

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Appellate Case No. 2020-000641
W.C.C. File Nos. 1322789, 1719990, 1423445, 1519702, 1503655

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

v.

City of Columbia, Employer, and

Companion Third Party Administrator, LLC, Carrier, ...Respondents.

**REPLY IN SUPPORT OF APPELLANT'S PETITION FOR REHEARING - FRAUD ON
THE COURT, CRIME FRAUD EXCEPTION, "ACTIVE CONCEALMENT FOR
FRAUD IN REAL PROPERTY" 15-3-670 (C) (1) (2), VOID JUDGMENT AND OTHERS**

I. INTRODUCTION

Appellant Terry H Capone, Employee ("Appellant") submits this Reply In Support of Appellant's Petition For Rehearing and In Direct Opposition to Respondents Return In Opposition To Appellants' Petition For Rehearing due to their Fraud On The Court, Crime Fraud Exception, "Active Concealment For Fraud In Real Property" 15-3-670 (c) (1) (2), Void Decision/ Order And Others Constitutional violations affecting substantial rights already brought to the attention of this court in See Exhibits# 1- 12 Appellants Return to Motion to Dismiss Dated May 13, 2019, in the associated case# 2019-000369 SC WCC #1322451, 1319203, 1420487 a Void Decision /Order. Appellants' opposition is based upon and supported by the

pleadings and papers on file with the Court, and for the reasons stated in greater detail, below. In addition because the above referenced claims central to this petition “substantially” relied upon and was founded upon the January 29, 2020 South Carolina Workers Compensation Single Commissioner Taylor Decision/ Order it to is a Void Decision.

The January 23, 2019 Remittitur See Exhibits# 1-12 Appellate Case No, 2018-2190 SC W.C.C# 1322789, 1719990, 1423445, 1519702 and 1503655 submitted December 11, 2018 to this very Court; “Claimants Motion to Quash is denied as there are open claims regarding benefits requested under the Act. Discovery is not complete until a final order is served and the claims is/are closed and Claimants Motion to Reconsider “has been reviewed and is denied. A final decision and order on the merits of claimant’s form 50 Request in the above referenced claims is still pending before the undersigned”. The Court violated the Petitioners/ Appellants Constitutional rights to due process, Procedural due process, Substantive Justice and Equal protection under the color of law and this Court previously denied appeal in this matter, and without advising him of his right to petition a Constitutional and fundamental right; no rights are lost. The Appeal never became final. See Exhibit 1-4 attached herewith, incorporated herein.

II. LEGAL STANDARD

South Carolina Court of Appeals analogue to the District Court, when the District Court reviews a final agency action under the APA, it also "sits as an appellate tribunal." PPG Indus., Inc. v. United States, 52 F.3d 363, 365 (D.C. Cir. 1995) (quoting Marshall Cty. Health Care Auth. v. Shalala, 988 F.2d 1221, 1225 (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). "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. Lorian, 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.").

However late this objection has been made, or may be made in any cause, in an inferior or appellate court of the United States, it must be considered and decided, before any court can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction. Jurisdiction is the power to hear and determine the subject-matter in controversy between parties to a suit, to adjudicate or exercise any judicial power over them; the question is, whether on the case before a court, their actions is judicial or extra-judicial; with or without the authority or of law, to render a judgment or decree upon the rights of the litigant parties. If the law confers the power to render a judgment or decree, then the court has jurisdiction; what shall be adjudged or adjudged or decreed between the parties, and with which is the right of the case, is judicial action, by hearing and determining it. 6 *Peters*, 709; 4 *Russell*, 415; 3 *Peters*, 203-7.

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.").

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.

Relied upon by the appellants here is a quotation from 73 C.J.S., Public Administrative Bodies and Procedure, § 41, to the effect that the rule requiring the exhaustion of administrative remedies is an inflexible one. The text goes on to say, though, "However, in some jurisdictions it is a rule of policy, convenience, and discretion rather than of law, and is not jurisdictional." The decisions of this Court have committed us to the quoted view. *Pullman Company v. Public Service Commission*, 234 S.C. 365, 108 S.E.2d 571; *Ex parte Allstate Insurance Company*, 248 S.C. 550, 151 S.E.2d 849. We quote the following from the last cited case:

"While we have, where the question was involved, rather consistently applied the doctrine of exhaustion of administrative remedies to avoid interference with the orderly performance of administrative functions, we have recognized that it is not an invariable rule. For example, in *Pullman Co. v. Public Service Commission*, 234 S.C. 365, 108 S.E.2d 571, the application of the doctrine was approved as a 'proper exercise of the discretion of the court.' *The adoption of the view that the rule is discretionary in nature is a recognition that situations can exist where failure to exhaust administrative remedies may be excused.*" (Emphasis added.)

MEMORANDUM OF LAW

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, Plaintiff states as follows:

In the instant case Single Commissioner Aisha Taylor Decision/ Order filed January 29, 2020 is Void. Although the records were left open the Single Commissioner disregarded the Appellants evidence, affirmative defenses and counter claims. Failed to give an impartial review. Allowed the Defendants to write the order/ decision allowing them to additional input after the hearing instead of the Commission Writing their own order, the procedure is unconstitutional and does not even give the appearance of impartiality.

Petitioner asserts, the Single Commissioner Taylor claims of res judicata should not apply here, neither the Single Commissioner Wilkerson Order/Decision dated March 27, 2018 , as they are all based and premised on the Void December 2, 2015 Order/Decision of Gene McCaskill, the Appellant never received a fair hearing and they all denied him Procedural due Process and denied the following:

1. No unbiased decision Maker
2. No Substantial opportunity to be heard(allowing the Defendant to write orders/Decision for the agency is extra- judicial and unconstitutional and a denial of procedural due process and right to be heard in a meaningful way.
3. Right to present evidence that is counted and referenced in the decision
4. Written decision based on the records provided, supported by fact and reason
5. The Appellant /Claimant was denied the right to “discover” the other party’s evidence by the Commissioner squashing his subpoenas denied him procedural due process
6. Single Commissioner Taylor took 18 months to make a Decision/ Order only to not give consideration to non –frivolous issues, affirmative defenses and evidence.

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.

Administrative law requires that an agency's decision set forth its reasons for decision, and failure to do so render the agency's decision arbitrary and capricious. *Remmie v. Mabus*, 898 F. Supp. 2d 108, 119 (D.D.C. 2012) (*Tourus Records, Inc. v. Drug Enforcement Admin.*, 259 F.3d 731, 737 (D.C. Cir. 2001)).

FRAUD UPON THE COURT/TRIBUNAL

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 Sheryl 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 and Justice 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).

III. ADDITIONAL ARGUMENTS

A. Exceptions to Interlocutory are those affecting Substantial Rights, as in this case and they are appealable

Nevertheless, an appeal from an interlocutory order may be proper when the order from which appeal is taken affects a substantial right of the appellant. N.C. Gen. Stat. .. 7A-27(d) (1999); 1-277 (1999). This exception requires that the interlocutory order being appealed affect a right of the appellant which is a substantial one, the deprivation of which will potentially result in injury to the appellant if the order is not reviewed before final judgment. *Travco Hotels v. Piedmont Natural Gas Co.*, 332 N.C. 288, 420 S.E.2d 426 (1992); *see Plummer v. Kearney*, 108 N.C. App. 310, 423 S.E.2d 526 (1992) (applying substantial right analysis to workers' compensation case). Whether an order affects a substantial right is a case-by-case determination made by weighing the specific facts and procedural context. *Id.* “The party desiring an immediate appeal of an interlocutory order bears the burden of showing that such appeal is necessary to prevent loss of a substantial right.” *Mills Pointe Homeowner's Association, Inc. v. Whitmire*, 146 N.C. App. 297, 299, 551 S.E.2d 924, 926 (2001) (citing *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994)). In *Jeffreys*, this Court stated that “[i]t is not the duty of this Court to construct arguments for or find support for appellant's right to appeal from an interlocutory order.” 115

N.C. App. at 380, 444 S.E.2d at 254. Plaintiff has shown, in his brief, no substantial right which may be lost if the Commission's opinion and award is not reviewed before a final decision.

This Act was fashioned upon the North Carolina Workmen's Compensation Act and the opinion of the Supreme Court of North Carolina construing such Act are entitled to great weight. *Flemon v Dickett-Keowee, Inc.* (1972) 259 SC 99, 190 SE2d 751. *Carter v Penney Tire & Recapping Co.* (1973) 261 SC 341, 200 SE2d 64.

B. 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)

B1. Mr. Capone has Constitutional Property Right and Liberty interest in his South Carolina Workers Compensation Benefits and a Fundamental Right to be awarded for industry.

B2. The South Carolina Workers' Compensation Commission has failed to consider relevant factors .

B3. The Procedural Due Process requires the Court to allow motions to supplement the record/Extra Record Evidence: There has been a change in law, regulations and facts material to the claim.

B4. The Court requires background information to understand complex and technical matters

B5. The Court has evidence in its possession the South Carolina Workers Compensation Commission have act in "Bad Faith" by their failure to follow proper procedures, making decisions in contravention of its own procedures, Fraudulent Concealment, Violating Mr. Capone's right to due and committing fraud on the Court.

B6. Due process requires that the outcome of the hearing be determined by impartial decision makers. Impartiality is questioned, as here, the South Carolina Workers Compensation Commissioners have acted both judge and "prosecutors" have not been impartial and who's interest are opposed to the side of the Petitioner/Appellant/Claimant.

B6. The South Carolina Workers' Compensation Commission practices/ procedures of allowing the Defendants/ Respondents to "Participate" in preparation, Draft the order consistent with the below findings" of "Request For Proposed Order" of the Commission is a violation of the Petitioner/ Appellant/ Claimants and others Constitutional Right to Due process, Procedural Due process and Equal Protection under the Color of law, as it allows the Defendants/ Respondents to create/ fabricate findings in their behalf and excludes the Claimant/ Appellant from the process.

B7. "Procedural due process imposes constraints on government decisions which deprive individuals of 'liberty' or 'property' interest with the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment" *Matthews v. Eldridge*, 424 U.S. 319, 332 (1976) Mr. Capone has a liberty and Property interest in his South Carolina Workers Compensation Benefits.

To determine what process is due, *Mathews* requires a balancing of (1) the private interest affected, (2) the risk of erroneous deprivation under current procedure and the probable value of additional safeguards, and (3) Defendants' interest, including potential fiscal or administrative burdens of additional safeguards. 424 U.S. at 335.

Herein, Mr. Capone' interest far outweigh Defendants', First, Mr. Capone has a strong interest in the proper receipt of South Carolina Workers Compensation Benefits he has earned and has a fundamental right to be rewarded for industry, as a veteran of work that began at 14 years old in civil service. Second, there is a high and demonstrable risk of erroneous deprivation under the current procedures, based on the supported by the irregular judgments and race disparities created by the categorical denial of nearly every step in Mr. Capone's South Carolina Workers Compensation Commission process that begin in 2014, and *Extra Judicial*.

B.8 Failure by the South Carolina Workers' Compensation Commissioners and Appellate Panel to address a non-frivolous argument raised by the Petitioner/Appellant/Claimant is, by default, arbitrary, because it failed to grapple with what appears to be a substantial issue of Appellant/Claimant.

B.9 Because the South Carolina Workers' Compensation Commission Appellate panel provided no explanation on its denied motions of the Petitioners/Appellant/ Claimant, the Commission did "not meet the requirement that the agency adequately explain its result. " *Dickinson v. Sec 'y of Defense*, 68 f 3d 1396, 1407 (D.C. Cir. 1995) (internal quotation marks omitted).

To enable a court to perform the review and ensure that the decision is not "utterly unreviewable," the South Carolina Workers' Compensation Appellate Panel "must give a reason that a court can measure, albeit with all due deference, against the 'arbitrary or capricious' standard of the APA." *Kreis*, 866 F.2d at 1514- 15. ("Fail[ure] to provide anything approaching a reasoned explanation" rendered South Carolina Workers' Compensation Appellate Panel's decision "arbitrary and capricious"); see also *Calloway v. Brownlee*, 366 F. Supp.2d 43, 53 (D.D.C. 2005)

B.10 In the case of Mr. Capone the hearings conducted by South Carolina Workers' Compensation Commission since 2015 and thereafter, resulted in Void Decisions/ Orders because they are conclusory, inaccurate, "counter to evidence before the agency, "and do not establish a "rational connection between the facts found and the choice made." Motor Vehicle

Mf rs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)
(Internal quotation marks omitted).

B.11 All issues raised by Appellant / Claimant are due a written response and if not ruled on by the Commission is not abandoned, it’s an abuse of discretion, a violation Constitutional protections, since the Motions, Hearings etc, require fees there is a property right/ interest attached and clear violation of Procedural Due process and Substantive Justice and failure of the agency to follow its on procedures and mandates.

B.12 An agency’s failure to address a non-frivolous procedural claim is arbitrary and capricious. “[A]n agency action is arbitrary and capricious if the agency ... has entirely failed to consider an important aspect of the case presented.”).

B.13 Mr. Capone was not provided with notice and directions on his appeal from this Court, because this violated his constitutional rights the order never became final. Failure to give notice and opportunity to be heard no rights are lost. Due process violation

“Notice is elementary and fundamental component of American concepts of due process”.
Mullane v. Central Hanover Trust Co., 338 US 306 (US Supreme Court, 1950).

C. Mr. Capone asserts a denial of his Petition affects Substantial Right: Property Right/Interest In his South Carolina Workers Compensation Benefits

Whether a person has a “property” interest is traditionally a question of state law. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430 (1982) (“The hallmark of property is an individual entitlement grounded in state law.”). For that reason, “[i]njury to property” for RICO purposes is generally determined by state law.” *Isaak v. Trumbull Sav. & Loan Co.*, 169 F.3d 390, 397 (6th Cir. 1999) (citing *DeMauro v. DeMauro*, 115 F.3d 94, 96 (1st Cir. 1997)).

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.

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 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)

“[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 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))

As a Firefighter we have a Property Right /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)

**D. PETITIONER/ APPELLANT AFFIRMS THE RESPONDENTS/ DEFENDANTS
AND THE SOUTH CAROLINA WORKERS’ COMPENSATION COMMISSION
DEVALUATION OF HIS WORKERS COMPENSATION BENEFITS VIOLATES
CIVIL RICO AND OTHER VIOLATIONS OF FEDERAL LAW ARE WELL
FOUNDED**

D1.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).

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.

CAVEAT:

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.

D2. ORIGINS OF THE SOUTH CAROLINA WORKERS’ COMPENSATION 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. Mingos*, 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.**

E. As the Court and Respondents are well aware, there are Exceptions To The “Final Judgment Rule”

Petitioner/ Appellant/ Claimant asserts the “Final Judgment Rule” is Unconstitutional and denies procedural due process, and is Inapplicable Firefighters injured in the line of duty.

Among other things, these exceptions allow the introduction of “extra record evidence” where the agency has failed to consider relevant factors, where the court requires background information to understand complex and technical matters, or where there is evidence of “bad faith” on the part of the agency, See *Lands Council v. Powell*, 395 F.3d 1019, 1030 (9th Cir. 2004) (listing exceptions to the record review rule) that bear immediately on the present Petition.

In their article, Stark and Wald identified eight “exceptions” to the record review rule that they believed had developed in the case law:

(1) when as in the case at bear, the agency action is not adequately explained in the record before the court;

(2) when as in the case at bear, the agency failed to consider factors which are relevant to its final decision

Factors Not Considered -The lower courts have recognized another exception to the rule limiting the record in those cases where the challenging party claims that factors relevant to an agency's decision were ignored.

Because a failure to consider all relevant factors automatically makes an administrative decision inadequate under the APA,⁶⁷ courts have reasoned that a party challenging agency action must be given a chance to show that relevant factors were ignored.

By definition, the only way a party can show that relevant factors were ignored is to introduce extra-record evidence. If an agency does not even consider certain issues, no mention of those issues will be on the record. Therefore, the plaintiffs can only identify those relevant factors to a court with new evidence. As one court noted:

"How is a court to determine whether all relevant factors were considered in the administrative record without knowing what factors outside the administrative record were not considered in the decisionmaking process

67. See *Overton Park*, 401 U. S. 402 (1977); *Asarco, Inc. v. Idaho*, 616 F.2d 1153 (9th Cir. 1980) (court cannot adequately discharge its duty to engage in a substantial inquiry, if it is required to take the agency's word that it considered all relevant factors).

68. *Hiatt Grain & Feed, Inc. v. Bergland*, 446 F. Supp. 457, 467 (D. Kan. 1978), *aff'd*, 602 F.2d 929 (10th Cir. 1979), *cert. denied*, 449 U.S. 1073 (1980). 69 See *Conservation Law Found. of N.E., Inc. v. Watt*, No. 83-0506-NA, slip. op. (D. Mass. April 25, 1984). In that case the plaintiffs were allowed to introduce hundreds of pages of testimony showing that the defendants had failed to consider some of the possibilities of harm to the seashore by off-road vehicle traffic;

(3) when in the case at bar an agency considered evidence which it failed to include in the record;

(4) when as in this case at bar is so complex that a court needs more evidence to enable it to understand the issues clearly;

(5) When as in this case, in cases where evidence arising after the agency action shows whether the decision was correct or not;

(6) When as in this case, where agencies are sued for a failure to take action;

(7) in cases arising under the National Environmental Policy Act;

and (8) in cases where relief is at issue, especially at the preliminary injunction stage.⁴⁹ *Id.* at 344

As the Article discussed further below, these exceptions "... were given canonical status by the D.C. Circuit in the influential case of *Esch v. Yeutter*.⁵¹ In that case, the court stated that "when the substantive soundness of the agency's decision is under scrutiny . . . it may sometimes be appropriate to resort to extra-record information to enable judicial review to become effective."⁵² As the court explained, in response to this problem, "the courts have developed a number of exceptions countenancing use of extra-record evidence," at which point the court cited the eight exceptions from the Stark and Wald article, noting that "[t]he caselaw supports these applications."⁵³

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.

F. The Petitioner/Appellant vehemently Opposes a Remand to Agency With Good Cause Shown.

Petitioner/ Appellant opposes a remand on the ground that it would be futile because the South Carolina Workers Compensation Commission since 2015 has consistently failed to adequately explain itself, review his claims fairly, impartially, in contravention of its own procedures and Federal and State laws. The evidence in the records and in possession of this Court is undisputable, a clear showing that based on all prior experiences before the South Carolina Workers Compensation in Petitioner/ Appellant Capone's case a remand would be futile. This is not a case where "[t]here is not the slightest uncertainty as to the outcome" on remand, A.L. Pharma, 62 F.3d at 1489, or where "reversal and remand would be an 'idle and useless formality' . . . because there is not the slightest doubt that the South Carolina Workers Compensation Commission would simply reaffirm its order," Am. Geri-Care, 697 F.2d at 64. Remand is definitely not appropriate when, as here, there is no chance the agency will come to a different conclusion. E.g., Nat'l Nutritional Foods Ass'n v. FDA, 504 F.2d 761, 798 & n.65 (2d Cir. 1974) (remanding to the FDA to allow for cross-examination of an expert because the court "simply cannot assume that if [the expert's testimony] had been shattered by vigorous cross-examination, however unlikely that may be, the FDA or we would reach the same result").

G. THIS COURT SHOULD DECLINE TO REMAND MR. CAPONE'S CASE; BECAUSE A REMAND WOULD BE FUTILE, AS THE PREVIOUS REMAND (REVESTMENT) BY THE AGENCY WAS IN BAD FAITH.

This Court can glean for the District Court when "'the outcome of a new administrative proceeding is preordained,' a district court may forego the futile gesture of remand to the agency." Berge v. United States, 949 F. Supp. 2d 36, 43 (D.D.C. 2013) (quoting A.L. Pharma, Inc. v. Shalala, 62 F. 3d 1484,1489 (D.C. Cir. 1995)).

E. A Remand Would Continue to Cause Delay and Subject Mr. Capone to the Very Legally Deficient Procedures He Continues To Receive and Challenge.

In addition to futility, a remand without protection from discrimination and prejudice will cause further delay. Remand is appropriate where "new evidence or later-acquired information

demonstrated a potential to change the agency's initial decision" and "where the agency recognizes the merits of the plaintiff's challenges and is forthcoming about the challenges."

Frito-Lay, Inc. v. Dep't of Labor, 20 F. Supp. 3d 548, 554 (N.D. Tex. 2014); *see also SKF USA, Inc.*, 254 F.3d at 1028. In these instances, remand preserves judicial economy by providing the defendant the opportunity to cure its own mistakes. *Frito-Lay*, 20 F. Supp. 3d. at 555.

Here, there is no new evidence or later acquired information that demonstrates a potential to change the Navy's initial decision. While the Navy has conceded that it should have considered Ms. Bradley's MWPA claim, there is no new evidence in the record to support her assertion that she filed a sexual harassment complaint.

Like the previous voluntary remand that was granted, judicial economy would not be served here. In *Frito-Lay*, the court found judicial economy would be served because the likely remedy, even if the plaintiff prevailed on summary judgment, was remand to the agency. *Frito-Lay*, 20 F. Supp. 2d at 555. In addition to causing delay, a remand would compel Mr. Capone to resubmit to the same flawed procedures that the instant appeal was filed to rectify.

F. ANY REMAND MUST INCLUDE SAFEGAURDS SUFFICIENT TO AVOID FURTHER PREJUDICE TO MR. CAPONE.

Should this Court nevertheless order a remand, the order should include conditions to ensure that Mr. Capone is not prejudiced. "Remand involves all interested parties and should receive the careful and thoughtful scrutiny of the court not mere deference to the desires of one party." Toni M. Fine, *Agency Requests For Voluntary Remand: A Proposal for the Development of Judicial Standards*, 28 Ariz. St. L.J. 1079, 1092 (1996). Attaching appropriate conditions to any remand ordered by this Court is essential to avoid prolonged re-litigation of South Carolina Workers Compensation Commission errors. Mr. Capone requests that, in the event this Court orders a remand, it does so on the under conditions necessary to protect him from prejudice as well as ensure the South Carolina Workers Compensation Appellant Panel functions fairly and without discrimination, as intended by Law.

IV. PLAINTIFF 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: *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.1941) 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."

V. SUPPLEMENTAL POINTS OF AUTHORITY

The Fifth Amendment Id. At 1295-96, which states:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty; or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Cushman, 576 F.3d at 1296.

“[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 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))

An order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue.(See *Rose v. Himely* (1808) 4 cranch 241, 2 L ed 608; *Pennoyer v. Neff* (1877) 95 US 714, 24 L ed 565; *Thompson v. Whitman* (1873) 18 Wall 457, 21 I ED 897; *Windsor v. McVeigh* (1876) 93 US 274, 23 L ed 914; *McDonald v. Mabey* (1917) 243 US 90, 37Sct 343, 61 L ed 608.

A void judgment is not entitled to the respect accorded a valid adjudication, but may be entirely disregarded, or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It is not entitled to enforcement...All proceedings founded on the void judgment are themselves regarded as invalid.(30 Am Jur Judgments “44,45.

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 v. Loyd*, 86 Idaho 45, 382 P2d 910.

The limitations inherent in the requirements of due process and equal protection of the law extend to judicial as well as political branches of government, so that a judgment may not be rendered in violation of those constitutional limitations and guarantees. *Hanson v. Denckla*, 357 US 235, 2d 1283, 78 S Ct 1228.

The statute provides:

"A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof...."

5 U.S.C. § 702 (1977).

The Administrative Procedures Act establishes the standard of review for decision By the Workers' Compensation Commission. Code 1976, § 1-23-310 et seq., *Brown v. Bi-Lo, Inc.* (S.C. App. 2000) , 341 S.C. 611, 535 S.E2d 445, rehearing denied, certiorari granted

Section 1-23-380 provides for judicial review of final agency decisions, and states, in pertinent part, that "[a] party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review" but that "[t]his section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law."

Title IV. Estoppel- Art.1433 Under the New Civil Code. 1. Estoppel in pais (by conduct) - is that which arises when one by his acts, representations, or admissions, or by his silence when ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other, rightfully relies and acts on such belief, as a consequence of which he would be prejudiced if the former is permitted to deny the existence of such facts.

[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)).

VI. CONCLUSION/ PRAYER AND RELIEF REQUESTED

Petitioner/ Appellant request the Court to *GRANT* this Petition for Rehearing and *Deny* A remand to the Agency which would to be Futile and has continued to deny Due process, Procedural Due process, Substantive Justice and Equal protection under the color of Law .

Executed on this date June 26, 2020

Signed:



By: _____

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

Richland, South Carolina
June 26, 2020
Enclosures Exhibits 1-12 as stated.

EXHIBIT 1

88607

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Appellate Case No. 2018-002190
W.C.C. File Nos. 1322789, 1719990, 1423445, 1519702, 1503655

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

v.

City of Columbia, Employer, and

City of Columbia, Carrier, ...Respondents.

RECEIVED

DEC 20 2018

SC Court of Appeals

SECOND NOTICE OF APPEAL

Continues to take steps necessary to appeal the November 28, 2018, decision Claimant's Motion to Reconsider – Reconsider Motion Denied abridging fundamental rights and other violations of law

Terry H Capone, of Richland County, Appellant in Propria Persona .

