority of the agency; is made upon unlawful procedure; is affected by other error of law; is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion and “VOID” and should be set aside. Due to Fraud Upon the Court.”**

**“6. The Commission denied request for medical evidence from Companion, TPA “Co-Defendant”, preventing a fair and impartial hearing and continued abuse of discovery.”**

**“7. Any and All others that are applicable to grant authority and that may or may not be stated in greater detail below without prejudice.”**

**“8. S.C. R.Civ.P. Rule. 41(B) Grants The authority to set-aside a judgment obtained by Fraud Upon The Court, omitting of evidence, abuse of discovery and frivolous pleading, false statements, use of Mail Fraud and Wire Fraud, and others”**

My opposition to these unlawful acts are based upon and supported by the affidavits, pleadings and papers herein, See Appellants Media Disc For File Under Seal Titled: TCAPONE 10/10/2018 is “UNREDACTED” TCAPONE 10/10/2018- Pages 1-73, Exhibits 10/10/2018 Appellant Exhibits AE#1-9 and 2015 Redacted Files Hard Copies Appellant Exhibits-AE#9-14, to support those already on file with the Court, and for the reasons stated in greater detail, below, Appellant assert The original Notice of Appeal filed by Appellant *pro se* Terry Capone (“Capone”) with this Court July 18, 2018 and active concealment for fraud in real property 15-3-670 ( C ) (1) (2) and others which the Respondents are well aware of regarding the above referenced matters was not untimely; A void judgment, and produced by fraud Upon the Court does not create any binding obligation, can be attacked at any time and there is no statute of limitations. This Court has not here been deprived of appellate jurisdiction to consider the merits of Capone’s claim, here as the Respondents through their attorney suggest, based on the South Carolina Workers Compensation Commission lack of subject matter jurisdiction and defects

thereof and the tolling of statute of limitations or by July 18, 2018 original Notice of Appeal mailed certified (see exhibit #1 USPS Tracking History) by Appellant pro se Terry H Capone ("Capone") of the Interlocutory Order, dated June 18, 2018, affecting fundamental and substantial rights, and in which "extraordinary circumstances existed" based on crime fraud exception, fraud on the court, was of unsound mind/insane due to mental illness and intoxication due to combined medications regiment and Neurocognitive Disorder due to Traumatic Brain Injury under disability, as a Firefighter which is permanently and totally disabled as a result of firefighting service related disabilities in the Columbia (RICHLAND) State of South Carolina, by (4) State agencies as well as federal agencies (see See Appellants Media Disc For File Under Seal Titled: TCAPONE 10/10/2018 is "UNREDACTED" TCAPONE 10/10/2018- Pages 1-73, Exhibits 10/10/2018 pages 1-3181 Appellant Exhibits AE#1-9 and 2015 REDACTED FILES HARD COPIES Appellant Exhibits-AE#9-14.)

which include South Carolina Police Retirement System (PORS) as of 3/10/2014; South Carolina Internal Revenue Service as of 11/12/2014; South Carolina Employment And Workforce as of 10/17/2014; South Carolina Education Commission, Social Security Administration Office of Disability adjudication as of October 21, 2013, and U.S. Department of Education and SC Code 15-3-670 (C) The limitation provided by Section 15-3- 640 may not be asserted as a defense to an action for personal injury, including a personal injury resulting in death, or property damage which is:

(1) by its nature not discoverable in the exercise of reasonable diligence at the time of its occurrence; and (2) the result of ingestion of or exposure to some toxic or harmful or injury producing substance, element, or particle, including radiation, over a period of time as opposed to resulting from a sudden and fortuitous trauma i.e. Toxic Mold found in Fire Stations although

concealed, same found on Appellants body (See Appellants Media Disc For File

Under Seal Titled: TCAPONE 10/10/2018 is "UNREDACTED" TCAPONE 10/10/2018- Pages 1-73, Exhibits 10/10/2018 pages 1-3181 Appellant Exhibits AE#1-9 and 2015 REDACTED FILES HARD COPIES Appellant Exhibits-AE#9-14).

I oppose these unlawful acts against me and the illegal taking and withholding of my South Carolina Workers Compensation Benefits for the following reasons and based upon the laws of equity and legal analysis herein. The Respondents/Defendants are es-topped from contesting and defense from illegally Taking and withholding of my South Carolina Workers Compensation Benefits for violations of my *Fundamental Rights* and Constitutional protections, to include but not limited to Due Process, Procedural and Substantive Due Process, Substantive Justice and Equal Protection Under the Color of law, No Opportunity to be Heard, omitting evidence Crime Fraud Exception, "Active Concealment For Fraud In Real Property" 15-3-670 (c ) (1) (2) Mold/Fungus and Fraud on the court and other violations of law.

On December 20, 2013 City of Columbia Fire Department Health and Safety Officer Albert Owusu, under the Subject: 2014 Annual Fire Brigade Physical TCapone 12/6 Ortho Status excerpts stated: "Chief Capone, With regards to the completion of your fire brigade physical and your request for restricted duty, you are out due to multiple physical and psychological conditions you have brought to the forefront. The Fire department will need clearance from licensed medical professionals that address each and every one of the issues you have brought to light. Each will need to be evaluated separately and clearances will be required for each of the conditions before we can integrate you back into any fire department function, including the fire physical process and/ or being considered for restricted duty. I wish you a speedy recovery."

On February 6, 2014 Companion P&C Senior Claims Adjuster Doris J McCubbins, AIC, AID, under the Subject: TCAPONE Claim: 700000004250 excerpts Stated: "...At your most recent appointment on 1/21/14, Dr. Fulton released you to return to work with restrictions and the City has offered accommodations to these restrictions effective 2/3/14. Therefore, as of 2/3/14 your weekly temporary total benefits which you were receiving through us have been terminated."

This was a Denial of Due Process, Procedural and Substantive Due Process and Equal Protection under the Color of Law of the Constitutional 5<sup>th</sup> & 14 Amendments. Appellant *pro se* Capone has a protected property right/ interest not only in the ultimate receipt of South Carolina Workers' Compensation Benefits (property), but in the application for the same and the Respondents ( employer and carrier) and South Carolina Workers' Compensation Commission action constitutes an unlawful "taking". As a Firefighter permanently disabled in the line of duty the State of South Carolina, "The State" shows great difference:

I have a protected property right/ interest in being a "Firefighter that is permanently disabled in the line of duty" under the State of South Carolina Constitution.

Pursuant to the provisions of Section 3 of Article X of the state constitution and subject to the provisions of Section 12-4-720, there is exempt from Ad Valorem Taxation

Tuition waived for four years of undergraduate study at state-supported colleges, universities, or vocational or technical schools. Children must be 18-22 years of age at the time of application. Applies to career and volunteer firefighters (**Reference: SC Code 59-110-111**)

"[t]o have a property interest in a benefit, a person clearly must have more than an abstract need or desire' and 'more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." Id. At 1297 (alteration in original) (citing *Town of Castle Rock, Colo. V.*

Gonzales, 545 U.S. 748, 756 (2005)(quoting Bd. Of Regents of State Colls. V. Roth, 408 U.S. 564, 577(1972)).

Property Interest in Claim for Worker's Compensation Benefits:

“[w]hen a plaintiff's personal injury is filtered through the [workers' compensation system], it is converted into a property right.” App., *infra*, 32a.

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).

A "void" judgment, as we all know, grounds no rights, forms no defense to actions taken thereunder, and is vulnerable to any manner of collateral attack (thus here, by). No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not *res judicata*, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen old wound and once more probe its depths. And it is then as though trial and adjudication had never been. *Fritts v. Krugh*, Supreme Court of Michigan, 92 N.W.2d 604, 354 Mich. 97 (10/13/58).

## STANDARD OF REVIEW IN LAW AND ACTIONS IN EQUITY

When a plaintiff brings claims under the APA, the reviewing court "sits as an appellate tribunal." *Am. Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1083 (D.C. Cir. 2001), and the "entire case on review is a question of law and only a question of law," *Marshall Cty. Health Care Auth. v. Shalala*, 988 F.2d 1221, 1226 (D.C. Cir. 1993). The court may "hold unlawful and set aside agency action, findings, and conclusions" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or that are "unsupported by substantial evidence." 5 U.S.C. § 706(2), and as applicable to the states.

Because the relevant facts in this case are not disputed, whether the Appellant Claimant's injuries are compensable is a question of law. *Eg. Grant v. Grant Textiles*, 372 S.C. 196, 201, 641 S.E.2d 869, 872 (2007) (holding that where there are no disputed facts, the question of whether an accident is compensable is a question of law).

The South Carolina Worker's Compensation Act is to be liberally construed to include injured workers rather than exclude them from the Act. *Moore v. Family Serv. Of Charleston Cty.*, 269 S.C. 275, 281, 237 S.E.2d 84, 87 (1977) (citations omitted).

Summary judgment thus serves as the mechanism for deciding, as a matter of law, whether the agency action is supported by the administrative record and otherwise consistent with the APA standard of review. See *Richard v. INS*, 554 F.2d 1173, 1177 & n.28 (D.C. Cir. 1977); see also *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 743-44 (1985) ("The task of the reviewing court is to apply the appropriate APA standard of review, 5 U.S.C. § 706, to the agency decision based on the record the agency presents to the reviewing court."). "An appellate court may reverse a commission decision when that decision is unsupported by substantial evidence." *Grant v.*

Grant Textile, 372 S.C. 196, 201, 641 S.E.2d 869, 871 (2007). "Under settled principles of administrative law, when a court reviewing agency action determines that an agency made an error of law, the court's inquiry is at an end: the case must be remanded to the agency for further action consistent with the corrected legal standards." PPG Indus., 52 F.3d at 365 (citations omitted); see also Fla. Power & Light Co. v. Lorion, 470 U.S. 729, 744 (1985) ("If the record before the agency does not support the agency action, if the agency has not considered all relevant factors, or if the reviewing court simply cannot evaluate the challenged agency action on the basis of the record before it, the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation.") Of course, an agency "may not skew the record by excluding unfavorable information but must produce the full record that was before the agency at the time the decision was made." *Blue Ocean Inst. v. Gutierrez*, 503 F. Supp. 2d 366, 369 (D.D.C. 2007). Additionally, the agency may not exclude information "on the grounds that it did not 'rely' on the excluded information in its final decision." *Id. Ad Hoc Metals Coalition v. Whitman*, 227 F.Supp.2d 134, 139 (D.D.C. 2002); *Amfac Resorts*, 143 F.Supp.2d at 12.

The South Carolina Workers' Compensation Act is to be liberally construed to include injured workers rather than exclude them from the Act.

