



South Carolina Bar

Continuing Legal Education Division

2019 Workers' Compensation Practice Essentials

Thursday, August 8, 2019

presented by
**The South Carolina Bar
Continuing Legal Education Division**

<http://www.scbar.org/CLE>

SC Supreme Court Commission on CLE Course No. 195229E

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2019 Workers' Compensation Practice Essentials

Thursday, August 8, 2019

This program qualifies for 6.5 MCLE credit hours.
SC Supreme Court Commission Course No.: #195229E

- 8 a.m. Registration**
- 8:25 a.m. Welcome and Program Overview**
Neal M. Lourie
Lourie Law Firm, LLC
Shannon T. Poteat
Robinson Gray Stepp & Laffitte, LLC
- 8:30 a.m. Overview of the Workers' Compensation Process in South Carolina**
Gary M. Cannon, *SC Workers' Compensation Commission*
- 9 a.m. Client/Case Intake, Evaluation and Case Strategy**
Morgan Turner McQueeney
Willson, Jones, Carter & Baxley, PA
Joseph R. Dasta
McWhirter Bellinger & Associates, PA
- 10 a.m. Break**
- 10:15 a.m. Effective Discovery Practice**
Morgan Turner McQueeney
Joseph R. Dasta
- 11:15 a.m. Form Prep**
Michael W. Burkett
Willson, Jones, Carter & Baxley, PA
Allison P. Sullivan
Bluestein Thompson Sullivan. LLC
- 12:15 p.m. Lunch with the Faculty/Q&A (Included)**
- 12:45 p.m. Hearing Prep**
Michael W. Burkett
Allison P. Sullivan
- 1:45 p.m. Mediation**
Landon "Rocky" Hughey
McAngus Goudelock & Courie, LLC
Andrea C. Roche
Mickle & Bass, LLC
- 2:15 p.m. Settlement**
Landon "Rocky" Hughey
Andrea C. Roche
- 3 p.m. Break**
- 3:15 p.m. Hints from the Commission**
Commissioner T. Scott Beck, Chairman
- 4 p.m. Adjourn**

2019 Workers' Compensation Practice Essentials

SPEAKER BIOGRAPHIES

(by order of presentation)

Neal M. Lourie

*Lourie Law Firm, LLC
Columbia, SC
(course planner)*

Neal Lourie is owner/partner at Lourie Law Firm, LLC. His Areas of Practice are Personal Injury, Workers' Compensation/On-the-job Injury and Criminal Defense. He received his B.A. in 1990 from Tulane University and his J.D. in 1993 from University of South Carolina School of Law. He was admitted to the South Carolina Bar in 1994 and U.S. District Court District of South Carolina in 2000. Mr. Lourie is a member of the South Carolina Bar, American Bar Association, Richland County Bar, Injured Workers' Advocates, South Carolina Association of Criminal Defense Lawyers, South Carolina Association for Justice and South Carolina Workers' Compensation Educational Association.

Shannon Till Poteat

*Robinson Gray Stepp & Laffitte, LLC
Columbia, SC
(course planner)*

Shannon Till Poteat practices with the office of Robinson Gray Stepp & Laffitte, LLC. Ms. Poteat earned her B.A. from Emory University in 1990 and her J.D. from the University of South Carolina School of Law in 1993, where she served as Articles Editor of the South Carolina Environmental Law Journal and as a staff member of the American Bar Association Real Property, Probate and Trust Journal. Ms. Poteat was also a member of the Order of Wig and Robe and a recipient of the John Holland Scholarship and an American Jurisprudence Award for Remedies. She co-authored The Law of Workers' Compensation in South Carolina, Second, Third, Fourth and Fifth Editions. She is a member of the Richland County Bar Association and South Carolina Bar as well as the South Carolina Workers' Compensation Educational Association and South Carolina Women Lawyers Association. Ms. Poteat holds an AV Preeminent rating from LexisNexis Martindale-Hubbell indicating the highest level of ethical and professional excellence.

Gary M. Cannon

*SC Workers' Compensation Commission
Columbia, SC*

Gary M. Cannon was appointed executive director of the South Carolina Workers' Compensation Commission in March 2009. He reports to the seven Commissioners and is responsible for the administration and operation of the Commission's five functional departments.

Mr. Cannon previously served as Director of Fund and Membership Development for the International City/County Management Association, the Director of Intergovernmental Relations for the Municipal Association of South Carolina and he also served in management positions in city and county government in North and South Carolina. He currently serves on the International Industrial Accidents Boards and Commissions Board of Directors and the United Way of South Carolina

He is a graduate of the University of North Carolina at Chapel Hill where he earned Bachelor of Political Science and Master of Public Administration degrees and is a graduate of the Senior Executive Institute of the University of Virginia, the South Carolina Executive Institute and Leadership South Carolina.

Joseph "Joe" R. Dasta

*McWhirter Bellinger & Associates, PA
Columbia, SC*

Mr. Dasta joined McWhirter Bellinger & Associates, PA in 1997 and works primarily in the Columbia office. He practices in the areas of automobile accidents, workers' compensation, wrongful death, premises liability and all forms of personal injury. Mr. Dasta graduated Magna Cum Laude from the University of South Carolina in May, 1990, with a Bachelor of Science, Criminal Justice and received his J. D. from the University of South Carolina School of Law in 1994. He was admitted to the South Carolina Bar in 1994.

Mr. Dasta is a member of the American Bar Association, the American Association for Justice, the South Carolina Association for Justice, the Injured Workers' Advocates, and the South Carolina Workers' Compensation Educational Association. After joining the Army ROTC at the University of South Carolina during his undergraduate studies, Mr. Dasta was commissioned as a Military Police Officer in the United States Army Reserves in 1990 and served in the Army Reserves for twenty-one (21) years and retired as a Major in August 2011. He was assigned to the 108th Training Division at Fort Jackson, South Carolina for the first ten (10) years of his military service and he spent the last eleven (11) years of his military service as a Judge Advocate with the 12th Legal Support Organization, at Fort Jackson, South Carolina.

Morgan Turner McQueeney

*Willson Jones Carter & Baxley, P.A.
Mt. Pleasant, SC*

Morgan Turner McQueeney practices in the Charleston, South Carolina office of Willson Jones Carter & Baxley, P.A. She received her B.S. degree, cum laude, from the South Carolina Honors College at the University of South Carolina and her J.D. degree from the University of South Carolina School of Law. Ms. McQueeney was admitted to the South Carolina Bar in 2005 and is a member of the South Carolina Bar Association and the South Carolina Workers' Compensation Educational Association. Ms. McQueeney practices exclusively in the area of workers' compensation defense.