Mr. Terry H Capone
Fire Battalion Chief-Retired
130 Summerlea Drive
Columbia, South Carolina 29203
tcapone@liberty.edu
Appellant In Propria Persona

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature ☒ Agent ☐ Addressee X <i>[Signature]</i>	
1. Article Addressed to: SC Court of Appeals		B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery <i>12-13</i>	
2. Article Number (Transfer from service label) 9590 9402 4402 8248 2482 53		D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
PS Form 3811, July 2015 PSN 7530-02-000-9053		3. Service Type ☐ Adult Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☐ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☒ Return Receipt for Merchandise ☐ Collect on Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500) Domestic Return Receipt	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature ☒ Agent ☐ Addressee X <i>[Signature]</i>	
1. Article Addressed to: Dooley & Pychik		B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery <i>DEC 12 2018</i>	
2. Article Number (Transfer from service label) 9590 9402 4402 8248 2482 46		D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
PS Form 3811, July 2015 PSN 7530-02-000-9053		3. Service Type ☐ Adult Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☐ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☒ Return Receipt for Merchandise ☐ Collect on Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500) Domestic Return Receipt	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature ☒ Agent ☐ Addressee X <i>Mike Gray</i>	
1. Article Addressed to: SC LCCC		B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery <i>DEC 13 2018</i>	
2. Article Number (Transfer from service label) 9590 9402 4402 8248 2482 46		D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
PS Form 3811, July 2015 PSN 7530-02-000-9053		3. Service Type ☐ Adult Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☐ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☒ Return Receipt for Merchandise ☐ Collect on Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500) Domestic Return Receipt	

SC Court of Appeals

DEC 20 2018

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 You may purchase a signature for a specified period.
 Signature of delivery (including the recipient's signature) that is retained by the Postal Service.
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 1601 ASSEMBLY ST
 COLUMBIA
 SC
 29201-9998
 4518040202
 12/11/2018 (800)275-8777 5:10 PM

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Product Description	Sale Qty	Final Price
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First-Class Mail Letter	1	\$0.71
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(Domestic)
 (COLUMBIA, SC 29201)
 (Weight:0 Lb 1.80 Oz)
 (Estimated Delivery Date)
 (Thursday 12/13/2018)

Certified	1	\$3.45
(@@USPS Certified Mail #) (70173040000001063422)		

Return Receipt	1	\$2.75
(@@USPS Return Receipt #) (9590940244028248248253)		

First-Class Mail Letter	1	\$0.71
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(Domestic)
 (COLUMBIA, SC 29202)
 (Weight:0 Lb 1.70 Oz)
 (Estimated Delivery Date)
 (Thursday 12/13/2018)

Certified	1	\$3.45
(@@USPS Certified Mail #) (70173040000001063439)		

Return Receipt	1	\$2.75
(@@USPS Return Receipt #) (9590940244028248248260)		

First-Class Mail Letter	1	\$0.71
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(Domestic)
 (COLUMBIA, SC 29202)
 (Weight:0 Lb 1.60 Oz)
 (Estimated Delivery Date)
 (Thursday 12/13/2018)

Certified	1	\$3.45
(@@USPS Certified Mail #) (70173040000001063446)		

Return Receipt	1	\$2.75
(@@USPS Return Receipt #) (9590940244028248248246)		

Total		\$20.73
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Cash	\$21.00
Change	(\$0.27)

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 (2USPS) to get the latest status.
 Standard Message and Data rates may
 apply. You may also visit www.usps.com
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EVIDENCE ENCLOSED
THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Appellate Case No. 2018-002190
W.C.C. File Nos. 1322789, 1719990, 1423445, 1519702, 1503655

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

v.

City of Columbia, Employer, and

City of Columbia, Carrier, ...Respondents.

PROOF OF SERVICE

RECEIVED

DEC 20 2018

SC Court of Appeals

Terry H Capone, of Richland County, Appellant in Propria Persona.

I certify that I have served the Initial Notice of Appeal on the above Respondents by depositing a copy In the United States Mail December 11, 2018 postage pre-paid certified return receipt addressed to their Attorney Cynthia Dooley PO BOX 1473, Columbia SC 29202 and the South Carolina Workers Compensation Commission PO BOX 1715 Columbia, SC 29203 and SC Court of appeals PO BOX 11629 Columbia, SC 29211. In addition I am placing a copy this Second Notice Of Appeal in the US Mail Prepaid December 19, 2018.

Mr. Terry H Capone
Fire Battalion Chief-Retired
130 Summerlea Drive
Columbia, South Carolina 29203
tcapone@liberty.edu
Appellant In Propria Persona



RETIRED

December 19, 2018

US CERTIFIED MAIL

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

RECEIVED

DEC 20 2018

SC Court of Appeals

Re: Terry Capone v. City of Columbia (2)
Appellate Case No. 2018-002190

Dear Ms. Kitchings:

This is reply to correspondence from the Court dated December 14, 2014 Please let this notice and enclosed corrected payment \$250.00, serve as 2nd Notice that I would like to appeal the attached South Carolina Workers' Full Compensation Commission Appeal of Motion Order dated November 28, 2018, signed USPS 11-29-18 TC. CCD.DMT.

I certify I am placing a copy of this letter with enclosures on this date to the respondents counsel who I know to be Cynthia Dooley and Carmelo Barone Sammataro, Tuner Padget PO BOX 1473, Columbia, SC 29202 and SC WCC PO BOX 1715 Columbia, SC 29202 US MAIL pre paid December 19, 2018.

With Regards,

Mr. Terry H Capone
Fire Battalion Chief-Retired
130 Summerlea Drive
Columbia, South Carolina 29203
tcapone@liberty.edu

Mr. Terry H. Capore
130 Summerlea Drive
Columbia, SC 29203



1000



29201

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FCM LG ENV
COLUMBIA, SC
29201
DEC 19, 18
AMOUNT
\$1.21
R2304H109175-16

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DEC 20 2018

SC Court of Appeals

To: The Honorable Jenny A. Kitchings, Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

First Class Mail
First Class Mail

EXHIBIT 2

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. 1322789, 1719990, 1423445, 1519702, 1503655

Terry Capone, EMPLOYEE,)
VS. CLAIMANT,)
City of Columbia)
EMPLOYER,)
AND)
City of Columbia)
CARRIER,)
DEFENDANTS,)

MOTION ORDER

A Motion regarding the following issue(s) has been received:

X Claimant's Motion to Reconsider.

The following dispositions have been made:

Reconsider Motion ☒ Denied ☐ Granted

Claimant's motion to Reconsider has been reviewed
and is denied. A final Decision and Order on
the merits of Claimant's Form 50 Requests in the
above-referenced claims is still pending before
the undersigned.

Columbia, SC ~~14~~
November 28, 2018

CERTIFICATE OF SERVICE

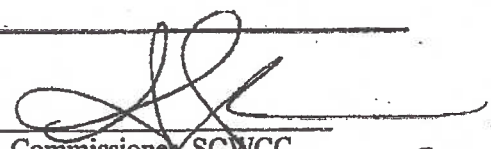
This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof; postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Renee Smith on November 28, 2018

RECEIVED

DEC 20 2018

SC Court of Appeals


Commissioner, SCWCC

Served by USPS

TC
CCP
DMT

11-29-18
AYH

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. 1322789

Terry H. Capone,	EMPLOYEE,	)
		)
	CLAIMANT,	)
VS.		)
		)
City of Columbia		)
	EMPLOYER,	)
		)
AND		)
		)
City of Columbia		)
	CARRIER,	)
		)
	DEFENDANTS,	)

MOTION ORDER

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Renee Smith on October 22, 2018

A Motion regarding the following issue(s) has been received:

X Claimant's Motion to Quash All Letters & Subpoenas.

The following dispositions have been made:

Quash Motion X Denied _____ Granted

RECEIVED

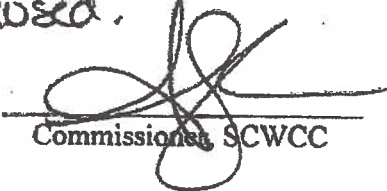
DEC 20 2018

SC Court of Appeals

Claimant's motion to quash is denied as there are open
claims regarding benefits requested under the Act.
Discovery is not complete until a final order is served
and the claim(s) is/are closed.

Columbia, SC

October 18th, 2018


Commissioner, SCWCC

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. 1322789, 1719990, 1423445, 1519702, 1503655

Terry H. Capone,	EMPLOYEE,	)	
		)	
	CLAIMANT,	)	
VS.		)	
		)	
City of Columbia		)	
	EMPLOYER,	)	
		)	MOTION ORDER
AND		)	
		)	
City of Columbia		)	
	CARRIER,	)	
		)	
	DEFENDANTS,	)	

A Motion regarding the following issue(s) has been received:

X Defendant's Motion to Quash Subpoena.

The following dispositions have been made:

Quash Motion Denied ☒ Granted

Defendants' motion to quash the October 26, 2018 subpoenas
issued by the Claimant is GRANTED! The requested documents
are unduly burdensome and not relevant to the issues litigated
by the parties on July 2, 2018 which is under advisement pending
a final Decision & Order by the undersigned
Columbia, SC

December 1st, 2018

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Renee Smith on December 20, 2018

Commissioner, SCWCC

Served by USPS
TC
CCD
DMT
12-20-18
RMS

EXHIBIT 3

The South Carolina Court of Appeals

Terry Capone, Appellant,

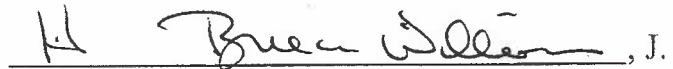
v.

City of Columbia, Employer, and City of Columbia,
Carrier, Respondents.

Appellate Case No. 2018-002190

ORDER

This appeal arises out of an order of the single commissioner denying the appellant's motion to reconsider. The order indicates a final decision on the merits of the appellant's Form 50 is still pending. Accordingly, this appeal is dismissed because the decision of the Workers' Compensation Commission is not final. *See* S.C. Code Ann. § 1-23-380 (Supp. 2018) ("A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review. . . ."); *Bone v. U.S. Food Service*, 404 S.C. 67, 84, 744 S.E.2d 552, 561 (2013) (finding the Administrative Procedures Act (APA) governs appeals in administrative cases and dismissing interlocutory appeals pursuant to the APA). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.


FOR THE COURT

Columbia, South Carolina

cc:

Terry Capone
Cynthia C. Dooley, Esquire
Carmelo Barone Sammataro, Esquire
Amy Bracy

FILED

January 3, 2019

EXHIBIT 4



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 23, 2019

The Honorable Amy Bracy
Worker's Compensation Commission
Post Office Box 1715
Columbia SC 29202

REMITTITUR

Re: Terry Capone v. City of Columbia (2)
Lower Court Case No. 1322789, 1719990, 1423445, 1519702, 1503655
Appellate Case No. 2018-002190

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Terry Capone
Cynthia C. Dooley, Esquire
Carmelo Barone Sammataro, Esquire

EXHIBIT 5

Smith, Renee

From: Taylor, Aisha
Sent: Wednesday, October 9, 2019 1:49 PM
To: Smith, Renee
Subject: ORDER INSTRUCTIONS: Terry Capone v. City of Columbia, WCC File Nos.: 1322789, 1423445, 1503655, 1519702, 1719990

Importance: High

Served by USPS
TC
CCD
10-9-19
RJS

Please see the Order Instructions below.

Please note these are general Order Instructions/Directives only. The drafting attorney is instructed to compose proposed Findings of Fact and Conclusions of Law consistent with and in support of the directives below. Please cite the APA Submissions, Deposition Transcripts and/or the Hearing Transcript where appropriate.

Please let me know if there are any questions.

1. These matters were heard before the undersigned on July 2, 2019 in Columbia, South Carolina.
2. At the call of the case for the hearing, the Claimant was advised of his right to have an attorney but elected to proceed with the hearing representing himself – pro se.
3. Claimant advised the Commission that in addition to his testimony, he had additional medical documentation that he was unable to produce that day and requested additional time to submit the evidence. Claimant was granted 45 days after the date of hearing to submit the evidence.
4. On or about August 7, 2018, the Claimant submitted a CD containing approximately 8,753 pages of APA submissions. On August 10, 2018, Claimant sent written correspondence advising that many of the pages were duplicates and his actual submission was approximately 200 pages. Nevertheless, On August 16, 2018, Defendants filed a Motion to Suppress Evidence related to the post-hearing submissions. The undersigned served an Order on August 31, 2018 denying Defendants Motion to Suppress Evidence. All evidence was admitted into the record for review by the undersigned. Defendants preserved their objection to the admitted evidence for appeal.
5. The matters pending before the undersigned on July 2, 2018 involve five different claims with five different dates of injury and or occupational disease as follows:
 - a. WCC File Number 1322789 with a date of injury of December 12, 2013 wherein Claimant alleged injuries to his "Brain to include Multiple Neurobiological Symptoms" in the form of Shift work disorder, sleep

- deprivation, and PTSD. Claimant also requested treatment for insomnia, sleep apnea, diabetes Type 2, hypertension, weight gain, and disease;
- b. WCC File Number 1423445 with a date of injury of September 25, 2014 wherein Claimant alleged injuries to his "Brain to include Multiple Neurobiological Symptoms" from exposure to multiple traumatic and critical incidents and prolonged employer related stressors. Claimant also requested medical treatment for irritable bowel syndrome/diarrhea, GERD, bilateral knee pain, and back pain;
 - c. WCC File Number 1503655 with a date of injury of March 17, 2015 wherein Claimant alleged injuries to his "Brain to include Multiple Neurobiological Symptoms" from a major impact injury in 2003 where he was catapulted 16ft off of a 24 ft ladder and other falls that caused/aggravated his traumatic brain injury. Claimant also requested treatment for mild neurocognitive disorder due to TBI including sleep, migraines, psychotherapy, and medications;
 - d. WCC File Number 1519702 with a date of injury of April 20, 2015 wherein Claimant alleged injuries to his Brain, Heart, Liver to include Multiple Neurobiological Symptoms" after exposure to carbon monoxide, Benzene, and other hazards. Claimant also requested treatment for cardiomegaly and severe hepatic steatosis, heart, liver and brain; and
 - e. WCC File Number 1719990 with a date of injury of November 21, 2017 wherein Claimant alleged injuries to his "Brain to include Multiple Neurobiological Symptoms" from exposure to multiple traumatic and critical incidents and prolonged employer related stress. Claimant also requested medical treatment for Post Traumatic Stress Disorder (PTSD) and occupational disease – multi system Disorder.
6. Claimant's request for benefits due to post-traumatic stress disorder, sleeplessness, sleep disorders, anxiety, and depression were previously ruled upon by the unappalled Order of Commissioner McCaskill dated December 2, 2015 (WCC File No.: 1322451). Claimant re-filed the same claims with the Commission and the issues were deemed res judicata by the Order of Commissioner Wilkerson dated March 27, 2018 and affirmed by the Full Commission on March 1, 2019. Claimant asserts he is now filing his PTSD claim as an occupational disease as opposed to a injury by accident as previously pled. I find this is a distinction without a difference in this claim as the underlying events and medical diagnosis are essentially the same and the facts have been previously been ruled upon by this Commission. As such, I find claims 1322789, 1423445, 1503655, 1519702, and 1719990 as they relate to PTSD, other psychological conditions including depression and anxiety, and sleep disorders are governed by the doctrine of res judicata.
7. Notwithstanding the finding of res judicata relating to the PTSD, anxiety, depression, and sleep disorders, I find Claimant has a pre-existing condition of PTSD and other psychological and sleep disorders related to his service in the military and there is no statement to a reasonable degree of medical certainty

that Claimant service with the City of Columbia aggravated these pre-existing conditions as required by S.C. Code Section 42-9-35.

8. I find Claimant did not advise the city of Columbia of his pre-existing PTSD and related conditions in his employment application and that the City reasonably relied on Claimant's application when placing him with the Fire Department. I find the City's testimony compelling that Claimant could have been placed in many other capacities within the city other than the Fire Department, which Claimant alleges aggravated his pre-existing condition. As such I find the employer-employee relationship is void pursuant to Cooper v. McDevitt & Street.
9. Claimant's request for benefits for "back pain" was previously pled and ruled upon in WCC File No.: 1319203 and is res judicata.
10. Claimant alleges he sustained a traumatic brain injury as a result of his employment with the City of Columbia (WCC File No.: 1503655). Although Claimant lists Claim Number 1503655 as having a date of injury of March 17, 2015, Claimant's form 50 indicates the injury stems from a 2003 impact injury where he was catapulted off of a 24ft ladder. As this claim related to an injury occurring in 2003, I find Claimant did not timely file this claim within the Statute of Limitations and is denied. I also find the doctrines of laches and estoppel apply to this claim, which also supports the basis for the denial.
11. Claimant asserts an occupational illness due to exposure to carbon monoxide benzene, and other hazards (WCC Claim No.: 1519702). Claimant alleges this exposure has injured or affected his heart, liver, brain, Claimant has failed to meet his burden of proof under S.C. Code 42-11-10. Specifically, Claimant has failed to establish that he has an occupational disease and that the occupational disease arose directly and naturally from exposure to hazards peculiar to his particular employment by a preponderance of the evidence. There is no medical evidence stated to a reasonable degree of medical certainty to support Claimant's contentions. As such this claim is denied.
12. Claimant also alleges injuries to include Type 2 diabetes, hypertension, weight gain, general disease, irritable bowel syndrome, diarrhea, GERD, and bilateral knee pain related to his employment with the City of Columbia (WCC File Nos. 1322789 & 1423445). Claimant has failed to meet his burden of proving any if these conditions were either caused or aggravated by his employment with the City of Columbia. There is no medical evidence in the record stated to a reasonable degree of medical certainty that supports Claimant's contentions. As such these claims are denied.
13. All claims for benefits related to WCC File Numbers 1322789, 1423445, 1503655, 1519702, and 1719990 are denied for the reasons set forth herein.

INSTRUCTIONS: Order to be written by Attorney Cynthia C. Dooley within 30 days. Please let our office know if you have difficulty obtaining a transcript or cannot complete the order within this timeframe. Draft the Order consistent with the above substance of the preceding Order Instructions; however, you may add additional Findings of Fact consistent with

the above ruling. The Order should also include biographical information, information regarding the Claimant's work history and previous medical history, if relevant to the case.

If you need a transcript, order it *immediately* from the court reporter, or contact my assistant, Reneé Smith, via e-mail at rgsmith@wcc.sc.gov. Provide a copy of the proposed Order to opposing counsel or *pro se* claimant before or at the same time one is submitted to the Commission. When submitting the proposed Order, please e-mail it to rgsmith@wcc.sc.gov, in Word format.

Matters To Include In The Order:

1. APA Submissions
2. Stipulations
3. Statement of the Case (contentions of the parties, stated concisely)
4. Evidence of the Case (synopsis of the evidence, including testimony and medical reports)
5. Findings of Fact – numbered (Do NOT delete any of the above findings, however, the prevailing party may add to support the decision, except regarding credibility, unless I have instructed you to)
6. Conclusions of Law (cite applicable statutory sections and case law)
7. Award

Do not address credibility in the Order, unless it has been addressed in the preceding Order Notes.

Commissioner Aisha Taylor
South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715
803-737-5692 Telephone

CONFIDENTIAL & PRIVILEGED

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EXHIBIT 6

The South Carolina Court of Appeals

Terry Capone, Appellant,

v.

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

Appellate Case No. 2019-000369

ORDER

Respondents have filed a motion to dismiss this appeal as untimely. After careful consideration, the motion is denied.


FOR THE COURT

Columbia, South Carolina

cc: Terry Capone
Cynthia C. Dooley, Esquire
Carmelo Barone Sammataro, Esquire

FILED

June 27, 2019

EXHIBIT 7


THE CAPONE FAMILY

Redacted
Copy

October 26, 2018

US MAIL

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

RECEIVED
NOV 05 2018
SC Court of Appeals

Re: Terry Capone v. City of Columbia and Companion Third Party Administrator, LLC
Appellate Case No.: 2018-001364 Request To Stay Remittitur and Appeal Order
Filed September 20, 2018.
W.C.C. File Nos. 1322451, 1319203, 1420487

Dear Ms. Kitchings:

Based on an email notification dated October 25, 2018 (enclosed), from  of SC WCC stating "The appeal was discussed on Monday and order instructions will be issued in the next few weeks. If you are dissatisfied with the decision, the next step would be to appeal that order to the Court of Appeals".

I am therefore requesting based on continued "Fraud On The Court" to Stay the Remittitur dated October 9, 2018 and appeal the order of the dismissal of my appeal dated September 20, 2018 and alternatively ask the case to be held in abeyance pending the decision of the South Carolina Workers Compensation Commission.

I had already paid \$100.00 fee for the appeal that did not take place, the Interlocutory order was a final order from signed  Since the "appealed" order from the Full Commission only stated: "denied as Interlocutory, it was in fact final and was clearly Nonfeasance, Misfeasance and Malfeasance. To include and based on the following:

1. Our courts have consistently held that the Commission is required to "make findings from which an appellate court may reasonably infer that it gave proper consideration to all relevant testimony." *Smith v. Beasley Enters.*, 148 N.C. App. 559, 562, 577 S.E.2d 902, 904 (2002).
2. This Court has held that when the matter is 'appealed' to the full Commission pursuant to G.S. 97-85, it is the duty and responsibility of the full Commission to *decide all of the matters in controversy between the parties.* " *Vieregge*, 105 N.C. App. at 638, 414 S.E.2d at 774 (emphasis added) (citation omitted).
3. Further stated :The Commission is not an appellate court. *Joyner v. Rocky Mount Mills*, 92 N.C. App. 478, 482, 374 S.E.2d 610, 613 (1988). "It is a quasi-judicial agency with statutory authority to make findings of fact, state conclusions of law and enter an order resolving the issues between the employee and the employer and the employer's insurance carrier, if any, arising out of the application of the Worker's Compensation Act." *Vieregge v. N.C. State University*, 105 N.C. App. 633, 639-40, 414 S.E.2d 771, 775 (1992).

4.Fox, 319 S.C. at 282, 461 S.E.2d at 394-95. See also Parsons v. Georgetown Steel, 318 S.C. 63, 456 S.E.2d 366 (1995)(findings of fact of administrative body must be sufficiently detailed to enable reviewing court to determine whether findings are supported by evidence).

My acquiescing to the Commission requested review was for a "Full Review" of the "whole Record" to hear and review all evidence from the beginning to the end, this is an "extraordinary circumstance" as fundamental and substantial rights were prejudiced and Fraud Upon The Court by the Commissioner [REDACTED] who at no point made me aware that he was practicing law without a South Carolina license and merely "masquerading as a judge" while him and the [REDACTED] proceeded to perpetrate Fraud Upon The Court during the hearing held August 21, 2015 and his December 2, 2015 decision is Void and all others that proceeded it and violated my constitutional rights, as stated:

The U.S. Supreme Court has stated that "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958).

The Illinois Supreme Court has held that "if the magistrate has not such jurisdiction, then he and those who advise and act with him, or execute his process, are trespassers." Von Kettler et.al. v. Johnson, 57 Ill. 109 (1870) 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." Elliot v. Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828)

This includes Procedural / Substantive Due process to deny / devalue my SC Workers Compensation Benefits (property) that myself and my family hold a substantial property interest to the minimum [REDACTED]

This is a controversy whose violations also had a disparate impact. If there was no reviewing of the "whole record" then any review could not have been meaningful; it is Fraud Upon The Court. Let this stand as notification that it will be my intention in the coming days to file official complaints for Fraud Upon The Court and others to include with the SC Ethics Committee, Disciplinary Council and will seek to file a Federal Complaints for Civil RICO for Wire Fraud and Mail Fraud. I can understand for the life of my, how the defendants City of Columbia can submit paper work to the State of South Carolina stating I was disabled as a result of Work-related injury as 10/21/2013, and then come into a SC Workers' Compensation Commission Court and deny the injuries are work related this is fraud upon the court.

Thank you for your consideration.

With The Highest Regards,



Enclosure(s) as Stated

Cc: Carmelo B. Sammataro Attorney for Respondents (w/all enclosures)

Mr. Terry H. Capone
Fire Battalion Chief-Retired
[REDACTED]

Email [REDACTED]

LIMITATION OF CIVIL ACTIONS Section 15-3-670 - Circumstances in which limitations provided by Sections 15-3-640 through 15-3-660 are not available as defense as a defense to a 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 a person who conceals any such cause of action. (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.

HISTORY: 1962 Code Section 10-155; 1970 (56) 2397; 1986 Act No. 412, Section 3; 2011 Act No. 52, Section 5, eff January 1, 2012.

EXHIBIT 8



THE CAPONE FAMILY

November 08, 2018

US MAIL

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

RECEIVED

NOV 13 2018

SC Court of Appeals

Re: Terry Capone v. City of Columbia and Companion Third Party Administrator, LLC
Appellate Case No.: 2018-001364 W.C.C. File Nos. 1322451, 1319203, 1420487
ADDENDUM To October 26, 2018 mailing order filed November 2, 2018.

Dear Ms. Kitchings:

Based on an email notification received today November 8, 2018 (enclosed), from South Carolina Workers Compensation Commission Request For A proposed Decision And Order.

When I realized that the hearing that was dated for October 22, 2018, was Fraud Upon the Court and had no intention of a full review of the above referenced case, I promptly notified this Court. That happened to take place after October 9th, 2018. I say again, I immediately gave notification to this Court after it was brought to my attention that Fraud Upon The Court was continued being perpetrated by the South Carolina Workers Compensation Commission. Why does the South Carolina Workers Compensation Commission get a second chance to revise their Interlocutory Decision without reviewing the whole record, despite a pool of evidence that proves fraud was committed in my case?

1. The South Carolina Workers Compensation Commission gets a second chance to make a determinations they failed to make due to incompetence in the first decision and pulled my appeal from this Court.
2. The South Carolina Workers Compensation Commissioners are not only incompetent, but clearly lackadaisical on their part to require the Defendants Attorney to prepare the Commission Decision or Order for this Court, even though they are paid salaries of over \$124,000.00 and some secretaries receiving over \$50,000.00, paid by the State of South Carolina. Why is the Defendants Attorney task with preparing an Order or Decision against me that they failed to complete their first go at it?
3. This appeal process lacks fundamental fairness and clearly a denial of procedural due process and other violations, all while the Commission screams RES JUDICATA and yet gives themselves a second chance to correct a decision they failed to make.

****SEE SIGNATURE ON BACK****

I request that this Court reconsider my request and its November 2, 2018 Decision, or as an alternative I request that the \$100 fee to re-instate the forth coming appeal based on continued Fraud Upon The Court by The South Carolina Workers Compensation Commission be waived as I prepare to move part of my complaint to

Federal Court. Do you realize no matter how many calls 1- 20, Firefighters go on we have to complete our own reports.

Thank you for your consideration.