In reviewing plaintiff's filing, the Court is mindful that pro se complaints are held "to less stringent standard than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972); see also Matzker v. Herr, 748 F.2d 1142, 1146 (7th Cir.1984) (federal district courts must ensure that pro se litigants are given "fair and meaningful consideration")

## ARGUMENTS AND AUTHORITIES

I. THE SOUTH CAROLINA WORKERS' COMPENSATION SCHEME IS UNCONSTITUTIONAL, BECAUSE IT ABRIDGED THE RIGHTS OF THE APPELLANT BY DENING HIM DUE PROCESS, PROCEDURAL DUE PROCESS, SUBSTANTIVE JUSTICE AND EQUAL PROTECTION UNDER THE COLOR OF LAW AND OTHER VIOLATIONS OF LAW AND THE APA. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND COMMISSIONERS DID NOT HAVE PERSONAL OR SUBJECT MATTER JURISDICTION AS WAS OBTAINED THROUGH TRICKERY AND FRAUD UPON THE COURT AND DEVALUATION OF HIS WORKERS COMPENSATION BENEFITS (AN ECONOMIC LYNCHING) IN WHICH HE AND HIS FAMILY HAVE A PROTECTED SUBSTANTIAL PROPERTY INTEREST; ALTERED MEDICAL REPORTS/ OPINIONS AND OMITTED EVIDENCE TO DENY HIS WORK RELATED DISABILITY, BUT HAS A HISTORY OF **IRREGULAR JUDGMENTS** AND **FAVORABLE FINIDNGS OF DISABILITY OUTCOMES** TO WHITES/ CAUCASIANS LIKE: 1. **U.S.ARMY VETERAN CLEO N. POWELL** WHO AS RESULT OF AN ALTERCATION WITH A SUPERVISOR, WHO PUSHED A FINGER INTO HIS CHEST, CURSED HIM, CALLED HIM A LIAR AND ACCUSED POWELL OF POOR MAINTENANCE 2. **THEODORE ABNER "TED" FRAME** WHO WAS PERMANENTLY DISABLED BY HIS BI- POLAR DISORDER THAT WERE AGGRAVATED BY HIM SEEING THE MISTREATMENT OF AFRICAN AMERICANS/ BLACK WORKERS 3. **JARROD SELLERS'** WHO AS A RESULT OF A MVA AT 16 YEARS OF AGE IN HIGH SCHOOL WAS RENEDERED A PARAPLEGIC. THE SC WORKERS' COMPENSATION COMMISSION ADJUSTED HIS AVERAGE WEEKLY WAGE AND COMPENSATION RATE BASED ON HIS FUTURE EARNING CAPACITY AS AN ELECTRICIAN, THE SC COURT OF APPEALS AFFIRMED

**I-1. SOUTH CAROLINA WORKER' COMPENSATION SYSTEM IS NCONSTITUTIONAL DUE TO CONSTITUTIONAL VIOLATIONS TO INCLUDE DENIAL OF DUE PROCESS, PROCUDURAL AND SUBSTANTIVE DUE PROCESS, SUBSTANTIVE JUSTICE AND EQUAL PROTECTION CLAUSE OF U.S. CONSTITUTION/ DISPARATE TREATMENT AND IMPACT**

*"Obviously a judgment, though final and on the merits, has no binding force and is subject to collateral attack if it is wholly void for lack of jurisdiction of the subject matter or person, and perhaps for excess of jurisdiction, or where it is obtained by extrinsic fraud. [Citation]" (7*

*Witkin,, Cal. Procedure, supra, Judgment, § 286, p. 828*

Mr. Capone asserts:

1. He was denied a full and fair hearing on the factual issues of his South Carolina Workers Compensation claims due to the presence of the omitted and altered medical records by the South Carolina Workers' Compensation Commission and Commissioners. See, *Cushman v. Shinseki* 576 F.3d 1290 (2009) deprived him of a full and fair hearing under the Fifth Amendment. The Due process clause only applies to protected interest.
2. The South Carolina Workers' Compensation Commissions failure to insure procedural safe guards where followed by the Employer/Carrier beginning, during and after stopping his Workers Compensation Benefits denied him due process
3. The failure of his Employer/Carrier to provide payment prior to the 79<sup>th</sup> day of injury in South Carolina Workers Compensation procedures where a denial of due process
4. The late payment of his South Carolina Workers Compensation benefits where a denial of due process
5. The Illegal stopping of his South Carolina Workers Compensation benefits without proper procedures and service was an illegal taking and a denial of due process

Mr. Capone therefore raises a genuine issue of procedural due process under the Fifth Amendment to the Constitution. Cf. *Pierre v. West*, 211 F.3d 1364, 1367 (Fed.Cir.2000). The court has jurisdiction to resolve the due process issue in deciding his claims.

In order to allege that the denial of his claim involved a violation of his due process rights, Mr. Capone must first prove that under the South Carolina Workers' Compensation Act, he has a constitutional right to a fundamentally fair adjudication of his claim. The right to due process of application, receipt and continued receipt of South Carolina Workers' Compensation benefits is an issue of first impression for this court.

The Due Process Clause of the Fifth Amendment guarantees that an individual will not be deprived of life, liberty, or property without due process of law. U.S. Const. amend. V. Due process of law has been interpreted to include notice and a fair opportunity to be heard. See *Mullane v. Cent. Hanover Tr. Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950). To raise a due process question, the claimant must demonstrate a property interest entitled to such protections. *Richard v. West*, 161 F.3d 719, 723 (Fed.Cir.1998).

It is well established that South Carolina Workers Compensation benefits are a protected property interest and may not be discontinued without due process of law. "[t]o have a property interest in a benefit, a person clearly must have more than an abstract need or desire' and 'more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.'" *Id.* At 1297 (alteration in original) (citing *Town of Castle Rock, Colo. V. Gonzales*, 545 U.S. 748, 756 (2005)(quoting *Bd. Of Regents of State Colls. V. Roth*, 408 U.S. 564, 577(1972)).

Property Interest in Claim for Worker's Compensation Benefits:

“[w]hen a plaintiff's personal injury is filtered through the [workers' compensation system], it is converted into a property right.” App., *infra*, 32a.

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).

Mr. Capone asserts, once the State of South Carolina determined he was a disabled Firefighter totally and permanently disabled in the line of duty the benefits that stem from that status are not only property rights and interest, but Fundamental Rights and Status protected by the State of South Carolina Constitution. His South Carolina Workers Compensation Benefits are a Fundamental Right, as a Fire fighter permanently and totally disabled in the line of duty determined by the State.

Mr. Capone has a *fundamental right*, protected property right/ interest in any benefit (property) arising, as a result of being a “Firefighter that is permanently disabled in the line of duty” under the State of South Carolina Constitution:

Pursuant to the provisions of Section 3 of Article X of the State Constitution and subject to the provisions of section 12-4-720, there is exemption from Ad Valorem Taxation.

Tuition waived for four years of undergraduate study at state-supported colleges, universities, or vocational or technical schools. Children must be 18-22 years of age at the time of application.

Applies to career and volunteer firefighters (*Reference: SC Code 59-110-111*)

Alternatively, Social Security extract evidence shows Mr. Capone began working at the very young age of 14 for the City of New York and began his adult working career here in Columbia South Carolina, where he voluntarily enlisted in the US. Marines, at 18 years of age, until disability retirement in 2014. Injured in the line of duty, as a veteran of work in the State of South Carolina Mr. Capone asserts he has a *fundamental right* to be rewarded for industry and to the receipt and continued receipt of South Carolina Workers Compensation Benefits.

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)

I-2. The U.S. Supreme Court requires workers' compensation benefits to be "significant" if workers' compensation as the "exclusive" remedy is to pass muster under the 14th Amendment to the U.S. Constitution (Due Process). " Statutes are subject to strict scrutiny if they impinge upon fundamental rights.

I learned I was not protected by the Equal Protection Clause and these actions by the Commission had a Disparate Treatment and impact me compared to similarly situated Individuals claimant who where Caucasian/ White showing Irregular judgments in terms of people of color:

It has been my experience that the SC Workers' Compensation Commission Scheme, all stakeholders are not treated fairly and equitably in a timely manner and the system is not efficient or effective, as it bestowes privileges to white men while denying those to American African/black men and woman of color, in comparison to my own, three cases note the irregular judgment before us:

CASE #1. CLEO N. POWELL v. VULCAN MATERIALS Co. Believed to be Caucasian White Male MENTAL INJURY

POWELL, a Caucasian, a national guard veteran, As a result of an altercation with a supervisor, who pushed a finger into his chest, cursed him, called him a liar and accused POWELL of poor maintenance. The hearing commissioner found in its Scheme found that POWELL suffered an accidental mental injury arising out of an in the course of his employment. He ordered Vulcan to make weekly payments of \$268.99 for 500 weeks, to pay medical expenses retroactive to march 21, 1984, and to pay future lifetime medical care. It was determined a totally disabling and compensable "mental, emotional, and psychological injury" this was unusual, extraordinary condition. The circuit court's affirming the Commission is hereby Affirmed. GREGORY, C.J., and CHANDLER and FINNEY, JJ., concur.

CASE #2. TED FRAME v. RSI Caucasian White Male MENTAL INJURY

FRAME, a Caucasian, was often troubled by the dishonorable treatment of African-American employees under his charge from upper management, exacerbated by comments and admitted to never actually witnessing intimate sexual relations. The psychiatrist and psychologist agree (1) that Frame suffers from a bipolar type psychosis; (2) on the day in question he experienced what is known as a "decompensation" (a mental breakdown); (3) there is a certain genetic predisposition to this kind of psychosis; (4) this "decompensation" was the result of job-related stress; and (5) it was in no way certain that Frame would experience such a mental collapse regardless of exterior stimuli (i.e., his job). According to the psychiatrist and psychologist, Frame is not currently capable of full-time work. In the SC Workers Compensation Commission

Scheme, A hearing before a single commissioner resulted in an order granting Frame full benefits. The order of the single commissioner reads:

1. The Claimant was predisposed to mental illness, although it is unclear whether the predisposition was a result of genetics or something else. The basis of the predisposition is not relevant.

2. The Claimant's work stress was a contributing factor to the decompensation and was the major contributing factor .

3. Particular stressors in the workplace included: answering to "five bosses"; the constant anxiety resulting from escalating pressure associated with being on call. Other examples were trying to cut cost without cooperation, insufficient fire extinguishers to put out fires in the plant, conflict with DOT standards or regulations, lack of cooperation from mechanics and drivers, etc.

Note: In regards to above "FRAME", the record is absent that FRAME ever "DID ANYTHING" to help African-American people, only that it so troubled him along with other stress that he was made disabled. Disabled by Bipolar Disorder that often runs in families (Hereditary) and inherent parts appear to be part of the mobile genetic elements; of those with this mood disorder (Genetics).

### **I -3. FRAUD ON THE COURT/ UNCLEAN HANDS VIOLATION CONSTITUTIONAL PROTECTIONS TO INCLUDE DUE PROCESS AND OTHER VIOLATION OF LAWS\***

Capone, Claimant gave notice October 25, 2013 seeking Workers' Compensation benefits for:

1. ,SC WCC File No.: 319203 Date of Injury of October 12, 2013, in which I re-injured my bilateral hands and wrist;
2. SC WCC File No.: 1322451 Date of Diagnosis November 7, 2013, I sustained an aggravation of a psychological injury to my "Psyche ";
3. SC WCC File No.: 1420487 Date of June 24, 2013 sustained an injury to his toe Mold (Fungus) to include Cladosprium; and "Chaetomium" and others a now conclusively known to be toxic mold(fungus) at the time Claimant was also diagnosed with 1. Tinea pedis, 2. Ear pain/Vertigo 3 , Onychomycosis 4. Headaches, all while working at and under the emply of the City of Columbia, Columbia Fire Department, and are known Botoxin symptom's Top symptoms associated with Mold/Mytoxin-Associated Illness.

The Appellant /Claimant SC WCC File No.: 319203 Date of Injury of October 12, 2013, re-injury to bilateral hands and wrist was an accepted/admitted physical injury .

The South Carolina Workers Compensation Commission changed SC WCC File No 1420487 Date of Injury from the correct June 24, 2013 back to June 24, 2014 and is incorrect. The Employer/Carrier denied Mold/Fungus in Fire Stations and was fraud upon the Court. They are stopped by the SC Statute of Repose.

DUE PROCESS VIOLATION BY EMPLOYER/CARRIER SC REG 67-503:

On or about the eighth day payment was due should have been on or about October 20, 2013, but he was made to use his own Sick leave, Holiday or Vacation time and was not provided with any Temporary Total Disability compensation until on or about January 6, 2014 (temporary total disability from 12/6/2013-1/2/2014 4 weeks). 79 days or 2 months, 18 days after the injury and they never served Claimant with a form 15 with the first check according to R67-211. This was violation of Due Process, Procedural and Substantive Due Process, Substantive Justice and Equal Protection Under the Color of law.

It is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are to be affected." *Tyron Fed. Sav. & Loan Ass'n v. Phelps*, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992). Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property. The requirements of due process not only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review. *Grannis v. Ordean*, 234 U.S. 385, 394 (1914) ("The fundamental requisite of due process of law is the opportunity to be heard."); *S.C. Dep't of Soc. Servs. v. Holden*, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995).