Michael W. Burkett

*Willson Jones Carter & Baxley, P.A.
Columbia, SC*

Michael W. Burkett practices workers' compensation defense and workers' compensation subrogation in the firm's Columbia, South Carolina office and serves as the office's managing shareholder. He earned his Bachelor of Science, *magna cum laude*, from The Citadel in 1995 and his J.D. degree from the University of South Carolina School of Law in 1999. While in law school, he served as Chief Justice of the Moot Court Bar and captain for one of the school's two American Bar Association National Appellate Advocacy Competition teams. He was named a member of the Order of Barristers in 1999, and he received Student Compleat Lawyer Award from the School of Law Alumni Association in 1999. He is the author of the Workers' Compensation Chapter in the South Carolina Bar publication *South Carolina Administrative Law Practice and Procedure*.

He was admitted to the South Carolina Bar in 1999, and he is a member of the South Carolina Workers' Compensation Educational Association. He is admitted to practice before the United States District Court for the District of South Carolina and all South Carolina State Courts. Michael was also named *US News Best Lawyers* for Workers' Compensation Law for 2018 and 2019.. He holds an AV Preeminent rating Lexis Nexis Martindale-Hubbell, indicating the highest level of ethical and professional excellence.

Michael grew up in Sumter, SC, and he currently lives in Columbia with his wife, Kelly, and their two children, Porter and Sophie. He is an active member of St. John's Episcopal Church. Prior to attending law school, he taught Eighth Grade English at Hand Middle School in Columbia, and he currently serves as the President of the Dreher High School Athletic Booster Club. Because he cannot play golf, he coaches competitive soccer for South Carolina United FC in his free time.

Allison P. Sullivan

*Bluestein Thompson Sullivan LLC
Columbia, SC*

Allison Sullivan is a partner in the Columbia firm of Bluestein Thompson Sullivan LLC, where her practice is concentrated in the areas of Personal Injury, Workers' Compensation, Business Litigation Wrongful Death, Medical Malpractice, Motorcycle Wrecks, Wrecks with Tractor Trailers, Whistleblower Lawsuits and Mediation. She earned her B.A. in Political Science from Furman University in 2001 and her J.D. from the University of South Carolina School of Law in 2005. Ms. Sullivan serves on the Executive Committee of Injured Workers' Advocates and is also a member of the South Carolina Association for Justice and the John Belton O'Neall Inn of Court. Ms. Sullivan was recognized as the 2014 SC Bar Young Lawyer of the Year and received the SC Bar YLD President's Award in 2013 and 2014.

Landon “Rocky” Hughey

*McAngus Goudelock & Courie, LLC
Columbia, SC*

Landon “Rocky” Hughey practices in the Columbia office of McAngus Goudelock & Courie, LLC. He graduated cum laude from the University of South Carolina in 2000 and the University of South Carolina School of Law in 2003. He was admitted to the South Carolina Bar in 2003, as well as the United States District Court, District of South Carolina. Rocky Hughey focuses his practice in the area of workers’ compensation defense. He frequently appears before the South Carolina Workers’ Compensation Commission, representing the interests of employers, insurance carriers and self-insured clients throughout the state. He regularly lectures before various organizations on issues related to workers’ compensation law. Rocky has also been recognized by the South Carolina Supreme Court as a certified mediator and maintains a statewide mediation practice. Rocky is a member of the South Carolina Bar, Richland County Bar Association, South Carolina Defense Trial Attorneys’ Association and South Carolina Workers’ Compensation Educational Association. Outside of work, Rocky enjoys spending time with his family, including his wife and three children. He and his family enjoy spending time at the beach and traveling together. Rocky also enjoys watching the South Carolina Gamecocks and is active in the local community.

Andrea C. Roche

*Mickle & Bass, LLC
Columbia, SC*

Andrea C. Roche is a partner at Mickle & Bass, LLC, practicing primarily workers’ compensation. She is a former member of the South Carolina Workers’ Compensation Commission, serving from 2006 until 2014. She was named Chairman of the Commission by Governor Sanford and served in that role from 2008-2010.

Before serving on the Commission, Andrea was a partner at Barnes, Alford, Stork & Johnson where her practice consisted primarily of defending employers and insurance companies in workers’ compensation claims.

Andrea is a 1994 graduate of the Yale Law School and a 1988 graduate of the University of North Carolina at Chapel Hill. Following graduation from Yale, she clerked for the Honorable Robert F. Chapman on the United States Court of Appeals for the Fourth Circuit. Andrea also clerked for the Honorable Carol Connor of the South Carolina Court of Appeals and served as a staff attorney for the Court. She is Past President of the Board of Directors of the South Carolina Workers’ Compensation Educational Association.

Commissioner T. Scott Beck

*Chairman, SC Workers’ Compensation Commission
Charleston, SC*

Commissioner Beck was appointed to the South Carolina Workers’ Compensation Commission on June 30, 2008. In 2010, he was elected by the Commission as Interim Chairman and in December 2012, Governor Haley nominated Commissioner Beck for reappointment as Chairman.

He graduated with a BS degree from Penn State in 1981 and from the USC School of Law in 1999. Prior to joining the Commission, he served in various positions in Law Enforcement from 1979-1996 and most recently as an Assistant Attorney General from 2000-2008 prosecuting healthcare fraud cases. Commissioner Beck served as a city councilman in North Augusta, South Carolina from 1993-1996, and was elected to the South Carolina House of Representatives, serving from 1996-2000.



South Carolina Bar

Continuing Legal Education Division

2019 Workers' Compensation Practice Essentials

Overview of the Workers' Compensation Process in South Carolina

Gary M. Cannon

SC Workers' Compensation Commission



Workers' Compensation Essentials SC Bar August 8, 2019



South Carolina Workers' Compensation Commission

Commissioners



T. Scott Beck
Chairman
Term Expires
June 30, 2020



Susan S. Barden
Term Expires
June 30, 2022



Melody L. James
Term Expires
June 30, 2022



Aisha Taylor
Term Expires
June 30, 2020



Avery B. Wilkerson, Jr.
Term Expires
June 30, 2020



Gene McCaskill
Term Expires
June 30, 2024



Michael R. Campbell II
Term Expires:
June 30, 2024



System Objectives

- 1. No fault system**
- 2. Single remedy**
- 3. Relieve demands on charities**
- 4. Minimize cost and time-consuming trials**
- 5. Use experience-rating mechanism**
- 6. Study cause rather than conceal fault**



Mission Statement

To provide an equitable and timely system of benefits to injured workers and employers in the most responsive, accurate and reliable manner possible.



What we believe.....