With The Highest Regards,



Enclosure(s) as Stated

Cc: Carmelo B. Sammataro Attorney for Respondents (w/all enclosures)
South Carolina Workers Compensation Commission: Judicial Department

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

The South Carolina Court of Appeals

Terry Capone, Appellant,

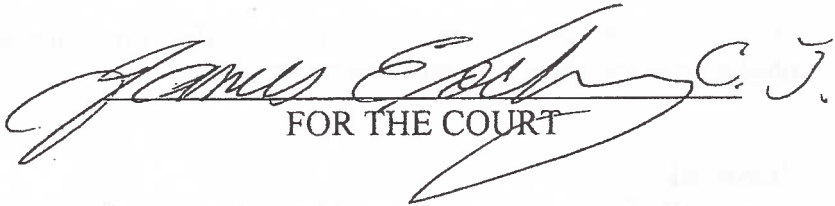
v.

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

Appellate Case No. 2018-001364

ORDER

This appeal was dismissed on September 20, 2018. No petition for rehearing was filed as of October 9, 2018, and this Court sent down the remittitur on that day. Appellant has now filed a letter, which this court construes as a motion to recall the remittitur and reinstate the appeal. A remittitur cannot be recalled except upon "a very strong showing . . . that remittitur was sent down through some mistake or inadvertence on the part of this Court or its officer." *State v. Keels*, 39 S.C. 553, 17 S.E. 802 (1893). Appellant has failed to make such a showing. Because Appellant failed to timely file a petition for rehearing with this Court, remittitur was properly sent, and this Court no longer has jurisdiction over the case. Appellant's motion, therefore, is denied.


FOR THE COURT

Columbia, South Carolina

FILED

November 2, 2018

cc:

Terry Capone

Cynthia C. Dooley, Esquire

Carmelo Barone Sammataro, Esquire

Mr. Terry H Capone
130 Sumner Lea Drive
Columbia SC 29203

COLUMBIA SC 290

08 NOV 2018 PM 1 L



RECEIVED

NOV 13 2018

SC Court of Appeals

To: The honorable Jenny A Kitchens
Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

29201-678999

EXHIBIT 9

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Terry Capone v City of Columbia
SCWCC: 1322451, 1319203, 1420487
Commissioner: Wilkerson

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission dated March 27, 2018, is hereby;
☒ Dismissed as Interlocutory. ☐ Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;
☐ Granted. ☐ Denied. ☐ Dismissed ☐ Set for Hearing.

BEFORE THE;
☐ Hearing Comm. ☐ Jurisdictional Comm. ☐ Full Commission.

IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

☐ Remand to Panel as indicated below.
☐ Barden ☐ James ☐ Taylor
☐ Beck ☐ Roche ☐ Wilkerson
☐ McCaskill

☐ Remand for Order consistent with the Order of the Court.
☐ Remand to the Hearing Commissioner.
☐ Remand to the Jurisdictional Commissioner.

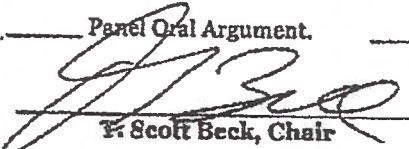
☐ Other: _____

☐ Remand: ☐ Panel Oral Argument. ☐ En Banc Oral Argument.

AND IT IS SO ORDERED.

Columbia, South Carolina

6/13 2018


F. Scott Beck, Chair

CONCURRING:
Commissioner Susan S. Barden
Commissioner Melody James
Commissioner Aisha Taylor
Commissioner Avery Wilkerson
Commissioner Michael Campbell
Commissioner Gene McCaskill

NOT PARTICIPATING:

DISSENTING:

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPY THEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL.

This _____ day of _____, 2014.

By: _____
SCWCC Judicial Department

EXHIBIT 10

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1319203, 1322451, 1420487

Terry Capone,

Claimant,
Vs.

City of Columbia,

Employer,

Companion Property & Casualty, TPA,

Carrier,
Defendants

MOTION ORDER
ON CLAIMANT'S NOTICE OF MOTION
TO VACATE A VOID PRIOR DECISION
BY THE COMMISSION
FILED AND IN CLAIM #1319203, 132451, 1420487
DUE TO FIFTH AMENDMENT VIOLATION FOR
DENIAL OF DUE PROCESS
(Dated January 12, 2018)

A Motion regarding the following issue(s) has been received.

Served via U.S. Mail upon:

- ☐ Discovery or Subpoena
☐ Appointment of guardian Ad Litem
☐ Attorney's appearance before the Commission
☐ Withdrawal of Representation
☐ Attorney's Fee
☐ Claim Pending Commission Review
☐ Postpone
☐ Adjourned the Scheduled Hearing
☐ Self Insurance Privileges
☐ Penalties and Interest
☐ Third Party Practice
☒ Other: Claimant's Notice of Motion to Vacate a Void Prior Decision
By The Commission Filed and in Claim #1319203, 132451,
1420487 Due to Fifth Amendment Violation for Denial of Due
Process (dated January 12, 2018)

Terry Capone, *pro se*

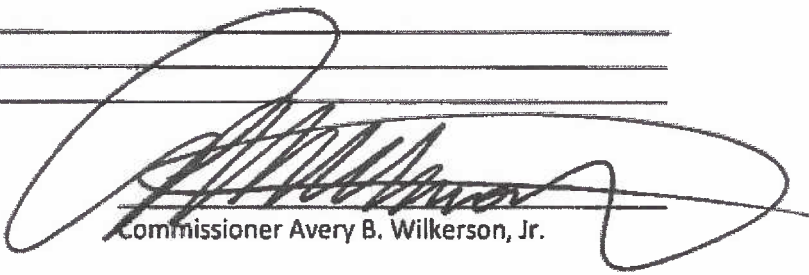
Dana M. Thye, Esquire

The following disposition has been made: ☐ Granted ☒ Denied

- ☐ Set for Hearing
☐ Have Attorneys brief the Issue

Reasons:

Columbia, South Carolina


Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Deborah Hutto on January 31, 2018

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1319203, 1322451, 1420487

Terry Capone,

Claimant,
Vs.

City of Columbia,

Employer,

Companion Property & Casualty, TPA,

Carrier,
Defendants

MOTION ORDER
ON CLAIMANT'S MOTION FOR
ESTOPPEL IN PAIS (BY CONDUCT)
ANY DEFENSE MOTION TO EXCLUDE
EVIDENCE AND ANY DEFENSE OF
STATUTE OF LIMITATIONS BROUGHT
FORTHWITH DUE TO "UNCLEAN HANDS"
(of January 12, 2018)

A Motion regarding the following issue(s) has been received.

- ☐ Discovery or Subpoena
- ☐ Appointment of guardian Ad Litem
- ☐ Attorney's appearance before the Commission
- ☐ Withdrawal of Representation
- ☐ Attorney's Fee
- ☐ Claim Pending Commission Review
- ☐ Postpone
- ☐ Adjourned the Scheduled Hearing
- ☐ Self Insurance Privileges
- ☐ Penalties and Interest
- ☐ Third Party Practice
- ☒ Other: Claimant's Motion For Estoppel in Pais (by Conduct) Any
Defense Motion to Exclude Evidence and Any Defense
of Statute of Limitations Brought Forthwith Due to
"Unclean Hands" (of January 12, 2018)

Served via U.S. Mail upon:

Terry Capone, *pro se*

Dana M. Thye, Esquire

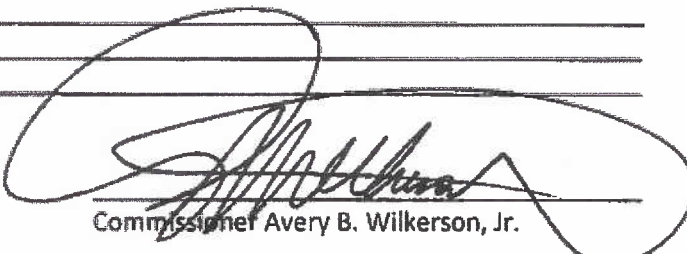
The following disposition has been made: ☐ Granted ☒ Denied

- ☐ Set for Hearing
- ☐ Have Attorneys brief the Issue

Reasons:

Columbia, South Carolina

1-30-2018


Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Deborah Hutto on January 31, 2018

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1319203, 1322451, 1420487

Terry Capone,

Claimant,
Vs.

City of Columbia,

Employer,

Companion Property & Casualty, TPA,

Carrier,
Defendants

MOTION ORDER
ON CLAIMANT'S NOTICE OF MOTION
TO COMPEL SUBPOENAED MATERIAL
EVIDENCE
(of January 12, 2018)

Served via U.S. Mail upon:

Terry Capone, *pro se*

Dana M. Thye, Esquire

A Motion regarding the following issue(s) has been received.

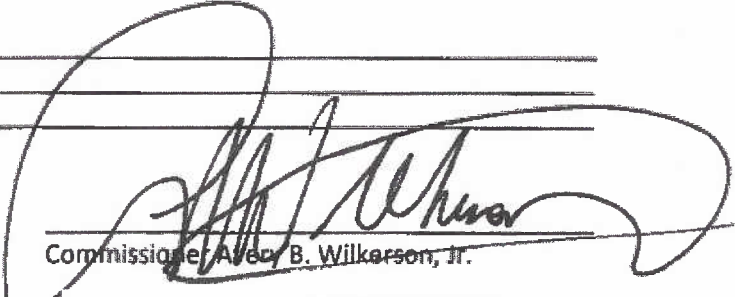
- ☐ Discovery or Subpoena
- ☐ Appointment of guardian Ad Litem
- ☐ Attorney's appearance before the Commission
 - ☐ Withdrawal of Representation
 - ☐ Attorney's Fee
- ☐ Claim Pending Commission Review
 - ☐ Postpone
 - ☐ Adjourned the Scheduled Hearing
- ☐ Self Insurance Privileges
- ☐ Penalties and Interest
- ☐ Third Party Practice
- ☒ Other: Claimant's Notice of Motion to Compel Subpoenaed Material Evidence

The following disposition has been made: ☐ Granted ☒ Denied

- ☐ Set for Hearing
- ☐ Have Attorneys brief the Issue

Reasons: _____

Columbia, South Carolina


Commissioner A. B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Deborah Hutto on January 31, 2018

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1319203, 1322451, 1420487

Terry Capone,

Claimant,
Vs.

City of Columbia,

Employer,

Companion Property & Casualty, TPA,

Carrier,
Defendants

MOTION ORDER
ON CLAIMANT'S MOTION FOR
EQUITABLE ESTOPPEL AND FIDUCIARY
BREACH UNDER THE ACT & ERISA
(of January 12, 2018)

Served via U.S. Mail upon:

Terry Capone, *pro se*

Dana M. Thye, Esquire

A Motion regarding the following issue(s) has been received.

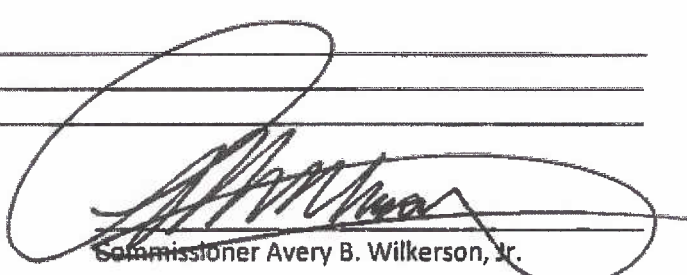
- ☐ Discovery or Subpoena
☐ Appointment of guardian Ad Litem
☐ Attorney's appearance before the Commission
☐ Withdrawal of Representation
☐ Attorney's Fee
☐ Claim Pending Commission Review
☐ Postpone
☐ Adjourned the Scheduled Hearing
☐ Self Insurance Privileges
☐ Penalties and Interest
☐ Third Party Practice
☒ Other: Claimant's Motion for Equitable Estoppel and Fiduciary
Breach Under the Act & ERISA (of January 12, 2018)

The following disposition has been made: ☐ Granted ☒ Denied

- ☐ Set for Hearing
☐ Have Attorneys brief the Issue

Reasons: _____

Columbia, South Carolina
1-30-2018


Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Deborah Hutto on January 31, 2018

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1319203, 1322451, 1420487

Terry H. Capone,

Claimant,
Vs.

City of Columbia,

Employer,

Companion Property & Casualty Group,

Carrier,
Defendants

MOTION ORDER

ON CLAIMANT'S MOTION FOR RELIEF TO ALTER,
AMEND, SET ASIDE JUDGMENT ORDER OR
PROCEEDING DECIDED DECEMBER 2, 2015 UNDER
RULE 60(a)(b) AND/OR SC CODE 1-23-380 ISSUED
TO DEFENDANTS IN THE ABOVE REFERENCED
MATTERS

A Motion regarding the following issue(s) has been received.

- ☐ Discovery or Subpoena
- ☐ Appointment of guardian Ad Litem
- ☐ Attorney's appearance before the Commission
- ☐ Withdrawal of Representation
- ☐ Attorney's Fee
- ☐ Claim Pending Commission Review
- ☐ Postpone
- ☐ Adjourned the Scheduled Hearing
- ☐ Self Insurance Privileges
- ☐ Penalties and Interest
- ☐ Third Party Practice
- ☒ Other: Claimant's Motion For Relief to Alter Amend, Set Aside Judgment Order or Proceeding Decided December 2, 2015 Under Rule 60(A)(B) And/or SC Code 1-23-380 Issued to Defendants in the Above Referenced Matters.

Served via U.S. Mail upon:

Terry Capone

Cynthia C. Dooley, Esquire

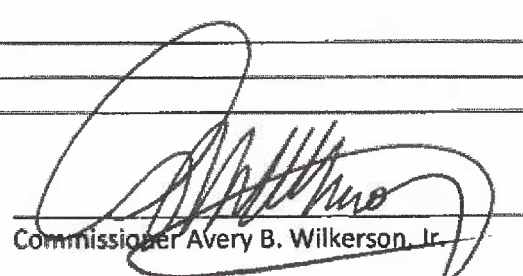
Dana M. Thye, Esquire

The following disposition has been made: ☐ Granted ☒ Denied

- ☐ Set for Hearing
- ☐ Have Attorneys brief the Issue

Reasons:

Columbia, South Carolina


Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Deborah Hutto on March 27, 2018

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1319203, 1322451, 1420487

Terry H. Capone,

Claimant,
Vs.

City of Columbia,

Employer,

Companion Property & Casualty Group,

Carrier,
Defendants

MOTION ORDER

ON CLAIMANT'S MOTION FOR RELIEF TO ALTER,
AMEND, SET ASIDE JUDGMENT ORDER OR
PROCEEDING DECIDED DECEMBER 2, 2015 UNDER
RULE 60(a)(b) AND/OR SC CODE 1-23-380 ISSUED
TO DEFENDANTS IN THE ABOVE REFERENCED
MATTERS

A Motion regarding the following issue(s) has been received.

- ☐ Discovery or Subpoena
- ☐ Appointment of guardian Ad Litem
- ☐ Attorney's appearance before the Commission
 - ☐ Withdrawal of Representation
 - ☐ Attorney's Fee
- ☐ Claim Pending Commission Review
 - ☐ Postpone
 - ☐ Adjourned the Scheduled Hearing
- ☐ Self Insurance Privileges
- ☐ Penalties and Interest
- ☐ Third Party Practice
- ☒ Other: Claimant's Motion For Relief to Alter Amend, Set Aside Judgment Order or Proceeding Decided December 2, 2015 Under Rule 60(A)(B) And/or SC Code 1-23-380 Issued to Defendants in the Above Referenced Matters.

Served via U.S. Mail upon:

Terry Capone

Cynthia C. Dooley, Esquire

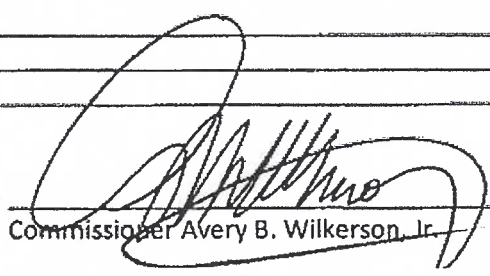
Dana M. Thyne, Esquire

The following disposition has been made: ☐ Granted ☒ Denied

- ☐ Set for Hearing
- ☐ Have Attorneys brief the Issue

Reasons: _____

Columbia, South Carolina


Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Deborah Hutto on March 27, 2018

3-26-2018

EXHIBIT 11

REQUEST FOR PROPOSED ORDER

This document is not an Order. It is a request for a proposed Order. The undersigned reserves the right to modify or delete any portion of this document.

WCC File Number: 1322451, 1319203, 1420487

Date of Hearing: 08/21/15
Place of Hearing: Richland County

CLAIMANT: Terry Capone

EMPLOYER: City of Columbia
CARRIER: City of Columbia

Claimant's Attorney: Pro Se

Defendants' Attorney: Dana M. Thye

DOI: #1319203 – 10/12/13, #1322451 – 11/07/13, #1420487- 06/24/14

AWW: \$1023.51 CR: \$682.68 (applies to all three dates of alleged injury)

Court Reporter: Kim Power
PO Box 2403
Lexington, SC 29071
kimberlytpower@aol.com
(803) 622-9057

FINDINGS OF FACT AND DIRECTIVES

Ms. Thye, please draft the order consistent with the below findings and return to this office within 30 days.

1. The Claimant brought three separate claims cited above. A hearing was held on 08/21/15 on all three claims.
2. The Claimant appeared without counsel and was advised of his right to counsel. He waived that right proceeded Pro Se.
3. Workers' Compensation File # 1319203 is an alleged Carpel Tunnel Syndrome claim which is denied by the Defendants.
4. Workers' Compensation File #1322451 is an alleged PTSD claim which is denied by the Defendants.

5. Workers' Compensation File # 1420487 is an alleged toe fungus claim which is denied by the Defendants.
6. Given that the claims are all denied, the burden of proof rests with the Claimant. The evidence standard in workers' compensation is a preponderance of the evidence. More likely than not.
7. The Claimant is a retired firefighter who worked for the City of Columbia.
8. As to the claim of Carpel Tunnel Syndrome, the Claimant asserts that he injured his hands/wrists in October 2013 while responding to a motor vehicle accident, and afterwards developed PTSD. However, Claimant also indicates in a medical record that he was experiencing numbness and tingling in his wrists and hands as early as May 2012.
9. In a medical note from Dr. Michael Green, dated **06/04/12**, reads in part, "EMG nerve conduction studies performed on 5/11/12 revealed a mild to moderate right carpal tunnel syndrome. There is mild left medial carpal tunnel syndrome as well." (Claimant's APAs, page 265)
10. A nerve conduction study is performed by Dr. John Clavet on 01/10/14. Dr. Clavet notes "very mild carpal tunnel syndrome" which is consistent with the findings of Dr. Green in 2012. (Defendant's APAs, page 30)
11. Dr. David Fulton opines on 02/18/14, "I see no evidence of permanent partial impairment to either wrist." "He has a 0% permanent partial impairment to each in my medical opinion" (Defendant's APAs, page 37)
12. There is also a medical note from Dr. Frank Pusey dated 07/07/15, in which he notes median nerve entrapment and lesion of ulnar nerve is listed under diagnoses. (Claimant's APAs, page 200)
13. Given that the Carpal Tunnel Syndrome predates the date of accident pled and given that there is no evidence of this condition worsening in the record, the Claimant has failed to establish compensability of his carpal tunnel syndrome.
14. Additionally, there is no opinion in the record establishing the medical foundation necessary to promulgate a repetitive trauma claim as required pursuant to §42-1-172.
15. As to the claim of toe fungus, a locker fall onto the Claimant's foot and broke several bones in or around 2004. The toenail fungus seems to have originated with that injury. (Claimant's APAs, page 133)
16. Additionally, the Claimant is experiencing no pain and no disability from the toenail fungus, just "ugly nails". (Claimant's APAs, page 117)
17. As such, I cannot find that the alleged injury (toenail fungus) has its origin on the date pled nor has it been aggravated by an injury by accident on or about said date.
18. As to the Claimant's PTSD being causally related to his employment, there is nothing in the record, other than the subjective complaints of the Claimant, that establish the origin or an aggravation of the Claimant's PTSD.
19. That is not to say that the Claimant does not suffer from PTSD. It appears from the notes of both Dr. Nicholas Lind and Sheryl Mims-Williams, both of whom have a professional specialization to the mind, that the Claimant does not suffer from PTSD which is causally related to his employment with the City. It is more likely than not that

the symptoms of PTSD experienced by the Claimant are rooted in events associated with his military service.

20. Dr. Lind writes, "Mr. Capone's current symptoms of anxiety and depression are consistent with the diagnoses of PTSD as well as Adjustment Disorder secondary to pain. In my opinion, these symptoms are as likely as not associated with stressors experienced while on active duty." (Claimant's APAs, pages 39-40)
21. Ms. Mims-Williams, who is a licensed professional counselor, writes, "According to Mr. Capone, he was injured in a severe auto accident while riding as a passenger with another Marine. He was diagnosed with post-concussion syndrome, post-traumatic headaches, common migraines, and he continues to experience symptoms of post-traumatic stress." Claimant's APAs, page 19)
22. There are no medical notes/reports in the record that link the Claimant's PTSD to his employment with the City of Columbia.
23. Additionally, as a matter of law, it is unlikely that firefighter seeing a burned body or other injuries or events associated with that profession can be viewed as neither extraordinary nor unusual.
24. When the record is viewed as a whole and juxtaposed to the injuries alleged, I cannot conclude that the Claimant has established a causal connection to the dates of injury pled and, thus, has not met the burden necessary as to compensability.
25. As such, the Claimant is not entitled to any benefits for these claims under the Act.
26. All three claims are dismissed with prejudice.
27. Both parties do have the right to appeal this decision pursuant to the procedure explained to them at the time of the hearing which is set forth in the Act.

INSTRUCTIONS: Please let our office know if you have difficulty obtaining a transcript or cannot complete the order within this timeframe. Draft the Order consistent with the above substance of the preceding Findings of Fact. You may also add additional Findings of Fact consistent with the above ruling. The Order should include biographical information regarding the Claimant's work history and previous medical history, if relevant to the case.

If you need a transcript, order it **immediately** from the court reporter listed above. Provide a copy of the proposed Order to opposing counsel or *pro se* claimant before or at the same time one is submitted to the Commission.

When submitting the proposed Order to the Commission, please email only to klindler@wcc.sc.gov. The Commission no longer needs hard copies of the proposed order unless the claimant is *pro se*.

Matters to include in the Order:

1. APA Submissions
2. Stipulations

South Carolina Workers' Compensation Commission

1333 MAIN STREET, SUITE 500

P.O. Box 1715

COLUMBIA, SOUTH CAROLINA 29202-1715

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TERRY CAPONE
130 Summerlea Drive
COLUMBIA, SC 29203

IYX-SMP 29203



EXHIBIT 12



THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

Appeal from The South Carolina Workers' Compensation Commission Appellate Panel
Voluntary Remanded

W.C.C. File Nos. 1322451, 1319203, 1420487
Appellate Case No.: 2018-000369 associated with 2018-001364

PROOF OF SERVICE

RECEIVED
MAY 21 2019
SC Court of Appeals

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

v.

City of Columbia, Employer, and

Companion Third Party Administrator, LLC, Carrier, ...Respondents.

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

I certify this 21st day of May 2019 that I have served a copy of the APPELLANTS RETURN TO MOTION IN OPPOSITION TO DISMISS APPEAL – EXCLUSIVE REMEDY DOCTRINE LACK OF JURISIDICITION, VOID JUDGMENT, VIOLATIONS OF CONSTITUTIONAL PROTECTIONS, FRAUD ON THE COURT, CRIME FRAUD EXCEPTION, “ACTIVE CONCEALMENT FOR FRAUD IN REAL PROPERTY” 15-3-670 (C) (1) (2) AND OTHERS ACTIONABLE VOLATIONS OF LAW AND TOLLING OF STATUE OF LIMITATIONS for filing in the above referenced matters herein, Pursuant to Regulations 67-705(A) , 67-205, and any other authorities on behalf of myself the Appellate/ Claimant for filing in the above referenced matters, by mailing same, postage prepaid in the United States mail, or Personal Service addressed to the

Following:

Cynthia C. Dooley, Esquire

Carmelo Barone Sammataro, Esquire

TURNER PADGET GRAHAM & LANEY P.A.

P.O. Box 1473

Columbia, SC 29202

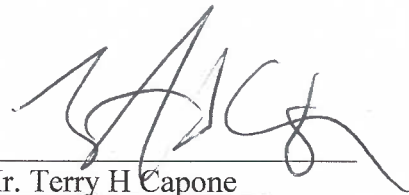
ATTORNEYS FOR RESPONDENTS

Amy Bracey SCWCC

May 21, 2019

By:

Mr. Terry H Capone



Service
Saturday, May 11, 2019
Viewing 12 PM - Homegoing 2 PM

Westminster Presbyterian Church

159-11 115 Rd
Jamaica, New York 11434

The Order of Service

Organ Prelude	Pastor Franco Harris
Selection	
Scriptures Readings:	
Old Testament:	Ms. Tykia Moore
New Testament:	
Prayer of comfort	Pastor Raymond E. Williams Jr.
Acknowledgement	
Life's Reflections	(2 minutes)
Obituary	Ms. Toney Moore
Selection	
The Eulogy	Pastor Raymond E. Williams Jr.
Final Viewing	
Committal	
Benediction	
Recessional	
Resting Place	All Souls Crematory

Obituary

Lykiewanna LaTisa Moore Tisa was born in Harlem on June 1, 1953 to Mathelean Lacey Moore and Terry Moore Jr. Tisa was educated in the NYC Public School System and the Catholic Archdiocese of Queens. At an early age, Tisa married Junebug and had three children David, Michael and Larydice. She was remarried later to Tony Hancock and had her last child, Toney. Tisa lived and worked for her family. She was a loving mother and a FANTASTIC COOK.

Tisa was a diligent worker and was employed for almost twenty-five years as an Office Manager at Jamaica Polishing (located on South Road). She was a member of the Parent Teacher Association at P.S. 140, her children's elementary school, and served for many years as Treasurer. Tisa also was a member of the Westminster Presbyterian Church, who welcomed her with open arms, after the death of her husband, Tony.

Tisa was a very kind, loving and generous woman; always willing to help someone when in need. Tisa was a true woman of WISDOM. Tisa fully embraced her Native American Heritage and was a member of The NorthEast Native American Assoc. And Adopted Tribal People. Tisa would have served as a Wise Elder if she had lived in a Native American Village. Ultimately, Tisa was one who never changed, no matter how people tried she could not be rearranged, when they made her soul, they had one mold, love like hers, could never grow old.