SC Reg 67-503 .Payment of Temporary Total and Temporary Partial Compensation. Excerpts:

- A. Medical, surgical, hospital, and other treatment including medical and surgical supplies are allowed from the first day of injury.
  - (1) Temporary total or temporary partial compensation is incurred on the eight calendar day of inactivity and from the first day of incapacity if the injury results in incapacity for more than fourteen calendar days. The seven and fourteen day periods need not be consecutive days.
  - (2) Payment and acceptance of temporary compensation files a claim
  
- B. When the employer's representative begins to pay either temporary total or temporary partial compensation, or salary in lieu of temporary compensation, the employer's representative shall complete Section I of the form 15, Temporary Compensation Report.

- (1) The employer's representative **shall file** the form 15 with the Claims Department within 10 days of the date of first payment of compensation.
- (2) The employer's representative **shall serve** the form 15 on the Claimant according to R.67-211 with the claimant's first check

On February 6, 2014 Companion P&C Senior Claims Adjuster Doris J McCubbins, AIC, AID, under the Subject: TCAPONE Claim: 700000004250 excerpts Stated: "...At your most recent appointment on 1/21/14, Dr. Fulton released you to return to work with restrictions and the City has offered accommodations to these restrictions effective 2/3/14. Therefore, as of 2/3/14 your weekly temporary total benefits which you were receiving through us have been terminated."

DUE PROCESS VIOLATIONS EMPLOYER/CARRIER SC WCC 67-504:

**SC WCC 67-504 (A)(B). EMPLOYER FAILED TO FOLLOW PROCEDURES FOR STOPPING BENEFITS; (A) EMPLOYERS DID NOT FILE FORM 15 "IMMEDIATELY" WITH THE CLAIMS DEPARTMENT AND/OR SERVE FORM 15 AFTER COMPENSATION WAS TERMINATED, AND EMPLOYER DID NOT SERVE THE FORM 15 "IMMEDIATELY" ON THE CLAIMANT PURSUANT TO 67-211 WITH DOCUMENTATION ATTACHED AS TO THE REASON FOR TERMINATION OR SUSPENSION.(B) TO TERMINATE OR SUSPEND COMPENSATION PURSUANT TO SECTION 42-9-260(B)(2) THE EMPLOYER'S REPRESENTATIVE "MUST" OBTAIN A SIGNED FORM 17, THEY DID NOT COMPLETE THESE SERVICES. INEFFECTIVE SERVICE OF PROCESS!**

Prior to the hearing on August 21, 2015, the Single Commissioner Gene McCaskill, Commission via Judicial department and Attorney for the Respondent Dana Thye where all notified about the medical opinion I had obtained which stated the PTSD was aggravated. Commissioner McCaskill and Attorney Thye during the hearing denied me a fair and impartial hearing, when I attempted to testify they kept saying it was "hearsay", and they knew that Rules of evidence did not apply before the Workers' Compensation Commission and then to omit evidence / and Commissioner McCaskill to alter the medical opinions, which stand at the heart of the matters herein, was Fraud Upon The Court and is a Void judgment, Decision/ Order .

Commissioner Gene Henry McCaskill Denied Mr. Capone Procedural Due Process committing Fraud Upon The Court, when he altered the medical opinions, then quoted it December 2, 2015 Decision and Order as a finding of fact. Commissioner Gene McCaskill States:

FACT#18. "As to the Claimant's Post Traumatic Stress Disorder claim being casually related to his employment, **there is nothing in the record, other than the subjective complaints of the Claimant, that established the origin or an aggravation of the Claimants's Post Traumatic Stress Disorder.**

**\*This Is Fraud Upon the Court/Tribunal and false facts surmise and co.**

FACT #19. "...However, it appears from the notes of both **Dr. Nicholas and Sheryl Mims Williams both of whom have a professional specialization to the mind, that the Claimants does not suffer from Post Traumatic Stress Disorder which is casually related to his employment with the City.** It is more likely than not that the symptoms of Post Traumatic Stress Disorder experienced by the Claimant are rooted in events associated with his military service

**This Fraud Upon The Court/Tribunal, these statements can not be located in the records**

FACT #22. **There is no medical notes/reports in the record** that link the aggravation of Claimant's Post Traumatic Stress Disorder to his employment with the City of Columbia

**\*This Is Fraud Upon the Court/Tribunal and Untrue.**

Appellate Exhibit #1 SC WCC FILE.: 1322451

2/10/2014 City of Columbia Employee Family Medical Leave Act Dr. Tiona Praylow, MD Envision Wellness Medical Group excerpts:"5. Through course of evaluating + Treating Mr. Capone it is my belief that the severity of PTSD symptoms reported that have resulted from his job duties make it unsafe for pt. and other employees to return to work in this capacity..."

2/6/2014 p. 303 on Media Disc [299-304] **OMITTED FROM THE RECORD**

3/6/2014 Disability Rational South Carolina Retirement System DDS Examiner # 049890 Page 288 on Media Disc

Dr. Tiona Praylow, MD Envision Wellness Medical Group excerpts:"This represents a change from previous baseline given pt. with many years of optimal function prior to developing symptoms related to PTSD as a result of occupational exposures". 4/2/2015 p. 256 on Media Disc [254-257] **OMITTED FROM THE RECORD**

Actual Unaltered opinion: Page 249 249 -253 on MEDIA DISC

Dr. Nicholas Lind excerpts, "His PTSD were aggravated in 2013 when as a firefighter, he responded to a traumatic call, which resulted in his retirement." Post Trauma Resources April 3, 2015 Page 2 of 5. **OMITTED FROM THE RECORD**

Commissioner and Commissions Decision and Orders or proceeding decided December 2, 2015 and thereafter are "arbitrary, capricious, characterized by abuse of discretion, clearly unwarranted exercise of discretion . . . or otherwise not in accordance with law." It is therefore indisputable that these document sets are required to complete the Record.

Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In *Bulloch v. United States*, 763 F.2d 1115, 1121(10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury.... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted.

**I-4. Mr. Capone re-asserts the South Carolina Workers' Compensation Act is Unconstitutional, All Decisions/Orders stemming out of or relying on the December 2, 2015 Decision/Order and thereafter are VOID as a matter of law- "Strict Scrutiny Applies".**

The protections provided by our state Constitution are applicable in the instant case.

Under our state Constitution, due process in the administrative context has been established by Article I, Section 22.[7] This section provides:

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of \*391 *liberty or property* unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.  
S.C. Const. art. I, § 22 (emphasis added).

In explaining this provision, The Supreme Court stated: "[i]n recognition of the increasing number of governmental powers delegated to administrative agencies, South Carolina Constitution article I, § 22 was added to the 1895 Constitution in 1970` as a safeguard for the protection of liberty and property of citizens.'" *Ross v. Med. Univ. of S.C.*, 328 S.C. 51,

68, 492 S.E.2d 62, 71 (1997) (quoting *Final Report of the Committee to Make a Study of the South Carolina Constitution of 1895*, p. 21 (1969)).

Although our appellate courts have not always used the term "due process rights" when discussing Article I, Section 22, we have consistently indicated that the protections provided under this section are the equivalent of those afforded by the Due Process Clause of our state and federal Constitutions. *See, e.g., Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (citing Article I, Section 22 and stating "[p]rocedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." (citation omitted)); *Harbit v. City of Charleston*, 382 S.C. 383, 393, 675 S.E.2d 776, 781 (Ct.App.2009) (citing Amendments V and XIV of the United States Constitution and Article I, Section 22 of the South Carolina Constitution and stating "[t]he fundamental requirements of due process under the United States Constitution and the South Carolina Constitution include notice, an opportunity to be heard in a meaningful way, and judicial review").

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)

To have an injury produce a permanent disability, yet a doctor provided by the Respondent prescribes a rating of 0% produce an incompatible outcome. This is all to devaluation of Workers Compensation benefits (property) he and his family have a substantial property right /interest to

and a compensation rate of \$2,611.20 x .666 = **average weekly wage \$1739.06 x 500 Weeks or \$869, 530.00, in which he and his family have been defrauded by the Respondents' and Commission.**

"While relied upon by the Panel and the circuit court, the South Carolina Rules of Evidence do not apply in proceedings before the Workers' Compensation Commission. S.C. Code Ann. § 1-23-330(1) (2005). We further note that great liberality is exercised in permitting the introduction of evidence in proceedings under the Workers' Compensation Act. *Hallums v. Michelin Tire Corp.*, 308 S.C. 498, 504, 419 S.E.2d 235, 239 (Ct. App. 1992) ("An administrative or quasi judicial body is allowed a wide latitude of procedure and [is] not restricted to the strict rule of evidence adhered to in a judicial court."); *Hamilton v. Bob Bennett Ford*, 339 S.C. 68, 70, 528 S.E.2d 667, 668 (2000) ("[G]reat liberality is exercised in permitting the introduction of evidence in proceedings under Workmen's Compensation Acts." (quoting *Ham v. Mullins Lumber Co.*, 193 S.C. 66, 82, 7 S.E.2d 712, 719 (1940))); *id.* ("Hearsay testimony may be admissible in workers' compensation matters if corroborated by facts, circumstances, or other evidence."). *Cockerham v. Zikratch*, 619 P.2d 739 (Ariz. 1980). Void judgments generally fall into two classifications, that is, judgments where there is want of jurisdiction of person or subject matter, and judgments procured through fraud, and such judgments may be attacked directly or collaterally.

The 14th amendment of the United States Constitution gives everyone a right to due process of law, which includes judgments that comply with the rules and case law. Most due process exceptions deal with the issue of notification. If, for example, someone gets a judgement against

you in another state without your having been notified, you can attack the judgement for lack of due process of law. In *Griffen v. Griffen*, 327 U.S. 220, 66 S. Ct. 556, 90 L. Ed. 635 a pro se litigant won his case in the Supreme Court who stated.

“[A] plaintiff need only show compliance with the rules.” *Roche v. Young Bros., Inc.*, 318 S.C. 207, 211, 456 S.E.2d 897, 900 (1995).

It is a fundamental doctrine of law that a party to be affected by a personal judgment must have his day in court, and an opportunity to be heard. *Renauld v. Abbott*, 116 US 277, 29 L Ed 629, 6 S ct 1194.

**I-5. TIMELINESS OF THE NOTICE OF MOTION AND MOTION TO ALTER, AMEND, SET ASIDE JUDGMENT, ORDER, OR PROCEEDING UNDER RULE 60 (A) (B)(SINC) AND/OR SC CODE 1-23-380 APA, SEE NOTICE OF MOTION IN RESPONDENTS (EXHIBIT E) WAS PROPER AND TIMELY BEFORE THE WORKERS COMPENSATION COMMISSION**

Time limitation does not apply where the judgment is based on a fraudulent return. (*Washko v. Stewart*, supra, p. 318; *Richert v. Benson Lbr. Co.*, supra, p. 677.).

There is no time limit for fraud Upon the Court and it is another effort by Respondents and their Attorneys to commit Fraud Upon the Court and to hear an independent action for exceptional circumstances warranting equitable relief, Respondents Attorney p. 5 of motion (2) excerpts “The remaining grounds for relief provided for in Rule 60(b) are not at issue in these proceedings”.

(See Appellants Media Disc For File Under Seal Titled: TCAPONE 10/10/2018 is

“UNREDACTED” TCAPONE 10/10/2018- Pages 1-73, Exhibits 10/10/2018 pages 1-

3181 Appellant Exhibits AE#1-9 and 2015 REDACTED FILES HARD COPIES Appellant

Exhibits-AE#9-14).

The South Carolina Workers' Compensation Act was tailored after the North Carolina Act and opinions of the North Carolina Supreme Court construing such Act are entitled to great weight with the appellate courts of this state. *Carter v. Penney Tire and Recapping Co.*, 261 S.C. 341, 200 S.E. (2d) 64 (1973).

