

THE STATE OF SOUTH CAROLINA  
*In the Supreme Court*

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**S.C. SUPREME COURT**

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
APPELLATE PANEL

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Appellate Case No. 2021-000453  
W.C.C. File Nos. 1322451, 1319203, 1420487  
(Associated Cases No. S.C.Ct. App 2019-000369/2018-001364 Filed Aug 13, 2020)

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


v.

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

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

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By:   
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PETITIONER, PRO PER

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COMMISSION ADJUSTED HIS AVERAGE WEEKLY WAGE AND COMPENSATION RATE BASED ON HIS FUTURE EARNING CAPACITY AS AN ELECTRICIAN, THE SC COURT OF APPEALS AFFIRMED. 4. **CITY OF COLUMBIA FIRE CAPTAIN JAMES “WOODY” GOODMAN** THE PETIONER SUBSTANTIALLY COMPLIED WITH § 42-17-50 WHERE HE WROTE THE WORKERS’ COMPENSATION COMMISSION A TIMELY LETTER EXPRESSING HIS DESIRE TO APPEAL. ....7

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*Frame v. Resort Servs., Inc.*, 357 S.C.520, 528, 593 S.E.2d 491, 495 (ct App. 2004).....

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

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Eg. *Grant v. Grant Textiles*, 372 S.C. 196, 201, 641 S.E.2d 869, 872 (2007).....

*Moore v. Family Serv, of Charleston City.*, 269 S.C. 275, 281, 237 S.E.2d 84, 887 (1977).....

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

*Thomas & Howard Co. v. T.W. Graham and Co.*, 318 S.C. 286, 291,  
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*Tyron Fed. Sav. & Loan Ass'n v. Phelps*, 307 S.C. 361, 362, 415 S.E.2d 397,398(1992) .....

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

What is Private Property- The ownership of tangible and intangible goods by an individual who has exclusive rights over it. The transfer of a private property can take place only by the owner's consent or through a sale or through its presentation as a gift.

Black's Law Dictionary Free Online Legal Dictionary 2nd Ed, last accessed July 6, 2021

## Constitutional and Statutory Provisions

U.S. Const Art amend V.....	
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## CONSTITUTIONAL PROVISIONS INVOLVED

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

The Fourteenth Amendment provides in relevant part:

[N]or shall any State deprive any person of life, liberty, or property, without due process of law.  
U.S. Const. amend. XIV, § 1.

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

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

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.

## **INTRODUCTION**

Pursuant to Rule 242(g), SCACR, Petitioner/Appellant pro se Terry H Capone, under the Administrative Procedure Act, hereby respectfully submits this reply in opposition to the Respondents Return in opposition to the Petition for Writ of Certiorari of a Void Decisions/ Judgments Starting Dec 2, 2015, that were heard by a Single Commissioner and all subsequent are void, procured by Fraud Upon the Court, other violations of law under the APAP, to include right to due process of law.

## **REPLY IN OPPOSITION TO RESPONDENTS STATEMENT OF THE CASE**

### MEMORANDUM OF POINTS AND AUTHORITIES

### 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, Petitioner/ Appellant states as follows:

1. The Appellate filed Petition provided this Court with his correct new mailing address, this Court sent notice to a previous address not being monitored at the time and this Court Provided Additional time to respond and Respondents were served on or about May 24, 2021.

2. The Attorneys for Respondents On April 28, 2021, Did continued to commit fraud on the tribunal/Court when they submitted fraudulent SCWCC Form #19 for WCC File No.:1319203 stating \$0.00 compensation has ever been paid and case denied.

3. The Attorneys for Respondents Return to the Court dated June 23, 2021 failed to advised the Court that the Respondents City of Columbia, Employer, and Companion Third Party Administrator, LLC, Carrier P.O. Box 100159 Columbia, SC 29202 – 3165 Claim No: 700000004250 0001 Policy No: CCW 0000001 failed to follow procedures when they failed provide payment prior to the 79<sup>th</sup> day after injury and Illegally stopped temporary Total disability payment for Coverage Workers Compensation, Cause of Loss Workers Compensation, Loss Date 10/12/2013 check dated 1/14/2014 Terry Capone 01/10/2014 to 1/16/2014, was a denial of due process and illegal taking.

4. The failure of The Employer/Carrier to provide payment prior to the 79<sup>th</sup> day of injury in South Carolina Workers Compensation procedures where a denial of due process

5. The Illegal stopping of the South Carolina Workers Compensation benefits without proper procedures and service was an illegal taking and a denial of due process

6. SC WCC 67-504 (A)(B). Employer failed to follow procedures for stopping benefits; (A) employers did not file form 15 “immediately” with the claims Department and/or serve form 15 after compensation was terminated, and employer did not serve the form 15 “immediately” on the claimant pursuant to 67-211 with documentation attached as to the reason for termination or suspension.(B) to terminate or suspend compensation pursuant to section 42-9-260(B)(2) the Employer’s representative “must” obtain a signed form 17, they did not complete these Services. INEFFECTIVE SERVICE OF PROCESS NEVER COMPLETED