Tisa was preceded in death by her parents, Mathelean Lacey Moore and Terry Moore Jr., her sister, Charmaine and her other half, Tony Hancock. Tisa is survived by her siblings, TARNISA (Tarny) and Ron Perkins, TYKIEYEN (Tykie) and Debbie Moore, KIEYA-SIEN (Teya) and Dana Moore and her step-siblings, Kecia Shelton and Kenneth Lampkins. Tisa is survived by her biological children, David Moore, Michael Moore, Larydice Moore and Toney Moore and five biological grandchildren, Lyiesa, JayQuan, Leiyla, Lana and Shamyia. Tisa is also survived by her children through family Joe, Terry, Tykia, Tilonia and Precious. Tisa was a true MATRIACH and all the children and adults alike, who she mothered, are too many to mention.

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In Loving Memory of Mom

Mom never looked for praises
Mom was never one to boast
Mom just went on quietly working
For the ones she loved the most.
Her dreams were seldom spoken
Her wants were very few
And most of the time her worries
Went unspoken too.

Mom was there.... A firm foundation

Through all our storms of life
A sturdy hand to hold on to
In times of stress and strife.
A true friend we could turn to
When times were rough or calm
One of our greatest blessings

The woman we call Ma, Mommy, Sister, Aunt Tisa, Grandma and
Friend

Acknowledgements

The family of the late Lykiewanna LaTisa Moore acknowledges with sincere appreciation your understanding, prayers and acts of kindness extended during this time of bereavement.

The Family Thanks You



Services Entrusted to the Professional Care of

Crowe's Funeral Homes, Inc.

107-44 Sutphin Blvd., Jamaica, New York 11435
Tel (718) 558-0921 - Fax (718) 558-0924

Web: www.crowesfuneralhome.com - Email: crowesfh@aol.com

Chaplain Kenneth Brewster, CFSP, CPC Mgr. Exe. Director/Third Generation

Send the family an online condolence by visiting us at www.crowesfuneralhome.com

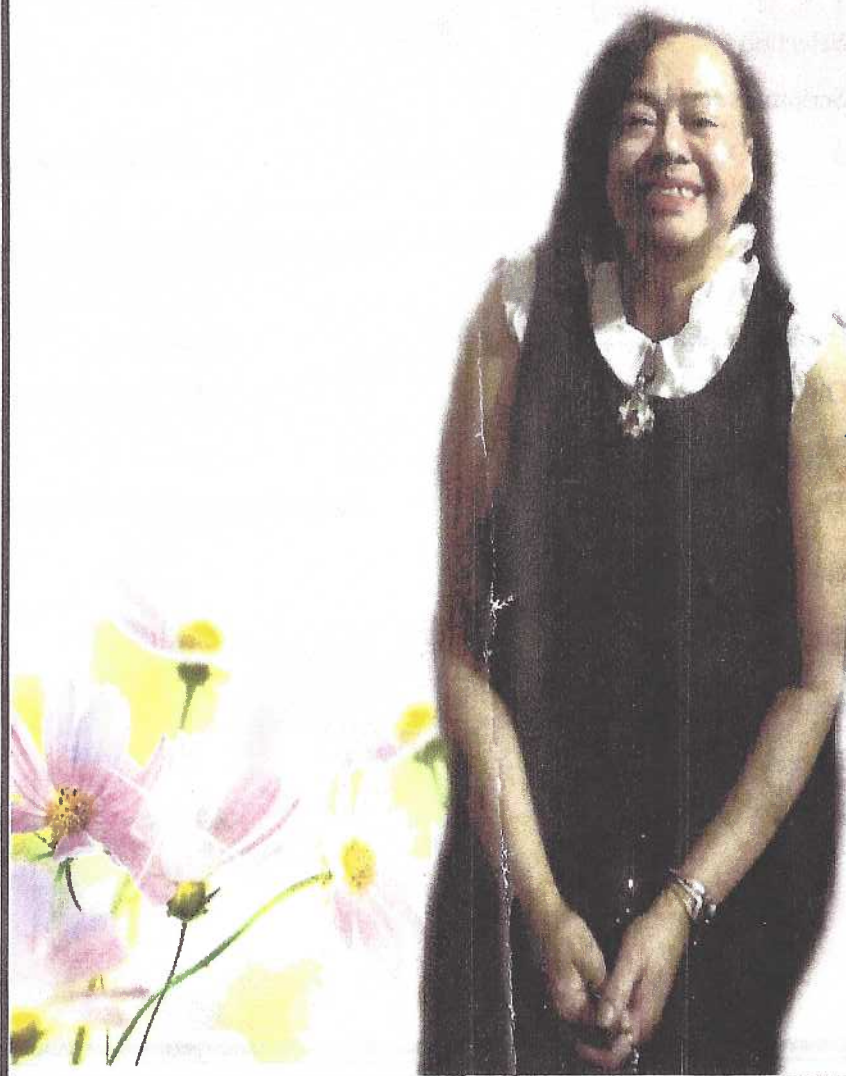
PROGRAMS PRINTED & DESIGNED BY BREWSTER'S CREATIONS (917) 217-4141 Email: Brewstercreation@aol.com



In Loving Memory of

Lykiewanna L. Moore

June 1, 1953 - May 6, 2019





Privacy Act Data Cover Sheet

To be used on
all documents
containing personal
information

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

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

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

v.

City of Columbia, Employer, and

Companion Third Party Administrator, LLC, Carrier, ...Respondents.

**RETURN TO MOTION IN OPPOSITION TO DISMISS APPEAL – EXCLUSIVE
REMEDY DOCTRINE LACK OF JURISDICTION, VOID JUDGMENT, VIOLATIONS
OF CONSTITUTIONAL PROTECTIONS, FRAUD ON THE COURT, CRIME FRAUD
EXCEPTION, “ACTIVE CONCEALMENT FOR FRAUD IN REAL PROPERTY” 15-3-
670 (C) (1) (2) AND OTHERS ACTIONABLE VIOLATIONS OF LAW AND TOLLING
OF STATUE OF LIMITATIONS**

Pursuant to Rule 240, SCACR, Appellant *pro se* Terry H Capone, Employee
 (“Appellant”) submits this return to the Respondents City of Columbia, Employer, and
 Companion Property & Casualty, Carrier (collectively “Respondents”) respectfully opposing
 their motion to dismiss the appeal. 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 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 Exhibits 1-8

Accordingly, Appellant asserts the Respondents are not entitled to an order dismissing the appeal in its entirety and with prejudice due to aforementioned violations of law. In addition, Appellant request the order the Respondents seek from this Court relieving them or any further obligation to respond to appellate filings by Appellant *pro se* related to WCC File Nos. 1322451, 1319203, and 1420487 also be denied with prejudice due to the aforementioned violations of law.

FACTUAL AND PROCEDURAL BACKGROUND

My opposition is based upon and supported by the affidavits, pleadings and papers herein, See Exhibits 1-8, 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 attached 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 exhibit #5 &6), 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 Exhibit #8, #9, 17,#18). Accordingly, Respondents are not entitled to an order dismissing this appeal in its entirety and/ or with prejudice, but are entitled to an order dismissing the motion in its entirety and/ or with prejudice. I oppose the motion on file with the Court for the following reasons and based upon the laws of equity and legal analysis below. The Respondents have not been deprived due to omitting evidence crime fraud exception, fraud on the court and “active concealment” of fraud in real property.

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 brigade 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 5th & 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).

Jaffe and Asher v. Van Brunt, S.D.N.Y.1994, 158 F.R.D. 278. 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.

STANDARD OF REVIEW ARE IN LAW: ACTIONS IN EQUITY

Arbitrary, Capricious, An abuse of discretion or otherwise not in accordance with law, or if it was taken without observance of procedures required by law. Under the arbitrary and capricious standard, a reviewing court must consider whether an agency’s decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.

See Env'tl. Def. Ctr., Inc. v. EPA, 344 F.3d 832, 858 n.36 (9th Cir. 2003). The court may reverse only when the agency has relied on impermissible factors, failed to consider an important aspect

of the problem, offered an explanation for its decision that runs counter to the evidence or is so implausible it could not be ascribed to a difference in view or to agency expertise. *See id.*; *County of Los Angeles v. Leavitt*, 521 F.3d 1073, 1078 (9th Cir. 2008).

§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 proscribed by the General Assembly, and shall have all such instances the right to judicial review.(1970)(56) 2684; 1971 (57) 315.))

§23. Provisions of Constitution mandatory. The provision of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and merely directory, except where expressly made directory or permissive by its own terms. (1970 (56) 2684; 1971 (57) 315.))

The standard of review of factual findings differ if the findings are made in an action at law and in an action in equity. *Townes Assoc., Ltd. V. City of Greenville*, 266 S.C. 81, 85-86, 221 S.E.2d 773, 775-776 (1976)

In equity cases, the Court's ability to find facts does not mean that it disregards the trial judge's findings, particularly his or her credibility findings. Factual findings will be affirmed unless the appellant satisfies the Court that the preponderance of the evidence is against the findings of the Court. *Lewis v. Lewis*, 392 S.C. 381, 709 S.E.2d 650 (2011).

If the allegations in the complaint and the undisputed facts support jurisdiction, or if discovery is necessary to determine jurisdiction, the Court may not grant Respondents' 12(b)(1) motion to dismiss. *See State Emps. Bargaining Agent Coal. v. Rowland*, 494 F.3d 71, 76-77 (2d Cir. 2007).

In a 12(b)(6) motion to dismiss, the Court must “constru[e] the complaint liberally, accept[] all factual allegations in the complaint as true, and draw[] all reasonable inferences in the plaintiff’s favor.” *Aegis Ins. Svcs., Inc. v. 7 World Trade Co., L.P.*, 737 F.3d 166, 176 (2d Cir. 2013) (quotation marks omitted). “Dismissal is inappropriate unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him or her to relief.” *Id.* (quotation marks omitted). “The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.” *Villager Pond, Inc. v. Town of Darien*, 56 F.3d 375, 378 (2d Cir. 1995) (quotation marks omitted).

Federal Rule of Civil Procedure 56 provides that “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Just as with the review in a motion for summary judgment, in a motion to dismiss, the Court must “view[] the facts in the light most favorable to the non-moving party.” *Aegis*, 737 F.3d at 176. The Rules also dictate that the pleadings be liberally construed “as to do substantial justice.” *Id.*

In reviewing plaintiff’s filing, the Court is mindful that pro se complaints are held “to less stringent standards 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

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 proescribed 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 x .666 = **average weekly wage \$1739.06 x 500 Weeks or \$869, 530.00.**

See Exhibits 1-8.

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).

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.**

DOCTRINE OF REVESTMENT

The Motion should be denied in its entirety with prejudice based on the Doctrine of Revestment, Applied to the Respondents through their Attorney's and the South Carolina Workers' Compensation Full Commission voluntarily remanding the original appeal of their Interlocutory Decision and Order 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, to voluntarily remand the order and decision and not grapple with any of the no-frivolous issues of the Appellate *pro se* Capone was Arbitrary on its face. Therein jurisdiction was obtained by Deceit and Trickery and was Fraud Upon the Court was again Fraud Upon the Court and violation of Due process, Procedural and Substantive Due Process protected by the Constitution.

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 of Appeals to the full commission Oct 5, 2018 that was not decided until March 6, 2019, about 6 months later.*

FRAUD ON THE COURT/ UNCLEAN HANDS

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. 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/ order . 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 $\$2,611.20 \times .666 =$ **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**,

"[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.

LACK OF JURISDICTION

The Motion should be denied because at the hearing held 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 5th and 14 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 Exhibits 1-8.

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 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*, 4th 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 Sheryl 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 Ill.2d 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 Service 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 corners 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 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”).

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 being 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 injures where work related transmitted electronically and stored online to South Carolina Police Retirement System, and the release of the Appellants Employee medical records are conduct by the Respondents, their attorneys and the Commission that prevented the Appellant from receiving a fair and impartial hearing on the merits. See Exhibits 1-8.

**TIMELINESS OF THE NOTICE OF MOTION AND MOTION TO ALTER, AMEND, SET
ASIDE JUDGEMENT, ORDER, OR PROCEEDING UNDER RULE 60 (A) (B) [sinc] AND/OR SC
Code 1-23-380 SEE NOTICE OF MOTION IN RESPONDENTS (Exhibit E) WAS PROPER AND
TIMELY BEFORE THE WORKERS' COMPENSATION COMMISSION**

The Motion should be denied in its entirety, because the appeal was timely, 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 Exhibits 1-8.

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:

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 (10th Cir. 1994) (quoting V.T.A., Inc. v. Airco, Inc., 597 F.2d 220, 224 n.8 (10th 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; (4) 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.

Chewning, 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 hearing that resulted in *Res Judicata* as the decision, and the Appellant believed the 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 a decision was made the Appellant timely appealed that decision, requesting a Review by the Commission, which again was denied. That decision was timely appealed to the South Carolina Court of Appeals (see 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 Rehearing 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 file 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 SCRCR Rule 59(e) Motions to Alter or Amend a Judgment do not apply to matters before the Commission.

RULE 60 RELIEF 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); *Lark 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

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, 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 DOCTRINE OF RES JUDICATA IS INAPPLICABLE TO A VOID 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 Exhibits 1-8.

The doctrine of res judicata is inapplicable to void judgments. "Obviously a judgment, though final and on the merits, has no biding 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, whenunfairness 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.

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 *res judicata*. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244 (1944).

**FRAUD UPON THE COURT/ CRIME FRAUD EXCEPTION / FRAUDULENT
CONCEALMENT - 8 YEAR STATUE OF REPOSE 15-3-670 AND DISCOVERY RULE**

The Motion should be denied in its entirety for Employer Insurance Fraud, Fraud on the Court (No Time Limitation), Fraudulent Concealment Exception, Statue of Repose, and Discovery Rule are the law in this case/ claim. The Appellant *pro se* Capone asserts the “Hand of One, Hand of All” if **NOT** for the unlawful conduct of the Respondent’s, Respondent’s Attorney’s, South Carolina Commission, and Commissioners Insurance Fraud, Fraud Upon the Court, Fraudulent Concealment, Abuse of Discovery, Wire fraud and Mail fraud, substantial rights of Appellant would **NOT** have been severely prejudiced, he would have had an opportunity to be heard by a fair and impartial decision maker, who had a license to practice law, with superior knowledge of the law at a hearing held August 21, 2015, extreme circumstance would **NOT** exist and clear violations disregarding the *safe guards* of his Constitutional rights to Due Process, Procedural and Substantive Due Process and Equal protection under the Color of Law , a “Taking” and Devaluation of his South Carolina Workers Compensation Benefits (property) that

he and his family have a substantial property right/interest to with a compensation rate of \$2,611.20 x .666 = average weekly wage \$1739.06 x 500 Weeks or \$869, 530.00, would NOT have occurred and the December 2, 2015 Judgment/ Order would NOT be VOID. But because of their extremely egregious unlawful actions, which were arbitrary, capricious, a clear abuse of discretion or otherwise not in accordance with any law, and was TAKEN without procedures (safe guards) required by law, its VOID and as a matter of Law “**Ex Nihilo Nihil Fit**” *Latin*: “**nothing is created from nothing**”.

See, Peay v. U.S. Silica Co., 313 S.C. 91, 94, 437 S.E.2d 64, 65 (1993) (“Workers' compensation laws were intended by the Legislature to relieve workers of the uncertainties of a trial for damages by providing sure, swift recovery for workplace injuries regardless of fault.”); Parker v. Williams & Madjanik, Inc., 275 S.C. 65, 70, 267 S.E.2d 524, 526 (1980) (“The employee receives the right to swift and sure compensation; the employer receives immunity from tort actions by the employee.”).

“Discovery Rule”:

Under the discovery rule, the statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct. S.C. Code Ann. § 15-3-535 (2005); Dean v. Ruscon Corp., 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996).

In Santee Portland Cement v. Daniel Int’l Corp., 2999 S.C. 269, 271, 384 S.E. (2d) 693, 694 (1989), The Court addressed the discovery rule, as it relates to statutes of limitations, in the following manner:

One policy behind the statute of limitations is the protection of a defendant from false or fraudulent claims that might be difficult to disprove if not brought until after relevant evidence has been lost or destroyed and witnesses have become unavailable ... It affords defendants an opportunity to gather

evidence while facts are still fresh ... This concern must be balanced against a plaintiff's interest in prosecuting an action and pursuing his rights. Plaintiffs should not suffer where circumstances prevent them from knowing they have been harmed ... "[S]tatutes of limitation which are susceptible to judicial construction should not be applied mechanically but rather construed in the manner most consistent with both their underlying purposes and the requirements of substantial justice for all parties involved."

[Quoting *Gattis v. Chavez*, 413 F. Supp. 33, 39 (D.S.C. 1976).]

"Fraudulent Concealment":

Fraudulent Concealment is founded on the principal of estoppel. A defendant / Respondent should not be able to invoke the statute of limitations if through fraud or concealment, "he causes the plaintiff to relax his vigilance or deviate from his right of inquiry into the facts." *Fine v. Checcio*, 870 A.2d 850, 860 (Pa.2005)

A non-disclosure becomes fraudulent concealment when it is the duty of the party having knowledge of the facts to make them known to the other party to the transaction. *Lawson v. Citizens & S. Nat'l Bank of S.C.*, 259 S.C. 477, 481-82, 193 S.E.2d 124, 126 (1972). The seller of real property has a duty to disclose material facts to the purchaser "[w]here material facts are accessible to the [seller] only and he knows them not to be within the reach of the diligent attention, observation and judgment of the purchaser." *Lawson*, 259 S.C. at 485, 193 S.E.2d at 128.

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 event such person in actual possession or

control knows, or reasonably should have known, of the defective or unsafe condition.
(Emphasis supplied.)

The statute of repose is a law that requires that a lawsuit be brought against each defendant
(Respondent) within a certain number of years following a specific date – usually the
date of substantial completion. South Carolina’s statute of repose is found at S.C. Code Ann.
§15-3-640-670.

South Carolina’s statute of repose provides that a lawsuit for damages based upon a defective or
unsafe condition of an improvement to real property must be brought within **(8) eight years
after substantial completion of the improvement**. Appellant *pro se* Capone asserts the defense the
appeal was timely, the time is tolled for the Respondent’s Fraud upon the Court , Crime Fraud Exception/
Fraudulent Concealment of MOLD (FUNGUS) in Fire Stations Real Properties 15-3670, **which was
released not by the Respondent’s to the Appellant until January 25, 2018**, Fraudulent Concealment of
Appellants correct pay (Firefighters wages and Earnings to include overtime), Fraudulent Concealment of
Appellants City of Columbia Employee Health records that was in Respondent’s custody and their
control, Fraudulent Concealment of Appellant was Injured on the Job as a Firefighter-Fire Battalion Chief
, Fraud Concealment that the Respondents were not given proper notification of Appellant’s injuries and
and had no knowledge of all injuries at the time of the August 21, 2015 hearing before South Carolina
Workers’ Compensation Commission and their Attorneys to commit Fraud Upon the Court.

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 altered the medical opinion/ omitted evidence in their possession to deny the claims depriving me of my fundamental right to Workmens' Compensation benefits (property) a property right and interest. Appellant further asserts God never intended for him to be harmed or suffer Luke 10:18-19 NIV ¹⁸He replied, "I saw Satan fall like lightning from heaven. ¹⁹I have given you authority to trample on snakes and scorpions and to overcome all the power of the enemy; nothing will harm you.

UNDER DISABILITY/ UNSOUND MIND/INSANE

The Motion should be denied it entirety with prejudice, during the time period to appeal is tolled due to the Appellant being under legal disability and of Unsound mind/ Insane and the statue of limitations as a matter of law is tolled. See, Exhibits 1-8.

During the proceedings of August 21, 2015, and after any statute of limitations should be tolled I was and remain disabled, mentally incompetent due to mental illness and Neurocognitive Disorder due to Traumatic Brain Injury underdisability, 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 exhibit #5 &6), 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.

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).

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.

**SOUTH CAROLINA WORKERMENS' COMPENSATION SYSTEM IS
UNCONSTITUTIONAL DUE TO DENIAL OF EQUAL PROTECTION CLAUSE OF
U.S. CONSTITUTION/ DISPARATE TREATMENT AND IMPACT**

The Motion should be denied in its entirety, because the Appellant pro se Capone was not provided with Due process, Procedural Due Process and Equal Protection under the Color of Law and the Commissions' actions amounted to disparate treatment and had disparate impact protected by the Equal Protection Clause and negatively impacting me by denying benefits (property) 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).

EQUITABLE TOLLING

The Motion should be denied in its entirety, because the appeal was timely, the time is tolled based on Equitable Tolling. Appellant Capone asserts that based on the issue above cited "extraordinary circumstances" exist that that the Doctrine of Equitable Tolling should also be applied to serve the ends

of Justice and to stop the Respondents unjust enrichment of benefits (property) there are non discretionary and statutorily-mandated based on the Appellants pro se Capone's injuries and total disabilities. The Workers' Compensation disability benefits (property) Appellate pro se Capone has 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.**

As an additional sustaining ground, Kimmer urges this court to apply the doctrine of equitable tolling. The South Carolina Supreme Court recently adopted this doctrine. *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 29 (2009). The court explained the doctrine of equitable tolling may be applied to toll the running of the statute of limitations "to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits." *Id.* at 115, 687 S.E.2d at 32. The court explained:

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. Equitable tolling may be applied where it is justified under all the circumstances. *Id.* at 116–17, 687 S.E.2d at 33 (citation and quotation marks omitted). The court noted the party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use. *Id.* at 115, 687 S.E.2d at 32.

CONCLUSION AND PRAYER

For the reasons stated supported by the affidavits, pleadings and papers on file with the Court and addressed herein, Plaintiffs request that the Court deny Defendants' Motion to Dismiss Appellant, *pro se* Terry Capone's Notice of Appeal is timely and should not be dismissed

because it would continue to deprive him of fundamental and substantial rights are affected. The Appellant alternately request the Respondent motion to dismiss be denied with prejudice, Appellant so moves. See Exhibits 1-8.

By:



APPELLANT, *pro se*

May 21, 2019

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

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

RECEIVED

MAY 21 2019

SC Court of Appeals

Exhibit 1

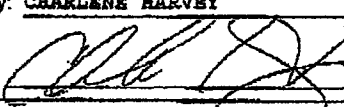
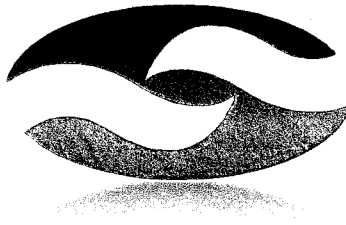
Form 8253 Revised 7/8/2012 Print or type in black ink		EMPLOYER'S DISABILITY EMPLOYMENT STATUS REPORT To Be Completed by Applicant's Payroll/Benefits Officer SC Public Employee Benefit Authority South Carolina Retirement Systems Attention: Customer Services Annuity Claims PO Box 11960, Columbia, SC 29211-1960		☐ SCRS ☒ PORS ☐ GARS
The individual indicated below has applied for disability retirement benefits. Please complete the information on the remainder of this form, and return it to the address listed above as soon as possible. Upon receipt of this completed form, the employee's application will be processed.				
Employee Name: TERRY H CAPONE		Social Security Number: 133-58-7472		
Employer: CITY OF COLUMBIA		Employer Code: 740.05		RECEIVED JAN 15 2014
Position Title: FIRE BATTALION CHIEF				
1. Is the position title shown above correct? ☒ Yes ☐ No (please explain)		2. Annual salary on date of disability: \$ 54,688.66		
3a. Is the employee currently working? ☒ No (last day physically worked): 10/21/2013 ☐ Yes (proceed to Question 3b)		3b. Is the employee performing all regular duties? ☐ Yes (skip to Question 6a) ☐ No (proceed to Question 3c)		
3c. In what capacity is the employee currently working? ☐ Light duty* ☐ Diminished capacity* ☐ Reduced hours ☐ Other (please explain):		3d. Date member was placed in status shown at left: ☒ No (skip to Question 5) ☐ Yes (date of termination):		
*Attach letter explaining current duties in relation to normal work functions.				
4b. Last day compensation was earned (including pay continuation, using annual and sick leave): MM-DD-YYYY		4c. Amount of lump-sum payments for unused leave Annual leave \$ _____ Sick leave \$ _____		4d. Number of days of unused leave: (complete and proceed to Question 6a) Annual leave _____ Sick leave _____
5. Employee's current payroll status (check one and indicate appropriate date): ☐ On annual leave (date leave began): _____ ☐ On sick leave (date leave began): _____ ☒ Other (please explain): WORKERS COMP				
6a. Was this employee injured on the job? ☐ No ☒ Yes (date of injury): MM-DD-YYYY		6b. Is employee on leave without pay (not terminated) pending settlement of a Workers' Compensation claim? ☐ No ☐ Claim settled (date): _____ ☒ Yes MM-DD-YYYY		
I hereby certify that to the best of my knowledge, the information above correctly reflects the records of the employing entity.				
Prepared by: CHARLENE HARVEY		Title: HR SPECIALIST		
Signature: 		Date: 01-15-14 Telephone: 545-3027		
Return completed form to the SC Retirement Systems (address above). Please call SC Retirement Systems Customer Service with any questions: (800) 868-0002 (In state) or (803) 737-6800				

Exhibit 2

Post Trauma Resources

"Solutions for Life's Toughest Problems"



3 April 2015

Dr. Tiona Praylow
Envision Wellness Medial Group
2601 Read St, Suite I-7
Columbia, SC 29204

Thank you for allowing me to meet with Mr. Capone and conduct a psychological evaluation. I had a chance to interview him today and review his medical records.