Apply facts of case to law

Apply rules equitably

Create a level playing field

Promote efficiency and effectiveness

Provide timely responses to all stakeholders

Remember ... a case involves a person



Stakeholders

- Employers
- Employees
- Insurance Carriers
- Medical Service Providers
- Attorneys
- Uninsured Employers Fund



Statutory/Regulatory Authority

**Title 42 - Workers'
Compensation**

Regulation 67



SC Code of Laws

Title I - Chapter 23
Title 8 - Chapters 11 & 13
Title 14 - Chapter 8
Title 15 - Chapter 78 & 81
Title 16 - Chapter 3
Title 23 - Chapter 31



SC Code of Laws

- Title 32 - Chapter 2
- Title 38 - Chapters 1-73
- Title 40 - Chapter 68
- Title 41 - Chapter 1
- Title 48 - Chapter 57
- Title 63 - Chapter 17



SC Appellate Court Rules

II. Rules of Appellate Practice

Rule 241 –
Stay and Supersedeas In Civil Actions

Rules of Procedure for the Administrative Law Court



Coverage Exemptions

Every employer and employee in SC covered, with notable exceptions:

- Railroad & Railway companies**
- Certain casual employees**
- Federal employees in SC**
- Businesses with less than 4 employees**
- Agricultural employees**
- Certain real estate sales persons**
- Corporate officers (by election)**



Commissioners' Functions

Judicial

Public Policy/Quasi-legislative



Judicial

Conduct Jurisdictional Hearings
Approve Settlements
Decide on Motions
Approve Attorney Fees
Conduct Appellate Hearings
Rule to Show Cause Hearings



Public Policy/Quasi-legislative

Approve Regulations
Administrative Policies & Procedures
Medical Fee Schedules
Applications to self insure

 **South Carolina Workers' Compensation Commission**

www.wcc.sc.gov/commissioners/preferences

PO Box 1713 1333 Main Street, Suite 100 Columbia, SC 29202-1713 803-737-5700



**South Carolina
Workers' Compensation Commission**

Home > Commissioners > Commissioners' Preferences

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

COMMISSIONER'S PREFERENCES

[Standard Preferences](#)

Commissioner-Specific Preferences

[T. Scott Beck](#)

[Susan S. Barden](#)


[Avery B. Wilkerson, Jr.](#)

[Melody L. James](#)

[Gene McCaskill](#)

[Aisha Taylor](#)

[R. Michael Campbell, II](#)

 **South Carolina Workers' Compensation Commission**

By the Numbers

7

\$7.3_{million}

54

Commissioners

Annual Budget

FTEs



South Carolina Workers' Compensation Commission

\$1 Billion

Premiums Paid in 2016

**Commercial
Self-Insurance
State Accident Fund**



South Carolina Workers' Compensation Commission

\$20 million

Workers' Compensation Insurance Taxes

State General Fund

Commercial



FY2018-19

97,124 Employers with Insurance
2,285 Self-Insured
188 new employers approved



Coverage/Compliance

2,234 Investigations
288 Show Cause Hearings
572 employers compelled
5,212 employees covered
\$13.7m fines assessed



FY2018-19

65,827 Accidents Filed

24,155	Cases Created
38,596	Minor Medical
3,076	Cases re-opened

|

64,419 Cases Closed



Informal Conferences

4,033 assigned

2,780 conducted

Single Commissioner Cases

10,031 docketed



1,184 - Mediations

11,312 – Settlements Approved



Commissioner Appellate Panels

298	Appeals
118	Reviews
199	Decisions/Opinions
61	Higher Court



Other Case Related Activities

• Approval of Fee Petitions	8,314
• Administrative Orders	5,763
• Clincher Conferences	1,725
• Motions Assigned	1,607
• Pre-hearing conferences	313
• Informal Conferences Med >\$50k	83



Other Case Related Activities Per year

• Failed Informal Conference	189
• Relief of Counsel	1,200
• Judicial Conference Admin Matters	9



Average Processing Time

<u>Single Commissioner</u>	<u>Days</u>
Request for Hearing -	32
Hearing Docketed -	100
Order instructions issued -	90
 <u>Appeals</u>	
Hearings Held -	90



Medical Cost

Commission responsibility

Ensuring medical care is available to claimants
Controlling cost of system

Fee Schedules

Medical Services Provider Manual
In-Patient Fee Schedule
Ambulatory Surgery Center



Medical Services Provider Manual

Medicare Based (CMS)
2019 Resource Based Relative Values
Conversion Factor (\$50)
Updated Annually
Effective April 1



System Cost (millions)

\$ 995

Medical	\$ 381	(8%)
Indemnity	\$ 614	(6%)



Most Recently.....

Regulations Amended
Medical Fee Schedule Update
Website Update
Venues – statute change



VENUES

Statewide

7 districts

54 sites

99 rooms

Court rooms

City/county Council Chambers

State Agency Conference Rooms

Technical Colleges



Self Insurance Audits

Conducted on a 2 year cycle

Conducted 48 during FY2018-19

SI Funds submit quarterly reports
internal financial reports
annual audit report



KERMIT

(Key Element Reporting Management & Incident Tracking)

New IT system

More responsive processes

Increase operational efficiencies

Ensure prompt delivery of benefits

Decrease cost

Improved performance of system stakeholders



KERMIT Portal Concept

Bank Portal

Secure login
Manage profile
Dashboard
Check account balance
Pay bills
View statement
Notifications - balances
Account history

Claim Portal

Secure login
Manage profile and protection
Dashboard
Check status of a claim
Pay filing fee
Review all claim forms and documents
Notifications – claims updates or due
Claim history



KERMIT Stakeholder Benefits

Online form completion and submission
Electronic payment
Electronic service to all parties
View documents



KERMIT

Agency Benefits

Business Operation Improvements

- Data collection edits
- Process standardization
- Electronic workflows
- Reduction in FTE's

Reduced Complexity and Dependency

Enhanced Security



KERMIT

Implementation Schedule

Implementation Guide Published

July 25

Regional Training Sessions

- September 18 - Columbia
- September 24 - Greenville
- September 27 - N. Charleston
- September 30 - Columbia
- October 3 - N. Charleston
- October 7 - Greenville

Launch October 28, 2019



Contact:

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South Carolina Bar

Continuing Legal Education Division

2019 Workers' Compensation Practice Essentials

Client/Case Intake, Evaluation & Case Strategy
And
Effective Discovery Practice

Morgan Turner McQueeney
Joseph R. Dasta

Client/Case Intake, Evaluation and Case Strategy & Effective Discovery Process

Joseph R. Dasta of McWhirter, Bellinger & Associates, P.A.

Morgan Turner McQueeney of Willson, Jones, Carter & Baxley, P.A.

