

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAY 28 2021

APPEAL FROM THE WORKERS COMPENSATION COMMISSION
Appellant Case No. 2021-000468

SC Court of Appeals

Gilberto Salguero,
Employee.....Respondent,

v.

Vargas Drywall LLC, Employer, and
Riverport Insurance Company, Carrier,Appellants.

**APPELLANTS' MOTION TO STAY THE APPEAL AND HOLD ALL ISSUES IN
ABEYANCE**

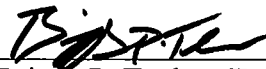
Appellants respectfully submit this Motion to Stay the Appeal pursuant to Rule 240, SCACR, Rule 267, SCACR, and the following grounds:

1. This appeal arises from a decision of the South Carolina Workers Compensation Commission;
2. The sole issue before the Commission was determination of Respondent's Average Weekly Wage pursuant to the South Carolina Workers' Compensation Act;
3. Appellants filed this present appeal to properly preserve the issue determined in the underlying hearing;
4. However, the underlying workers' compensation claim remains ongoing as the Appellants are providing and Respondent is receiving continued medical care and disability benefits pursuant to the Act;
5. Accordingly, the decision of the Workers Compensation Commission is not a "final judgment" as defined by S.C. Code Ann. § 1-23-390 and *Bone v. U.S. Food Serv.*, 404 S.C. 67, 744 S.E.2d 552 (2013)

6. The parties have conferred and agreed to stipulate this appeal is interlocutory as presently constituted; (See Exhibit A)

For the foregoing reasons, the Appellants hereby move to stay the current appeal and hold all matters in abeyance until such time as the underlying workers' compensation claim has reached a final judgment and matters can be appropriately consolidated or withdrawn according to the South Carolina Appellate Court Rules.

Respectfully submitted,



Briggs P. Tucker, Esq.
Speed, Seta, Martin, Trivett, & Stublely, LLC
PO Box 11669
Columbia, SC 29211
(803) 748-2919
Attorney for Appellants

Columbia, South Carolina
May 26, 2021

EXHIBIT A

Blythe Justen

From: Mark Calhoun <mark@calhounlawfirmssc.com>
Sent: Thursday, March 18, 2021 10:27 AM
To: Briggs Tucker
Subject: Re: Gilberto Salguero v. Vargas Drywall LLC

Follow Up Flag: Follow up
Flag Status: Completed

Briggs:

Good morning. I hope you are doing well too. I got my shot and survived.

I will stipulate the AWW decision is interlocutory under Bone.

I do not think it would be a bad idea to go ahead and set up mediation. No zoom mediations please. Lets use someone like Ellen Adams.

Also, Mr. Salguero recently ran out of Amitriptyline. He needs a refill.

Thank you

mark

Mark Calhoun
Calhoun Law Firm
23 Broad Street
Charleston, SC 29401
843-991-5631
mark@calhounlawfirmssc.com

On Mar 17, 2021, at 5:50 PM, Briggs Tucker <btucker@speed-seta.com> wrote:

Mark, I should clarify that the stipulation would include an agreement to increase the wages going forward.

- Briggs

On Mar 17, 2021, at 5:24 PM, Briggs Tucker <btucker@speed-seta.com> wrote:

Mark,

Hope everything is well on your end. I wanted to run something by you while we are waiting on the final order from the commission. My client would like to appeal but I have discussed the *Bone* implications with them. Would you agree an appeal of the AWW determination would be considered interlocutory under *Bone*? If so, can we stipulate to that and leave the issue for consideration upon a final resolution?

Additionally, my client would also like for me to offer \$35k to settle this if Ms. Salguero would be so interested. If you would like to make a counterdemand please feel free. Obviously settlement would preclude consideration of any appeals, etc.

Thanks,

Briggs P. Tucker, Esq.

Speed, Seta, Martin, Trivett & Stublely, LLC

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Unless expressly stated to the contrary herein, (a) Nothing contained in this message was intended or written to be used, can be used, nor may be relied upon or used, by any taxpayer for the purpose of avoiding penalties that could be imposed upon the taxpayer under the Internal Revenue Code of 1986, as amended; and (b) Any written statement contained herein relating to any federal tax transaction or issue may not be used by any individual or entity to recommend or support the promotion or marketing of any such transaction or issue.

