

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Appellate Case No. 2020-001133
Associated Case No. 2019-000369/ 2018-001364
W.C.C. File Nos. 1322789, 1423445, 1503655, 1519702, 1719990

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

v.

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

**PETITIONERS' REPLY TO RESPONDENTS' RETURN TO PETITION FOR WRIT OF
CETIORARI OF A VOID JUDGMENT /DECISION PRODUCED BY FRAUD ON THE
COURT AND OTHER VIOLATIONS OF LAW UNDER THE APA.**

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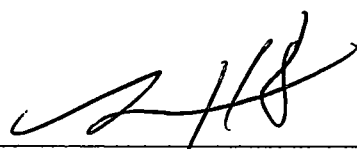
By: 
Mr. Terry H Capone
130 Summerlea Drive
Columbia, SC 29203
(803) 622-6578
Email: tcapone@liberty.edu
PETITIONER, PRO PER

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii-xxiii

STATEMENT OF THE CASE.....1

ARGUMENT..... 6

I. THIS COURT SHOULD GRANT APPELLANT’S PETITION FOR *CERTIORARI* BECAUSE THE COURT OF APPEALS INCORRECTLY DISMISSED THE APPEAL AS INTERLOCUTORY AS THE JUDGEMENT IS VOID BECAUSE 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. 4. **CITY OF COLUMBIA FIRE CAPTAIN JAMES “WOODY” GOODMAN** THE PETIONER SUBSTANTIALLY COMPLIED WITH § 42-17-50 WHERE HE WROTE THE WORKERS’ COMPENSATION COMMISSION A TIMELY LETTER EXPRESSING HIS DESIRE TO APPEAL.6

CONCLUSION.....8

RECEIVED
OCT 29 2020
S.C. SUPREME COURT

TABLE OF AUTHORITIES

Fritts v. Kruh, Supreme Court of Michigan, 92 N. W.2d 604, 364 Mich 97 (10/13/58).....	
Am. Bioscience, Inc v. thompson, 269 f.3d 1077, 1083 (d.c.cir.2001).....	
Haines v, Kramer, 404 U.S., 519, 520, 92 S Ct, 594, 30L., Ed 2d 652(1972).....	
<i>Cushman v. Shinseki</i> 576, F.3d 1290 (2009).....	
Town of Castle Rock, Colo. V. Gonzales, 545 U.S. 748, 756 (2005).....	
Bulloch v United States, 763 F. 2d 1115, 1121 (10 th Cir 1985.....	
National Helicopter Corp, of am. V, City of New York, 137 F. 3d 81, 88 (2d Cir. 1989)	
Brady v, U.S., 397 U.S.742, 748.....	
Keystone Driller Co. v. Gen. Excavator Co., 290 U.S. 240, 244-45 (1953).....	
<i>Wilson v. Landstrom</i> e, 281 S.C. 260,315 S.E.2d 130(Ct. 1984).....	
Hasel-Atlas Glass Co v. Hartford-Empire Co., 322 U.S. 238, 244 (1944).....	
Macktal v. Chao, 286 F. 3d 822, 826 (5 th Cir. 2002).....	
Ortiz v. Principi, 274 F, 3d 1361 (Fed ,Cir.2001).....	

Cases

<i>Goodman v. City of Columbia</i> , 318 S.C. 488, 458 S.E.2d 531 (S.C. 1995).....	
<i>Frame v. Resort Servs., Inc.</i> ,357 S.C.520, 528, 593 S.E.2d 491, 495 (ct App. 2004).....	
<i>Powell v. Vulcan Materials, Co.</i> , 299 S.C.325, 384 S.E.2d 725 (1989).....	
<i>Sellers v. Pinedale Residential Center</i> (S.C.App. 2002,350 S.C.183, 564 S.E.2d 694.....	
<i>Orszula v. Orszula</i> , 292 S.C. 264, 356 S.E. (2d) 114 (1987).....	
Eg. Grant v. Grant Textiles, 372 S.C. 196, 201, 641 S.E.2d 869, 872 (2007).....	
<i>Moore v. Family Serv, of Charleston City.</i> , 269 S.C. 275, 281, 237 S.E.2d 84, 887 (1977).....	
<i>Grannis v. Ordean</i> , 234 U.S. 385, 394 (1914)	

S.C. Dep't of Soc. Servs. v. Holden, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995).....