Symptoms/Impairments

Mr. Capone reported that, in or around 26 June 1989, he was involved in a motor vehicle accident when he was riding as a passenger with another marine. "He drove into a tree when we were in North Carolina," he said, "I just remember a woman running up and looking at me," he said, "she said, 'Look at his face!' When I looked in the mirror and saw how bloody I was I thought, 'I'm going to die!'" He was diagnosed with post concussive disorder and he continues to experience symptoms of posttraumatic stress associated with injury. On 30 July 1993, he assaulted a man who was having an affair with Mr. Capone's wife. The response was violent and excessive, resulting in Mr. Capone's 11 month confinement in the brig and ultimate bad conduct discharge. Mr. Capone believed both then and now that his reaction was mitigated by his TBI and PTSD. He acknowledges that his actions were hostile and harmful in a manner that deviates sharply from the social norms. His service records do not reflect deliberate or intentional disregard for consequences. In fact, the preponderance of the data reflects "otherwise honest, faithful and meritorious" service (38 C.F.R.3.3.1(n)). He earned outstanding IRAM Standard of conduct marks (between 4.9 and 5.0). At the time of the incident leading to his discharge, he had completed the Meritorious Sergeant board and earned the MALS-11 NCO of the Quarter by unanimous decision. He spent four months in solitary confinement, in which he was placed in uncomfortable positions for long periods of time. He suffered knee damage as a result, he said, and continues to experience knee pain at the average intensity of five out of 10.

Mr. Capone reported having repeated nightmares of the accident and/or other military experiences at least once a week. He experiences frequent intrusive recollections of what he went through in jail and, after having such dreams and thoughts, feels as if the events are again occurring.

www.posttrauma.com

1709 Laurel Street Columbia SC 29201
(803) 765-0700 (800) 459-6780 Fax (803) 765-1607



As for avoidance symptoms, Mr. Capone reported that he actively avoids any type of confrontations. Negative thoughts and mood symptoms include a decreased interest in previously enjoyed activities, such as drawing and socializing. He noted feeling detached from others and described that, in general, he experiences overwhelming feelings of anger.

In terms of arousal symptoms, he reported sleeping approximately four hours each night, a reduction from the eight hours he experienced prior to his military service. He said he has noticed increased irritability and difficulty concentrating. Other symptoms include feelings of guilt and a noted loss of energy, decreased appetite and a loss of sex drive. His PTSD were aggravated in 2013 when, as a firefighter, he responded to a traumatic call, which ultimately resulted in his retirement.

He denied having current suicidal thoughts. His last thought was approximately one year ago, in which he fantasized about driving off the road. Current risk factors for suicide include his reported symptoms of anxiety and potential impulsivity secondary to TBI. Protective factors include his willingness to seek help and his family. Based on Rudd et al's 2001 criteria for determining suicide risk, Mr. Capone is currently at No Risk for self-harm. The corresponding level of appropriate health care is outpatient therapy with recurrent risk assessment.

Mental Status

Mr. Capone appears stated age. Regarding level of consciousness, he appeared confused. Affect is flat. Reported mood is "agitated." He presented himself in a casually dressed and appropriate fashion. Eye contact can be described as good. His speech is tangential. Recent memory appears poor. Remote memory is poor. Psychomotor activity is normal. There is a negligible degree of conceptual disorganization evident. His thought content is characterized by no significant preoccupations. Regarding perceptual functioning, the examinee denies hallucinations and none are evident. Attitude can be described as cooperative. Insight and judgment appear poor. Concentration difficulty was noted in the interview. Regarding impulse control Mr. Capone demonstrated ability to resist urges.

Quality of Historian. The quality of Mr. Capone's self-reporting of symptoms appeared consistent with his presentation, records and testing.

Results of Psychological Testing

Mr. Capone articulated understanding of each instrument. His responses were consistent within and among measures and were determined to be valid reflections of his current functioning.

Personality. On the MMPI-2-RF, Mr. Capone endorsed a number of items that are infrequently answered by the normative sample (F-r=100). This response style is suggestive of overreporting of symptoms but may also be generated by individuals with genuine difficulties. Because even in non-compensation seeking settings people with PTSD are likely to report significantly higher subjective distress than people without PTSD, the authors of the VA's *Best Practice Manual for Posttraumatic Stress Disorder Compensation and Pension Examinations* (Watson et. al, 2002) suggest that the

Infrequency-Psychopathology Scale (F_p) be considered (this is now the " F_{p-r} " scale in the *Restructured* version of the MMPI-2). Citing Aribisi and Pen-Porath (1998), they suggest that when the F_p scale is elevated along with F , the clinician can more confidently attribute the high scores to be due to the overreporting of psychopathology, but only if the other validity scales are not also elevated significantly. While the F scale consists of items rarely endorsed by individuals from the normal population, the F_p contains items rarely endorsed by individuals within the clinical population. The F_{p-r} scale is within normal limits ($F_{p-r}=51$) and suggests that Mr. Capone's endorsement of emotional distress is legitimate. Individuals with profiles similar to Mr. Capone's have been found to be experiencing emotional distress likely to be perceived as a crisis. They report somatic complaints involving different body systems and display vegetative symptoms consistent with depression.

Mood/Emotional Symptoms. Mr. Capone was administered the Beck Depression Inventory-Second Edition, a 21-item self-report questionnaire assessing depressive symptoms in the time frame of the "past two weeks including today." Scores range from Minimal, Mild, Moderate to Severe levels of depressive symptoms. There is no validity measure. Compared to the normal population, he reported experiencing Severe levels of depression ($BDI-II=48$).

The examinee was administered the Beck Anxiety Inventory, a 21-item scale which measures the severity of anxiety in the time frame of the "past two weeks including today." Scores range from Minimal, Mild, Moderate to Severe levels of anxiety symptoms. There is no validity measure. Compared to an outpatient psychiatric population, he reported experiencing Severe levels of anxiety ($BAI=37$).

Mr. Capone was administered the Detailed Assessment of Posttraumatic Stress, a measure of the impact of potentially traumatic events. The resulting profile was determined to be valid and consistent with the diagnosis of Posttraumatic Stress Disorder. His scores were especially significant in the areas of general distress, re-experiencing the perceived traumas, avoidance of people and situations associated with the events and increased arousal. Mr. Capone reported significant emotional distress at the time of the traumas and endorsed the tendency to disassociate during traumatic events, a propensity associated with more severe posttraumatic symptoms (Koopman, Classen and Spiegel, 1996) and which may explain his reported increase in impairment.

The P3 is designed to identify pain patients who are experiencing emotional distress that may be affecting their symptoms and their response to treatment. The results suggest that Mr. Capone approached the test items in an open and honest manner. The profile suggests that he is experiencing more depression, anxiety, and somatization than the typical pain patient.

DSM-5 Diagnoses

309.81 Post Traumatic Stress Disorder, aggravated by chronic pain

References

- Arbisi, P.A. & Ben-Porath, Y.S. (1998). The ability of MMPI-2 validity scales to detect fake-bad responses in psychiatric inpatients. *Psychological Assessment*, 10, 221-228.
- Watson, P., McFall, M. E., McBrine, C., Schnurr, P., Friedman, M., & Keane, T. (2002). Department of Veterans Affairs Best Practice Manual for Post-Traumatic Stress Disorder (PTSD) Compensation and Pension Examinations.

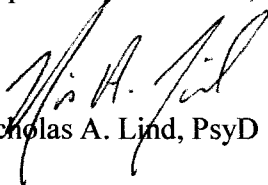


Conclusion and Responses to Specific Questions

Mr. Capone's current symptoms of anxiety and depression are consistent with the diagnosis of PTSD as well as Adjustment Disorder secondary to pain. In my opinion these symptoms are as likely as not associated with stressors experienced while on active duty. He is likely to experience ongoing symptoms in times of stress since PTSD has been shown to be influenced by the trauma itself as well as current psychosocial stressors, to include pain. I recommend combined psychological/psychiatric care to help normalize his sleep and mood. He would also benefit from physical therapy and pain management.

In my opinion, he was insane at the time of the 26 June 1989 incident that ultimately resulted in his discharge. His behavior was hostile and harmful to others and deviated sharply from societal norms. It was out of character for him, however, and his service records do not reflect deliberate or intentional disregard for consequences. In my opinion, his actions were more likely than not mitigated by his TBI and PTSD, which resulted in a prolonged deviation from his normal method of behavior.

Respectfully submitted,



Nicholas A. Lind, PsyD

Exhibit 3

220 Stoneridge Drive Suite 302
Columbia, South Carolina 29210

Phone: 803-779-2777
Fax: 803-779-5775

May 14, 2019

Re: SWORN AFFIDAVIT SHERYL MIMS WILLIAMS
Terry Capone: May 18, 2015 Altered Medical Health Opinion

To whom it may concern:

STATE OF SOUTH CAROLINA §

COUNTY OF RICHLAND §

Before me this day personally appeared SHERYL MIMS WILLIAMS who, being duly sworn, deposes and says:

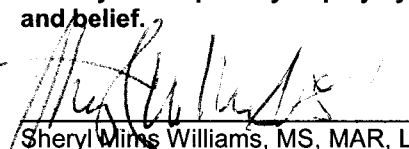
Mr. Capone has been in treatment with our services since 08/31/2012. I am the Mental Health Counselor for Terry Capone. In my capacity as a Licensed Professional Counselor, Mr. Capone was diagnosed with Post Traumatic Stress Disorder an occupational disease, Anxiety and Major Depression that was directly connected to and exacerbated by his employment with the City of Columbia Fire Department.

According to our records May 18, 2015, I composed a letter for Mr. Capone for reconsideration to The Department of Veterans Affairs, and according to Mr. Capone, he subsequently submitted this same letter for consideration in his South Carolina Workers Compensation Claim. The diagnoses of PTSD, which is an occupation disease, Anxiety and Major Depression have always resulted from and has been connected to his employment with the City of Columbia Fire Department. According to Mr. Capone the Decision and Order dated December 2, 2015 by a Commissioner McCaskill, was altered due to the letter that was written to the VA.

Dr. Nicholas Lind, PsyD, Dr. Tiona Praylow, MD as well as I, diagnosed Mr. Capone with PTSD which was aggravated by events he experienced as a firefighter and/or trauma in the workplace. According to my notes there are at least 2 incidents that Mr. Capone refers to as being very traumatic while working as a firefighter.

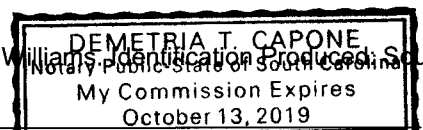
If you have any questions please feel free to call me at the above number.

I certify under penalty of perjury that the forgoing statement is true and correct to the best of my knowledge and belief.

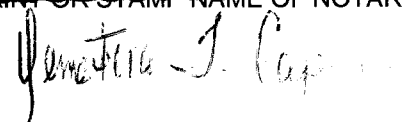

Sheryl Mims Williams, MS, MAR, LPCS

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Sworn and subscribed before me this 14 day of May 2019, by Sheryl Mims Williams, possessor of South Carolina Drivers License# 204348816 Expires: 3/30/2025



PRINT OR STAMP NAME OF NOTARY


Demetria T. Capone



AGAPE COUNSELING AND TRAINING SERVICES

5000 Thurmond Mall Suite 211
Columbia, South Carolina 29201
Telephone: (803) 779-2777
Fax: (803) 779-5775

Date: May 18, 2015

To: The Department of Veterans Affairs

RE: Mental Health opinion for
Mr. Terry H Capone,
4209 Woodridge Drive
Columbia, SC 29203

Reference: Social Security Number

I am the Mental Health Counselor for Veteran Terry Capone. In my capacity as a Licensed Professional Counselor, Mr. Capone has been diagnosed with Post Traumatic Stress Disorder. He has been in treatment with our services since 08/31/2012.

While I've provided treatment for Mr. Capone, I've become familiar with his active duty medical history from 10/1988 to 06/1994, past and present ailments and I've reviewed pertinent parts of his military record that document his injury and clinical conditions related to the events that occurred.

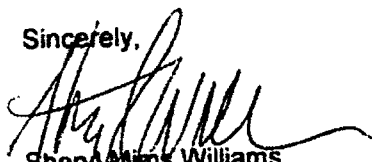
According to Mr. Capone, he was injured in a severe auto accident while riding as a passenger with another marine. The incident occurred during his active duty military service on or about June 26, 1989, in Kinston, located in Lenoir County North Carolina while assigned to MCAS Cherry Point North Carolina. He was diagnosed with Post Concussion Syndrome, Post Traumatic headaches, common migraines and he continues to experience symptoms of Post Traumatic Stress. Based on the records these symptoms are more likely than not associated with this injury. Mr. Capone is presently being treated for Post Traumatic Stress. There was no history reported prior to the service of any mental or physical nor any condition noted in his service records.

According to Mr. Capone, on July 30, 1993, he assaulted another marine who was having an affair with Mr. Capone's wife. The response was violent and excessive, resulting in Mr. Capone's 11 month confinement in the brig and ultimate bad conduct discharge. Mr. Capone believed both then and now that his reaction during service was mitigated by his Post Traumatic Stress Disorder of being in the accident.

He acknowledges that his actions during this time were hostile and harmful in a manner that deviates sharply from the social norms and his behavior disrupted the legal order of society. His service records do not reflect deliberate or intentional disregard of rules or consequences. In fact, the preponderance of the evidence in his files reflect "otherwise honest, faithful and meritorious" service. According to his records and Mrs. Capone, he earned outstanding IRAM standard of conduct marks between 5.0/5.0 in grade and average in service of 4.6. This includes a Navy Achievement Medal, Good Conduct Medal, Meritorious Promotion to the rank of Corporal and 3 Meritorious Mast (1991 to wit: "Your display of perseverance throughout this period motivated others and was instrumental in providing optimal support to both Operation Desert Storm and MAG-11(REAR) squadrons.") and a Certificate of Appreciation. At the time of the incident leading to his discharge, he had completed the Meritorious Sergeant board. It appeared that Mr. Capone was moving up in the military when he was discharged which could be another factor that would indicate that his actions were not his norm.

In my opinion, based on the records, statements from Mr. Capone, it appears that he was acting out of character and symptoms were more likely that not due to Post traumatic Stress at the time of his discharge. His behavior was hostile and harmful to others, deviated sharply from societal norms and disrupted the legal order of society. It was out of character for him, and his service records do not reflect deliberate or intentional disregard for rules or consequences. In my opinion, based on his records and the account as he describe them, his actions were more likely that not mitigated by his Post Traumatic Stress Syndrome while in the service, which resulted in a prolonged deviation from his normal method of behavior.

Sincerely,



Sheryl Mims Williams,
Licensed Professional Counselor

Exhibit 4



2601 Read Street, Suite I-7
Columbia, SC 29204
Phone 803-256-0101 or Fax 800-854-3497

April 30, 2019

Dear Sir or Madam,

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Before me this day personally appeared TIONA PRAYLOW, being duly sworn, deposes and says:

I am writing to outline the clinical imperatives warranting a full and unequivocal waiver of the statute of limitations in Mr. Terry Capone's claim for Post-Traumatic Stress Disorder, an occupational injury incurred during his service in the City of Columbia fire battalion. Mr. Capone has been under my care since 2013. At the initial period of time traditionally allotted to file claims (9/15/2015-9/15/2016), it is my professional assessment to a reasonable degree of medical certainty that Mr. Capone was of an "unsound mind," and unable to execute the imperative procedures.

Per judicial and statutory definitions, an individual is determined to be of "unsound mind" based on at least the following conditions: 1) "His mind is so weak and feeble . . . that he is incapable of understanding and acting in the ordinary affairs of life" 2) Delusions existⁱ During the time period in question, Mr. Capone experienced both an incapacity to understand and to act in ordinary life affairs.

A comprehensive body of scientific literature documents a persistent linkage between cognitive impairment and Post-Traumatic Stress Disorder. In *Traumatic stress: effects on the brain*, Bremner MD concludes "brain areas implicated in the stress response include the amygdala, hippocampus, and prefrontal cortex. Traumatic stress can be associated with lasting changes in these brain areas."ⁱⁱ Further detailing these deficits, Qureshi et al explicate, based on over 35 neuropsychological instruments, deficits in attention, learning, executive function, and memory.ⁱⁱⁱ In a 2016 evaluation of World Trade Center published in the *Alzheimers Dementia* journal responders experiencing PTSD symptoms, scientists concluded that re-experiencing symptoms of PTSD were consistently associated with cognitive impairment (CI).^{iv}

During the time of treatment, Mr. Capone experienced extreme executive function and cognitive impairment as well as emotional dysregulation. These symptoms are neurobiologically driven by neurochemical and structural cerebral insults incurred as a result of traumatic stress. He reported



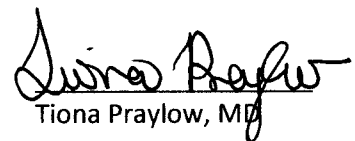
2601 Read Street, Suite I-7
Columbia, SC 29204
Phone 803-256-0101 or Fax 800-854-3497

ongoing difficulties sleeping. He noted episodes of severe mood lability and perseverative thought patterns that impaired his ability to organize, plan, execute, or participate in many of his functional activities of daily living. These PTSD symptoms evidence his incapacity to act in the ordinary affairs of life.

Mr. Capone's wife outlines paranoia as a critical symptom she observed and this is corroborated by client's own self-report during his treatment. He reported homicidal ideations triggered by the persistent recurrence of paranoid ideations. This delusional thought process evidences the existence of delusions.

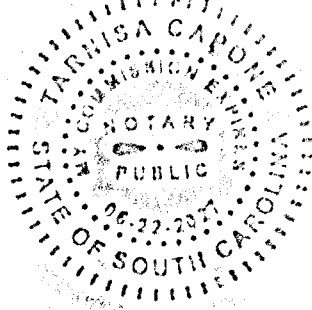
Based on scientific evidence describing neurobiological deterioration, resultant cognitive impairments present in PTSD survivors, as well as the subjective and objective observations of these symptoms in my client, I attest to a reasonable degree of medical certainty that Mr. Capone was of "unsound mind." Therefore, he was unable to organize and execute tasks essential to the affairs of his daily life. Moreover, his mental incapacity impaired him from appropriately participating in the claims process. It is imperative that my client be allowed to exercise his legal rights and seek warranted, deserving compensation for occupational disease incurred as a direct result of his valiant service to our community.

I certify under penalty of perjury that the forgoing statement is true and correct to the best of my knowledge and belief.


Tiona Praylow, MD

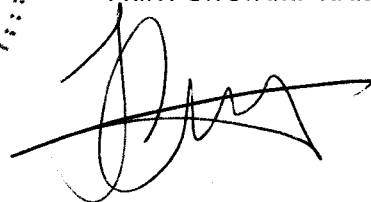
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Sworn and subscribed before me this 8th day of May 2019, by Tiona Praylow. Identification Produced:
South Carolina Drivers License# 007910777 Expires: 04/14/2023



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

PRINT OR STAMP NAME OF NOTARY





2601 Read Street, Suite I-7
Columbia, SC 29204
Phone 803-256-0101 or Fax 800-854-3497

ⁱ Editorial Staff of the National Reporter System (1905). *Judicial and Statutory Definitions of Words and Phrases*, Volume 8. P 7215

ⁱⁱ Bremner, Douglas, MD. (2006). Traumatic stress: effects on the brain. *Dialogues Clinical Neuroscience*. 8(4): 445-461.

ⁱⁱⁱ Quershi et al (2011). Does PTSD Impair Cognition Beyond the Effect of Trauma? *J Neuropsychiatry Clin Neurosci* 23:1(16-28)

^{iv} Clouston et al (2016) Cognitive impairment among World Trade Center responders: Long-term implications of re-experiencing the 9/11 terrorist attacks. *Alzheimers Dementia* 4: 67-75

Exhibit 5

SWORN AFFIDAVIT OF DEMETRIA T CAPONE (WIFE)

April 10, 2019

Mrs. Demetria T Capone
4209 Woodridge Drive
Columbia, SC 29203
(803) 312-1042

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

Re: Letter in Support of Fire Battalion Chief Terry H Capone, Disability Retired. Tolling of the statute of limitations: disability and unsound mind

Terry Capone v. City of Columbia and Companion Third Party Administrator, LLC Appellate Case No.: 2018-000369
W.C.C. File Nos. 1322451, 1319203, 1420487

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Before me this day personally appeared DEMETRIA T CAPONE who, being duly sworn, deposes and says:

- I. My name is Demetria T Capone, DOB September 9, 1970, SSN XXX-XX-6973, I am of sound mind and fully competent to make this sworn declaration. I have been married to my husband Terry H Capone over 21 years and have reviewed his military medical, personnel and civilian medical records and multiple South Carolina Workers Compensation files and various other records and have personal knowledge of the matters set forth below.
- II. My husband was under legal disability and of unsound mind during the period of 9/15/2015- 9/16/2016, as a result of the Marines and Fire Service through occupational exposures and effects thereof, has been diagnosed with PTSD an occupational disease, dementia due to metabolic causes(new), anxiety, depression (major), mild neurocognitive disorder, irritable bowel syndrome- diarrhea, insomnia, sleep apnea, migraine headaches, type II diabetes, Hypertension and others was unable to pursue legal recourse in the South Carolina Workers Compensation appeals process, and disassociated himself from it until a time in 2017, the statute of limitations should be tolled as noted in SC Code§ 15-3-40 (2013)

Exceptions as to persons under disability. In addition he was also impaired by the adverse effects of his medications that include Ambien 10 mg, Seroguel 300 mg, Ativan 1 mg, Depakote 500 mg, Prozac 20 mg, Relpax 40 mg, Dexilant 60 mg still prescribed today, along with others. Both Ambien and Ativan have known side effects that impair cognition, memory (amnesia) and should have been considered by the Commission during the August 21, 2015 hearing in regards to Ativan, which my husband had taken just prior to the start of the hearing for anxiety. See, Claimants 2015 APA's p.#590-620

- III. As a practicing nurse (RN) of over 16 years, I began to recognize mental and cognitive changes in my husband, as well as behavioral inconsistencies that included suicidal, homicidal ideation and paranoia. His sleep pattern were erratic with him staying up at times 24 hours for days ruminating, stuck and rehearsing the past. When he did sleep it was merely 4-6 hours and included nightmares. The impact of the disorders and medications led to him being irritable, over-reactive, having continued memory impairment, a lack of self care (haircuts, shaving and hygiene), and angry verbal outburst, led to an excessive strain on our family and marriage. He also requires the use of a CPAP (sleep apnea) machine due to him having periods of not breathing when he does sleep, but he feels the mask is smothering.
- IV. His psychological, physical and impairments due to the adverse effects of multiple medications continue to change his normal methods of behavior and during the period made him incapable of managing affairs of life, requiring him to see his counselor and psychiatrist on a weekly basis, he was no longer able to manage the home and finances, being an active husband, father to his children, interacting with family, friends and in marital activities. In addition my husband's affairs in life as a Fire Battalion Chief also included those of the City of Columbia Fire Department, in managing emergency scenes, that included: life safety, incident stabilization, and property conservation. This included managing multiple Fire Stations, personnel and pieces of equipment; pursuing his graduate degree and other educational courses that required travel to multiple states for self development throughout the course of his career. Also at a time included handling the nations affairs as a U.S. Marine, until he was made unfit for duty, on two separate occasions confined because of his inability to control his behavior, and subsequently discharged from service as a result; today he continues to remain under legal disability.
- V. I also observed the symptoms of diabetes at home prior to his diagnosis. He was having excessive trips to the bathroom, as well as an acetone smell to his breath. I encouraged him to seek medical help, as his wife, and as a nurse. He has frequent bowel movements

(6-8 times) after he eats, and this has also impeded him wanting or being able to accompany me in public. His diagnoses were confirmed.

- VI. Based on the medical documentation and definitions, my husband Terry Capone, who is a disability retired Fire Battalion Chief and Marine Veteran is legally disabled, and his military medical records show a long history of suffering from episodic periods and fluctuating levels of an unsound mind that began in 1989, was determined to be unfit for full duty until 1992 in the military and subsequent ended his career in the Fire Service.
- VII. In April 3, 2015, Dr. Nicholas A. Lind, provided a medical opinion, That stated: "His PTSD were aggravated in 2013 when as a firefighter, he responded to a traumatic call, which ultimately resulted in his retirement"... "In my opinion, he was insane at the time of the 26 June 1989, incident that resulted in his discharge" see, post trauma resources see claimants 12/2015 Book 1 of 2 APA's Pre-hearing brief- "Alleged aggravation of PTSD" p.#14, Pages 13-15 and p.#38, Pages 37-41.

VIII. On, September 12, 2016, Social Security Administrative Office of Disability Adjudication and Review excerpts:

3. "The claimant has the following severe impairments: Irritable Bowel Syndrome, and mental impairments variously diagnosed as Post-traumatic Stress Disorder, depression, and anxiety (20 CFR 404.1520 (c)). Page 3-8.

The claimant's impairments are considered severe because, they are medically determinable impairments that, when considered either individually or in unison, significantly limit the claimant's mental and physical abilities to do one or more basic work activities. In addition, the claimant's impairments have persisted at a severe level for a continuous period of more than 12 months." Page 3-8.

11. "The claimant has been under a disability as defined in the Social Security Act since October 21, 2013, the alleged onset date of disability (20 CFR 404.1520(g))." Page 8-8.

Decision: "Based on the application for a period of disability and disability insurance benefits filed on December 26, 2013, the claimant has been disabled under section 216(i) and 223(d) of the Social Security Act since October 21, 2013, the alleged onset date of disability (20CFR 404.1520(g))." Page 8-8.

IX. On August 2, 2017, Dr. Conigliaro Jones, my husband primary care physician wrote a letter explaining the adverse effects due to medication prescribed in 2014 named Elavil (Amitriptyline), noting "it works by affecting the balance of certain natural chemicals [neurotransmitters such

as serotonin) in the brain, this medication was also prescribed to him in service. The Food and Drug Administration (FDA), reported among other adverse events physical assault, sudden and usual changes in behavior, altered sugar levels and others experienced by my husband and observed at home by myself and other family members and he was later diagnosed with Type II Diabetes.