In *Hogan v. Cone Mills Corp.*, 315 N.C. 127, 337 S.E.2d 477 (1985), The North Carolina Supreme Court stated:

The Rules of Civil Procedure are not strictly applicable to proceedings under the Worker's Compensation Act, *see* N.C. R. Civ. P. 1, and we find no counterpart to Rule 60(b)(6) in the Act or the Rules of the Industrial Commission. We believe the Industrial Commission, nevertheless, has inherent power to set aside one of its former judgments. Although this power is analogous to that conferred upon the courts by N.C. R. Civ. P. 60(b)(6), it arises from a different source. We conclude the statutes creating the Industrial Commission have by implication clothed the Commission with the power to provide this remedy, a remedy related to that traditionally available at common law and equity and codified by Rule 60(b). This power inheres in the judicial power conferred on the Commission by the legislature and is necessary to enable the Commission to supervise its own judgments. *Id.* at 137, 337 S.E.2d at 483 (footnote omitted). The Court went on to note that it had previously held that "the Commission's judicial power includes the power to set aside a former judgment on the grounds of mutual mistake, misrepresentation, or fraud," *id.* at 138, 337 S.E.2d at 483, *citing Neal v. Clary*, 259

N.C. 163, 130 S.E.2d 39 (1963), and "also includes the power to order a rehearing on the basis of newly discovered evidence," *id.*, citing *Butts v. Montague Bros .*, 208 N.C. 186, 179 S.E. 799 (1935).

The Appellant asserts the remaining grounds of relief provided for in Rule 60(b) are also at the very heart of the matter in these proceedings:

Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A., U.S.C.A. Const. Amend. 5 - *Kiugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985). Void judgment is one which has no legal force or effect whatever, it is an absolute nullity, its invalidity may be asserted by any person whose rights are affected at any time and at any place and it need not be attacked directly but may be attacked collaterally whenever and wherever it is interposed, *City of Lufkin v. McVicker*, 510 S.X.2d 141 (Twx.Civ.App.-Beaumone 1973). When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory, *Omer. V. Shalala*, 30 F.3d 1307 (Cob. 1994).

In *Halbach v. Halbach*, 259 Wis. 329, 331, 48 N.W.2d 617 (1951), the ***void judgment*** was challenged ten years after entry. The court stated that laches did not apply even if the plaintiff had been dilatory or lackadaisical in his efforts to overturn the judgment. "It is the duty of the court to annul an invalid judgment."

Where Rule 60 (b) (4) is properly invoked on the basis that the underlying judgment is void,

**"Relief is not a discretionary matter; it is mandatory."** Orner v. Shalala, 30 F.3d 1307, 1310

(10<sup>th</sup> Cir. 1994) (quoting *V.T.A., Inc. v. Airco, Inc.*, 597 F.2d 220, 224 n.8 (10<sup>th</sup> Cir. 1979))

A motion to set aside a judgment as void for lack of jurisdiction is not subject to the time limitations of Rule 60 (b). See *Gracia v. Garcia*, 712 P.2d 288 (Utah 1986)

Rule 60(b), SCRCP, reads: "On motion ... the court may relieve a party ... from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; 2) newly discovered evidence ... ; (3) fraud, misrepresentation, or other misconduct of an adverse party; the judgment is void; (5) the judgment has been satisfied . . . ." Rule 60(b), SCRCP.

The rule continues, stating: "The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken." *Id.* Rule 60(b) also provides: "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court." *Id.*

Capone Appellant *pro se*, however, argues his action is timely because it is based on the authority granted in Rule 60(b) allowing an independent action, not subject to the one-year limitation, for fraud on the court, or under the authority in Rule 60 to hear an independent action for exceptional circumstances warranting equitable relief. See *Mr. T. v. Ms. T.*, 378 S.C. 127, 135, 662 S.E.2d 413, 417 (Ct. App. 2008) (stating Rule 60 permits these two potential independent attacks on a judgment). Our supreme court has explained that while in most circumstances there is a time limitation on a party seeking to reopen a final judgment, there is no limit when a party seeks to set aside a judgment due to fraud on the court. *Chewing*, 354 S.C. at 80, 579 S.E.2d at 609-10.

The hearing was held February 21, 2018, and fees for motions were paid and presented at The a hearing that result Res Judicata as the decision, and the Appellant believed Commissioner

improperly denied the motion, and also made a decision in regards to the Appellant not being under disability or that he did not have before him any evidence to that Disability or Incompetence based on mental illness or Traumatic brain Injury. The Appellant then paid the required fee in the allotted time to appeal, and that appeal was taken and was a decision was made the Appellant timely appealed that decision, requesting a Review b the Commission, which again was denied. That decision was timely appealed to the South Carolina Court of Appeals tree exhibit #1) and jurisdiction and chain of custody continues and remain with the South Carolina Court of appeals. The *Appellant* asserted he was entitled to file a Petition for Reheating with under Rule 60 because federal provisions are provided and to not allow deprives him of his fundamental right to Due Process, Procedural and Substantive Due process and Equal Protection under the Color of Law, in addition it is also the Appellate Panel because §1-23-380 of the APA provides a party with 30 days to fde a notice of \*appeal from the date of the final decision or “if a rehearing is requested, within 30 days after the decision is rendered.” The Workers’ Compensation Act is silent regarding Petitions for Rehearing; however, §42-17-60 provides the procedure for appealing Appellate Panel decisions. Pursuant to §42-17-60, a party has 30 days after an Appellate Panel award to file a Notice of Appeal with the Court of Appeals. It is well established in case law that SCRCP Rule 59(e) Motions to Alter or Amend a Judgment do not apply to matters before the Commission.

#### RULE 60RELIEF FROM JUDGMENT OR ORDER

##### (a) CORRECTIONS BASED ON CLERICAL MISTAKES; OVERSIGHTS AND OMISSIONS.

The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on

motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

Rule 60(a) of the Federal Rules of Civil Procedure provides that “[t]he court may correct a clerical mistake or a mistake arising from oversight whenever one is found in a judgment, order, or other part of the record.” Fed. R. Civ. P. 60(a). In *Sartin v. McNair Law Firm, P.A.*, 756 F.3d 259 (4th Cir. 2014), a case in which Sowell Gray represented the prevailing party, the Fourth Circuit construed the scope of Rule 60(a) and concluded that the Rule’s scope is not confined to correcting typographical and other clerical errors, but also extends to “unintended ambiguities that obfuscate[] the court’s original intent.” *Id.* at 266.

Affirming the district court, the Fourth Circuit found that while it is true that Rule 60(a) “allows courts to perform mechanical adjustments to judgments, such as correcting transcription errors and miscalculations[,]” the Rule “is not confined to just fixing typographical and other clerical errors.” *Id.* Instead, [t]he Rule’s text also authorizes a court to correct ‘a mistake arising from oversight or omission. Such a mistake occurs when there is an inconsistency between the text of an order or judgment and the district court’s intent when it entered the order or judgment.

A ‘mistake arising from oversight or omission’ also includes an unintended ambiguity that obfuscates the court’s original intent...In sum, the scope of a court’s authority under Rule 60(a) to make corrections to an order or judgment is circumscribed by the court’s intent when it issued the order or judgment, *Id.* at 266 (internal citations omitted).

Finally, the court concluded that the fact that the district court’s clarification order related to litigation that was dismissed over a year ago was of no consequence with respect to the district court’s jurisdiction over the matter because as “Sartin properly concedes ... ‘Rule 60(a) has

no time limit.” Id. at 268 (citing cases).

(4) the judgment is void

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer Equitable; or

(6) any other reason that justifies relief.

(c) TIMING AND EFFECT OF THE MOTION.

(2) *Effect on Finality*. The motion does not affect the judgment's finality or suspend its operation.

(d) OTHER POWERS TO GRANT RELIEF. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

or

(3) set aside a judgment for fraud on the court.

S.C. Code Ann. §1-23-380

The SC Administrative Procedure Act applies and grants me the right to seek rehearing.

The South Carolina Administrative Procedure Act (APA) established governs appeals from the decision of an administrative agency. S.C. Code Ann. § 1-23-380 (Supp.2011); *Work v. Bi-Lo, Inc.*, 276 S.C. 130, 134-35, 276 S.E.2d 304, 306 (1981). Under the APA, an appellate court has the power to reverse or modify a decision if the findings and conclusions of the administrative agency are affected by error of law *Stone v. Traylor Bros.*, 360 S.C. 271, 274, 600 S.E.2d 551, 552 (Ct.App.2004), “clearly erroneous in view of the reliable and substantial evidence on the whole record” *Liberty Mut. Ins. Co. v. S.C. Second Injury Fund*, 363 S.C. 612, 619, 611 S.E.2d 297, 300 (Ct.App. 2005) (citation and internal quotation marks omitted), or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

*Gray v. Club Grp., Ltd.*, 339 S.C. 173, 182, 528 S.E.2d 435, 440 (Ct.App. 2000). S.C. Code Ann. § 1-23-380(5). If findings, inferences, conclusions, or decisions of that agency are “clearly erroneous in view of the reliable, probative and substantial evidence on the whole record,” a reviewing court may reverse or modify. *Id.* Substantial evidence is not a mere scintilla of evidence, not evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached. *Pratt v. Morris Roofing, Inc.*, 357 S.C. 619, 622, 594 S.E.2d 272, 274 (2004). An abuse of discretion

Additionally, See 67—707. Additional and Newly Discovered Evidence. HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997.

See Supremacy Clause

The Supremacy Clause of the United States Constitution provides that “the Laws of the United States . shall be the supreme Law of the Land . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, c1. 2. State and local laws are thus preempted when they conflict with federal law. See *National Helicopter Corp. of Am. v. City of New York*, 137 F.3d 81, 88 (2d Cir.1998).

#### **I-6. SC WORKERS’ COMPENSATION COMMISSIONS DECEMBER 2, 2015 DECISION AND ORDERS IS A VOID JUDGMENT**

A *void judgment* is one that, from its inception, is a complete nullity and is without legal effect." *Thomas & Howard Co. v. T.W. Graham and Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995).

A Party Affected by VOID Judicial Action Need Not APPEAL. *State ex rel. Latty*, 907 S.W.2d at 486. It is entitled to no respect whatsoever because it does not affect, impair, or create legal

rights." *Ex parte Spaulding*, 687 S.W.2d at 745 (Teague, J., concurring). If an appeal is taken, however, the appellate court may declare void any orders the trial court signed after it lost plenary power over the case, because a void judgment is a nullity from the beginning and is attended by none of the consequences of a valid judgment.

When appeal is taken from a void judgment, the appellate court must declare the judgment void, because the appellate court may not address the merits, it must set aside the trial court's judgment and dismiss the appeal. A void judgment may be attacked at any time by a person whose rights are affected. See *El-Kareh v. Texas Alcoholic Beverage Comm'n*, 874 S.W.2d 192, 194 (Tex. App.—Houston [14th Dist.] 1994, no writ); see also *Evans v. C. Woods, Inc.*, No. 12-99-00153-CV, 1999 WL 787399, at \*1 (Tex. App.—Tyler Aug. 30, 1999, no pet. h.).

It has also been held that "It is not necessary to take any steps to have a void judgment reversed, vacated, or set aside, It may be impeached in any action direct or, collateral." *Holder v. Scott*, 396

A Decision is void on the face of judgment roll when from four corners of that roll, it may be determined that at least one of three elements of jurisdiction is absent: (1) jurisdiction over the parties, (2) jurisdiction over the subject matter, or (3) jurisdictional power to pronounce particular judgment that was rendered". *B & C Investments, Inc., v. T & M Nat. Bank & Trust*, 903 P.2d 339 (Okla. App. Div. 3, 1995).

A void judgment is a nullity from the beginning, and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." *Ex parte Seidel*, 39 S.W.3d 221, 225 (Tex. Crim. App. 2001), *Ex parte Spaulding*, 687 S.W.2d at 745 (Teague, J., concurring).

The law is well-settled that a void order or judgment is void even before reversal", *VALLEY v. NORTHERN FIRE & MARINE INS. CO.*, 254 U.S. 348, 41 S. Ct. 116 (1920) "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgements and orders are regarded as nullities; they are not voidable, but simply void, and this even prior to reversal." *WILLIAMSON v. BERRY*, 8 HOW. 945, 540 12 L. Ed. 1170, 1189 (1850).