7. The stopping of the pay of the Appellant, pro se Terry H Capone Under the Administrative Procedure Act, was in violation his constitutional rights to include to due process and other laws, at which point he sought redress from the South Carolina Workers’ Compensation Commission for benefits via three separate revised/amended claims: (1) WCC File Number 1319203 Date of Injury :October 21, 2013 for re-injury of his hands, wrist and arms, other diagnosed as Carpal Tunnel Syndrome, Neuropathy, Ulnar Nerve Neuropathy ; (2) WCC File Number 1420487 Date of Injury June 24, 2013 for re-injury of his Toes/Toe nails/foot internal bilateral stemming out of treatment received at the City of Columbia Health Clinic on that date, wherein the claimant was treated for 1. Tinea pedis (Fungal Infection of the foot) 2. Ear Pain/Vertigo 3. Onychomycosis (nail Fungus noted: Chaetomium fungus) (3) and WCC File Number 1322451 Diagnosed November 7, 2013 for aggravation of a psychological injuries, as Post Traumatic Stress Disorder (PTSD), Major Depression Disorder (MDD), Anxiety, Insomnia and that where heard together by the Single Commissioner.

8. I was never informed by the Single Commissioner or South Carolina Workers’ Compensation Commission of the process or procedure my employer/carrier needed to follow before stopping compensation, and was due to Fraud On the Court/Tribunal and denial of Procedural Due Process and Equal Protection under the color of law.

9. 10/29/2015 My Email that I not only wanted to appeal, but that I my wrist injury case was admitted, based on the August 11, 2015, email from City Attorney Thye stating' **Your wrist injury is accepted and has been (as stated above the claim was paid, before it was illegally stopped )**. I believe I "substantially complied" with giving notice of appeal at that time. The Commission and Attorney for the City was communicating with me by email in an informal fashion.

10. See Email From: Thye Dana [dmthye@columbiasc.net] Sent: Tuesday, August 11, 2015 2:07 PM To: Capone, Terry, Subject: RE: TCAPONE Fire Department records, as Thye states:

"But Workers Compensation benefits can only go so far. They can only provide you medical [or] money. Looking at your three claims scheduled for the 21<sup>st</sup>, I will try to address them separately. 1) You appear to relate your toe fungus claim back to a previous injury to your toe caused by something falling on it. But I've not seen any medical record that relates that and toe fungus is commonly occurring condition. 2) **Your wrist injury is accepted and has been.** Are you seeking additional treatment such as surgery [or] are you interested in settling additional treatment such as surgery [or] Are you interested in settling out the claim based upon the impairment to your wrist? 3) You've alleged psychiatric injury related to every fire you're ever responded to apparently, and I'm not convinced that it's not Really related to your on-going conflict with the City in general. But I'm willing to explore away to work that out. But I need guidance from you. Are you in need of medical care or are you looking for a money settlement? I always try to be reasonable in approaching these things. **I have not seen anything that links the toe fungus to a work-related injury**".

11. My This Petition/ Appeal fits squarely into the case of Cit of Columbia Fire Captain James "Woody" Goodman case: The petitioner substantially complied with § 42-17-50 where he wrote the Workers' Compensation Commission a timely letter expressing his desire to appeal. Goodman v. City of Columbia 318 S.C. 488 (S.C. 1995) 458 S.E.2d 531.

12. 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.

Stopping payment on temporary award-This rule and Code 1962 § 72-352 contemplate that if the insurance carrier desires to stop further payments of compensation under a temporary award., application should be made to the commission for permission to do so and the employee should receive notice of application. Halks v. Rust Engineering Co. (1946) 208 SC 39, 36 SE2d 852. Workers' Compensation ⇨ 2013. P. 439

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

**A Party Affected by VOID Judicial Action Need Not APPEAL.** State ex rel. Latty, 907

S.W.2d at 486. It is entitled to no respect whatsoever because it does not affect, impair, or create Legal rights." Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J.,concurring). If an appeal is taken, however, the appellate court may declare void any orders the trial court signed after it lost plenary power over the case, because a void judgment is a nullity from the beginning and is attended by none of the consequences of a valid judgment.

## REASONS FOR GRANTING THE PETITION/ARGUMENT

- I. THIS COURT SHOULD GRANT APPELLANT'S PETITION FOR *CERTIORARI* BECAUSE THE DECEMBER 2, 2015 DECISION/ JUDGEMENT IS VOID, AND ALL SUBSEQUENT , THAT VIOLATED 5 & 14 AMENDMENT DUE PROCESS PROTECTION, WAS PRODUCED BY FRAUD ON THE COURT AND OTHER VIOLATIONS OF LAW AND ACTIONS TAKEN IN THIS CASE ARE OUT OF ALIGNMENT WITH THIS COURT'S DECISIONS AND THE CONSTITUTION OF THE UNITED STATES. BECAUSE THE JUDGMENT IS VOID ON ITS FACE , THE COURT OF APPEALS INCORRECTLY DISMISSED THE APPEAL DUE TO DISABILITIES CAUSED BY WORK AND SEVERAL REQUEST FOR ASSISTANCE THAT WERE DENIED FROM THE COURT, RESULTING IN APPELLANTS INABILITY TO KEEP UP WITH THE COURTS RULES AND PACE. THE APPELLANT HAS A PROTECTED PROPERTY-RIGHT/INTEREST TO HIS SOUTH CAROLINA WORKERS' COMPENSATION BEENFITS AND A CONSTITUIONAL RIGHT TO BE REWARDED FOR INDUSTRY AS A DISABLED FIRE FIGHTGER AND ALL BENEFITS THAT FLOW FROM THOSE PROPERTY-RIGHTS/INTEREST.