Halbach v. Halbach, 259 Wis. 329, 331, 48 N.W.2d 617(1951).....

Hogan v. Cone Mills Corp., 315 N.C. 127, 337 S.E.2d 477 (1985).....

Carter v. Penney Tire and Recapping Co., 261 S.C. 341, 200 S.E. (2d) 64 (1973).....

Thomas& Howard Co. v. T.W. Graham and Co., 318 S.C. 286, 291,
457 S.E.2d 340,343 (1995).

Raby Const.,L.L.P. v. Orr, 358 S.C. 10, 18, 594 S.E.2d 478, 482 (2004)

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).....

Spivey ex rel. Spivey v. Carolina Crawler, 367 S.C. 154, 159, 624
S.E.2d 435, 437 (Ct. App. 2005).....

Shealy v. Aiken County, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000)

Tyron Fed. Sav. & Loan Ass'n v. Phelps, 307 S.C. 361, 362, 415 S.E.2d 397,398(1992)

McDaniel v. U.S. Fid. & Guar. Co., 324 S.C.639, 644, 478 S.E.2d 868,871 (Ct.App. 1996).....

Constitutional and Statutory Provisions

U.S. Const Art amend V.....

U.S. Const Art VI cl2

U.S. Const. Art. X.....

U.S. Const Art XIV.....

S.C. Const. Art I. § 2.....

S.C. Const. Art I. § 3.....

S.C. Const. Art I. § 9.....

S.C. Const. Art I. § 13.....

S.C. Const. Art I. § 22.....

S.C. Const. Art. X Sec 3.....

Title 12 Art 7 12-4-720.....

S.C. Code Ann. § 15-3-40.....

S.C. Code Ann. § 15-3-50.....

S.C. Code Ann § 15-3-60.....

S.C. Code Ann. § 15-3-640.....passim

S.C. Code Ann § 15-3-670.....passim

S.C. Code Ann. § 59-110-110.....

S.C. Code Ann § 1-23-380.....

SC WCC 67-503.....

SC WCC 67-504.....

SC WCC 67-707.....

“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 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 of juris." *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 Fininshing 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 jury 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' Compensation 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), SCRCPP, 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.²⁰¹ In other words, “[s]ince attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court.”²⁰² 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.²⁰³

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 (1st 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 (2d Cir. 1989) (“fraud which seriously affects the integrity of the normal process of adjudication”); *Rozier v. Ford Motor Co.*, 573 F.2d 1332,

1338 (5th 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 (7th 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 (8th Cir. 1998) (“egregious misconduct directed to the court itself”); *Dixon v. Commissioner*, No. 00-70858, 2003 U.S. App. LEXIS 4831, at *11-12 (9th Cir. Mar. 18, 2003), amending 316 F.3d 1041 (9th 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, centiorari 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 prohibitum, 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, ...⁹ 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. Dov. 3, 1995).

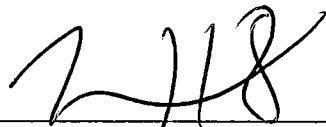
STATEMENT OF THE CASE

COMES NOW Appellant, Terry H Capone Under the Administrative Procedure Act, hereby Reply's In Opposition to Respondents Return To Petition For Writ of Certiorari of Under the APA in the above referenced claim that lies ay the heart of a **Void Decision/ Judgment**. 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.). This motion is based on the Appellants Amended Designation of Matter with Exhibits last filed with this Court 9/14/2020; the accompanying memorandum of points And authorities, the Declaration of Terry H. Capone and exhibits thereto, filed herewith as well as upon such further briefs, argument or other information as may be submitted to the Court for review.