FRCP RULE 60(b) FRCP Rule 60(b) provides that the court may relieve a party from a final judgment and sets forth the following six categories of reasons for which such relief may be granted: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59; (3) fraud, misrepresentation, or misconduct by an adverse party; (4) circumstances under which a judgment is void; (5) circumstances under which a judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. F.R.C.P. Rule 60(b)(1)-(b)(6). To be entitled to relief, the moving party must establish facts within one of the reasons enumerated in Rule 60(b).

When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory, Omer. V. Shalala, 30 F.3d 1307 (Cob. 1994). This cannot be ignored its fact recorded! Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A., U.S.C.A. Cōnst. Amend. 5 —Kiugh v. U.S., 620 F.Supp. 892 (D.S.C. 1985).

A Void Judgement is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Seidel, 39 S.W.3d 221, 225 (Tex. Crim. App. 2001). Since the trial court's dismissal "with prejudice" was void, it may be attacked either by direct appeal or collateral attack Ex parte Williams, No. 73,845 (Tex.Cnm.App. 04/11/2001). "Avoid judgment is a nullity from the beginning, and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J., concurring). A court cannot confer jurisdiction

**Black's Law Dictionary, Sixth Edition, p. 1574:**

**Void judgment.** One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. Reynolds v. Volunteer State Life Ins. Co., Tex.Civ.App., 80 S.W.2d 1087, 1092. One which from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. Judgment is a "void judgment" if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process. Klugh v. U.S., D.C.S.C., 610 F.Supp. 892, 901. See also Voidable judgment.

**[Black's Law Dictionary, Sixth Edition, p. 1574]**

**I-7. SOUTH CAROLINA WORKERS' COMPENSATION ACT  
EXCLUSIVE REMEDY DOCTRINE\***

Respondent's Motion should be denied in its entirety because South Carolina Workers' Compensation is the *pro se* Appellants Capone's Exclusive Remedy Doctrine, and the South Carolina Constitution protects him:

See, §22. Procedure before administrative agencies; judicial review. No person shall be finally

bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by mode of procedure prescribed by the General Assembly, and shall have all such instances the right to judicial review.(1970)(56) 2684; 1971 (57) 315.)

The Defendants already strut the grand bargain and the case before the Court is due to their “Breach of the grand bargain”. Thus, the South Carolina Workers’ Compensation scheme is unconstitutional, and inadequate remedy at law, no longer a fair exchange for losing the ability to sue the employer for a benefit (property) that has been reduced, and reduced, over the years and in the Appellants present case was reduced to zero by the Respondents (employer and carrier) and South Carolina Workers’ Compensation Commission. The adequacy of the benefits (property) no longer justifies the exclusive remedy enjoyed by the employer. The Respondents (employer and carrier) and South Carolina Workers Compensation Commission actions constitutes a unjust “Taking” of benefits (property) and a clear violation of law, that the Appellate pro se Capone has a substantial property right/ interest to and a compensation rate of  $\$2,611.20 \times .666 = \text{average week}$  **IT wage \$1739.06 x 500 Weeks or \$869, 530.00.** (See Appellants Media Disc For File Under Seal Titled: TCAPONE 10/10/2018 is “UNREDACTED” TCAPONE 10/10/2018- Pages 1-73, Exhibits 10/10/2018 pages 1-3181 Appellant Exhibits AE#1-9 and 2015 REDACTED FILES HARD COPIES Appellant Exhibits-AE#9-14).

Because South Carolina workers’ compensation law is fashioned after North Carolina’s statute, our courts often rely on North Carolina precedent for guidance in interpreting the South Carolina Workers’ Compensation Act. Nelson v. Yellow Cab Co., 343 S.C. 102, 117-118, 538

S.E.2d 276, 284 (Ct. App. 2000) aff d 349 S.C. 589, 564 S.E.2d 110 (2002) (citing Spoone v. Newsome Chevrolet-Buick, 309 S.C. 432, 424 S.E.2d 489 (1992); Stephen v. Avins Constr. Co., 324 S.C.334, 340, 478 S.E.2d 74, 77 (Ct. App. 1996) (decisions of North Carolina courts interpreting that state's Workers' Compensation statute are entitled to weight when South Carolina courts interpret South Carolina Workers' Compensation law).

See, Supremacy Clause

The Supremacy Clause of the United States Constitution provides that "the Laws of the United States . shall be the supreme Law of the Land . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. State and local laws are thus preempted when they conflict with federal law. See National Helicopter Corp. of Am. v. City of New York, 137 F.3d 81, 88 (2d Cir.1998).

The Supremacy Clause prevents the South Carolina Legislature from preempting a RICO remedy By declaring its Workers' Compensation scheme to be exclusive of federal remedies. An expected entitlement to benefits under the South Carolina Workers' Compensation Act qualifies as property, as does the claim for such benefits, and the injury to such property creates, under the circumstances, a RICO violation.

Relationship Between RICO and the South Carolina Workers' Compensation Act

RICO makes it a crime "for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." 18 U.S.C. § 1962(c). RICO defines

“racketeering activity” to include “any act which is indictable under any of the following provisions of title 18, United States Code: ... section 1341 [18 U.S.C. § 1341] (relating to mail fraud), section 1343 [18 U.S.C. § 1343] (relating to wire fraud).” *Id.*

§ 1961(l). That said, the language of the act is expansive, and Congress has mandated that RICO must be liberally construed to effectuate its remedial purpose.” Pub. L. No. 91-452, 904(a), 84 Stat. 947 (1970).

#### ORIGINS OF THE ACT

The General Assembly enacted the Act in 1929 to both “provide swift and sure compensation to injured without the necessity of protracted litigation,” and to “insure[] a limited and determinate liability for employers.” E.g., *Rorie v. Holly Farms*, 306 N.C. 706, 709, 295 S.E.2d 458, 460 (1982)

The philosophy which supports the Work[ers’] Compensation Act is “that the wear and tear of human beings in modern industry should be charged to the industry, just as the wear and tear of machinery has always been charged. And while such compensation is presumably charged to industry, and consequently to the Employer or Owner of the industry, eventually it becomes a part of the fair money cost of the industrial product, to be paid for by the general public patronizing such products.” [Or service] in the case of First Responders emphasis added.

*Vause v. Equipment Co.*, 233 N.C. 88, 92, 63 S.E. 2d 173, 176 (1951) (quoting *Cox v. Kansas City Refining Co.*, 108 Kan. 320, 195 P. 863 (1921)); see also *Barber v. Minges*, 223 N.C. 213, 216, 25 S.E. 2d 837, 839 (1943)(“The primary purpose of legislation of this kind is to compel industry to Take care if its own wreckage.”)

The basic operating principle of the Act is that an employee is **automatically entitled** to certain

benefits whenever he suffers either personal injury by accident occurring in the course of employment and arising out of it, or incurs an occupational disease. **Those benefits include both wages based on disability and medical compensation.**

#### **I-8. LACK OF JURISDICTION**

The August 21, 2015 and December 2, 2015 Decision and Order is Void, due to the South Carolina Workers' Compensation Commission and Commissioner Gene McCaskill Lack of Personal Jurisdiction and Subject Matter Jurisdiction by violating Capone's Due process, Procedural and Substantive due process protected by the 5<sup>th</sup> and 14<sup>th</sup> Amendments: Where a court failed to observe safeguards, it amounts to denial of due process of law, court is de-prived of juris."Merritt v. Hunter, C.A. Kansas 170 F.2d 739 (10TH Cir. 1948). See body (See Appellants Media Disc For File Under Seal Titled: TCAPONE 10/10/2018 is "UNREDACTED" TCAPONE 10/10/2018- Pages 1-73, Exhibits 10/10/2018 pages 1-3181 Appellant Exhibits AE#1-9 and 2015 REDACTED FILES HARD COPIES Appellant Exhibits-AE#9-14).

The Fifth Amendment to the United States Constitution reads in relevant part" . . .[n]o person shall be deprived of life, liberty, or property, without due process of law." The 14<sup>th</sup> Amendment to the United States Constitution contains similar **due-process language** and reads in relevant part". nor shall **any** State deprive any person of life, liberty, or due process of law."

1, The South Carolina Workers' Compensation Commission employs Commissioners who are licensed as practicing attorneys and dully competent and qualified as administrative law judges to decide cases, and whose names are found on the roles of attorneys in The State of South Carolina.

There can be no Law of the **case**, where the Commission and Commissioner Gene H McCaskill at a hearing held August 21, 2015 failed to disclose that he had no license to practice law and ignorant to the law in the State of South Carolina, while pretending to be authentic/ genuine, using legal jargon: "Juxtaposed this and that, but only merely himself juxtaposed to be an imposter/ a fraud. Subsequently it also determined that Commissioners Campbell and Wilkerson had no status as lawyers. Capone was subject to a Kangaroo Court, and did not and would not consent to such, and amounts to fraudulent misrepresentation by the Commission to obtain jurisdiction by Trickery, Acting without authority "induced" into jurisdiction through Fraud Upon The Court/ Fraudulent misrepresentation which was a Denial of Due process, Procedural and Substantive Due Process.

Waivers of Constitutional Rights, not only must they be voluntary, they must be knowingly intelligent acts done with sufficient awareness. *Brady v. U.S.*, 397 U.S. 742, 748.

Implicit in the requirements of justice is that no rule of the Industrial Commission may compel a result incompatible with the fundamental rights of any party. See *handy v. PPG Indus.*, 154 N.C. App. 311, 571 S.E.2d 853 (2002) (Emphasizing the importance of neutrality and impartiality of any tribunal in maintaining the integrity of our judicial and quasi-judicial processes)

"Brutum Fulmen": "An empty noise, an empty threat. A judgment void upon its face which is in legal effect no judgment at all, and no rights are divested, and from which none can be obtained; and neither binds nor bars anyone. *Dollert v. Pratt-Hewitt Oil Corporation*, Tex, Civ. Appl, 179 S.W.2d 346, 348. Also, See *Corpus Juris Secundum*, "Judgments" §499, 512, 546, 549. *Black's Law Dictionary*, 4" Edition.

2. The Commissioner Gene McCaskill committed Fraud Upon the Court when in his December 2,

2015 Decision and Order denied Mr. Capone Due Process, Procedural and Substantive Due Process committing Fraud Upon the Court, when he omitted key evidence and altered the April 2015 medical opinion, then quoted it as, a FINDING OF FACT-#18. “As to the Claimant’s Post Traumatic Stress Disorder claim being casually related to his employment, there is nothing in the record, other than the subjective complaints of the Claimant, that establish the origin or aggravation of the Claimant’s Post Traumatic Stress Disorder”...#19. “That is not to say that the Claimant does not suffer from Post Traumatic Stress Disorder. However, it appears from the notes of both Dr. Nicholas Lind and Sheiyl Mims-Williams, both of whom have a professional specialization to the Mind, that the Claimant does not suffer from Post Traumatic Stress Disorder which is casually related to his employment with the City.

Actual Unaltered version:Page #2, Dr. Nicholas Lind notes:“ **His PTSD were aggravated in 2013 when, as a firefighter, he responded to a traumatic call, which ultimate resulted in his retirement**”.(Post Trauma Resources 3 April 2015).

This Single Commissioner and Commission relied on the omitted evidence and altered the medical records (Specifically Dr. Linds medical opinion) in its decision to deny/ devaluation of benefits (property) and such reliance was prejudicial to the Appellants/ Claimants claim, the Single Commissioner Gene Henry McCaskill in his Workers’ Compensation Scheme denied Mr. Capone Due Process, Procedural and Substantive Due Process for non-discretionary and statutorily —mandated Workers’ Compensation disability benefits (property) Mr. Capone has a substantial property right /interest in, by the due process clause of the Fifth Amendment entitling him to a full and fair impartial hearing. Cushman v. Shinseki, 576 F.3d 1290 (Fed. Cir 2009). The due process clause of the Fifth Amendment only applies to property interest. It is well settled that

an individual's disability benefits are protected that may not be discontinued without process of law. "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).

Every person is entitled to an opportunity to be heard in a court of law upon every question involving his rights or interest, before he is affected by any judicial decision on the question. *Earle v. McVeigh*, 91 US 503, 23 L Ed 398.