Client Intake, Evaluation and Strategy for Claimant

- A. Initial Client Interview
 - a. Information gathering
 - b. Explain the system to the client
 - c. Answer questions
 - d. Stay informed
 - e. Other potential claims?
- B. Types of benefits available to the claimant:
 - a. temporary total
 - b. causally related medical expenses
 - c. permanent partial/total
- C. Evaluating the Claim
 - a. Two year statute of limitations
 - i. Form 50 tolls statute
 - a) file for claim
 - b) file requesting hearing
 - ii. Additional issues -- amend Form 50
 - iii. Death case -- Form 52
- D. Review/evaluate Medical Records and Personnel File
 - a. Need to gather and evaluate all medical records and documentation supporting injury
 - i. Send medical authorization with each request
 - ii. Client should sign several blank forms at initial meeting
 - b. Communication by Defense Counsel with Doctors
 - i. Employer/Carrier communications limited by *Brown v. Bi-Lo* for cases prior to July 1, 2007
 - ii. Employer/Carrier allowed direct contact for cases after June 30, 2007, without employee's consent but employee must be allowed opportunity to be present pursuant to Sec. 42-15-95.
 - c. Medical Evidence
 - i. Review and determine whether to obtain doctors' statements
 - ii. Medically complex = deposition
 - iii. Obtain past medical evidence (prior ratings, restrictions)
 - iv. Check medical records for MMI
 - a) If MMI get statement from doctor with rating, restrictions and future medical care- Form 14B Physician's Statement
 - b) Is rating accurate?
 - v. Do you (or your client) want a second opinion?
 - a) Request from Defense Counsel- Carrier may choose to pay!

- vi. Do you (or your client) want an IME (independent medical examination)
 - a) Credible doctor
 - b) Employee often pays (Claimant's attorney may advance cost)
 - c) Send all medical records to IME doctor
 - d) Put specific requests/questions in writing
- d. Calculate Average Weekly Wage and Compensation Rate
 - i. Request Payroll Records
 - ii. If D agrees that claimant has maximum rate, may not need payroll records
 - iii. Determine at initial meeting if rate is going to be an issue
 - iv. Note significant amounts of overtime
 - v. Can include other jobs at time of accident
- E. Determine if you need a vocational expert
 - a. Important in permanent and total disability cases/partial wage loss cases
 - i. Somewhat expensive but necessary
 - ii. Provide all the evidence to the V.E. so the report will be legitimate
 - iii. Choose someone credible

Case Intake, Evaluation and Case Strategy for Defendants

- A. Review of new file from insurance carrier
- B. Initial Tasks
 - a. Investigate compensability of claim, claim history, and assistance needed from adjuster and employer
 - b. Analysis of pleadings
 - c. Call Claimant's counsel to investigate claim issues and benefits seeking
- C. Analyze Potential Defenses: See Attached Defenses to Claims
 - a. Affirmative:
 - i. Statute of Limitations
 - ii. Notice
 - iii. Intoxication or Willfulness
 - iv. Willful Intent to Injure
 - v. Horseplay
 - vi. Act of God
 - vii. Assaults
 - b. Other Defenses:
 - i. No Employer/Employee Relationship
 - ii. Not arising out of and in the course and scope of employment
 - iii. Fraud in Employment Application
- D. Information Needed from Employer
 - a. Personnel file – Investigate employment and claim history and any prior claims
 - b. Claimant's current employment status for settlement evaluation
 - c. Payroll records – Confirm Form 20 is correct
 - d. Meet with employer – identify and interview potential witnesses – especially on denied claims
- E. Evaluate Claim
 - a. Calculate exposure and/or additional discovery needed to determine exposure
 - b. Analysis of defenses
 - c. Develop initial settlement recommendations
 - d. Contact adjuster to address compensability, exposure, settlement, information needed, and hearing preparation
 - i. Call to discuss
 - ii. Written initial case analysis
- F. Necessity of Experts
 - a. Vocational Expert if exposure for partial or total wage loss
 - b. Second Opinion
 - c. Medical Case Review
 - d. Ergonomics Expert for repetitive trauma claims


Effective Discovery Process for Claimant

- A. Depositions
 - a. Preparing your client for the deposition
 - i. what to expect
 - ii. reading/signing
 - iii. style of other attorney
 - iv. What to do...not to do.... during the deposition
 - 1. Be pleasant, not defensive or hostile
 - 2. Use verbal responses
 - 3. Cannot confer with attorney
 - 4. Do NOT guess
 - 5. OK if you don't know / don't remember
 - 6. OK if you don't understand question
- B. Additional Discovery
 - a. Determine whether you need to subpoena the personnel file
 - i. Has the employer/carrier made work habits, etc. an issue?
 - ii. If good work history, may improve the case
 - b. Gather Lay Witness Evidence
 - i. Do you need it?
 - 1. Is it a contested case?
 - ii. Can you speak to the witness?
 - 1. Is he/she represented?
 - iii. Subpoena the witness to the hearing if you need him/her
 - c. Surveillance
 - i. Subpoena from other side
 - ii. Ask client if anyone has been watching them
 - d. Social Media
 - i. Review Client's social media
 - ii. May want to ask them to get off of Facebook, Twitter, etc.

Effective Discovery Process for Defendants


- A. Discovery
 - a. Subpoena Medical Records from all providers if not in initial file materials. If claim is denied:
 - a. Request records from all known providers even outside of the workers' compensation claim to include handwritten intake sheets
 - b. Confirm complete copy of records available in file materials and subpoena if not in initial file materials
 - b. Subpoena personnel files/payroll records from other employers if question on compensability of claim or Claimant's concurrent or subsequent employment
 - c. Subpoena tax records, business records, out of state records from claimant if question on compensation rate, concurrent employment, or subsequent employment
 - d. Subpoena SCDEW records if question on concurrent employment, compensation rate, employment history, or return to work following injury
 - e. Subpoena to Claimant's attorney for IMEs, vocational evaluations, questionnaires if not provide without the necessity of a subpoena
 - f. SLED Record Check to investigate criminal history
 - g. Index Check to investigate prior claim history
- B. Depositions
 - a. Claimant
 - i. Early if a denied case
 - ii. Later to determine exposure, activity level, credibility issues
 - iii. May not be needed in every case
 - b. Treating Physicians or IME Doctors
 - c. Vocational Experts
 - d. Witnesses
- C. Surveillance
 - a. When to conduct surveillance
 - b. Proper steps
 - c. Relevance of surveillance
- D. Social Media
 - a. Goldmine of information
 - i. Check Facebook, Twitter, Google

Defenses to Claims




Statute of Limitations Defense

- Statute §42-15-40
- Injury by Accident
 - The right to compensation is barred unless the claim is filed within 2 years after an accident, or if death resulted from accident, within 2 years of death.
 - Filing a claim can be accomplished by filing a Form 50 or writing the Commission and advising them that a party plans to pursue a claim.



Statute of Limitations Defense

- Occupational Disease
 - 2 year period does not begin to run until the claimant has been diagnosed definitely as having an occupational disease and has been notified of the diagnosis.
- Repetitive Trauma
 - 2 year period does not begin to run until the claimant knew or should have known the condition/injury was compensable.



