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April 4, 2013

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

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APR 09 2013

SC Court of Appeals

Re: Hector Fragosa vs. Kade Construction, LLC
Appellate Case No.: 2012-212279
WCC File No.: 0717624 DOI: 11/1/2007
Carrier: Key Risk Management Services, Inc. - Claim No.: 1000021953
WJC&B File No.: 0310.00420

Dear Ms. Kitchings:

Pursuant to SCARC, Rule 208(7), please find enclosed for filing two (2) Supplemental Citations that have come to the attention of Respondents after the filing Respondent's Initial Brief.

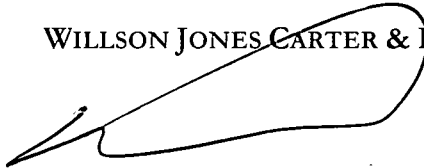
On March 6, 2013, the South Carolina Supreme Court released two (2) decisions related to physical brain damage. In Sparks v. Palmetto Hardwood, Inc., the Court declined to impose a requirement that physical brain damage be proven through an objective diagnostic medium, and the Court concluded that physical brain damage as used in §42-9-10(c) is physical brain damage that is both "permanent and severe." Op. No. 27229 (S.C.Sup.Ct. filed March 6, 2013). In Crisp v. SouthCo Inc., the Court stated "[w]e view the inclusion of 'physical brain damage,' along with quadriplegia and paraplegia, in §42-9-10(C) as indicative of the General Assembly's intent to compensate an employee-claimant for life only on the most serious cases of injury to the brain, separate and apart from other scheduled injuries, resulting in permanent physical brain damage." Op. No. 27230 (S.C.Sup.Ct. filed March 6, 2013). The Crisp Court further noted the following: "As noted in Sparks, permanency and physicality are requirements. However, the severity of the injury is the lynchpin of the analysis." Id. The Crisp Court remanded the case to the Workers' Compensation Commission for a determination of maximum medical improvement, extent of permanency, and whether the injured worker's injury constituted "physical brain damage" as contemplated by §42-9-10(C).

Respondents cite the Crisp and Sparks opinions in support of their argument that Appellant did not suffer physical brain damage. After the filing of Respondents' Initial Brief, the Supreme Court provided guidance to the Commission on what requirements are to be taken into consideration in making the determination of whether an injury is serious enough to qualify for lifetime benefits under §42-9-10(C). Respondents maintain the evidence in the record is not sufficient for a finding of physical brain damage based on the decisions in Crisp and Sparks, so the decision of the Workers' Compensation Commission should be affirmed. In the alternative, the case should be remanded to the Workers' Compensation Commission for a determination of whether the evidence supports a finding that Appellant's injury was so "permanent and severe" that he falls into the most serious class of cases contemplated by the Legislature.

By copy of this letter I am also providing copy of the Supplemental Citation to counsel for the Appellant.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.

A handwritten signature in black ink, appearing to read "Michael W. Burkett", is written over the printed name below. The signature is fluid and somewhat stylized, with a large loop at the end.

Michael W. Burkett

MWB/jgc

cc: Stephen B. Samuels, Esquire
Jeffrey C. Chandler, Esquire
Scott Lacey