*Reynolds v. Volunteer State Life Ins. Co.*, Tex.Civ.App., 80 S.W.2d 1087, 1092. *One* which from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. Judgment is a "void judgment" if court that rendered judgment **lacked jurisdiction of the subject matter**, or of the parties, or acted in a manner inconsistent with due process.

Subject matter jurisdictional defects include any of the following:

Fraud committed in the procurement of jurisdiction, *Fredman Brothers Furniture v. Dept. of Revenue*, 109 Ill.2d 202, 486 N.E.2d 893 (1985).

Fraud upon the court, *In re Village of Willowbrook*, 37 Ill. App.3d 393 (1962)

Violation of due process, *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019 (1938); *Pure Oil Co. v. City of Northlake*, 10 Ill.2d 241, 245, 140 N.E.2d 289 (1956); *Hallberg v. Goldblatt Bros.*, 363 111.25 (1936); If the court exceeded its statutory authority, *Rosenstiel v. Rosenstiel*, 278 F.Supp. 794 (S.D.N.Y. 1967).

In addition, any ruling that involves violation of due process of law under the Fifth, Sixth, or Seventh Amendments is also a void judgment. Void judgment can be attacked or vacated at any time and there is no statute of limitation. See *long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999). A void judgment is one which, from its inception, was a complete nullity and without legal effect, *Lubben v. Selective Servfce System Local Bd. No. 27*, 453 F.2d 645, 14 A.L.R.Fed. 298 (C.A. 1 Mass. 1972).

*Loyd v. Director, Dept. of Public Safety*, 480 So.2d 577 (Ala.Civ.App. 1985). A judgment shown by evidence to be invalid for want of jurisdiction is a void judgment or at all events has all attributes of a void judgment, *City of Los Angeles v. Morgan*, 234 P.2d 319 (Cal.App. 2 Dist. 1951). Void judgment which is subject to collateral attack, is simulated judgment devoid of any potency because of **jurisdictional defects**, *Cockett Oil Co. v. Effie*, 374 S.W.2d 154 (Mo.App. 1964). Decision is void on the face of the judgment roll when from four comers of that roll, it may be determined that at least one of three elements of jurisdiction was absent: (1) jurisdiction over parties, (2) jurisdiction over subject matter, or (3) jurisdictional power to pronounce particular judgment that was rendered

See *Weinhauer v. State*, 334 S.C. 327, 513 S.E.2d 840 (1999) (stating issues involving subject *Cockett Oil Co. v. Effie*, 374 S.W.2d 154 (Mo.App. 1964). Decision is void on the face of the judgment matter jurisdiction may be raised at anytime, including for the first time on appeal); *State v. Brown*, 351 S.C. 522, 570 S.E.2d 559 (Ct. App. 2002) (stating issues related to **subject matter jurisdiction can be raised at anytime, can be raised for the first time on appeal**, and can be raised sua sponte by the Court).

See *State v. Funderburk*, 259 S.C. 256, 261, 191 S.E.2d 520, 522 (1972) (stating "the acts of a court with respect to a matter as to which it has no jurisdiction are void").

S.W.2d 906, (Tex.Civ.App., Texarkana, 1965, writ ref., n.r.e.). A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court", *OLD WAYNE MUT. L. ASSOC. v. McDONOUGH*, 204 U. S. 8, 27 S. Ct. 236 (1907). Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A., U.S.C.A. Const.

This cannot be ignored its fact recorded! Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A., U.S.C.A. Const. Amend. 5 — *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985).

Under Federal law which is applicable to all states, the U.S. Supreme Court stated that if a court is "without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers. A Party Affected by VOID Judicial Action Need Not APPEAL. *State ex rel. Latty*, 907 S.W.2d at 486. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." *Ex parte Spaulding*, 687 S.W.2d at 745 (Teague, J., concurring).

#### ***I-9. REQUEST FOR NEW HEARING BASE ON NEW EVIDENCE UNOBTAINABLE***

Based on the Administrative Procedure Act, Appellant paid the required fees for hearing was requested by the Appellant for an opportunity to bring before the Commission, the new evidence that had been concealed that included Mold(Fungus) in Fire Station properties; wrong wage earnings and documents sent showing the injuries where work related transmitted electronically

and stored online to South Carolina Police Retirement System, and the release of the Appellants Employee medical records are conducted by the Respondents, their attorneys and the Commission that prevented the Appellant from receiving a fair and impartial hearing on the merits. See (See Appellants Media Disc For File Under Seal Titled: TCAPONE 10/10/2018 is "UNREDACTED" TCAPONE 10/10/2018- Pages 1-73, Exhibits 10/10/2018 pages 1-3181 Appellant Exhibits AE#1-9 and 2015 REDACTED FILES HARD COPIES Appellant Exhibits-AE#9-14).

As previously stated by this court: we would note other South Carolina tribunals have the inherent power to reopen agreements and judgments procured by fraud. See Raby Const., L.L.P. v. Orr, 358 S.C. 10, 18, 594 S.E.2d 478, 482 (2004) (citing Bryan v. Bryan, 220 S.C. 164, 66 S.E.2d 609 (1951); see also Greenfield v. Greenfield, 245 S.C. 604, 141 S.E.2d 920 (1965) (holding "the inherent powers of a court, which are essential to its existence and protection and to the due administration of justice within the scope of the jurisdiction expressly conferred, do not depend upon express constitutional or legislative grant"). Spivey ex rel. Spivey v. Carolina Crawler, 367 S.C. 154, 159, 624 S.E.2d 435, 437 (Ct. App. 2005). This Court upon advice to other Appellants/Claimants to seek redress through the commission, the tribunal has wielded this exact inherent power even in situations that are not as egregious as the facts of the Appellant Capone's case see, Spivey ex rel. Spivey v. Carolina Crawler, 367 S.C. 154, 159, 624 S.E.2d 435, 437 (Ct. App. 2005).

#### **I-10. UNCLEAN HANDS /FRAUD ON THE COURT**

Based on the evidence herein the Appellants/Claimants Asserts, The Employer and Employers Carrier are precluded from asserting any affirmative defenses i.e laches due to their own unclean hands. Laches is a defense in equity, and one who comes to the court seeking equity must come with clean hands. [T]hat whenever a party who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his [or her] prior conduct, then the doors of the court will be shut against him [or her] in limine; the court will refuse to interfere on his [or her] behalf, to acknowledge his [or her] right, or to award him [or her] any remedy.

Keystone Driller Co. v. Gen. Excavator Co., 290 U.S. 240, 244–45 (1933), (quoting John Norton Pomeroy, A Treatise on Equity Jurisprudence as Administered in the United States of America § 397 (4th ed. 1918)). In a later case, the Supreme Court explained the rationale of unclean hands: “That doctrine is rooted in the historical concept of court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be ‘the abetter of iniquity.’” *Id.* at 814 (quoting *Bein v. Heath*, 47 U.S. (6 How.) 228, 247 (1848)).

See Precision Instrument Mfg. Co. v. Automotive Co., 324 U.S. 806, 814 (1945) (“He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief.”); Wilson v. Landstrom, 281 S.C. 260, 315 S.E.2d 130 (Ct. App. 1984) (“The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.”) (quotations and citations omitted).

The South Carolina Workers' Compensation Commission failed to follow and to insure that the Employer and Carrier had adhered to the proper procedures prescribed by the South Carolina Workers Compensation Act i.e. Reg 67-503-67- 504 in commencing and terminating payment on a Temporary Total Disability award payment, violating its own procedures, APA , Appellants /Claimants fundamental Rights, and Due Process, Procedural and Substantive Due Process, Substantive Justice and Equal Protection Under the Color of law, No Opportunity to be Heard, federal and state law.

Capone, Claimant below, sought workers' compensation benefits a fundamental right, via three separate claims: (1) WCC File Number 1319203 for re-injury of his hands and wrist; (2) WCC Files Number 1322451 for aggravation of a psychological injury; and (3) WCC File Number 1420487 for re-injury of his toe (Toe nail fungus). Prior to that hearing on August 21, 2015, the Single Commissioner Gene McCaskill, Commission via Judicial department and Attorney for the Respondent Dana Thye where all notified about the medical opinion I had obtained which stated the PTSD was aggravated.

"[A] plaintiff need only show compliance with the rules." Roche v. Young Bros., Inc., 318 S.C. 207, 211, 456 S.E.2d 897, 900 (1995).

It is a fundamental doctrine of law that a party to be affected by a personal judgment must have his day in court, and an opportunity to be heard. Renauld v. Abbott, 116 US 277, 29 L Ed 629, 6 S ct 1194.

Arizona recognizes that an action for personal injury is a fundamental right guaranteed by the Arizona Constitution. Further, Barrio makes clear that the controlling consideration under Arizona law is the inability of the injured individual to bring an action on his own behalf, not the possibility that a guardian or parent will assert his rights. This is in accord with Arizona's clear policy of protecting the disabled from statutes of limitations.

**I-11. CRIME FRAUD EXCEPTION CONCEALMENT FRAUD IN REAL PROPERTY  
15-3-670**

Further I was unaware the Respondent had knowledge of toxic mold (fungus) in the fire stations I worked and, and it wasn't until 2017, that I found through past and present news articles at the time, it was the same mold (fungus) found on my body "Chaetomium". The Respondents concealed this (see exhibits#9;17;18; 20 Attorney Thye Email) and submitted the incorrect average weekly wage, because they had changed the way firefighters shift pay was determined and did not inform me or the Commission of the change. Attorney Dana Thye for the Respondents and the Single Commissioner Gene McCaskill and Commission unfairly omitted evidence in their possession to deny the claims depriving me of my fundamental right to Workmens' Compensation, which deprived me my property interest.

No person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law. *Sunset Cay*, 357 S.C. at 430, 593 S.E.2d at 470; *Worsley Companies, Inc. v. Town of Mt. Pleasant*, 339 S.C. 51, 528 S.E.2d 657 (2000). A "legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt." *Joytime Distribs. and Amusement Co.*, 338 S.C. at 640, 528 S.E.2d at 650.

A following section, 15-3-670, provides, in part:

The limitation provided in §§ 15-3-640 through 15-3-660 may not be asserted as a defense by any person in actual possession or control, as owner, tenant, or otherwise, of the improvement at the time the defective or unsafe condition constitutes the proximate cause of the injury or death for which it is proposed to bring an action, in the \*352 event such person in actual possession or control knows, or reasonably should have known, of the defective or unsafe condition. (Emphasis supplied.)

## **I-12. ADMINSTRATIVE PROCEDURE ACT (APA) STATUTE OF LIMITATIONS**

Under the APA, circuit courts may review final decisions of the full commission to determine

if the decision was affected by an error of law in view of the evidence on the whole record. Shealy v. Aiken County, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000).

Although the APA itself contains no specific statute of limitations, a general six-year civil action statute of limitation applies to challenges under the APA. 28 U.S.C. § 2401(a) ("[E]very civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues."); *Sierra Club v. Penfold*, 857 F.2d 1307, 1315 (9th Cir.1988) (holding that § 2401(a) applies to the APA). *Turtle Island Restoration Network v. U.S. Department of Commerce*, 438 F.3d 937 (9th Cir. 2006). Appellant/ Claimant Capone contends that this general six-year limit, not the fourteen or thirty-day provision of the Regulations of South Carolina Workers' Compensation Commission Chapter 67 Article 7 Section 67-701 Requesting Commission Review of the Hearing Commission's Decision, applies to his claims.

Further, Chapter 67 Article 7 Section 67-701, excerpts: "Request for Commission Review, with the Commission's Judicial Department within fourteen days of the day the Commissioner's order received. The fourteen day period is jurisdictional. The Commission will not accept for filing a form 30 that is not postmarked or delivered to the Commission by the fourteenth day from the date of receipt of the Hearing Commission's order", unlawful and invalid due to being an inadequate substitute.

28 U.S.C. § 2401(a) states that "every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues."

Avoid judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. See *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999). 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.