X. On November 21, 2017, Dr. Tiona Praylow diagnosed my husband with "post traumatic stress disorder an occupational disease, arising from prolonged work-related stress that was ongoing and caused him to deviate from his normal method of behavior"... "The neurobiology of post traumatic stress disorder explains Mr. Capone's exposure to traumatic and critical incidents, or stressors beyond the range of the normal human experience resulted in [neurochemical alterations in multiple neurotransmitter systems]"..."PTSD appears to be associated with a significant disturbance of multiple neurobiological systems"... "may represent a multi system disorder". Dr. Praylow has been the psychiatrist treating my husband since November 7, 2013 for ptsd, anxiety, insomnia, depression and he has chronic pain and IBS-D, a referral for testing 3/2015 confirmed neurocognitive impairment and Dr. Praylow stated he was insane during the events that lead to his discharge while serving in the Marines. See, Envision Wellness Medical Group Mental Health Opinion.

XI. As of March 11, 2019, the US Veterans Administration determined February 26, 2019 a rating decision which deemed my husband was insane at the during the time of the circumstances surrounding his discharge and changed is his character of discharge to "Honorable" for VA purposes and made him eligible for benefits that include health care.

XII. On March 20, 2019, the Department of Veterans Administration provided my husband with a compensation and pension exam, where a VA Doctor determined my husband's PTSD was due to his service in the Marines and Fire Service and a TBI that was related the Marines; a rating is pending.

XIII. On April 5, 2019, the Department of Veterans provided my husband with another compensation and pension exam, where it was recommended his Headaches receive a disability rating of 50% and Unemployable 100% with Sciatic nerve 10% rating and both were due to injury during his service in the Marine; a final rating is pending.

XIV. My husband continues to suffer and remains under disability. His March 20, 2019 blood work noted a vitamin D deficiency at 18.9 of minimum of 30 and others noted and since been diagnosed by Dr. Jones, with dementia associated with another disease: metabolic associated.

XV. I also had the opportunity to review the South Carolina Worker's Compensation Commission correspondence, transcripts and their decisions in my husband's, most recently Appellant Panel Decision and Order dated March 1, 2019. I disagree at page 4 #4 "I find no medical evidence to suggest that the Claimant had a then existing mental condition which prohibited him from filing a timely appeal". I find the statement to be untrue, not based on information in the record, now or as they existed during the time for filing of appeal based on December 2, 2015 Decision and Order, and the commission is aware of that my husband's PTSD is an occupational disease, and all the other diagnosis, medications and adverse side effects that is before it.

XVI. Definitions

Suggest:

1 a Obsolete: to seek to influence: SEDUCE
b: to call forth: EVOKE
c: to mention or imply as a possibility
d: to propose as desirable or fitting *suggest* a stroll
e: to offer for consideration or as a hypothesis *suggest* a solution to a problem

2 a: to call to mind by association
B: to serve as a motive or inspiration

suggest [Def.1 and 2]. (n.d.). In Merriam Webster Online, Retrieved March 20, 2019, from <https://www.merriam-webster.com/dictionary/suggest>

Section 15-3-40 (Supp. 2013) Exceptions as to persons under disability.

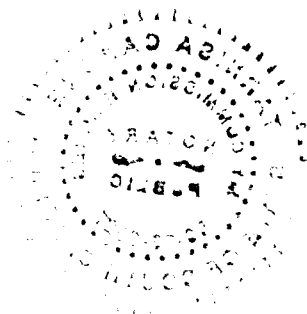
states:

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.



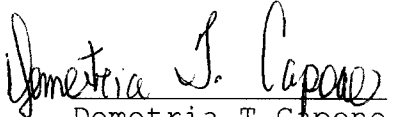
Disability. The want of legal capability to perform an act. Term is generally used to indicate an incapacity for the full enjoyment of ordinary legal rights; thus, persons under age, insane persons, and convicts are said to be under disability. Sometimes the term is used in a more limited sense, as when it signifies an impediment to marriage, or the restraints placed upon clergymen by reason of their spiritual avocations, or lack of legal qualifications to hold office.

As used in connection with Workers' Compensation Acts, disability is a composite of (1) actual incapacity to perform the tasks usually encountered in one's employment and the wage loss resulting there from, and (2) physical impairment of the body that may or may not be incapacitating. Russell v. Bankers Life Co., 46 Cal.App.3d 405, 120 Cal.Rptr. 627,633. Black's Law Dictionary 415(5th ed. 1979).

Unsound mind. Non-legal term referring to one who from infirmity of mind is incapable of managing himself or his affairs. The term, therefore, includes insane persons (see Insanity). It 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. Oklahoma Natural Gas Corporation v. Lay, 175 Okla 75, 51 P.2d 580, 582. Black's Law Dictionary 1380(5th ed. 1979).

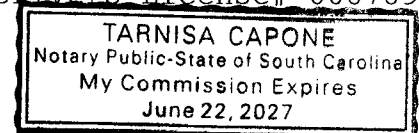
Mental incapacity; mental incompetency. Such is established when there is found to exist an essential privation of reasoning faculties, or when a person is incapable of understanding and acting with discretion in the ordinary affairs of life. Black's Law Dictionary 889 (5th ed. 1979)

I certify under penalty of perjury that the Forgoing statement is true and correct to the best of my knowledge and belief.

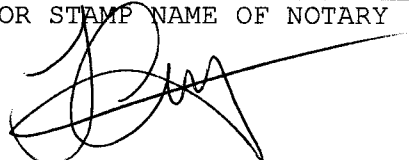

Demetria T Capone

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Sworn and subscribed before me this 10th day of April 2019, by Demetria T. Capone. Identification Produced: South Carolina Drivers License# 008789079 Expires 09-04-2026



PRINT OR STAMP NAME OF NOTARY



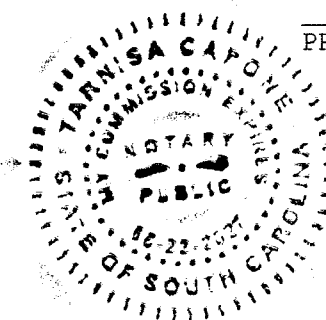


Exhibit 6



Department of Veterans Affairs

INITIAL POST TRAUMATIC STRESS (PTSD)
DISABILITY BENEFITS QUESTIONNAIRE**IMPORTANT:** This form is for use by VA staff and contract psychiatrists or psychologists.

NAME OF PATIENT/VETERAN

Terry Capone

PATIENT/VETERAN'S SOCIAL SECURITY NUMBER

IMPORTANT: If the veteran experiences a mental health emergency during the interview, please terminate the interview and obtain help, using local resources as appropriate. You may also contact the VA Suicide Prevention Hotline at 1-800-273-TALK. Stay on the Hotline until help can link the veteran to emergency care.**NOTE:** Your patient is applying to the U.S. Department of Veterans Affairs (VA) for disability benefits. VA will consider the information you provide on this questionnaire as part of their evaluation in processing the veteran's claim.

CRITERIA INFORMATION FOR PTSD EXAMINER

IMPORTANT: In order to conduct an initial examination for PTSD, the examiner must meet one of the following criteria: (1) be a board-certified or board-eligible psychiatrist; (2) a licensed doctorate-level psychologist; (3) a doctorate-level mental health provider under the close supervision of a board-certified or board-eligible psychiatrist or licensed doctorate-level psychologist; (4) a psychiatry resident under close supervision of a board-certified or board-eligible psychiatrist or licensed doctorate-level psychologist; (5) or a clinical or counseling psychologist completing a one-year internship or residency (for purposes of a doctorate-level degree) under close supervision of a board-certified or board-eligible psychiatrist or licensed doctorate-level psychologist.

SECTION I - DIAGNOSIS

1A. DOES THE VETERAN HAVE A DIAGNOSIS OF PTSD THAT CONFORMS TO DSM IV CRITERIA?

☒ YES ☐ NO (If "Yes," complete Item 1B) (If "No," complete Item 1C)

PTSD

1B. PROVIDE THE DATE OF DIAGNOSIS, ICD CODE, & FACILITY

ICD CODE-

DATE OF DIAGNOSIS

NAME OF DIAGNOSING FACILITY OR CLINICIAN

DR. PRAYLOW

1C. PTSD NOT DIAGNOSED (Check all that apply)

☐ VETERAN'S SYMPTOMS DO NOT MEET THE DIAGNOSTIC CRITERIA FOR PTSD UNDER DSM IV CRITERIA☐ VETERAN HAS ANOTHER AXIS I-IV DIAGNOSIS (If checked, list the Axis I-IV diagnosis and then complete the VA Form 21-0960P-2, Mental Health Disorder Disability Benefits Questionnaire and/or the VA Form 21-0960P-1, Eating Disorder Disability Benefits Questionnaire in lieu of this questionnaire):☐ OTHER TRAUMA SPECTRUM DISORDER☐ VETERAN DOES NOT HAVE A MENTAL DISORDER THAT CONFORMS WITH DSM IV CRITERIA☐ OTHER (Describe)

1D. IF THERE IS A DIAGNOSIS OF PTSD, DOES THE VETERAN ALSO HAVE ANY OTHER AXIS I-IV DIAGNOSES?

☒ YES ☐ NO

(If "Yes," indicate additional diagnoses below)

☒ MENTAL HEALTH DISORDER #1(If checked, provide the ICD code PTSD, the date of the diagnosis _____, and the name of the diagnosing facility or clinician _____)(If checked, indicate the Axis category): ☒ AXIS I ☐ AXIS II ☐ AXIS III ☐ AXIS IV

(If checked, describe the condition and its relationship to PTSD): _____

☐ MENTAL HEALTH DISORDER #2

(If checked, provide the ICD code _____, the date of the diagnosis _____, and the name of the diagnosing facility or clinician _____)

(If checked, indicate the Axis category): ☐ AXIS I ☐ AXIS II ☐ AXIS III ☐ AXIS IV

(If checked, describe the condition and its relationship to PTSD): _____

☐ MENTAL HEALTH DISORDER #3

(If checked, provide the ICD code _____, the date of the diagnosis _____, and the name of the diagnosing facility or clinician _____)

(If checked, indicate the Axis category): ☐ AXIS I ☐ AXIS II ☐ AXIS III ☐ AXIS IV

(If checked, describe the condition and its relationship to PTSD): _____

(If additional diagnoses, describe using the above format): _____

SECTION II - DIAGNOSTIC CRITERIA

2. THE DIAGNOSTIC CRITERIA FOR PTSD, REFERRED TO AS CRITERIA A-F, ARE FROM THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 4TH EDITION (DSM-IV) (Check boxes next to symptoms below)

CRITERION A: The Veteran has been exposed to a traumatic event where both A and B were present

- ☒ Veteran experienced, witnessed or was confronted with an event that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others
- ☒ Veteran's response involved intense fear, helplessness or horror
- ☐ No exposure to a traumatic event

CRITERION B: The traumatic event is persistently reexperienced in 1 or more of the following ways:

- ☒ Recurrent and distressing recollections of the event, including images, thoughts or perceptions
- ☒ Recurrent distressing dreams of the event
- ☐ Acting or feeling as if the traumatic event were recurring; this includes a sense of reliving the experience, illusions, hallucinations and dissociative flashback episodes, including those that occur on awakening or when intoxicated
- ☐ Intense psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event
- ☒ Physiological reactivity on exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event
- ☐ The traumatic event is not persistently reexperienced

CRITERION C: Persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness (not present before the trauma), as indicated by 3 or more of the following:

- ☒ Efforts to avoid thoughts, feelings or conversations associated with the trauma
- ☒ Efforts to avoid activities, places or people that arouse recollections of the trauma
- ☐ Inability to recall an important aspect of the trauma
- ☒ Markedly diminished interest or participation in significant activities
- ☒ Feeling of detachment or estrangement from others
- ☐ Restricted range of affect (e.g., unable to have loving feelings)
- ☐ Sense of a foreshortened future (e.g., does not expect to have a career, marriage, children or a normal life span)
- ☐ No persistent avoidance of stimuli associated with the trauma or numbing of general responsiveness

CRITERION D: Persistent symptoms of increased arousal, not present before the trauma, as indicated by 2 or more of the following:

- ☒ Difficulty falling or staying asleep
- ☒ Irritability or outbursts of anger
- ☒ Difficulty concentrating
- ☒ Hypervigilance
- ☒ Exaggerated startle response
- ☐ No persistent symptoms of increased arousal

CRITERION E: Duration of symptoms

- ☒ The duration of the symptoms described in Criteria B, C and D is more than 1 month
- ☐ The duration of the symptoms described in Criteria B, C and D is less than 1 month
- ☐ No symptoms

CRITERION F: Clinically significant distress or impairment

- ☒ The symptoms described above in Criteria B, C and D cause clinically significant distress or impairment in social, occupational, or other important areas of functioning
- ☐ The symptoms described above in Criteria B, C and D do NOT cause clinically significant distress or impairment in social, occupational, or other important areas of functioning
- ☐ No symptoms

SECTION III - EVIDENCE REVIEW

NOTE: In order to provide an accurate medical opinion, the veteran's records should be reviewed (if available).

3A. WAS THE VETERAN'S VA CLAIMS FILE REVIEWED?

☒ YES ☐ NO (If "No," complete Item 3B)

3B. CHECK ALL RECORDS THAT WERE REVIEWED AS PART OF THIS EXAMINATION.

- ☐ Military service treatment records
- ☐ Military service personnel records
- ☐ Military enlistment examination
- ☐ Military separation examination
- ☐ Military post-deployment questionnaire
- ☐ Department of Defense Form DD214, Separation Documents
- ☒ Veterans Health Administration medical records (VA treatment records)
- ☒ Civilian medical records
- ☐ Interviews with collateral witnesses (family and others who have known the veteran before and after military service)
- ☐ No records were reviewed
- ☐ Other: _____

SECTION IV - STRESSORS

NOTE: For VA purposes, "fear of hostile military or terrorist activity" means that a veteran experienced, witnessed, or was confronted with an event or circumstance that involved actual or threatened death or serious injury, or a threat to the physical integrity of the veteran or others, such as from an actual or potential improvised explosive device; vehicle-imbedded explosive device; incoming artillery, rocket, or mortar fire; grenade; small arms fire, including suspected sniper fire; or attack upon friendly military aircraft, and the veteran's response to the event or circumstance involved a psychological or psycho-physiological state of fear, helplessness, or horror.

4. STRESSORS

A. STRESSOR # 1:

MVA

Describe the circumstance of stressor # 1 Car accident

Are the veteran's symptoms related to this stressor?

☒ YES ☐ NO (If "No," explain) _____

Does this stressor meet Criterion A (i.e., is it adequate to support the diagnosis of PTSD)?

☒ YES ☐ NO

Is this stressor related to the veteran's fear of hostile military or terrorist activity?

☒ YES ☒ NO (If "No," explain) _____

B. STRESSOR # 2:

Fire department saw individuals injured + burned killed, including kids

Describe the circumstance of stressor # 2

Are the veteran's symptoms related to this stressor?

☒ YES ☐ NO (If "No," explain) _____

Does this stressor meet Criterion A (i.e., is it adequate to support the diagnosis of PTSD)?

☒ YES ☐ NO

Is this stressor related to the veteran's fear of hostile military or terrorist activity?

☐ YES ☒ NO (If "No," explain) _____

C. STRESSOR # 3:

Describe the circumstance of stressor # 3

Are the veteran's symptoms related to this stressor?

☐ YES ☐ NO (If "No," explain) _____

Does this stressor meet Criterion A (i.e., is it adequate to support the diagnosis of PTSD)?

☐ YES ☐ NO

Is this stressor related to the veteran's fear of hostile military or terrorist activity?

☐ YES ☐ NO (If "No," explain) _____

D. ADDITIONAL STRESSORS (If additional stressors, describe):

SECTION V - SYMPTOMS

5. SYMPTOMS - FOR EACH LEVEL BELOW, CHECK ALL SYMPTOMS THAT APPLY. CONSIDER THE CUMULATIVE IMPACT OF ALL DIAGNOSED MENTAL DISORDERS THAT THE EXAMINER JUDGES RELATED TO MILITARY SERVICE, WITHOUT ATTEMPTING TO DIFFERENTIATE WHICH SYMPTOMS ARE SPECIFICALLY CAUSED BY WHICH MENTAL DISORDER

A. LEVEL I -

Has the veteran been diagnosed with PTSD (and/or other mental disorder), but symptoms are not severe enough either to interfere with occupational and social functioning or to require continuous medications?

☐ YES ☐ NO

B. LEVEL II -

Does the veteran have occupational and social impairment due to mild or transient symptoms, which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or are the veteran's symptoms controlled by continuous medication?

☒ YES ☐ NO

C. LEVEL III -

Does the veteran have any symptoms from the list below?

☒ YES ☐ NO (If "Yes," check all that apply)

- ☒ Depressed mood
- ☒ Anxiety
- ☒ Suspiciousness
- ☒ Panic attacks that occur weekly or less often
- ☒ Chronic sleep impairment
- ☒ Mild memory loss, such as forgetting names, directions or recent events

D. LEVEL IV -

Does the veteran have any symptoms from the list below?

☒ YES ☐ NO (If "Yes," check all that apply)

- ☐ Flattened affect
- ☐ Circumstantial, circumlocutory or stereotyped speech
- ☐ Panic attacks more than once a week
- ☐ Difficulty in understanding complex commands
- ☐ Impairment of short - and long - term memory, for example, retention of only highly learned material, while forgetting to complete tasks
- ☐ Impaired judgment
- ☐ Impaired abstract thinking
- ☒ Disturbances of motivation and mood
- ☐ Difficulty in establishing and maintaining effective work and social relationships

E. LEVEL V -

Does the veteran have any symptoms from the list below?

☐ YES ☒ NO (If "Yes," check all that apply)

- ☐ Suicidal ideation
- ☐ Obsessional rituals which interfere with routine activities
- ☐ Speech intermittently illogical, obscure, or irrelevant
- ☐ Near-continuous panic or depression affecting the ability to function independently, appropriately and effectively
- ☐ Impaired impulse control, such as unprovoked irritability with periods of violence
- ☐ Spatial disorientation
- ☐ Neglect of personal appearance and hygiene
- ☐ Difficulty in adapting to stressful circumstances, including work or a work like setting
- ☐ Inability to establish and maintain effective relationships

F. LEVEL VI -

Does the veteran have any symptoms from the list below?

☐ YES ☒ NO (If "Yes," check all that apply)

- ☐ Gross impairment in thought processes or communication
- ☐ Persistent delusions or hallucinations
- ☐ Grossly inappropriate behavior
- ☐ Persistent danger of hurting self or others
- ☐ Intermittent inability to perform activities of daily living, including maintenance of minimal personal hygiene
- ☐ Disorientation to time or place
- ☐ Memory loss for names of close relatives, own occupation, or own name

SECTION V - SYMPTOMS (Continued)

5G. DOES THE VETERAN HAVE ANY OTHER SYMPTOMS ATTRIBUTABLE TO PTSD (and/or other mental disorder) THAT ARE NOT LISTED ON PAGE 4?

☐ YES ☒ NO (If "Yes," describe):

Calm, cooperative, verbal, logical, O&A, does not SE/HK

SECTION VI - OCCUPATIONAL AND SOCIAL IMPAIRMENT

6. WHICH OF THE FOLLOWING BEST REPRESENTS THE VETERAN'S LEVEL OF OCCUPATIONAL AND SOCIAL IMPAIRMENT?

- ☐ A mental condition has been formally diagnosed, but symptoms are not severe enough either to interfere with occupational and social functioning or to require continuous medication
- ☐ Occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or, symptoms controlled by medication
- ☐ Occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks, although generally functioning satisfactorily, with normal routine behavior, self-care and conversation
- ☒ Occupational and social impairment with reduced reliability and productivity
- ☐ Occupational and social impairment with deficiencies in most areas, such as work, school, family relations, judgment, thinking and/or mood
- ☐ Total occupational and social impairment

SECTION VII - GLOBAL ASSESSMENT OF FUNCTIONING (GAF)

7. PROVIDE THE CURRENT GLOBAL ASSESSMENT OF FUNCTIONING (GAF) SCORE

N/A

SECTION VIII - COMPETENCY

8. IS THE VETERAN CAPABLE OF MANAGING HIS OR HER FINANCIAL AFFAIRS?

☒ YES ☐ NO (If "No," explain):

SECTION IX - DIAGNOSTIC TESTING

9. HAS ANY MENTAL HEALTH TESTING BEEN PERFORMED?

☒ YES ☐ NO (If "Yes," provide dates, types of testing and results):

SECTION X - FUNCTIONAL IMPACT

10. DOES THE VETERAN'S PTSD AND/OR OTHER MENTAL DISORDER(S) IMPACT HIS OR HER ABILITY TO WORK?

☐ YES ☒ NO (If "Yes," describe impact, providing one or more examples)

SECTION XI - REMARKS

11. REMARKS (If any) PTSD is as least as likely as not due to MYA [119] duties as a Firefighter from 1997-2014.

SECTION XII - PSYCHIATRIST/PSYCHOLOGIST CERTIFICATION AND SIGNATURE

CERTIFICATION - To the best of my knowledge, the information contained herein is accurate, complete and current.

12A. PSYCHIATRIST/PSYCHOLOGIST SIGNATURE AND TITLE	12B. PSYCHIATRIST/PSYCHOLOGIST PRINTED NAME	12C. DATE SIGNED
Tanya C. Dilligan	Tanya Dilligan	3-20-15
12D. PSYCHIATRIST/PSYCHOLOGIST PHONE NUMBER	12E. PSYCHIATRIST/PSYCHOLOGIST FAX NUMBER	12F. PSYCHIATRIST/PSYCHOLOGIST ADDRESS
3		

NOTE - This form is to be completed by the medical information, including additional examinations, if necessary to complete VA's review of the veteran's application.

IMPORTANT - PSYCHIATRIST/PSYCHOLOGIST send the completed form to:

(VA Regional Office FAX No.)

NOTE - A list of VA Regional Office FAX Numbers can be found at www.va.gov/disabilityexams or obtained by calling 1-800-827-1000.

Exhibit 7

March 11, 2019

Department of Veterans Affairs
San Diego VA Benefits Office
8810 Rio San Diego Drive
San Diego, CA 92108

C
Terry Capone

ADMINISTRATIVE DECISION

ISSUE: Statutory Bar Determination Under 38 USC 5303(a)

EVIDENCE:

- Statutory Bar Determination Under 38 USC 5303(a) Determination Administrative Decision dated December 15, 2014 and evidence listed therein.
- Statement of the Case (SOC) dated March 30, 2017 and evidence listed therein.
- Deferred Rating Decision raising the issue of insanity dated November 6, 2018.
- Rating Decision resolving the issue of insanity dated February 26, 2019.

DECISION:

This decision is an addendum to Statutory Bar Determination Under 38 USC 5303(a) Determination Administrative Decision dated December 15, 2014 as the issue of insanity was raised in Deferred Rating Decision dated November 6, 2018 and was resolved in Rating Decision dated February 26, 2019.

Mr. Capone's character of service from October 26, 1988 to April 16, 1997 is considered Honorable for VA Purposes under 38 CFR 3.12(b), and entitlement is established to all benefits administered by the VA for any disability incurred or aggravated during active military, naval, or air service in line of duty during this period of service.

Mr. Capone is entitled to health-care under Chapter 17 of Title 38, U.S.C. for any disability incurred or aggravated during active military, naval, or air service in line of duty for service from October 26, 1988 to April 16, 1997.

This discharge was a bad conduct discharge issued by sentence of a general court-martial.

REASONS AND BASES:

According to 38 U.S.C. 101(18), the term "discharge or release" includes (A) retirement from the active military, naval, or air service, and (B) the satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable. VA regulations consider the satisfactory completion of one

contracted period of enlistment while serving on a subsequent contracted period of service under a new enlistment to be a conditional discharge. An individual can establish eligibility to VA benefits under 38 U.S.C. 101(18) when that individual enlists or reenlists prior to the completion of a period of active service. If the period of active service for which the individual was obligated to serve is satisfactorily completed, eligibility to VA benefits is established. The individual can be entitled to VA benefits under 38 U.S.C. 101(18) even if, 1) The subsequent discharge was under dishonorable or other than honorable conditions, or; 2) A statutory bar exists for entitlement to benefits for the later period of service. M21-1 III.v.1.B.5.a-h also applies.

According to 38 CFR 3.12(a), if the former service member did not die in service, pension, compensation, or dependency and indemnity compensation is not payable unless the period of service on which the claim is based was terminated by discharge or release under conditions other than dishonorable. (38 U.S.C. 101(2)). A discharge under honorable conditions is binding on the Department of Veterans Affairs as to character of discharge.

According to 38 CFR 3.12(b), a discharge or release from service under one of the conditions specified in this section is a bar to the payment of benefits unless it is found that the person was insane at the time of committing the offense causing such discharge or release or unless otherwise specifically provided (38 U.S.C. 5303(b)).

According to 38 CFR 3.12(c)(2), benefits are not payable where the former service member was discharged or released by reason of the sentence of a General Court-Martial.

According to 38 CFR 3.354(a), an insane person is one who, while not mentally defective or constitutionally psychopathic, except when a psychosis has been engrafted upon such basic condition, exhibits, due to disease, a more or less prolonged deviation from his normal method of behavior; or who interferes with the peace of society; or who has so departed (become antisocial) from the accepted standards of the community to which by birth and education he belongs as to lack the adaptability to make further adjustment to the social customs of the community in which he resides. As stated in 38 CFR 3.354(b), when a rating agency is concerned with determining whether a Veteran was insane at the time he committed an offense leading to his court-martial, discharge or resignation (38 U.S.C. 5303(b)), it will base its decision on all the evidence procurable relating to the period involved, and apply the definition in paragraph (a) of this section.

As stated in 38 CFR 3.360(a), the health-care and related benefits authorized by Chapter 17 of Title 38, United States Code shall be provided to certain former service persons with administrative discharges under other than honorable conditions for any disability incurred or aggravated during active military, naval, or air service in line of duty. Under 38 CFR 3.360(b), with certain exceptions such benefits shall be furnished for any disability incurred or aggravated during a period of service terminated by a discharge under other than honorable conditions. Specifically, they may not be furnished for any disability incurred or aggravated during a period of service terminated by a bad conduct discharge or when one of the bars listed in 38 CFR 3.12(c) applies.