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.

"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).

Dated: October 29, 2020

By: 
Mr. Terry H Capone
Fire Battalion Chief-Retired
130 Summerlea Drive
Columbia, South Carolina 29203
Email: tcapone@liberty.edu
(803) 622- 6578

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Appellant under the Administrative Procedure Act (APA) request that the Court GRANT This Petition Due to the SC Carolina Workers' Compensation Commissions' Revestment in the above referenced claims, Fraud On The Court and Other Violations of Law to include Due process.

What is REVEST: To vest again. A seisin is said to revest, where it is acquired a second time by the party out of whom it has been divested. 1 *Rop. Husb. & Wife*, 353. It is opposed to "divest. Black's Law Dictionary 2nd Edition p. 1035

SWORN DECLARATION

STATE OF SOUTH CAROLINA §

COUNTY OF RICHLAND §

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

1. Respondents previously filed a motion to dismiss the Appellants appeal as untimely, after careful consideration, this Court denied the motion, and was filed June 27, 2019
See, Exhibit #1.

In support of the above the Appellant continues to assert the South Carolina Workers Compensation Commission December 2, 2015 decision / Order and all subsequent are void, procured by Fraud Upon the Court, other violations of law under the APAP, to include right to due process of law.

2. I was never informed by the South Carolina Workers' Compensation Commission of the process or procedure my employer/carrier needed to follow before stopping compensation, and was due to Fraud On the Court/Tribunal and denial of Procedural Due Process and Equal Protection under the color of law.
3. 10/29/2015 My Email that I not only wanted to appeal ,but that I thought my case was admitted. I believe I "substantially complied" with giving notice of appeal at that time. The Commission and Attorney for the City was communicating with me by email in an informal fashion. **See, Exhibit # 2.**

4. This Petition/ Appeal fits squarely into the case of Cit of Columbia Fire Captain James "Woody" Goodman case: The petitioner substantially complied with § 42-17-50 where he wrote the Workers' Compensation Commission a timely letter expressing his desire to appeal. Goodman v. City of Columbia 318 S.C. 488 (S.C. 1995) 458 S.E.2d 531. **See, Exhibit #3.**
5. The failure of The Employer/Carrier to provide payment prior to the 79th day of injury in South Carolina Workers Compensation procedures where a denial of due process
6. The Illegal stopping of the South Carolina Workers Compensation benefits without proper procedures and service was an illegal taking and a denial of due process
7. 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 NEVER COMPLETED! See, Exhibits # 4 and #5**
8. Department of Veterans Affairs determined Appellant Terry Capone became totally and permanently a disabled Veteran due to service connected disabilities in 2019 and back dated effective date to: **February 03, 2014. See, Exhibit #6**

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.

4

Even if employer could have stopped workers' compensation claimant's temporary total disability benefits after claimant was cleared by orthopedic surgeon to return to work without restrictions, employer failed to follow procedures for stopping benefits; employer did not file and serve Form 15 for at least 18 days after compensation was terminated, and employer failed to attach supporting documentation to form. Martin v. Rapid Plumbing (S.C. App. 2006) 631 S.E.2d 547, 369 S.C.278, rehearing denied. Workers' Compensation → 2021 p.439

Stopping payment on temporary award-This 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 application. *Halks v. Rust Engineering Co.* (1946) 208 SC 39, 36 SE2d 852. *Workers' Compensation* ↻2013. P. 439

The Supreme Court stated in *Abbott Laboratories v. Gardner*, 387 U.S. 136, 87 S. Ct. 1507, 18 L. Ed. 2d 861 (1967), that "a survey of our cases shows that judicial review of a final agency action by an aggrieved person will not be cut off unless there is a persuasive reason to believe that such was the purpose of Congress." Id. at 140, 87 S. Ct. at 1511.

As the Supreme Court told us in *Goldberg v. Kelly* 397 U.S. 254(1970, in almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.

"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).