From: Mark Calhoun <mark@calhounlawfirm.com>

Sent: Monday, February 22, 2021 1:36 PM

To: Briggs Tucker <btucker@speed-seta.com>; Rebecca Reid <RReid@hplplaw.com>

Subject: Gilberto Salguero v. Vargas Drywall LLC

Briggs;

If your client does not appeal the Full Commission Order please send me the past due TTD check amount to my office payable to;

Gilberto Salguero and Calhoun Law Firm PA

Thank you

mark

Mark Calhoun
Calhoun Law Firm
23 Broad Street
Charleston, SC 29401
843-991-5631
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THE STATE OF SOUTH CAROLINA
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APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION **SC Court of Appeals**

Avery B. Wilkerson, Commissioner

SCWCC File No. 1900834

Gilberto Salguero,.....Respondent.

v.

Vargas Drywall, LLC, Employer, and Riverport Insurance Company,
Carrier.....Appellants.

PROOF OF SERVICE

I certify that I have served the Appellants' Motion to Stay the Appeal and Hold All Issues in Abeyance on the attorney of record for Gilberto Salguero as well as the South Carolina Workers' Compensation Commission by depositing a copy of it in the United States Mail, postage prepaid, on April 30, 2021, addressed as follows:

Mark R. Calhoun
Calhoun Law Firm
23 Broad Street
Charleston SC 29401
mark@calhounlawfirmssc.com

The Honorable Amy Bracy
Judicial Director
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202

May 26, 2021



Briggs P. Tucker
Speed, Seta, Martin, Trivett & Stublely, LLC
Post Office Box 11669
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(803) 748-2919
Attorney for Appellants

SPEED, SETA, MARTIN, TRIVETT & STUBLEY, LLC
ATTORNEYS AT LAW

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SETH C. MARTIN (GA & FL)
ERIC L. TRIVETT (GA)
M. STEPHEN STUBLEY (SC)
STEPHANIE A. ROCKWELL (GA & TN)
JAMES E.L. FICKLING (SC & NC)
ANDREA S. OWEN (GA)

REPLY TO
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SCOTT H. ANDREWS (GA)
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HUNTER CHANDLER (GA & TN)
MELISSA CRUZ (GA & TN)
JEREMY T. ENGLAND (AL & MS)
CARLY RECORD FEDELE (GA)
C. BENTON HILBURN (GA)
SARA P. MORRIS (SC)
TRACEY R. PERLMAN (SC)
CALEY A. PITTS (GA)
KELSIE L. QUEEN (SC & NC)
JENNIFER S. RAY (GA)
BRITTANY SCHWANITZ (GA)
SARAH V. SNIPES (GA)
MARK M. STUBLEY, JR. (AL & NC)
BRIGGS P. TUCKER (SC)
BRITTANY BELL TURNER (GA & FL)
LILY D. WILKERSON (GA & FL)

May 26, 2021

VIA EMAIL: CTAPPFILINGS@SCCOURTS.ORG
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: *Gilberto Salguero v. Vargas Drywall, LLC*
Appellate Case No.: 2021-000468
WCC No.: 1900834
Claim No.: BARWC0015818
DOA: 2/5/19
Our File No.: 8701-0046

GEORGE D. GALLAGHER (SC), of counsel

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SC Court of Appeals

Dear Ms. Kitchings:

Enclosed for filing are the Appellants' Motion to Stay the Appeal and Hold All Issues in Abeyance and Proof of Service on behalf of Vargas Drywall, LLC, and the Riverport Insurance Company in the above-referenced matter. Also, our check in the amount of \$50.00 for the filing fee has been placed in the mail today as well. Please return a clocked copy of the Motion to me at your earliest convenience.

By copy of this letter, I am serving the Notice upon all counsel of record.

Sincerely,


Briggs P. Tucker

BPT/bej

Enclosures

cc: Mark Calhoun, Esquire (w/encl)
The Honorable Amy Bracy, Judicial Director (w/encl)
Deja Lewis (w/encl)

SPEED, SETA, MARTIN, TRIVETT & STUBLEY, LLC

ATTORNEYS AT LAW

P.O. BOX 11669

COLUMBIA, SOUTH CAROLINA 29211

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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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SC Court of Appeals

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