The South Carolina Court of Appeals June 27, 2019 Order Appellant Case No, 2019-000369, Denied the Respondents Motion to Dismiss my appeal as Untimely, stated: "Respondents have filed a motion to dismiss this appeal as untimely. After careful, the motion is denied."

The Respondents failed to follow procedures in beginning to pay temporary total disability benefits. **Because these Constitutional Violations The December 2, 2015 Decision/ Judgment is Void, notice has not been given as of this date, no opportunity to be heard.**

The Respondents failed to follow procedures in Stopping pay fro temporary total disability benefits. **Because these Constitutional Violations The December 2, 2015 Decision/ Judgment is Void, notice has not been given as of this date, no opportunity to be heard.**

The Respondents Attorney Dana Thye, prior to the August 2015 hearing, did in an email stated the "**Wrist injury was accepted**" and the appellant/Claimant relaxed his guard.

The Respondents denied Appellant on the job exposure to mold /fungis, to later release records/evidence the Fire Stations where exposed to mold/fungis (same type found on his feet)

The South Carolina Workers Compensation Commission Illegally changed the date of Injury of **June 24, 2013** to June 24, 2014, after the Respondent and claimant, confirmed and agreed on the Correct date on the record.

The Single Commissioner Henry Gene McCaskill December 2, 2015 Decision/Judgment and Commissioners relied on a Medical Opinion 'evidence' Commissioner Henry Gene McCaskill himself omitted and altered 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 & Fourteenth Amendments entitling him to a full and fair impartial hearing.

**Because these Constitutional Violations The December 2, 2015 Decision/ Judgment is Void. Respondents and South Carolina Workers Compensation Commission failed to Follow its own rules, lack-jurisdiction, to include Subject matter was lost.**

"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)

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

SCHOOL WAS RENEDED A PARAPLEGIC. THE SC WORKERS' COMPENSATION COMMISSION ADJUSTED HIS AVERAGE WEEKLY WAGE AND COMPENSATION RATE BASED ON HIS FUTURE EARNING CAPACITY AS AN ELECTRICIAN, THE SC COURT OF APPEALS AFFIRMED. 4. **CITY OF COLUMBIA FIRE CAPTAIN JAMES "WOODY" GOODMAN** THE PETIONER SUBSTANTIALLY COMPLIED WITH § 42-17-50 WHERE HE WROTE THE WORKERS' COMPENSATION COMMISSION A TIMELY LETTER EXPRESSING HIS DESIRE TO APPEAL.

**Because these Constitutional Violations Respondents failure to follow proper procedures and the December 2, 2015 Decision/ Judgment and thereafter are Void. The Respondents never touch "first base"(failed to followed proper procedure to start and stop workers compensation Payments, resulting in an illegal taking) therefore forfeits the home run.**

No different from the June 8, 2021 - Blake Harris (@BlackHarrisTBLA) @ 7:52 pm On Tuesday, Pittsburgh Pirates third baseman Ke'Bryan Hayes hit a solo home run off Los Angeles Dodgers pitcher Walker Buehler. The impressive play down the right-field line was supposed to give the Pirates a 1-0 lead, but it was instead called an out. The Appellant has continued to challenge the miscarriage of justice and ask the Court finally find that the violations of Constitutional rights to include due process rights and with no opportunity to be heard. .

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

**III. CONCLUSION AND PRAYER FOR RELIEF**

**WHEREFORE, AND IN** light of the forgoing reasons, noted above, the Petitione prays that this Honorable Court will GRANT the requested Petition for Writ of Certiorari. The Court should also wipe the slate clean as in *Armstrong Id.*, mandate the lower courts and tribunals set aside and / or Vacate the VOID Orders/Decisions and Judgments of the lower courts as in *Hazel Atlas Id.*,


With intent the petitioner extends to the court of the South Carolina Supreme Court to capture the complete record by writ for evidence of fraud, as to draw sufficient reason to regulate by Supreme Court review the elements to verify fraud of the court, constitutional and other violations law to include under the APA for Fraud Upon the Court Denial of Due process, Procedural Due process, Substantive Due Process and Equal protection under the color of Law.

**In Lieu of Notary**

Under Penalty of Perjury, in accordance and full compliance with 28 USC § 1746 (2) and statutes applicable to the state of South Carolina , I declare that I have read foregoing petition for the Writ of Certiorari and the facts stated in it are true and correct.

Executed on this date July 6, 2021

Dated: July 6, 2021

By:  \_\_\_\_\_  
Mr. Terry H Capone  
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