Statute of Limitations Defense

• The employer and carrier may be estopped to invoke the statute of limitations if by their conduct they have induced the claimant to believe that his claim is compensable and will be taken care of without its being filed with the commission within the statutory period. *Hucks v. Green's Fuel of South Carolina*, 247 S.C. 457, 158 S.E.2d 149 (1966).

• The burden of proof is on the claimant who asserts an estoppel. *Id.* Estoppel only continues for such reasonable length of time as would be sufficient to enable the employee in exercise of due diligence to realize that he could no longer rely upon it. *DuPont v. D.I. De Nemours & Co.*, 231 S.C. 295, 88 S.E.2d 528 (1957).



90 Day Notice Defense

• Notice of accident shall be given to the employer within 90 days.
• Statute section 42-15-20.

"Every injured employee or his representative shall immediately on the occurrence of an accident, or as soon thereafter as practicable, give or cause to be given to the employer a notice of the accident and the employee shall not be entitled to physician's fees nor to any compensation which may have accrued under the terms of this title prior to the giving of such notice, unless it can be shown that the employer, his agent, or representative, had knowledge of the accident or that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity or the fraud or deceit of some third person.



90 Day Notice Defense (statute continued)


Except as provided in subsection (C), no compensation shall be payable unless such notice is given within ninety days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been prejudiced thereby.

In the case of repetitive trauma, notice must be given by the employee within ninety days of the date the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been unduly prejudiced thereby."




90 Day Notice Defense

- 42-15-20 (A) — Employee shall give immediate notice of accident.
- 42-15-20 (A) — Employee is not entitled to payment for medical treatment or compensation benefits until notice is given unless employer had knowledge of the accident.
- 42-15-20 (B) — Claim is barred (not compensable) if notice not given within 90 days unless an exception applies.




90 Day Notice Defense

- Exceptions to 90 day notice defense
 - Reasonable excuse is made to the satisfaction of the Commission for not giving such notice
 - The Commission is satisfied that the employer has not been prejudiced thereby
- Although the statute requires "immediate" notice, the statute does not penalize the Claimant unless notice is not provided within 90 days




90 Day Notice Defense

- 42-15-20 (C) — In repetitive trauma claims, notice is required within 90 days of the date the employee discovered or could have discovered that the condition was compensable (work related).
- To assert this defense, the employer/carrier must file a Form 51 and assert the notice defense within thirty days of the filing of a Form 50.




90 Day Notice Defense

- The mere knowledge that the employee became ill at work does not necessarily serve the employer with notice that such illness constituted or resulted in a compensable injury. Sanders v. Richardson, 251 S.C. 325, 162 S.E.2d 257 (1968).
- Foreman's knowledge of an employee's accident was sufficient notice to the employer. Buggs v. United States Rubber Company, 201 S.C. 31, 22 S.E.2d 881 (1943).
- The burden to establish prejudice is on the employer. Mize v. Sangamo Electric Co., 251 S.C. 250, 161 S.E.2d 846 (1968).




Intoxication or Willfulness

- Claimant not entitled to compensation when injury or death caused by intoxication or willfulness of employee.
- No compensation shall be payable if the injury or death was caused by the intoxication of the employee or the employee intentionally injured or killed himself or another.
- The burden to establish this defense is on the employer/carrier. Chandler v. Sutt Constr. Co., 288 S.C. 503, 343 S.E.2d 633 (Ct. App.1986).




Intoxication or Willfulness

- Statute section 42-9-60
- Another affirmative defense that must be plead or waived, and the burden is on the employer to prove that the intoxication actually caused the accident. Just because the claimant has something in his system does not mean he is barred from compensation. Even if intoxicated, if he is doing his job standing at an assembly line and he's hit from behind by a forklift, his intoxication did not cause the accident and the claim is still compensable.




Fraud in Employment Application

- This defense is commonly known as the Cooper v. McDevitt & Street defense. In this case, the Supreme Court held that for a false statement in an employment application to bar workers' compensation benefits the following elements must be established:
 - The employee must have knowingly and willfully made a false representation as to his/her physical condition
 - The employer must have relied upon the false representation and this reliance must have been substantial factor in the hiring of the employee
 - There must be a causal connection between the false representation and the injury in question.




Fraud in Employment Application

- Example using the Cooper v. McDevitt and Street case:
 - Cooper was hired by McDevitt and Street to do construction work that would require heavy lifting;
 - Cooper completed a medical history form and stated that he had not had any prior back problems;
 - Cooper had actually had a prior back injury and received a \$5,000 award for disability from the Commission;
 - Cooper re-injured his back while lifting at work;
 - Court denied his claim and said that his employment was voidable due to his misrepresentation.




Fraud in Employment Application

- In Wilbanks v. Kentucky Fried Chicken, 312 S.C. 131, 439 S.E.2d 300 (1993 Ct. App.), the application simply asked if the claimant had any disability that would prevent her from doing the job for which she was applying. She did not disclose her history of back problems because she did not feel it would affect her ability to perform as a cashier, and the court agreed that she did not make a false statement.




Going and Coming Rule

- Not a statutory defense, but established by case law
- General rule: An injury sustained by an employee while on his way to or from work and away from the premises of this employer, does not arise out of and in the course of his employment. Williams v. S.C. State Hospital, 245 S.C 377, 140 S.E.2d 601 (1965).
- Exceptions to the general rule:
 - If while going to or returning from work the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages, then the injury during such travel is compensable.
 - Example: means of transportation — Construction company has a van that goes around and picks up employees.




Going and Coming Rule

- Exceptions to the general rule
 - Where the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment
 - The way used is inherently dangerous and is either:
 - The exclusive way or ingress or egress to and from his work
 - Constructed and maintained by the employer. Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1966).



No Accident or Not a Compensable Accident

- When there is a question about whether an accident actually occurred at work or occurred at all, an employer/carrier can deny the claim on this basis.
- A Form 19 should be filed and the box beside the statement "Case Denied" should be marked. The Form 19 is submitted to the Commission.
- If an injury did occur in the course of employment but there is an argument that it did not arise out of the employment, then a case could also be denied on this basis.
- Example: Crosby v. Wal-Mart





WCC File #: «accident_state_number»

Carrier File #: «accident_claim_number»

Carrier Code #: _____

Employer FEIN #: _____

«Claimant_full_name» _____ «Claimant_ssn» _____
Claimant's Name SSN

«Claimant_address_1», «Claimant_address_1_city»,
«Claimant_address_1_state» «Claimant_address_1_zip»
Address City State Zip

«Claimant_phone_home» _____ «Claimant_phone_business» _____
Home Phone Work Phone

«Employer_WC_Defendant_company_sk» _____
Employer's Name

«Employer_WC_Defendant_address_1»,
«Employer_WC_Defendant_address_1_city»,
«Employer_WC_Defendant_address_1_state»
«Employer_WC_Defendant_address_1_zip»
Address City State Zip

«CarrierInsurance_Company_company_sk» _____
»
Insurance Carrier

«Paralegal_full_name» _____ «Paralegal_address_1», «Paralegal_address_1_city»,
«Paralegal_address_1_state» «Paralegal_address_1_zip» _____ «Paralegal_phone_business» _____
Preparer's Name Address Phone #

SUBPOENA

To: «Medical_Provider_full_name», «Medical_Provider_title»-«Medical_Provider_company_sk»/Records Custodian

YOU ARE COMMANDED to appear before the above named Commission at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY: _____ ROOM: _____

DATE AND TIME: _____

YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION: _____ DATE AND TIME: _____

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

Any and all records you have in your possession relating to the medical care of «Claimant_full_name» FOR DATES OF SERVICE . This would include copies of medical reports from other facilities, correspondence, statements, and questionnaires to or from any attorneys or other parties. This should also include a copy of the initial patient information form and patient history form.