Goodman v. City of Columbia 318 S.C. 488 (S.C. 1995) 458 S.E.2d 531
Fire Captain James "Woody" Goodman (White) retired after 25 years of service as a Fire Captain with the City of Columbia Fire Department. Files a worker's comp claim against City of Columbia (the City) claiming an onset of severe mental stress and depression caused by job stress. Who wrote a letter of his desire to appeal, finding his letter constituted substantial compliance S.C. Code Ann 42-17-50."..."The letter unquestionably gave notice of intent to appeal". [I guess White Privilege]?

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

5

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.

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).

II. ARGUMENT

1. THIS COURT SHOULD GRANT APPELLANT'S PETITION FOR *CERTIORARI* BECAUSE THE COURT OF APPEALS INCORRECTLY DISMISSED THE APPEAL AS INTERLOCUTORY AS THE JUDGEMENT IS VOID BECAUSE 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. 4. FIRE CAPTAIN JAMES W. GOODMAN (CITY OF COLUMBIA) SUBSTANTIALLY COMPLIED WITH §42-17-50 WHERE HE WROTE THE WORKERS' COMPENSATION COMMISSION A TIMELY LETTER EXPRESSING HIS DESIRE TO APPEAL.

The Due Process Clause of the Fourteenth Amendment provides “nor shall any State deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. The Supreme Court’s interpretation of this clause explicates that the amendment provides two different kinds of constitutional protection: procedural due process and substantive due process. *Cf. Zinermon v. Burch*, 494 U.S. 113, 125, 110 S. Ct. 975, 983, 108 L. Ed. 2d 100 (1990).

The substantive component of the Due Process Clause protects those rights that are “fundamental,” that is, rights that are “implicit in the concept of ordered liberty,” *Palko v. Connecticut*, 302 U.S. 319, 325, 58 S. Ct. 149, 152, 82 L. Ed. 288 (1937). [] The Supreme Court has deemed that most—but not all—of the rights enumerated in the Bill of Rights are fundamental; certain unenumerated rights (for instance, the penumbral right of privacy, see *Planned Parenthood v. Casey*, 505 U.S. 833, ----, 112 S. Ct. 2791, 2807, 120 L. Ed. 2d 674 (1992)) also merit protection. It is in this framework that fundamental rights are incorporated against the states. [] A finding that a right merits substantive due process protection means that the right is protected “against ‘certain government actions regardless of the fairness of the procedures used to implement them.’” *Collins v. City of Harker Heights*, 503 U.S. 115, ----, 112 S. Ct. 1061, 1068, 117 L. Ed. 2d 261 (1992) (quoting *Daniels v. Williams*, 474 U.S. 327, 331, 106 S. Ct. 662, 665, 88 L. Ed. 2d 662 (1986))

The processes offered by the state are inadequate remedies in regards to violation of my federal rights. As a disabled Firefighter in the line of duty My South Carolina Workers Compensation Benefits are a fundamental Right and any benefits as a disabled fire fighter or disabled Veteran under the South Carolina Constitution.

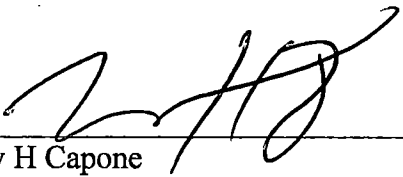
**III. CONCLUSION
PRAYER FOR RELIEF**

For the forgoing reasons, due to the “extraordinary circumstances” , actual facts and all evidence before this Court Petitioner/ Appellant respectfully urget the Court to GRANT Petitioner’s Petition for *Writ of Certiorari* of this Void Judgment/Decision Under the APA for Fraud Upon the Court Denial of Due process, Procedural Due process, Substantive Due Process and Equal protection under the color of Law .

Executed on this date October 29, 2020

Dated: October 29, 2020

Enclosures Exhibits #1-6 on file with court in this matter.

By: 

Mr. Terry H Capone
Fire Battalion Chief-Retired
130 Summerlea Drive
Columbia, South Carolina 29203
Email: tcapone@liberty.edu
(803) 622- 6578