According to 38 U.S.C. 5303(a), the discharge or dismissal by reason of the sentence of a general court-martial of any person from the Armed Forces, or the discharge of any such person on the ground that such person was a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authority, or as a deserter, or on the basis of an absence without authority from active duty for a continuous period of at least one hundred and eighty days if such person was discharged under conditions other than honorable unless such person demonstrates to the satisfaction of the Secretary that there are compelling circumstances to warrant such prolonged unauthorized absence, or of an officer by the acceptance of such officer's resignation for the good of the service, or (except as provided in subsection (c)) the discharge of any individual during a period of hostilities as an alien, shall bar all rights of such person under laws administered by the Secretary based upon the period of service from which discharged or dismissed, notwithstanding any action subsequent to the date of such discharge by a board established pursuant to Section 1553 of Title 10.

According to 38 U.S.C. 5303(b), if it is established to the satisfaction of the Secretary that at the time of the commission of an offense leading to a person's Court-Martial, discharge, or resignation, that person was insane, such person shall not be precluded from benefits under laws administered by the Secretary based upon the period of service from which such person was separated.

The issue of insanity was raised per M21-1 III.v.1.E.1.a in Deferred Rating Decision dated November 6, 2018 based on the evidence of record. Per M21-1 III.v.1.E.1.b-d and M21-1 IX.ii.2.6, Rating Decision dated February 26, 2019 deemed that Mr. Capone was insane at the time of the circumstances surrounding his discharge.

Statutory Bar Determination Under 38 USC 5303(a) Determination Administrative Decision dated December 15, 2014 outline the Reasons and Bases for determining service from October 26, 1988 to April 16, 1997 Dishonorable for VA Purposes under 38 CFR 3.12(c)(2), and as such, will not be repeated in this Character of Discharge Determination. However, Deferred Rating Decision dated November 6, 2018 raised the issue of insanity based on the evidence of record. Rating Decision dated February 26, 2019 deemed that Mr. Capone was insane at the time of the circumstances surrounding his discharge.

Additionally, an individual can establish eligibility to VA benefits under 38 U.S.C. 101(18) when that individual enlists or reenlists prior to the completion of a period of active service. If the period of active service for which the individual was obligated to serve is satisfactorily completed, eligibility to VA benefits is established. The individual can be entitled to VA benefits under 38 U.S.C. 101(18) even if, 1) The subsequent discharge was under dishonorable or other than honorable conditions, or; 2) A statutory bar exists for entitlement to benefits for the later period of service. A careful review of the Military Service Records of record do not reveal that Mr. Capone reenlisted during this service period. Mr. Capone was placed on involuntary appellant leave and was confined for 18 months.

Therefore, considering the February 26, 2019 Rating Decision that deemed that Mr. Capone was insane at the time of the circumstances surrounding his discharge, it is therefore determined that

his character of service for the period from October 26, 1988 to April 16, 1997 is considered Honorable for VA Purposes under 38 CFR 3.12(b), and entitlement is established to all benefits administered by the VA for any disability incurred or aggravated during active military, naval, or air service in line of duty during this period of service.

Mr. Capone is entitled to health-care under Chapter 17 of Title 38, U.S.C. for any disability incurred or aggravated during active military, naval, or air service in line of duty for service from October 26, 1988 to April 16, 1997.

Submitted By: 1320 Digitally signed by Melissa D. Brown 521320
Date: 2019.03.11 13:16:01 -07'00' Date: 03/11/2019

Concurred By: 19596 Digitally signed by GABRIEL TAROMA 119596
Date: 2019.03.11 15:14:35 -07'00' Date: 03/11/2019

Approved By: VANS Digitally signed by WILLIE J. EVANS 122102
Date: 2019.03.11 15:56:51 -07'00' Date: 03/11/2019

Exhibit 8

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COLUMBIA
1601 ASSEMBLY ST
COLUMBIA
SC
29201-9998
4518040202
10/05/2018 (800)275-8777 5:04 PM

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Product Description	Sale Qty	Final Price
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Insurance (Up to \$50.00 included)	1	\$0.00
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First-Class Mail	1	\$2.05
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Large Envelope
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(COLUMBIA, SC 29202)
(Weight: 0 Lb 5.60 Oz)
(Estimated Delivery Date)
(Tuesday 10/09/2018)

Cert Mail RstrDel	1	\$8.55
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(@USPS Certified Mail #)
(70173040000001094730)
(Recipient name: CYNTHIA DOOLEY)

Return Receipt	1	\$2.75
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(9590940242088121030674)

Total	\$23.20
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☐ Adult Signature Restricted Delivery \$0.00

Postage \$2.05
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10/05/2018

Sent To: *Cynthia Dooley*
Street and Apt. No., or PO Box No.
City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

THE CAPONE FAMILY

October 5, 2018

S.C. Workers' Compensation Commission
Ms. Amy Bracey Judicial Director
P.O. Box 1715
Columbia, SC 29202-1715

RE: Terry Capone v. City of Columbia
WCC File Nos.: 1322451, 1319203, 142087

Dear Commission and Judicial Director,

Please Notice To Take Judicial Notice Pursuant to South Carolina Rules of Civil Procedure 201(c)(2),
Regulations 67-214, 67-215 and any others authority of law on behalf of myself the Appellate/Claimant for filing
in the above referenced matters.

By copy of this letter to Cynthia C Dooley, Attorney for Defendants, I am notifying her of this submission, and serving a
copy upon her by personal service or USPS certified mailing.

Thank you for your consideration.

With The Highest Regards,

Enclosure(s) as Stated

Cc:

Cynthia C. Dooley Attorney for defendants (w/all enclosures)



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

October 5, 2018
Columbia, South Carolina

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE REVIEW
WCC FILE NO. 1322451, 1319203, 1420487

1 Terry H Capone ,

2 Pro Per Claimant

3 *Employee*

4 v.

5 City of Columbia,

6 *Employer*

7 And

8 Companion Property and Casualty Group,

9 *Carrier*

10 Defendants

NOTICE TO TAKE
JUDICIAL NOTICE

11 **TO: COMMISSIONERS, SOUTH CAROLINA WORKERS' COMPENSATION**
12 **COMMISSION, DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

13 **PLEASE TAKE NOTICE,** In Propria Persona, on my own behalf, in person, I
14 Terry H Capone, Pursuant to S.C. R. Civ. P. 201 (c)(2), hereby respectfully move this Court to
15 Take Judicial Notice, in the above referenced matters.

16 **1. NOTICE: STATUS,** Pursuant to 28 U.S.C § 1746, I hereby declare as follows: I am Mr.
17 Terry H. Capone, I was unable to file a timely response to the void December 2, 2015 decision,
18 that was procured by Fraud Upon the Court (omitting evidence) that effectively denied me a
19 full and fair hearing on the merits of my claim and is, and was a *Denial of Procedural Due*
20 *Process under the Fifth Amendment of the U.S. Constitution*, as applicable to the states through
21 the Fourteenth Amendment by Commissioner Gene Henry McCaskill (Chairman),[who I am
22 unable to find his name on South Carolina Judicial Department Attorney Information Search, is
23 practicing law without a license] and City of Columbia Attorney Dana M Thye, for
24 Defendants, who committed Fraud Upon the Court, False Statements, Fraudulent Concealment
Exception, Active Concealment of Fraud in Real Property, both who I know to be artificial and
had no Standing, no Authority and no Jurisdiction to deny *Worker's Compensation Benefits:*

TERRY H CAPONE PRO PER, CLAIMANT v. CITY OF COLUMBIA, EMPLOYER

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE REVIEW
WCC FILE NO. 1322451, 1319203, 1420487

1 that are automatic and guaranteed and with "No fault" by the Constitution. I remain and was
2 under disability prior to a hearing held August 21, 2015; this is due to multiple disabilities; that
3 include post traumatic stress disorder (PTSD) an occupational disease; major depression
4 disorder; anxiety and irritable bowel syndrome with diarrhea (IBS-D), and Neurocognitive
5 Disorder due to Traumatic Brain Injury under disability, as a Firefighter which is permanently
6 and totally disabled as a result of firefighting service related disabilities in the Columbia
7 (RICHLAND) State of South Carolina, by four (4) State agencies as well as federal agencies
8 (evidence is before this court), which include 1. The State of South Carolina Police Retirement
9 System (PORS) as of 3/10/2014; 2. The State of South Carolina Internal Revenue Service as of
10 11/12/2014 Pursuant to the provisions of Section 3 of Article X of the state constitution and
11 subject to provisions of sections 12-4-720, there is exempt from Ad Valorem Taxation because
12 I am a firefighter who is permanently and totally disabled as a result of firefighter service
13 connected disability; 3. The State of South Carolina Employment And Workforce as of
14 10/17/2014; 4. The State of South Carolina Education Commission (2014) as a result of being
15 totally and permanently disabled in the line of duty, my children are entitled to free educational
16 benefits and my daughters are enrolled at the University of South Carolina, one in criminal
17 justice to become a lawyer and other nursing, to become a nurse midwife, both (Columbia
18 campus) and my son graduated with a Communications degree University of South Carolina
19 (upstate) campus SC Code § 59-111-120; U.S. Department of Education, and U.S. Social
20 Security Administration Office of Disability Adjudication as of October 21, 2013, day unable
21 to return to work and reported disablement as a matter of law, (October 18, 2013, last day
22 worked on Fire 2nd shift) to be "Severe" impairments (20 CFR 404.1520 (c)). And the
23 claimant also suffers from a variety of osteoarthritis, carpal tunnel syndrome; sleep related
24 breathing disorder, and migraine headaches, decided September 12, 2016. I have suffered from
temporary insanity. No Statute of limitations apply, as stated under the law based on Mental
Incompetence Title 42 Workers' Compensation SC Code § 42-15-50, SC Code § 15-3-40

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE REVIEW
WCC FILE NO. 1322451, 1319203, 1420487

1 exceptions as to person under disability; SC Code §15-3-60 effects of two more disabilities,
2 and SC Code § 15-3-50, disability must exist when right accrued.

3
4 **2. FURTHER NOTICE: STANDING** In this workers' compensation case, Appellant Mr.
5 Terry H Capone, Fire Battalion Chief-Disability Retired by the State of South Carolina Police
6 Retirement System, is of African –Decent (Claimant) is a Natural-born citizen of The United
7 States, The United States of America, and The State of South Carolina, and resides in Richland
8 County, South Carolina. The hearing held August 21, 2015 and decision filed December 2,
9 2015, "Extraordinary circumstances" exist, in which deprived me of "substantial rights "and
10 "fundamental rights" are prejudiced and because the Administrative findings, inferences,
11 conclusions, or decisions: violated constitutional and statutory provisions; exceeds statutory
12 authority of the agency; was made upon unlawful procedures; is effected by an error of law; is
13 clearly erroneous in view of the reliable, probative, substantial evidence on the whole record,
14 all records, documents and media to include any and all that lay before, or the possession of the
15 Jurisdiction of this Commission, including WCC File No: 1719990, 1519702, 1423445,
16 15036555, 1322789; and is arbitrary and capricious and characterized by abuse of discretion
17 and unwarranted exercise of discretion.

18 **3. FURTHER NOTICE:**South Carolina Workers' Compensation WCC FILE NO. 1322451
19 date of initial diagnosis was 11/07/2013; I sustained an aggravation of a psychological injury to
20 my "Psyche"; WCC FILE NO. 319203 on or about Oct 12, 2013, in which I re-injured my
21 bilateral hands and wrist; WCC File 1420487, due to a "scrivener's error" was originally noted
22 as June 24, 2014, but at the hearing held Aug 21, 2015, was corrected twice on the record
23 under oath, to be "June 24, 2013", (with no objection) sustained an injury to his toe Mold
24 (Fungus) to include Cladosporium; and "Chaetomiun" a now known toxic mold (fugus) at the
time was also diagnosed with 1. Tinea pedis 2.Ear pain/Vertigo 3. Onychomycosis 4.

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1 Headaches , all while working at the employed at the City of Columbia, Columbia Fire
2 Department, and are known Botoxin symptoms' Top Symptoms associated with
3 Mold/Mytoxin-Associated Illness.

4
5 **4.FURTHER NOTICE:** I was not made aware until on or about December 2017, the City of
6 Columbia, Columbia South Carolina, was aware of Mold (Fungus) in Fire Stations, because a
7 publicly published news article dated: Thursday, May 21, 2015, that was uncontested, showed
8 two types: Aspergillus/ Penicillium and "Chaetomium". The same mold (fungus) determined
9 by lab results to be found on my body.

10 **5. FURTHER NOTICE:** Under the Act, The Defendants struck the "grand bargain", impart
11 that bargain gave me benefits (property) that is clearly defined as 1."automatic" 2."guaranteed"
12 and 3. regardless of fault "no fault"[emphasis], that are constitutionally protected. To allow
13 anything is else is a clear violation and deprivation of those constitutionally protected rights to
14 benefits (property) and clearly "frivolous" in violations in regard to rule 11 South Carolina rule
15 of civil procedures, Signing of Pleadings; Attorneys (A) and The South Carolina Frivolous
16 Civil Proceedings Sanction Act S.C. Code Ann. § 15-36-10, et seq.

17
18 **6. FURTHER NOTICE,** The Defendants and their Attorneys submitted False Information
19 with regards to my Average Weekly Wage (AWW) to this Commission: The defendants were
20 well aware of The City of Columbia violations of law in regards to Firefighters pay
21 calculations, in an effort to correct this violation defendant made changes to the way Fire Shift
22 Employees pay was calculated. The disability of a workers' compensation claimant reaches
23 into the future, not the past; his loss as a result of injury must be thought of in terms of its
24 impact on probable future earnings, for purposes of calculating the claimant's average weekly
wage. Code 1976, § 42-1-40. **Compensation rate \$2611.20 x .666= AWW \$1739.06**

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1 7. **FURTHER NOTICE**, Stands in further violation *Deprivation of Equal Protection* and
2 *Denial Of procedural Due process Under the Color of law, constitutional protected rights*. It
3 has been my experience that the SC Workers' Compensation Commission Scheme, all
4 stakeholders are not treated fairly and equitably in a timely manner and the system is not
5 efficient or effective, as it bestowes privileges to white men while denying those to American
6 African/black men and woman of color, in comparison to my own, (3) cases below noted the
7 irregular judgment before us:

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

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

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

20 FRAME, a Caucasian, was often troubled by the dishonorable treatment of African-American
21 employees under his charge from upper management, exacerbated by comments and admitted
22 to never actually witnessing intimate sexual relations. The psychiatrist and psychologist agree
23 (1) that Frame suffers from a bipolar type psychosis; (2) on the day in question he experienced
24 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

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1 stress; and (5) it was in no way certain that Frame would experience such a mental collapse
2 regardless of exterior stimuli (i.e., his job). According to the psychiatrist and psychologist,
3 Frame is not currently capable of full-time work.

4 In the SC Workers Compensation Commission Scheme, A hearing before a single
5 commissioner resulted in an order granting Frame full benefits. The order of the single
6 commissioner reads:

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

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

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

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

22 CASE #3. Edward L. McLane v. City of Columbia \ African-American Male PHYSICAL
23 INJUIRES/ MENTAL INJURY

24 Mr. Edward L. McLane v. City of Columbia, an African American Firefighter-Fire Engineer –
Retired Claimant was a passenger in a motor vehicle accident (rolled over fire truck), while
employed with the City of Columbia Fire Department, Columbia, South Carolina

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(RICHLAND), due to his injuries included" whole body" and "psyche", did not receive the maximum award for total disability or death limited by the law to five hundred 500 weeks of compensation; guaranteed under the act. This was fraud Upon the Court, by the Commission and the Attorney, and in violation of his procedural due process, illegally withholding his (property) and today has not received the remainder of his benefits guaranteed under the Act. Mr. McLane was at the time and remains totally and permanently disabled under the law, (6/6/2007).

8. FURTHER NOTICE, JUDICIAL NOTICE BY STATUE:

☒ Status- "The status of a person is his legal position or condition"..." The term is chiefly applied to persons under disability, or persons who have some peculiar condition which prevents the general law from applying to them in the same way as it does to ordinary persons. Sweet. See Barney v. Tourtellotte, 138 Mass. 108; De la Montanya v. De la Montanya, 112 Cal. 115. 44 Pac. 345, 32 L.R.A. 82, 53 Am. St. Rep. 105; Duram v. Durham, 57 111. App.407 There are certain rights and duties, with cer- tain capacities and incapacities to take rights and incur duties, by which persons, as subjects of law, are variously determined to certain classes. The rights, duties, capacities, or incapacities which determine a given person to any of these classes, constitute a condition or status with which the person is invested. Aust. Jur. -Black's Law Dictionary 2nd editon

☒ violates art. I, § 22, of our State Constitution on several grounds. This provision states:
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

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1 the right to judicial review. No person shall be deprived of life, liberty, or property
2 without due process of law. U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3.

3
4
5 ☒ A "legislative act will not be declared unconstitutional unless its repugnance to the
6 constitution is clear and beyond a reasonable doubt." Joytime Distribs. and Amusement Co.,
7 338 S.C. at 640, 528 S.E.2d at 650. Since the decision in *M'Culloch v. Maryland*, 17 U.S. 316
8 (1819), it has been settled that state law that conflicts with federal law is "without effect."
9 *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992); see also *Maryland v. Louisiana*,
10 451 U.S. 725, 746 (1981) ("It is basic to this constitutional command that all conflicting state
11 provisions be without effect.").

12 ☒ The people's right under the Fourth Amendment to "be secure in their persons, houses,
13 papers, and effects, against unreasonable searches and seizures," U.S. CONST. amend. IV,
14 "extends to . the curtilage of the home," *State v. Herring*, 387 S.C. 201, 209, 692 S.E.2d 490,
15 494 (2009) (citing *United States v. Dunn*, 480 U.S. 294, 107 S. Ct. 1134, 94 L. Ed. 2d 326
16 (1987) and *Rogers v. Pendleton*, 249 F.3d 279, 287 (4th Cir. 2001)).

17 ☒ *Vernon v. Harleyville Mut. Cas. Co.*, 244 S.C. 152, 155, 135 S.E.2d 841, 844 (1964)
18 (citing 82 C.J.S. Statutes § 384b(2), page 904). "The Court must presume the legislature did
19 not intend a futile act, but rather intended its statutes to accomplish something." *Denene, Inc.*
20 *v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002) (citing *TNS Mills, Inc. v.*
21 *South Carolina Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998)).

22
23 ☒ *Grier v. AMISUB of South Carolina, Inc.*, 397 S.C. 532, 540, 725 S.E.2d 693, 698
24 (2012)("[W]hen a statute is clear on its face, it is improvident to judicially engraft extra

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1 requirements to legislation just because doing so may further the intent behind the statute.");
2 Consumer Advocate v. South Carolina Dept. of Ins., 397 S.C. 599, 602, 725 S.E.2d 708, 710
3 (Ct.App. 2012)("The court has no right to add words [the legislature] omitted, nor to
4 interpolate them on conceits of symmetry and policy.")

5
6 ☒ In seeking out the intention of the legislature from the act as a whole the court are not bound
7 to close their eyes to the consequences of the construction contended for (Ewen v. Thompson-
8 Starrett Co., 208 N.Y.245). It is to be presumed that the lawmakers did not intend an unjust,
9 absurd or oppressive result (Flynn v. Prudential Ins. Co., 207 N.Y.315; People v. Ahearn, 196
10 N.Y. 221).

11 ☒ In 1911, in response to these common-law inequities, the legislature passed our Workers'
12 Compensation Act. L, 1911, c. 95. The legislature involved historic trade-off whereby
13 employees relinquish their right to pursue common law remedies in exchange for automatic
14 entitlement to certain, but reduced, benefits whenever they suffered injuries by accident arising
15 out and in the course of employment.

16
17 ☒ Pursuant to the statutory scheme implemented by the Act, the employee gave up his
18 common law rights to sue his employer in tort, but recovery for injuries arising out of and in
19 the course of his employment became automatic without regard to any fault on his part. The
20 employer, who gave up the right to plead the numerous common law defenses, was compelled
21 to pay, but liability became fixed under strict and comprehensive statutory scheme, and was
22 not subjected to the sympathies of jurors whose compassion for fellow employees often led to
23 high recovery. (See 81 Am.Jur.2d Worker's Compensation sec. 1 et seq. (1976.) This trade- off
24 between employer and employees promoted the fundamental purpose of the Act, which was to

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1 afford protection to employees by proving them with prompt and equitable compensation for
2 their injuries. See *O'Brien v. Rautenbush* (1956), 10 III.2d 167.

3
4 ☒ The Workers' Compensation Act is a form of social legislation wherein and whereby the
5 employer and employee surrender benefits previously enjoyed under common law in exchange
6 for other benefits provided under the Act; one such benefit is an employee's swift and sure
7 compensation. *Brown v. Bi-Lo, Inc.* (S.C.App. 2000) 341 S.C. 611, 535 S.E.2d 445, rehearing
8 denied, certiorari granted, certiorari granted, reversed 354 S.C.436, 581 S.E.2d 836. Workers'
9 Compensation 11.

10 ☒ The South Carolina Workmen's Compensation Act having been fashioned to the North
11 Carolina Workmen's Compensation Act, and practically a copy thereof, the opinions of the
12 Supreme Court of that state construing such act are entitled to great respect. *Nolan v. Daley*
13 (S.C. 1952) 222 S.C. 407, 73 S.E.2d 449.

14
15 ☒ Since the South Carolina Workers' Compensation Act was tailored after the North Carolina Act,
16 and opinions of the North Carolina Supreme Court construing the North Carolina Act are entitled
17 to great weight with the appellate courts of South Carolina. *Holly v. Owens Corning Fiberglas*
18 *Corp.* (S.C.App.1990) 301 S.C. 519, 392, S.E.2d 804, certiorari granted, opinion adopted 302
19 S.C.518, 397 S.E.2d 377. Workers' Compensation 45.

20 ☒ Since the South Carolina Workers' Compensation Act was tailored after the North Carolina Act,
21 the opinions of the Supreme Court of North Carolina's act are entitled to great weight in South
22 Carolina workers' compensation cases. *Corbett v City of Columbia* (S.C.App.1986) 290 S.C. 71,
23 348 S.E.2d 191, reversed 294 S.C. 327, 364 S.E.2d 459.

24 ☒ North Carolina court decisions interpreting the state's workers' compensation statute are

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1 entitled to weight when South Carolina courts interpret our workers' compensation law because
2 the South Carolina statute was fashioned after that of North Carolina. *Stephen v. Avins Const.*
3 *Co.*, 324 S.C. 334, 340, 478 S.E.2d 74, 77 (Ct.App.1996).

4 ☒ The referenced rule, Industrial Commission Rule 801, provides that:

5 In the interest of justice, these rules *may be waived* by the Industrial Commission. The rights of any
6 unrepresented plaintiff will be given special consideration in this regard, to the end that a plaintiff
7 without an attorney shall not be prejudiced by mere failure to strictly comply with any one of these
8 rules.

9 ☒ The primary purpose of the Workmen's Compensation Act is to protect the workman who
10 actually does the work. *Smith v. Fulmer* (S.C. 1941) 198 S.C. 91, 15 S.E.2d 681

11
12 ☒ The Petty court rejected the Commission's construction of section 97-12 as incompatible
13 with the Workers' Compensation Act-which was "to provide for the injured workman, or his
14 dependents in the event of his death, at the cost of the industry." *Id.* at 328. To that end the
15 court announced the rule of statutory interpretation in North Carolina: "[B]enefits under the
16 Act 'should not be denied by a technical, narrow, and strict construction.' " *Id.* (citing
17 *Hollman v. City of Raleigh*, 273 N.C. 240, 159 S.E.2d 874, 882 (1968)).

18 ☒ The General Assembly enacted the Act in 1929 to both "provide swift and sure
19 compensation to injured without the necessity of protracted litigation," and to "insure[] a
20 limited and determinate liability for employers." E.g., *Rorie v. Holly Farms*, 306 N.C. 706,
21 709, 295 S.E.2d 458, 460(1982)

22
23 ☒ The philosophy which supports the Work[ers'] Compensation Act is "that the wear
24

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1 and tear of human beings in modern industry should be charged to the industry, just as the wear
2 and tear of machinery has always been charged. And while such compensation is presumably
3 charged to industry, and consequently to the Employer or Owner of the industry, eventually it
4 becomes a part of the fair money cost of the industrial product, to be paid for by the general
5 public patronizing such products."

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

11
12 ☒ "Active fraudulent Concealment", as defined:

13 The fraudulent concealment exception applies where an employer fraudulently conceals a
14 worker's injury and its connection to employment whereby the concealment results in an
15 aggravation of the injury. There are three necessary elements: (1) the employer conceals the
16 existence of the injury; (2) the employer concealed the connection between the injury and
17 employment; and (3) the injury was aggravated following the employer's concealment. (Lab.
18 Code, § 3602, subd, (b); *Jensen v. Amgen* (2003) 105 Cal. App 4th 1322, 1325; see also,
19 *Palestini v. General Dynamics Corp.* (2002) 99 Cal. App. 4th 80.)

20 ☒ The fraudulent concealment exception more typically arises in situations involving exposure
21 to asbestos, mold, or toxic chemical. (See, e.g. *John-Manville Products v. Sup. Ct* (1980) 27
22 Cal. 3d 465.) It is a very limited exception that requires actual knowledge by the employer and
23 a lack of awareness by the worker of the injury and its relationship to employment
24

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1 ☒The reversion doctrine provides an exception. As the supreme court originally described it,
2 that doctrine provides that the trial court is reversioned with jurisdiction if the parties "actively
3 participate without objection in proceedings which are inconsistent with the merits of the prior
4 judgment." *People v. Kaeding*, 98 Ill. 2d 237, 241 (1983).

5
6 ☒Vause v. Equipment Co., 233 N.C. 88, 92, 63 S.E. 2d 173, 176 (1951) (quoting Cox v.
7 Kansas City Refining Co., 108 Kan. 320, 195 P. 863 (1921)); see also Barber v. Minges, 223
8 N.C. 213, 216, 25 S.E. 2d 837, 839 (1943)("The primary purpose of legislation of this kind is
9 to compel Industry to Take care if its own wreckage.")