MAIL OR

FAX TO: «Paralegal_full_name»
Willson Jones Carter & Baxley, P.A.
«Paralegal_address_1_block»

MAIL/FAX BY:

Fax: «Paralegal_phone_fax»

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES: _____ DATE AND TIME: _____

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE ISSUING OFFICER.

ISSUING OFFICER'S SIGNATURE AND TITLE _____ «Responsible_Attorney_phone_business» _____ «current_date_long»
«Responsible_Attorney_full_name», Attorney for Defendants PHONE# DATE

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. «accident_state_number»

«Claimant_full_name»,)
Employee,)
Claimant,)
vs.)
«Employer_WC_Defendant_company_sk»,)
Employer,)
and)
«CarrierInsurance_Company_company_sk»,)
Carrier,)
Defendants.)

NOTICE OF DEPOSITION

TO: «CLAIMANTS_ATTORNEY_FULL_NAME», «CLAIMANTS_ATTORNEY_TITLE»,
ATTORNEY FOR CLAIMANT

YOU WILL PLEASE TAKE NOTICE that the deposition of «Claimant_full_name» will be taken upon oral examination before a Notary Public or some other official authorized by law to take depositions. The deposition will be held on «Deposition_appoint_date_long», at «Deposition_begin_time», at the offices of «Claimants_Attorney_company_sk», «Claimants_Attorney_address_1», «Claimants_Attorney_address_1_city», «Claimants_Attorney_address_1_state». The oral examination will continue from day to day until completed. You are invited to attend and take such part as is fit and proper.

**WILLSON JONES CARTER &
BAXLEY, P.A.**

«Responsible_Attorney_full_name»,
«Responsible_Attorney_title»
«Responsible_Attorney_address_1»
«Responsible_Attorney_address_1_city»,
«Responsible_Attorney_address_1_state» «Responsible_Attorney_address_1_zip»
Attorneys for Defendants

Date: «current_date_long»

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. «accident_state_number»

«Claimant_full_name»,)
Employee,)
Claimant,)
)
vs.)
)
«Employer_WC_Defendant_company_sk»,)
)
Employer,)
and)
)
«CarrierInsurance_Company_company_sk»,)
)
Carrier,)
Defendants.)

CERTIFICATE OF SERVICE

I, «Paralegal_full_name», do hereby certify that I am the paralegal for «Responsible_Attorney_full_name», Esquire, attorney for the defendants with **WILLSON JONES CARTER & BAXLEY, P.A.** in «Responsible_Attorney_address_1_city», South Carolina, and that on the «current_date_dd»«current_date_day_ss» day of «current_date_month», «current_date_yyyy», I mailed the foregoing Notice of Deposition to the following by placing a copy thereof in the United States mail, first class, proper postage affixed thereto:

«Claimants_Attorney_full_name», «Claimants_Attorney_title»
«Claimants_Attorney_company_sk»
«Claimants_Attorney_address_1»
«Claimants_Attorney_address_1_city»,
«Claimants_Attorney_address_1_state» «Claimants_Attorney_address_1_zip»

«Paralegal_full_name»
Paralegal to «Responsible_Attorney_full_name»,
«Responsible_Attorney_title»

WILLSON JONES CARTER & BAXLEY, P.A.

«Paralegal_address_1»

«Paralegal_address_1_city», «Paralegal_address_1_state»

«Paralegal_address_1_zip»

INTRODUCTION

Make sure the witness understands the question/answer format of the deposition. Answer all questions verbally – no head nods or “un huh’s.”

If witness does not understand any question, witness should ask you to rephrase question.

Remember you are under oath and have sworn to answer all questions truthfully.

If witness needs to take a break, just notify you

Are you on any medications that keep you from being able to understand me?

BACKGROUND INFORMATION

Name-

Address-

Date of Birth-

Social Security Number-

Marital Status?

Children, stepchildren, etc.? Ages?

Anyone else dependent upon you for support?

How long at current address?

How far in school?

(Ask specifically about a GED if they did not finish high school)

College? Technical School? Licenses? Certificates? CDL? Specialized training? Military?

Work History:

- (a) names of employers?
- (b) description of jobs (be very specific about the **actual tasks/duties** performed at each job...try to discover the Claimant's peak skill level)?
- (c) dates of employment?

EMPLOYMENT AT TIME OF ACCIDENT

When did you start?

What position?

How much money? How many hours? Paid in check or cash? (If business dissolved or cannot be found and paid in check, ask name of bank where have account?)

Direct supervisor?

At time of accident, was this your only job?

CURRENT EMPLOYMENT

Are you currently working?

If working with same employer, need current position, current pay, current hours, current supervisor and current job duties?

If working with another employer, need name of employer, telephone number, address, date started working, current position, current pay, current hours, current supervisor and current job duties?

If not currently working, need name of last employer and date last worked?

INTERIM EMPLOYMENT

Has he/she worked any jobs *in between* the time the alleged injury made them unable to do their job they held at DOA and *the present*?

If yes, what was(were) that (those) job(s)?

How much were you paid?

Why aren't you doing that any more?

PREVIOUS LITIGATION

Prior workers= comp claims?- when, what injuries, treatment, duration, time out of work, settlement, residual problems

Previous or subsequent automobile accidents?

If yes, find out:

- 1) Did you receive settlement?
- 2) Were you represented?
- 3) Who did you treat with? Where?
- 4) What kind of treatment did you receive?
- 5) If subsequent, name/county of police that responded so can obtain incident report?

Previous lawsuits or claims for personal injury?

Ever had deposition taken or been to court?

Any claims against insurance company?

Medicare and Social Security Disability Questions:

- Always confirm birth date and social security number.
- Are you a current Medicare beneficiary (currently receiving Medicare benefits, have a Medicare card?)
- Are you a current Medicare Advantage Plan (MAP) beneficiary? If so, collect the necessary information re: the MAP (carrier Name, Group #, Member ID, etc.).
- If so, do you know if any medical bills related to this injury have been paid by Medicare or by your Medicare Advantage Plan?