The Court Has A Responsibility To Correct a Void Judgment: The statute of limitations does not apply to a suit in equity to vacate a void judgment. (*Cadenasso v. Bank of Italy*, p. 569; *Estate of Pusey*, 180 Cal. 368,374 [181 P. 648].) This rule holds as to all void judgments. In the other two cases cited, *People v. Massengale* and *In re Sandel*, the courts confirmed the judicial power and responsibility to correct void judgments.

### **I-13.UNDER DISABILITY/ UNSOUNDMIND**

During the proceedings of August 21, 2015, and after any statute of limitations is tolled Appellant was and remain under disability, Unsound mind due to mental illness and Neurocognitive Disorder due to Traumatic Brain Injury under disability, as a Firefighter which is permanently and totally disabled as a result of firefighting service related disabilities in the Columbia (RICHLAND) State of South Carolina, by (4) State agencies as well as federal agencies (see body (See Appellants Media Disc For File Under Seal Titled: TCAPONE 10/10/2018 is "UNREDACTED" TCAPONE 10/10/2018- Pages 1-73, Exhibits 10/10/2018 pages 1-3181Appellant Exhibits AE#1-9 and 2015 REDACTED FILES HARD COPIES Appellant Exhibits-AE#9-14). which include South Carolina Police Retirement System (PORS) as of 3/10/2014; South Carolina Internal Revenue Service as of 11/12/2014; South Carolina Employment And Workforce as of 10/17/2014; South Carolina Education Commission, Social Security Administration Office of Disability Adjudication as of October 21, 2013, and U.S. Department of Education. **Applying SECTION 15-3-40. Exceptions as to persons under disability; SECTION 15-3- 50. Disability must exist when right accrued; SECTION 15-3-**

**60. Effect of two or more disabilities; SECTION 42-15-50. Limitation of time on notice or claim of mentally incompetent person or minor and No person shall avail himself of a disability unless it existed when his right of action accrued.**

The employees who are most likely to repeatedly confront horrifying or terrifying incidents as part of their jobs—such as emergency medical personnel, firefighters, police officers and armed forces members—face heightened risks of developing PTSD. See DSM–V, *supra*, at 276 ("Rates of PTSD are higher among veterans and others whose vocation increases the risk of traumatic exposure (e.g., police, firefighters, emergency medical personnel)."). The fact that horrifying traumatic events may be more common in some occupations than others does not necessarily make them less traumatic or horrifying. The fact that horrifying traumatic events may be more common in some occupations than others does not necessarily make them less traumatic or horrifying. Furthermore, an "unexpected and undesigned" test does not necessarily erect a heightened hurdle for them to obtain an accidental disability pension. Even if a kind of event is not unexpected over the course of a particular worker's career e.g., an explosion in a bomb squad member's career or a fatal shooting in a police officer's career and even if a worker's training is designed to enable the worker to confront such event, the event may still be undesigned and unexpected when it occurs.

Some personal injury victims who sustain serious traumatic brain injury are often considered by law to be of "unsound mind." A person of "unsound mind" is unable to manage his affairs or to understand his legal rights or liabilities. *Sahf v. Lake Havasu City Assn' for the Retarded*, 150 Ariz. 50; 55, 721 P.2d 1177, 1182 (1986); *Allen v. Powell's Int'l, Inc.*, 21 Ariz. App. 269, 270; 518 P.2d 588, 589 (1974).

Additionally, in *Cerami v. City of Rochester School District*, 624 N.E.2d 680 (N.Y. 1993), the claimant filed an untimely worker's compensation claim for a mental breakdown allegedly precipitated by stressful working conditions. The Court of Appeals of New York was required to construe the provision "any person who is mentally incompetent or a minor so long as he has no committee or guardian" to determine if the filing provision was tolled. 624 N.E.2d at 681. This Court has said that words should be given "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (citation omitted).

**II. THE DOCTRINE OF RES JUDICATA DOES NOT BAR FURTHER REVIEW OF A VOID JUDGMENT [ ORDER / DECISION] THE ILLEGAL TAKING AND SCHEME TO DEFRAUD APPELLANT OF BENEFITS ARISING OUT OF HIS**

INJURIES UNDISPUTED BY EVIDENCE THAT ALSO PROVES ARE WORK-RELATED. AS THESE ARE MATTERS IN EQUITY AND THE APPELLATE MAINTAINS HIS COMMON LAW RIGHTS, EXTRAORDINARY CIRCUMSTANCES EXIST.

## **II-A. THE DOCTRINE OF RES JUDICATA IS INAPPLICABLE TO AVOID JUDGEMENT**

Respondents contend that the legally disabled *pro se* Appellant's failure to appeal to the single commissioner McCaskill December 2, 2015 decision and order established the law of the case, resulting in the order becoming final and having preclusive effect. The Appellant disagrees. The Appellant asserts the Motion should be denied, because the single commissioner McCaskill December 2, 2015 decision and order is a Void judgment, because the decision and order exceeded the jurisdiction and was rendered in violation of constitutional protections. The protections (safe guards) include Due Process, Procedural and Substantive Due Process, Equal Protection under the color of law and Fraud Upon the Court, and other actionable violations of law. The Appellant asserts, that based upon and supported by the pleadings and papers on file with

the Court, it should be clear that he was not given a full and fair opportunity to be heard and the Commission should not be allowed to invoke the doctrine of Res Judicata, especially since the Commission and Single Commissioner was complicit in the fraud on the Court and omitting of key evidence and the altering of medical opinions in case that went be for it. See Appellants

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TCAPONE 10/10/2018- Pages 1-73, Exhibits 10/10/2018 pages 1-3181 Appellant Exhibits

AE#1-9 and 2015 REDACTED FILES HARD COPIES Appellant Exhibits-AE#9-14.

The doctrine of res judicata is inapplicable to void judgments. "Obviously a judgment, though final and on the merits, has no binding force and is subject to collateral attack if it is wholly void for a lack of jurisdiction of subject matter or personal jurisdiction, or when it is obtained by extrinsic fraud. (Citations)" (7 Witkins, Cal. Procedure, supra, Judgment, §286. p. 828)

"The doctrine may not be invoked unless the precluded party has had a full and fair opportunity to litigate the issue in the first action." *Zurcher v. Bilton*, 379 S.C. 132, 135, 666 S.E.2d 224, 226 (2008).

Under a standard issue preclusion analysis, "even if all the elements for collateral estoppel are met, when unfairness or injustice results or public policy requires it, courts may refuse to apply it." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 555, 684 S.E.2d 779, 782 (Ct.

App. 2009).

A "final" but void order can have no preclusive effect. "A void judgment [or order] is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It never binds nor bars anyone. (Citation)" (Bennett v. Wilson (1898) 122. Cal. 509. 513-514.

A void judgment does not create any binding obligation. Federal decisions addressing void state court judgments include *Kalb v. Feuerstein* (1940) 308 US 433, 60 S Ct 343, 84 L ed 370.

Where an order/judgment is based on a void order/judgment, *Austin v. Smith*, 312 F 2d 337, 343 (1962); *English v. English*, 72 Ill. App. 3d 736, 393 N.E. 2d 18 (1st Dist. 1979)

Federal judges issued orders permanently barring *Stitch* from filing any papers in federal courts. After Judges Robert Jones and Edward Jellen corruptly seized and started to liquidate *Stitch's* assets, Judge Jones issued an unconstitutional order barring *Stitch* from filing any objection to the seizure and liquidation.

*People v. Sales*, 551 N.E.2d 1359 (Ill.App. 2 Dist. 1990). Res judicata consequences will not be applied to

a void judgment which is one which, from its inception, is a complete nullity and without legal effect

The doctrine of res judicata, however, does not bar collateral attack of a judgment based on extrinsic fraud. *Aaron*, 381 S.C. at 592-93, 674 S.E.2d at 486. Our supreme court reiterated the rule that extrinsic fraud is necessary to set aside a judgment based on fraud in *Chewning v. Ford Motor Company*, 354 S.C. 72, 80, 579 S.E.2d 605, 610 (2003). The court explained the difference between intrinsic and extrinsic fraud:

Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action."

Intrinsic fraud, on the other hand, is fraud which was presented and considered in the trial. It is fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud.

*Id.* at 81, 579 S.E.2d at 610 (quoting *Hilton Head Ctr. of S.C. v. Pub. Serv. Comm'n*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)). Perjury by a party or a witness, use of forged documents, or failure to disclose documents by a party or witness are examples of intrinsic fraud. *Id.*; *Raby Constr., L.L.P. v. Orr*, 358 S.C. 10, 21 n.5, 594 S.E.2d 478, 483 n.5 (2004). However, the

subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud amounting to fraud on the court. *Chewning*, 354 S.C. at 82-84, 579 S.E.2d at 610-11. Any claim of fraud on the court must be accompanied by particularized allegations. *Id.* at 86, 579 S.E.2d at 613.

Appellant asserts the South Carolina Commission Appellant Panel erred in continuing to sustain the denial of the appeal on the basis of res judicata. Independent actions must, if Rule 60(b) is to be

interpreted as a coherent whole, be reserved for cases, as in the present one, of “injustices which, in certain instances, are deemed sufficiently gross to demand a departure” from rigid adherence to the doctrine of *resJrdicoto. Hasel-Atlas Class Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244 (1944).

**III.** THE MARCH 1, 2019 APPELLANT PANEL DECISION AND ORDER OF THE SOUTH CAROLINA WORKERS’ COMPENSATION COMMISSISON FULL COMMISSION S.C. W.C.C. FILE NOS. 1319203, 1322451, 1420487 APPELLATE PANEL REVIEW HELD IN COLUMBIA, SOUTH CAROLINA ON OCTOBER 22, 2018 AND VOLUNTARILY REMANDED/ REVESTMENT SEPTEMBER 5, 2018 FROM THE SOUTH CAROLINA COURT OF APPEALS IS A VOID JUDGMENT DECISION AND ORDER AND MUST BE SET ASIDE, BECAUSE IT VIOLATED THE APPELLANTS/CLAIMANTS RIGHT TO DUE PROCESS, PROCEDURAL DUE PROCESS, SUBSTANTIVE JUSTICE AND EQUAL PROTECTION UNDER THE COLOR OF LAW AND OTHER VIOLATIONS OF LAW AND THE APA.

#### **III-A. DOCTRINE OF REVESTMENT\***

The Doctrine of Revestment must apply, to the corrupted Respondents , their Attorney’s and the South Carolina Workers’ Compensation Commission Appellate Panel/Full Commission went back with illegal orders and decision (It was already a Void Decision and Order due to December 2, 2015 VOID Decision and Order) and voluntarily remanded the original appeal of their illegal Interlocutory Decision and Order to cover up Not providing Appellant/ Claimant Due process, only to yet again deny him Constitutional safe-guards i.e and Due Process, Procedural and Substantive Due Process, Substantive Justice and Equal Protection Under the Color of law, No Opportunity to be Heard and APA and was Fraud Upon the Court, perpetrated on or about September 20, 2018 from the South Carolina Court of Appeals October 5, 2018 and said a hearing was to be held October 22, 2018, the decision order was not made until March 1, 2019. Additional sustaining ground, under the APA to voluntarily remand the order and decision

and not grapple with any of the non-frivolous and substantial issues, i.e. that its orders and decision was void or those brought to the forefront by Appellant *pro se* Capone and supported by undisputed and "Substantial Evidence" in the whole record before the agency and the South Carolina Court of Appeals knew, was arbitrary on its face, capricious, or an abuse of discretion and violated fundamental Rights, and Due Process, Procedural and Substantive Due Process, Substantive Justice and Equal Protection Under the Color of law, No Opportunity to be Heard, federal and state law.

The Remand was frivolous, violates "good faith or conscience" and the inequitable conduct was motivated solely by a desire of the South Carolina Workers' Compensation Commission to avoid judicial review of the challenge interlocutory order and decision. Therein jurisdiction was obtained by Deceit and Trickery and was again Fraud Upon the Court and again violated Appellants/ Claimants Due Process, Procedural and Substantive Due Process, Substantive Justice and Equal Protection Under the Color of law, No Opportunity to be Heard. See also Macktal v. Chao, 286 F.3d 822, 826 (5th Cir. 2002) ("An agency may not reconsider its own decision if to do so would be arbitrary, capricious, or an abuse of discretion."). Further, 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, SDNY 1994 158 F. R. D. 278.