10 ☒The basic operating principle of the Act is that an employee is **automatically entitled** to
11 certain benefits whenever he suffers either person injury by accident occurring in the course of
12 employment and arising out of it, or incurs an occupational disease. **Those benefits include**
13 **both wages based on disability and medical compensation.** "Medical compensation"
14 includes hospital services "as may reasonably be required to effect a cure or give relief and for
15 such additional time as, in the judgment of the Commission, will lessen the period of
16 disability." N.C.G.S. § 97-2 (19)(1991). "Medical compensation shall be provided by the
17 employer". N.C.G.S. § 97-25 (1991). Medical compensation may be ordered by the
18 Commission if not provided by the employer. *Id.* The pecuniary liability of the employer
19 therefore "shall limited to such charges as prevail in the same community for similar treatment
20 of injured person of a like standard of living when such treatment is paid for by the injured
21 person." N.C.G.S. §97-26 (1991). "[C]harges of hospitals for medical compensation...shall be
22 subject to approval of the Commission."N.C.G.S. §97-90(a)(1991).

23 ☒The General Assembly created the Industrial Commission see N.C.G.S. §97-77, to
24 administer the provisions of the Act, *Hanks v. Utilities Co.*, 210 N.C.312, 319, 186 S.E. 252,

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1 257 (1936), and authorized the Commission to "make rules, not inconsistent with [the Act], for
2 carrying out the provisions [thereof]. "N.C.G.S. § 97-80(a) (1991).

3
4 ☒The Workers' Compensation Act is the exclusive remedy against an employer for an
5 employee's work-related accident or injury. Fuller v. Blanchard, Op. No. 3763 (S.C. Ct. App.
6 filed March 22, 2004) (Shearouse Adv. Sh. No. 12 at 16); see also Strickland v. Galloway, 348
7 S.C. 644, 646, 560 S.E.2d 448, 449 (Ct. App. 2002) ("In circumstances in which the South
8 Carolina Workers' Compensation Act covers an employee's work-related accident, the Act
9 provides the exclusive remedy against the employer."). The exclusivity provision of the Act
10 precludes an employee from maintaining a tort action against an employer where the employee
11 sustains a work-related injury. Tatum v. Medical Univ. of South Carolina, 346 S.C. 194, 552
12 S.E.2d 18 (2001).

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

18 ☒See, e.g., GJR Invs., Inc. v. Cty. of Escambia, 132 F.3d 1359, 1369 (11th Cir. 1998) (stating
19 that "[c]ourts do and should show a leniency to pro se litigants not enjoyed by those with the
20 benefit of a legal education").

21
22 ☒As the Court unanimously held in Haines v. Kerner, 404 U.S. 519 (1972), a pro se
23 complaint, "however inartfully pleaded," must be held to "less stringent standards than formal
24 pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears

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1 "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would
2 entitle him to relief." Id. at 520-521, quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

3
4 ☒ In Stuckey, the legislature's subsequent adoption of a specific time period was interpreted by
5 the court as "evidence of legislative intent that 'directly' be given a time-related meaning." 339
6 S.C. at 401, 529 S.E.2d at 708.

7 ☒ Nevertheless, workers' compensation is a creature of statute. As such, we are bound to
8 strictly construe the terms of the statute and to rely on the General Assembly to amend the
9 statute where necessary. See Wigfall v. Tideland Utilities, Inc., Op. No. 25628 (S.C. Sup. Ct.
10 filed April 14, 2003) (Shearouse Adv. Sh. No. 14 at pg.10) (because Act provides
11 compensatory system in derogation of common law rights, Court must strictly construe the
12 statute and leave it to the General Assembly to amend and define any ambiguities).

13 ☒ SC CODE §42-9-440 SUSPECTED FALSE STATEMENTS OR
14 MISREPRESENTATIONS TO BE REPORTED TO INSURANCE FRAUD DIVISION OF
15 OFFICE OF ATTORNEY GENERAL. The Commission shall report all cases of suspected
16 false statement or misrepresentation, as defined in Section 38-55-530(D), to the Insurance
17 Fraud Division of the Office of the Attorney

18
19 ☒ The Supremacy Clause of the United States Constitution provides that "the Laws of the
20 United States . shall be the supreme Law of the Land . any Thing in the Constitution or Laws
21 of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. State and local laws
22 are thus preempted when they conflict with federal law. See National Helicopter Corp. of Am.
23 v. City of New York, 137 F.3d 81, 88 (2d Cir.1998).

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1 "Waivers of Constitutional Rights, not only must they be voluntary, they must be
2 knowingly intelligent acts done with sufficient awareness." *Brady v. U.S.*, 397 U.S. 742,
3 748

4 ☒ In *United States v. Bagley* (1985), the Court narrowed the reach of *Brady* by stating the
5 suppressed evidence had to be "exculpatory" and "material" for a violation to result in the
6 reversal of a conviction.^[21] Harry Blackmun wrote in *Bagley* that "only if there is a reasonable
7 probability that, had the evidence been disclosed to the defense, the result of the proceeding
8 would have been different. A 'reasonable probability' is a probability sufficient to undermine
9 confidence in the outcome."

10
11 ☒ Since the decision in *M'Culloch v. Maryland*, 17 U.S. 316 (1819), it has been settled that
12 state law that conflicts with federal law is "without effect." *Cipollone v. Liggett Group, Inc.*,
13 505 U.S. 504, 516 (1992); see also *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981) ("It is
14 basic to this constitutional command that all conflicting state provisions be without effect.").

15 ☒ the Fourteenth Amendment, provides: "No person shall * * * be deprived of life, liberty, or
16 property, without due process of law." But "[f]or all its consequence, 'due process' has never
17 been, and perhaps can never be, precisely defined. * * * Rather, the phrase expresses the
18 requirement of 'fundamental fairness,' a requirement whose meaning can be as opaque as its
19 importance is lofty. Applying the Due Process Clause is therefore an uncertain enterprise
20 which must discover what 'fundamental fairness' consists of in a particular situation by first
21 considering any relevant precedents and then by assessing the several interests that are at
22 stake." *Lassiter v. Dept. of Social Servs. Of Durham Cty., North Carolina* (1981), 452 U.S. 18,
23 24-25, 101 S.Ct. 2153, 68 L.Ed.2d 640.

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1 ☒ The Federal Circuit determined that prior Supreme Court decisions offered relevant guidance
2 by explaining that “[t]o have a property interest in a benefit, a person clearly must have more
3 than an abstract need or desire’ and ‘more than a unilateral expectation of it. He must, instead,
4 have a legitimate claim of entitlement to it.” Id. at 1297 (alteration in original) (citing *Town of*
5 *Castle Rock, Colo. v. Gonzales*, 545 U.S. 748, 756 (2005) (quoting *Bd. of Regents of State*
6 *Colls. v. Roth*, 408 U.S. 564, 577 (1972))).

7 ☒ The Federal Circuit also looked to Supreme Court case law addressing due process
8 protections in the context of Social Security Administration (SSA) administrative proceedings.
9 Id Specifically, the Federal Circuit observed that SSA and veterans’ disability benefits were
10 analogous in the sense that they were not awarded on the basis of need or other discretionary
11 criteria, but, rather, “ar[ose] from a source that is independent from the [claim] proceedings
12 themselves.” Id Moreover, the Federal Circuit noted that both SSA and VA disability claims
13 were adjudicated based on statutory terms of eligibility, which “provide[d] an absolute right of
14 benefits to qualified individuals.” Id

15
16 ☒ In light of the above precedents, the Federal Circuit determined that all applicants for
17 “nondiscretionary, statutorily mandated” VA disability benefits were entitled to them and thus
18 had a property interest in those benefits protected by the Due Process Clause “upon a showing
19 that [they met] the eligibility requirements set forth in the governing statutes and regulations.”
20 Judge Bryson then launched into a discussion of Supreme Court case law preceding *Walters*,
21 which “characterized the critical components of due process as notice and the opportunity to be
22 heard ‘at a meaningful time and in a meaningful manner.’”⁵⁴ He explained that the Supreme
23 Court has set forth three factors that warrant consideration in determining what specific
24 procedures must be provided in particular cases:

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(1) "[T]he private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail Id. (quoting Mathews, 424 U.S. at 334-35)

☒The Citizen Clause is the first sentence of Section 1, Clause 1, of the Fourteenth Amendment to the United States Constitution, reads:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

The Civil Rights Act of 1866, 14 Stat. 27-30, enacted April 9, 1866, was the first United States federal law to define citizenship and affirm that all citizens are equally protected by the law.

☒The Equal Protection Clause is located at the end of Section 1 of the Fourteenth Amendment: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.* [emphasis added]

☒Procedural due process is a legal doctrine in the United States that requires government officials to follow fair procedures before depriving a person of life, liberty, or property.^{11:657} When the government seeks to deprive a person of one of those interests, procedural due process requires at least for the government to afford the person notice, an

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1 opportunity to be heard, and a decision made by a neutral decisionmaker. Procedural due
2 process is required by the Due Process Clauses of the Fifth and Fourteenth Amendments to
3 the US Constitution. The article "Some Kind of Hearing" written by Judge Henry
4 Friendly created a list of basic due process rights "that remains highly influential, as to both
5 content and relative priority." The rights, which apply equally to civil due process and criminal
6 due process, are the following:

7 An unbiased tribunal.

8 Notice of the proposed action and the grounds asserted for it.

9 The opportunity to present reasons for the proposed action not to be taken.

10 The right to present evidence, including the right to call witnesses.

11 The right to know the opposing evidence.

12 The right to cross-examine adverse witnesses.

13 A decision based only on the evidence presented.

14 Opportunity to be represented by counsel.

15 The tribunal to prepare a record of the evidence presented.

16 The tribunal to prepare written findings of fact and the reasons for its decision.

17 Not all the above rights are guaranteed in every instance when the government seeks to deprive
18 a person life, liberty, or property. A person is due only notice, an opportunity to be heard, and a
19 decision by a neutral decisionmaker. Courts use various tests to determine whether a person
20 should also be guaranteed any of the other above procedural rights.

21 ☒ 42 U.S. Code § 1981 - Equal rights under the law

22 (a) STATEMENT OF EQUAL RIGHTS

23 All persons within the jurisdiction of the United States shall have the same right in every State
24 and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full
and equal benefit of all laws and proceedings for the security of persons and property as is

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1 enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes,
2 licenses, and exactions of every kind, and to no other.

3 (b) "MAKE AND ENFORCE CONTRACTS" DEFINED

4 For purposes of this section, the term "make and enforce contracts" includes the making,
5 performance, modification, and termination of contracts, and the enjoyment of all benefits,
6 privileges, terms, and conditions of the contractual relationship.

7 (c) PROTECTION AGAINST IMPAIRMENT

8 The rights protected by this section are protected against impairment by nongovernmental
9 discrimination and impairment under color of State law.

10 (R.S. § 1977; Pub. L. 102-166, title I, § 101, Nov. 21, 1991, 105 Stat. 1071.)

11 ☒ SC CODE §42-9-440

12 SUSPECTED FALSE STATEMENTS OR MISREPRESENTATIONS TO BE
13 REPORTED TO INSURANCE FRAUD DIVISION OF OFFICE OF ATTORNEY

14 GENERAL. The Commission shall report all cases of suspected false statement or
15 misrepresentation, as defined in Section 38-55-530(D), to the Insurance Fraud Division of the
16 Office of the Attorney General for investigation and prosecution, if warranted, pursuant to the
17 Omnibus Insurance Fraud and Reporting Immunity Act.

18
19 ☒ Violations in regard to Fed R.Civ.P. Rule 11- South Carolina rule of civil procedures,
20 Signing of Pleadings; Attorneys (A) and The South Carolina Frivolous Civil Proceedings
21 Sanction Act S.C. Code Ann. § 15-36-10, et seq.

22 ☒ To deter Continued Fraud On The Court, This Court must apply: Sanctions
23 Sanctions required for specific misconduct including continued Fraud On the Court, False
24 Statements, Privacy Act Violations and other , pursuant to Karppi v. Greenville Terrazzo Co.,

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1 Inc., in which the court of appeals held that the sanction should be aimed at the specific
2 misconduct of the party sanctioned. 327 S.C. 538, 543, 489 S.E.2d 679, 682 (Ct. App. 1997).
3 Karppi further notes the policy reasons for the imposition of sanctions, which is to "penalize
4 those whose conduct may be deemed to warrant such a sanction, and to deter those who might
5 be tempted to such conduct in the absence of such a deterrent." 327 S.C. at 545, 489 S.E.2d at
6 683 (citing Nat'l Hockey League v. Metro. Hockey Club, Inc., 427 S.C. 639, 643, 96 S. Ct.
7 2778, 2781 (1976).
8
9
10

11 ☒ South Carolina Code Ann. § 15-36-10 (2005) provides that any person who takes part in the
12 procurement, initiation, and continuation of any civil proceeding is subject to being assessed
13 for payment of all or a portion of the attorney fees and court costs of the other party if (1) he
14 does so primarily for a purpose other than that of securing the proper adjudication of the claim
15 upon which the proceedings are based, and (2) the proceedings have terminated in favor of the
16 person seeking an assessment of the fees and costs.
17

18 ☒ The Commission shall report all cases of suspected false statement or misrepresentation, as
19 defined in Section 38-55-530(D), to the Insurance Fraud Division of the Office of the Attorney
20 General for investigation and prosecution, if warranted, pursuant to the Omnibus Insurance
21 Fraud and Reporting Immunity Act.
22

23 ☒ The fraudulent concealment exception more typically arises in situations involving exposure
24 to asbestos, mold, or toxic chemical.(See, e.g. John-Manville Products v. Sup. Ct (1980) 27

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1 Cal. 3d 465.) It is a very limited exception that requires actual knowledge by the employer and
2 a lack of awareness by the worker of the injury and its relationship to employment.

3
4 ☒ "Nondisclosure is fraudulent when there is a duty to speak." Ardis, 314 S.C. at 517, 431
5 S.E.2d at 270. Non-disclosure becomes fraudulent concealment only when it is the duty of the
6 party having knowledge of the facts to make them known to the other party to the transaction.
7 Lawson v. Citizens S. Natl. Bank of S.C., 259 S.C. 477, 481-82, 193 S.E.2d 124, 126 (1972).

8
9 ☒ While relied upon by the Panel and the circuit court, the South Carolina Rules of Evidence
10 do not apply in proceedings before the Workers' Compensation Commission. S.C. Code Ann.
11 § 1-23-330(1) (2005). We further note that great liberality is exercised in permitting the
12 introduction of evidence in proceedings under the Workers' Compensation Act. Hallums v.
13 Michelin Tire Corp., 308 S.C. 498, 504, 419 S.E.2d 235, 239 (Ct. App. 1992) ("An
14 administrative or quasi judicial body is allowed a wide latitude of procedure and [is] not
15 restricted to the strict rule of evidence adhered to in a judicial court."); Hamilton v. Bob
16 Bennett Ford, 339 S.C. 68, 70, 528 S.E.2d 667, 668 (2000) ("[G]reat liberality is exercised in
17 permitting the introduction of evidence in proceedings under Workmen's Compensation Acts."
18 (quoting Ham v. Mullins Lumber Co., 193 S.C. 66, 82, 7 S.E.2d 712, 719 (1940))); id.
19 ("Hearsay testimony may be admissible in workers' compensation matters if corroborated by
20 facts, circumstances, or other evidence.").

21 ☒ False Information. The evidence establishes by a preponderance of the evidence that affiant
22 made a false statement knowingly or with reckless disregard for the truth, then that false
23 information must be set aside.
24

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

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

8 ☒ As Larson states, “[t]he physical structure is not just bones and tissues considered as if they
9 were mechanical objects; it is the entire interrelated, living, functioning organism.” Larson,
10 supra, 56-17., 315 S.C. 119, 432 S.E.2d 454 (1993); Hamm v. Pub. Serv. Comm’n of S. C.,
11 310 S.C. 13, 425 S.E.2d 28 (1992).

12
13 South Carolina adheres to the final judgment rule. Accordingly, with certain exceptions, an
14 appeal lies only from a final judgment. Hagood v. Sommerville, 362 S.C. 191, 194-195, 607
15 S.E.2d 707, 708 (2005); S.C.Code Ann. § 14-3-330(1) (1976 and Supp.2004); Rule 72,
16 SCRCF; Rule 201(a), SCACR. By statute, an appeal from an interlocutory order is permitted in
17 certain circumstances, including when the order is one “involving the merits . [or] affecting a
18 substantial right.” S.C.Code Ann. § 14-3-330(1) and (2). Appeals from administrative bodies,
19 such as the Workers' Compensation Commission, follow the same rules, such that an appeal
20 will not lie from an interlocutory order of the Commission unless the order affects the merits or
21 deprives the appellant of a substantial right. Green v. City of Columbia, 311 S.C. 78, 79-80,
22 427 S.E.2d 685, 687 (Ct.App.1993). Orders from the Commission remanding a case to the
23 single commissioner for further proceedings generally do not affect the merits and are not
24 considered final. Chastain v. Spartan Mills, 228 S.C. 61, 65-67, 88 S.E.2d 836, 837-38 (1955).

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1 ☒ An exception exists to the application of res judicata where the original judgment was
2 obtained through the use of fraud. *Heiser v. Woodruff*, 327 U.S. 726, 66 S.Ct. 853, 90 L.Ed.
3 970 (1946); see also *Montalvo v. Banco Comercial de Mayaguez (In re Montalvo)*, 157 B.R.
4 510 (D.P.R.1993).

5
6 ☒ Real Property- Area of Law Action based upon defective or unsafe condition of
7 improvement to real property Statues: 15-3-640 15-3-670
8 (8) years (statue establishes an outside limitation of 8 years after substantial completion of the
9 improvement during which normal statutes of limitation continue to run) (Limitation period
10 may not be asserted by (1) defendant in personal injury or wrongful death action
11 Who was in possession of property and knew or should have known of defect; (2) defendant
12 who engaged in fraud, gross negligence, or reckless misconduct in connection with the
13 improvements or who concealed any cause of
14 action; (3) defendants in personal injury or wrongful death action (a) if the injury, by its nature,
15 was not discoverable in the exercise of reasonable diligence at the time of its occurrence, and
16 (b) the injury was the result of exposure to a toxic or other harmful substance overtime, instead
17 of the result of a sudden and fortuitous trauma.

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

20 ☒ It is a fundamental doctrine of law that a party to be affected by a personal judgment must
21 have his day in court, and an opportunity to be heard. *Renauld v. Abbott*, 116 US 277, 29 L Ed
22 629, 6 S ct 1194.

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

4 ☒ Under a standard issue preclusion analysis, "even if all the elements for collateral estoppel
5 are met, when unfairness or injustice results or public policy requires it, courts may refuse to
6 apply it." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 555, 684 S.E.2d 779,
7 782 (Ct. App. 2009).

8
9 ☒ Clearly, the same period of exposure to the same chemicals or other agents or conditions can
10 give rise to various separate and distinct diseases or conditions. See *Chevron U.S.A., Inc. v.*
11 *Workers' Comp. Appeals Bd.*, 268 Cal.Rptr. 699, 703, 704 (Cal. Ct. App. 1990) (noting
12 medical testimony that "four different disease processes have been linked to asbestos exposure:
13 asbestosis, pleural plaques, diaphragmatic calcifications, and malignant mesothelioma . . .
14 [W]hile malignant mesothelioma and asbestosis are often seen together, . . . they are in fact
15 separate and distinct pathological disease processes" and concluding that claimant's
16 "mesothelioma was an entirely separate and distinct disease process resulting in an entirely
17 separate and distinct injury and disability [from claimant's previously compensated
18 asbestosis]"), review denied (July 10, 1990).

19 ☒ As the Duvall court noted, the term " 'exposure' indicates a passive relationship between the
20 worker and his work environment rather than an event or occurrence, or series of occurrences,
21 which constitute injury under the Workers' Compensation Act." 621 N.E.2d at 1125.

22
23 ☒ In South Carolina, an occupational disease is defined as a disease which the employee is
24 exposed to in the workplace.² As other courts have recognized in construing comparable

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1 provisions, the definition of an occupational disease is incomplete, and focuses on causation
2 while assuming the claimant suffers from a disease. See Duvall v. ICI Americas, Inc., 621
3 N.E.2d 1122, 1126 (Ind.App.Ct.1993).

4
5
6 In Rodney v. Michelin Tire Corporation, 320 S.C. 515, 466 S.E.2d 357 (1996), Justice Toal
7 stated the timehonored maxim for compensability: "An injury arises out of employment when
8 there is apparent to the rational mind, upon consideration of all the circumstances, a causal
9 relationship between the conditions under which the work is being performed and resulting
10 injury." Rodney, 466 S.E.2d at 358. These decisions simply reaffirm the definition of injury by
11 accident that the court has applied since 1939.

12 Glenn, 236 S.C. at 19-20, 112 S.E.2d at 714. This Court, in Hanks v. Blair Mills, Inc., 286 S.C.
13 378, 386, 335 S.E.2d 91, 96 (Ct. App. 1985), refused to adopt the apportionment rule "under
14 which liability is apportioned among all the employee's employers, and their carriers, whose
15 conditions of employment were of the type contributing to the disease." We found it would
16 place an unduly harsh burden on an employee to notify, file a claim, and prove a compensable
17 injury against the many employers whose conditions of employment may have contributed to
18 his injury. Id. See also Reese v. CCI Constr. Co., Op. No. 2948 (S.C. Ct. App. filed February
19 22, 1999)(Shearouse Adv. Sh. No. 8 at 1)(finding that although carpenter had only worked for
20 employer for three days at time of diagnosis of occupational disease, employer may be liable
21 under act).

22
23 ☒ To be compensable under the Act, the injury must be an "injury by accident arising out of
24 and in the course of the employment." S.C.Code Ann. § 42-1-160 (Supp.1999). To determine
whether an "injury by accident" has been established, the focus is on the injury itself, and not

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1 on some specific event. Creech, 320 S.C. at 563, 467 S.E.2d at 116. “ ‘[A]ccident’ means an
2 unlooked for and untoward event which is not expected or designed by the person who suffers
3 the injury.” Id. It is an event “not within one's foresight and expectation and may be due to
4 purely accidental causes or to oversight and negligence, carelessness, fatigue, or
5 miscalculation of the effects of voluntary action.” Linnen v. Beaufort County Sheriff's Dep't,
6 305 S.C. 341, 344, 408 S.E.2d 248, 250 (Ct.App.1991). A slip, fall, or other fortuitous event or
7 accident in the cause of the injury is not required. Creech, 320 S.C. at 563, 467 S.E.2d at 116.
8 Proof of a “causative event” is not required to establish “injury by accident.” Sigmon v. Dayco
9 Corp., 316 S.C. 260, 449 S.E.2d 497 (Ct.App.1994). The unexpected result or industrial injury
10 is considered the compensable accident. Creech, 320 S.C. at 563, 467 S.E.2d at 116.

11
12 ☒ An injury need only be unexpected to be considered an injury by accident. Creech, 320 S.C.
13 at 559, 467 S.E.2d at 114. There is no requirement in the Act that it be distinct, as opposed to
14 gradual. To impose such a requirement would refocus the inquiry on a discrete event, as
15 opposed to the injury itself, in violation of Creech, 320 S.C. at 559, 467 S.E.2d at 114, and
16 Sigmon, 316 S.C. at 260, 449 S.E.2d at 497.

17
18 ☒ The term "agency" includes any department, independent establishment, commission,
19 administration, authority, board or bureau of the United States or any corporation in which the
20 United States has a proprietary interest, unless the context shows that such term was intended
21 to be used in a more limited sense. Definition of Administrative Definition of Agency Black's
22 Law Dictionary 5th ed p.42

23
24 (SIGNATURE PAGE TO FOLLOW)

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I DECLARE UNDER THE PENALTIES OF PERJURY UNDER THE LAWS OF
SOUTH CAROLINA THAT THE FORGOING IS TRUE AND CORRECT TO THE BEST
OF MY KNOWLEDGE

By: _____

Terry H Capone, Pro Per Claimant

130 Summerlea Drive Columbia, SC 29203

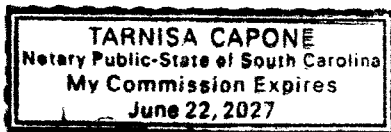
tcapone@liberty.edu

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Sworn and subscribed before me this 5th day of October 2018, by Terry H. Capone.

Identification Produced: South Carolina Drivers License# 007051734 Expires 06-10-2026



PRINT OR STAMP NAME OF NOTARY

Dated: October 5, 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the forgoing court copy referenced "Terry Capone v. City of Columbia SC Court of Appeals Appellant Case. No. Case No. 2020-000641 W.C.C. File Nos. 1322789, 1719990, 1423445, 1519702, 1503655

June 26, 2020 Appellant

- **REPLY IN SUPPORT OF APPELLANT'S PETITION FOR REHEARING - FRAUD ON THE COURT, CRIME FRAUD EXCEPTION, "ACTIVE CONCEALMENT FOR FRAUD IN REAL PROPERTY" 15-3-670 (C) (1) (2), VOID JUDGMENT AND OTHERS**

Being Sent via Email Per COVID PROTOCOL to the Defendant Legal Representative known to be: cdooley@turnerpadget.com

RECEIVED

Jun 26 2020

SC Court of Appeals

Cythia C Dooley

P.O.Box 1473

Columbia, SC 29202

This 26th day of June 2020.



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

Columbia, South Carolina



RECEIVED

Jun 26 2020

SC Court of Appeals

June 26, 2020

VIA EMAIL COVID Protocol

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

Re: Reply In Support Of Appellant's Petition For Rehearing-Fraud On The Court Crime Fraud Exception, "Active Concealment For Fraud In Real Property" 15-3-670(c) (1) (2) ,Void Judgment and Others. Terry Capone, Appellant, v. City of Columbia, Employer, and Companion Third Party Administrator, LLC, Carrier, Respondent Case No. 2020-000641 W.C.C. File Nos. 1322789, 1719990, 1423445, 1519702, 1503655

The Honorable Jenny Abbott Kitching, Clerk and SC Court of Appeals:

Please find enclosed Plaintiffs "Reply In Support of Appellant's Petition For Rehearing-Fraud On The Court Crime Fraud Exception, "Active Concealment For Fraud In Real Property" 15-3-670(c) (1) (2) ,Void Judgment and Others. Thank you for your assistance with this matter, please contact me if you have any questions. Thank you for your consideration.

Terry H Capone

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