- Are you currently entitled to Social Security Disability? If yes, what was the date of your entitlement?
- Have you applied for Social Security Disability? How many times have you applied? What was the most recent date that you applied? What is the status of that application? Are you awaiting the decision of your Social Security Benefits?

- If you were denied, have you appealed that decision? If not appealing, do you plan on re-filing? If so when?

- Do you have an attorney representing you on the Social Security matter?

Ever applied for disability through private insurance?

Did they get rejected/approved?

Do they have a lawyer for that claim?

GENERAL MEDICAL HISTORY

Any diseases/medical conditions?

Any chronic illnesses?

Any hospitalizations prior to your workers' compensation claim for ANY reason?

Any surgery prior to your workers' compensation claim?

Who is your family doctor?

How long has Doctor X been your family doctor?

Who was it before then?

Why did you switch?

What type of things would you typically go to the doctor for?

Ever gone to the emergency room for routine treatment?

CURRENT CLAIM

(Review Medicals to look for inconsistencies in between what the Claimant has told his Doctor's up to this point and now)

What parts of your body did you injure in the accident at work? For each body part/problem listed, ask if: (1) any previous problems; (2) any prior injuries to that body part; (3) **any prior medical treatment – including doctor's visits, ER, PT, family doctor, any treatment whatsoever**

CURRENT PROBLEMS

Describe all problems that you are having now (for each alleged body part) **When did problem start?** Is there pain? **Have Claimant demonstrate problems having and put on the record!** Level of pain(scale of 1-10)? Constant or intermittent? How often during day or week? How many hours out of day? Try to pin witness down on pain complaints

Are there things you can't do at work? At home?

Are there any other problems, other than those you just told me about, that you are having which are related to this work accident?

ACCIDENT

Describe accident - when, where, how, what hurt

Reporting of accident - to whom (ask generally and specify to exactly WHO), when, and, IF DENIED, what tell, how, anybody else around?

If quit or terminated, make sure get SPECIFICS- how, when, who told- WHICH boss- anybody hear?

If quit or terminated, did you ever talk to anybody at Employer after left employment?

Witnesses? Who?

Get complete information about accident and handling by employer after the incident?
*Get a general feel for the Claimant's mood/attitude towards the Employer. If UEF, find out if
knew did not have coverage and why not covered?*

MEDICAL

Medical treatment - when was first visit, with whom, who sent you there

Follow-up medical treatment - with whom, who sent you there, SURGERIES? *If the Claimant
had a MRI exam for THIS INJURY, see if he/she as ever had one performed before.*

Last appointment?

Were you Released by your doctor?

Did he give you an impairment rating?

Any lifting restrictions?

Did he mention and **future medical/surgical procedures you we need even though he released you?**

Future appointments?

List any other doctors seen for this accident that we have not discussed

On medication at time of accident?

Currently on medication?

Name of meds?

How long have you been taking it?

Clarify which meds the Claimant is taking for accident related purposes and which he was taking pre-accident.

Any **outstanding medical bills**?

How much?

Has the Claimant paid any of them out of pocket?

Have they been paid by any source?

Health Insurance?

TIME OUT OF WORK

Any time out of work? When?

Written out of work by doctor for those times?

Inquire about working limited duty?

Inquire what light duty work consisted of if Claimant was on light duty.

Were you paid for times that you missed out of work, either by employer or by carrier?

When did you return to work?

If not back at work, why not?

Written out by doctor? Who? (if they say yes, make sure we have proof (physical documentation of such restrictions in our file.)

Have you asked about working light duty?

Has it been offered to you? When do you plan to go back to work?

Received any income at all since this accident?

Unemployment?

Govt benefits?

Other job?

Any other problems that we haven't already discussed?

Subsequent accidents/injuries?

Any pending appointments with any health professionals/vocational experts?

YOU MUST EXPLAIN WHAT A VOC. EXPERT IS AND WHAT THEY DO

STANDARD DEPO QUESTIONS

Any criminal record? Ever plead guilty to a crime or been convicted of a crime? (Convictions need to be w/in 10 years to be admissible.) **Find out exactly when? In what county?**

Any pending criminal charges that have not been adjudicated? Attempted to have convictions expunged? Successful in attempts?

Ever had treatment, or been recommended treatment, for any type of substance abuse?

Ever had treatment, or been recommended treatment, for any type of mental or psychological problem?



South Carolina Bar

Continuing Legal Education Division

2019 Workers' Compensation Practice Essentials

Form Prep
And
Hearing Prep

Michael W. Burkett
Allison P. Sullivan

Workers' Compensation Attorney Form Preparation

**Michael W. Burkett, Esquire
Allison P. Sullivan, Esquire**

Forms, Forms, and More Forms

- WC is a Form driven practice
- System designed to be pro-se friendly
- 47 Different Forms—No discernable rhyme or reason to order of numbering system

FORM PREPARATION

Form 20 (Statement of Earnings of Injured Employee)- §42-1-40

- **Used to determine Claimant's average weekly wage and compensation rate**
- **Reflects claimant's prior earnings at Employer**

FORM PREPARATION

Form 20 (Statement of Earnings of Injured Employee) - cont.

- Typically prepared by Employer/Carrier or Defense Counsel
- If appropriate, always consider similar employee or some other method of reaching "fair and just" calculation
- Must attach supporting documentation if using alternative method of calculation
- Note for Claimant's Attorneys: Double check that reported CR matches with what your client reports to you re: income. You may need to verify calculations with Payroll Records.

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # _____
Carrier File # _____
Carrier Code # _____
Employer FEIN # _____

Client's Name _____ SSN _____ Employer's Name _____
Address _____ City _____ State _____ Zip _____ Address _____ City _____ State _____ Zip _____
Home Phone # _____ Work Phone # _____ Insurance Carrier _____
Repaper's Name _____ Phone # _____

A. Total Wages Paid
1. Check Applicable Method: _____ Date of Injury: _____ month day year
 Report of earnings of injured employee based on four completed quarters.
 Report of earnings of injured employee who did not complete four quarters based on actual time worked.
 Report of earnings of similar employee. Injured employee did not work sufficient time before alleged injury. Hire Date: _____
 Report of earnings of injured employee based on alternative method because Form 20 results in a compensation rate that is not fair and just. (Attach documentation to show how average weekly wage and compensation rate were calculated.)

2. List total wages paid as reported to Employment Security Commission on the Employer Quarterly Contribution and Wage Reports during the four quarters immediately preceding the quarter in which the injury occurred. Do not include the quarter during which the injury occurred.