"Void judgment is one entered by court that lacks the inherent power to make or enter the particular order involved, and it may be attacked at any time, either directly or collaterally; such a judgment would be a nullity." People v. Rolland 581 N.E.2d 907, (Ill.App. 4 Dist. 1991).

Nevertheless, an agency's voluntary request for remand may be denied under limited circumstances. For example, "[a] remand may be refused if the agency's request is frivolous or in bad faith." Id. (citing Lutheran Church-Mo. Synod v. FCC, 141 F.3d 344, 349 (D.C. Cir. 1998)). Moreover, a court may decline to grant a remand if it is clear that a remand would be futile. E.g., NLRB v. Am. Geri-Care, Inc., 697 F.2d 56, 64 (2d Cir. 1982) (upholding an administrative decision where "reversal and remand would be an idle and useless formality . . . because there is not the slightest doubt that the [agency] would simply reaffirm its order" (citation and internal quotation marks omitted)); see also A.L. Pharma, Inc. v. Shalala, 62 F.3d 1484, 1489 (D.C. Cir. 1995) (declining to remand where "[t]here is not the slightest uncertainty as to the outcome of a[n] [agency] proceeding" (alterations in original) (quoting NLRB v. Wyman-Gordon Co., 394 U.S. 759, 766 n.6 (1969))).

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Revestment applies as in this case where the parties (1) actively participate without objection (2) in further proceedings that are inconsistent with the merits of the prior judgment. *Id A swith the voluntary remand (Revestment) from the SC Court ofAppeals to the full commfssion Oct 5, 2018 that was not decided until March 6, 2019, about 6 months later.*

**IV. THE NOVEMBER 2, 2018 SOUTH CAROLINA COURT OF APPEALS ORDER APPELLATE CASE NO. 2018-001364 IS A VOID JUDGMENT DECISION AND ORDER AND MUST BE SET ASIDE. THIS APPEAL WAS DISMISSED ON SEPTEMBER 20, 2018 AND THE ORDER VIOLATED THE PETIONER/ APPELLANTS/CLAIMANTS FUNDAMENTAL RIGHT TO PETITION AND ABRIDGED CONSTITUTIONAL RIGHTS BY DENYING HIM DUE PROCESS, PROCEDURAL DUE PROCESS, SUBSTANTIVE JUSTICE AND EQUAL PROTECTION UNDER THE COLOR OF LAW AND OTHER VIOLATIONS OF LAW AND THE APA.**

The Court has a Dual role as the Appellate Court and as the Appellant Tribunal analog to the District.

When a plaintiff brings claims under the APA, the reviewing court “sits as an appellate tribunal.” *am. bioscience, inc. v. thompson*, 269 f.3d 1077, 1083 (d.c. cir. 2001),

To be able to Petition the Court is a Fundamental Right Protected by the South Carolina Constriction, its denial abridged Appellants/Claimants Constitutional rights. The Court did not advise by any notification of the right to petition or timeline to respond and the procedure is unconstitutional, no rights are lost when no notice is given and the Order/Decision/Remitter never became final.

The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996).

Void judgment is one where court lacked personal or subject matter jurisdiction or entry of order violated due process, U.S.C.A. Const. Amend. 5 - *Triad Energy Corp. v. McNell* 110 F.R.D. 382 (S.D.N.Y. 1986). Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A., U.S.C.A. Const. Amend. 5 - *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985)

§ 2. Religious freedom; freedom of speech; right of assembly and petition. The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government or any department thereof for a redress of grievances. (1970 (56) 2684; 1971 (57) 315.)

### **APPELLANTS REQUEST MANDATORY JUDICIAL NOTICE**

**PLEASE TAKE NOTICE**, In Propria Persona, on my own behalf, in person, Plaintiff Terry H Capone (“Capone”), pursuant to the FED R Civ P.201 (c) (2), (d), herby respectfully move this court to Take Mandatory Judicial Notice of the following:

**FURTHER NOTICE:** 2020-000641 Time Line: 04/22/2020 –Defendants : Adverse Action/Unlawful Action Filing On or about: May 20, 2020.

Correct link: <https://ctrack.sccourts.org/public/caseView.do?csIID=72069>

**FURTHER NOTICE:** 2019-00369 Time Line : 3/07-2019- Defendants: Adverse Action/Unlawful Action Filing on or about : May 08, 2019 - May 5, 2020.  
Correct Link: <https://ctrack.sccourts.org/public/caseView.do?csIID=69410>

**FURTHER NOTICE:** 2018-001364: Time Line 07/23/2018- Defendants : Adverse Action/Unlawful Action Filing On or about August 01, 2018  
Correct Link: <https://ctrack.sccourts.org/public/caseView.do?csIID=67942>

**FURTHER NOTICE:** See also *Macktal v. Chao*, 286 F.3d 822, 826 (5th Cir. 2002) ("An agency may not reconsider its own decision if to do so would be arbitrary, capricious, or an abuse of discretion.").

**FURTHER NOTICE:** The primary purpose of the workmen's compensation Act is to protect the workman who actually does the work. *Smith v. Fulmer* (S.C.19410 198 S.C. 91, 15 S.E.2d 681. Workers' Compensation □11

**FURTHER NOTICE:** While the Worker's Compensation Act is to be liberally construed to the end that the benefits thereof may not be denied upon technical, narrow and strict interpretation, words should be given their established legal meaning or the meaning which the legislature intended; nor is the Court justified in so construing it as to do violence to a specific requirement of the Act. *Brown v. Martin* (S.C.1943) 203 S.C. 84, 26 S.E.2d 317. Workers' Compensation □53

**FURTHER NOTICE:** Any reasonable doubt as to the construction of the Workers' Compensation Act will be resolved in favor of coverage.

**FURTHER NOTICE:** "Stopping payment on temporary award.-The rule and Code 1962 § 72-352 contemplate that if the insurance carrier desires to stop further payments of compensation under a temporary award, application should be made to the commission for permission to do so and the employee should receive notice of the application. *Halks v Rust Engineering Co.* (1946) 208 SC 39, 36 SE2d 852. Workers Compensation □2013."

**FURTHER NOTICE:** Exclusivity provision of Workers' Compensation Act Does not involve subject matter jurisdiction. *Sabb v. South Carolina State University* (S.C. 2002) 350 S.C. 416, 567 S.E.2d 231. Workers' Compensation □2084.

**FURTHER NOTICE:** The Court in *Ortiz v. Principi*, 274 F.3d 1361 (Fed. Cir. 2001) explained: Whether the positive and negative evidence renders a decision "too close to call" can perhaps be best understood by analogizing to Sandlot baseball's "tie goes to the runner."

**CONCLUSION: The Prestige.**

1. In the case sub judice, the 'cold' record proves Mr. Capone sustained an "injury by accident arising out of and in the course of his employment with City of Columbia. Succinctly put, there is no evidence to the contrary. Therefore, the Full Commission abused its discretion, continued in its complicity to perpetrate Fraud Upon the Court by voluntarily remanding (revested) in the case as it set before the South Carolina Court of Appeals and jurisdiction was gained through trickery, Fraud Upon The Court, violated Constitutional right to Due process, procedural Due process and Equal protection under the color of law, and Substantive Justice and APA.

2. Commission continuously has violated the Appellants right to due process, especially procedural due process of the fifth and fourteenth amendments were grossly violated and the APA for neutral decision making and was this in the administration of justice or where their actions arbitrary denial/ devaluation of his South Carolina Workers Compensation benefits in which he and his family have a substantial property interest.

3. Failed to address any of the Appellants non frivolous claims and properly adjudicate his Motion to take Judicial Notice that was 'mandatory' violated Constitutional right to Due process, procedural Due process and Equal protection under the color of law, and Substantive Justice and APA.

4. This was a manifest injustice by the Commission which erred in affirming the Single Commission's unlawful denial/ devaluation of his South Carolina Workers' Compensation benefits, in which Capone and The Capone family have a Substantial Property Interest. Moreover, he is entitled to compensation because the work-related accident accelerated or aggravated his pre-existing post traumatic stress disorder (PTSD), now diagnosed as an occupational disease and injury to his bilateral hands/ wrist and toes, vertigo, headaches that include evidence of environmental exposure to toxic mold (fungus) that was fraudulently concealed. Accordingly, we request a reversal and for correction of this Manifested Injustice error of law that violated Constitutional rights to Due process, procedural Due process and Equal protection under the color of law, and Substantive Justice and APA.

#### **PRAYER OF RELIEF**

For the reasons stated in the Appellants Initial Brief and herein, set aside the Void Judgment and Summary Judgment is appropriate means to end the controversy under the APA Standard of Relief. This Court has and continues to maintain jurisdiction and the A claim is "ripe" as facts of the case have matured into an existing substantial controversy warranting the judicial intervention of this Court .

Appellants'/ Claimants' arguments regarding violations of various Constitutional provisions

where never Abandoned, and because God never meant for him to suffer, and it would continue to deprive him of fundamental and substantial rights are affected. Further, the March 1, 2019 Decision and Orders applying *res judicata* and affirming the denial of additional benefits must be set-aside /reversed and is void, the December 2, 2015 Decision and Order of the single commissioner is a void judgment [Decision and order] and must be set-aside/ reversed, being worthless in itself, all proceedings founded upon it are equally worthless, a Void Order and Decision can have no preclusive effect and relief is not discretionary, it is mandatory.

Appellant /Claimant respectfully request the following:

1. This Commission to vacate the voided Decision RE: Files 1420487, 1319203, 1322451 made and certified on December 2, 2015.
2. Order Defendants to obtain an accounting and reimburse Mrs. Demetria T. Capone (spouse) any and all monthly payments made to maintain Healthcare/Dental/Vision/Prescription coverage benefits in relation to spouse Terry H. Capone (Claimant) from 3/31/2014 to present.
3. Order Defendants to obtain an accounting and reimburse BlueCross BlueShield Federal Employee Program and affiliates, Member Name: DEMETRIA T CAPONE MEMBER ID: R58879952 Enrollment Code: 105(PPO) Effective Date: 04/30/2017 to present. Customer Service 1-800-444-0025
4. Order Defendants to obtain and accounting reimburse State of SC OPEBA State Health Plan PPO and affiliates, BlueCross BlueShield of South Carolina State Claims Processing Unit. PO Box 100605 Columbia, SC 29260. Customer Service. In Columbia 803.736.1576. Effective Date: 3/31/2014 to 1/1/2018
5. Pay the Appellate/ Claimant based on disability and loss that reaches into the "future earning capacity" the correct Compensation rate  $\$2611.20 \times .666 =$  his stated Average Weekly Wage (AWW)  $\$1739.06 \times 500$  weeks totaling  $\$869, 530.00$ , and all compensation, due with interest and immediately pay all payment up to date.
6. Order Defendants to reimburse Claimant Terry H Capone all out of pockets paid from 10/21/2013, for health/dental/vision/prescription drugs and co-payments associated with medical/dental/vision/test/labs associated with visits from 10/21/2013- present.
7. Order Defendants to obtain/issue and pay for coverage for Claimant Terry H Capone through

BlueCross Blue Shield and affiliates for HEALTH/DENTAL/VISION/PRESCRIPTIONS  
DRUG PLAN for life.

8. The Appellant/Claimant is requesting Interest, Penalties and Punitive damages of amount to be determined partly based on monies previously withheld.

9. The Appellant/ Claimant request to be paid past the Schedule.

10. The Claimant is requesting the Commission make a finding of Total and Permanent Disability, due to Post Traumatic Stress Disorder an occupational disease, Major Depression, Anxiety, Irritable Bowel Syndrome with Diarrhea (IBS-D), Migraine Headaches, and Carpal Tunnel, Bilateral Foot Fungus, Bi-lateral Foot pain, Brain damage to include a Traumatic Brain Injury an aggravation thereof .

July 10, 2020

By: 

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Pro Per, Appellant