Quarter	Ending Date	Total Wages Paid
1st	_____	_____
2nd	_____	_____
3rd	_____	_____
4th	_____	_____
		Total Paid

3. List total value of other allowances of any character made in lieu of wages during four quarters above: _____
4. Add lines 2 and 3. **TOTAL WAGES PAID:** _____
5. List total number of weeks paid to employee during the four quarters immediately preceding the quarter in which the injury occurred. _____

B. Average Weekly Wage
6. To calculate average weekly wage, divide total wages (line 4) by total weeks paid (line 5). **AVERAGE WEEKLY WAGE:** _____

C. Compensation Rate
7. The general rule for calculating the compensation rate is to multiply average weekly wage (line 6) by .6667. Estimate compensation rate by multiplying average weekly wage (line 6) by .6667. See part B below to determine the actual compensation rate. _____
8. The compensation rate is as follows (choose one):
 When average weekly wage (line 6) is less than \$75.00, the compensation rate is the average weekly wage. Enter average weekly wage on line 8.
 When the estimated compensation rate (line 7) is less than \$75.00 and average weekly wage (line 6) is more than \$75.00, the compensation rate is \$75.00. Enter \$75.00 on line 8.
 When the estimated compensation rate (line 7) is more than the maximum compensation rate for the year in which the injury occurred, enter the maximum compensation rate for the year in which the injury occurred on line 8.
 Employee is within the exceptions listed in S.C. Code Ann. Section 42-7-65. List applicable exception here and enter appropriate compensation rate on line 8: _____
 The calculated compensation rate (line 7) applies. Enter amount from line 7 on line 8.

WEEKLY COMPENSATION RATE: _____

Employer's representative shall prepare a Form 20 and serve per R.67-211 a copy on the claimant within thirty days of beginning temporary compensation. See R.67-1603 when no temporary compensation is paid. NOTE: Average weekly wage represents average gross pay before taxes & other deductions. WHEN THE CLAIMANT DOES NOT AGREE WITH THE COMPENSATION RATE ON LINE 8, HE OR SHE SHOULD CONTACT THE EMPLOYER'S REPRESENTATIVE TO TRY TO REACH AN AGREEMENT AS TO THE COMPENSATION RATE. IF NO AGREEMENT CAN BE REACHED THE CLAIMANT SHOULD CONTACT THE CLAIMS DEPARTMENT AT (803)737-5723.

WCC FORM # 20 REV. DATE 3/97 **20** STATEMENT OF EARNING OF INJURED EMPLOYE

Form 20

FORM PREPARATION

– Form 17 (Receipt of Compensation)

- Submitted by Carrier to Claimant to stop pay of weekly benefits.
- Carrier may stop weekly benefits if Claimant agrees to sign the Form 17
- Claimant must be back at work for fifteen calendar days (or acknowledge ability to work for fifteen calendar days)

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # _____
Carrier File # _____
Carrier Code # _____
Employer FID# _____

Claimant's Name _____ SSN _____ Employer's Name _____
Address _____ City _____ State _____ Zip _____ Address _____ City _____ State _____ Zip _____
() _____ () _____
Home Phone # _____ Work Phone # _____ Insurance Carrier _____
Preparer's Name _____ Phone # _____

Date of injury: _____ month _____ day _____ year

1. Temporary Compensation Paid:

Number of Weeks	From	To	Amount
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

2. The claimant returned to work on _____ month _____ day _____ year With restrictions but at a salary not less than before the injury.
 Without restrictions.

3. The claimant agrees he or she was able to return to work on _____ month _____ day _____ year

I agree that I was disabled for the period(s) indicated and I was paid compensation as shown above. I UNDERSTAND THAT MY WEEKLY TEMPORARY COMPENSATION CHECKS WILL STOP; HOWEVER, I GIVE UP NO RIGHTS TO COMPENSATION FOR FUTURE DISABILITY, FOR PERMANENT DISABILITY, DISFIGUREMENT, OR MEDICAL CARE. The effect of this form has been fully explained to me, and I have received a copy of it. I understand that I should not sign this form until 15 days after I have returned to work or agree I was able to return to work.

Claimant's Signature _____ Employer's Representative Signature _____
(Click one) Witness Claimant's Attorney _____ Date Agreement Signed _____

File this form with the Claims Department no later than 31 days from the date the claimant returned to work to terminate temporary compensation after the first 150 days after employer's notice of the injury according to R.67-505. Within the 150 day period, obtain a Form 17 to document that claimant agrees he or she is able to return to work.

WCC FORM # 17 REV. DATE 3/97 **17** RECEIPT OF COMPENSATION

Form 17

FORM PREPARATION

– Form 18 (180-Day Report)

- Prepared by Carrier
- Used to reflect progress of claim and action requests
- Must be filed every 180 days (6 months) following accident date
- Can also be used to request an informal conference

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # _____
Carrier File # _____
Carrier Code # _____
Employer FEIN _____

Claimant's Name _____ SSN _____ Employer's Name _____
Address _____ City _____ State _____ Zip _____ Address _____ City _____ State _____ Zip _____
Home Phone # _____ Work Phone # _____ Insurance Carrier _____
Preparer's Name _____ Phone # _____

1. Date of injury: _____ month _____ day _____ year _____ 2. Total Weeks of Compensation Paid: _____

3. Type of Compensation Paid (TP or TT)/Periods of Payment: _____
Type: _____ From: _____ To: _____
Type: _____ From: _____ To: _____
Type: _____ From: _____ To: _____

4. Date of First Payment: _____ month _____ day _____ year _____

5. Total Amount Paid (a) Compensation: _____
(b) Medical (Include Nursing, Hospital Drugs, Etc.): _____

6. Informal Conference is Requested: yes no
(check one)

7. Use these lines to send a memo to the Commission: _____

Employer's Representative _____ Phone # _____ Date _____

Type or print all information. File this form 6 months after the alleged injury date and each 6 months until the Commission's file is closed. Form 18 must be filed whether or not compensation is ongoing. Check "yes" after number 6 to request an informal conference. Refer to 8.67-413, 8.67-497, and 8.67-498 for further information.

WCC FORM # 18 REV. DATE 3/96 18 PERIODIC REPORT

Form 18

FORM PREPARATION

- Form 50 (Employee's Notice of Claim and/or Request for Hearing)
 - Filing the Form 50 tolls the SOL
 - Can either file a "Claim Only"
 - File to request a hearing on compensability, medical treatment or compensation
 - If additional issues pop up – amend Form 50
 - If a death case, file a Form 52

South Carolina Workers' Compensation Commission
 1333 Main Street, Suite 500 • Post Office Box 1715
 Columbia, South Carolina 29202-1715
 (803) 737-5723 www.wcc.sc.gov

WCC File #: _____
 Carrier File #: _____
 Carrier Code #: _____
 Employer FEIN #: _____

Claimant's Name: _____ SSN: _____ Employer's Name: _____
 Address: _____ Address: _____
 City: _____ State: _____ Zip: _____ City: _____ State: _____ Zip: _____
 Home Phone: _____ Work Phone: _____ Insurance Carrier: _____
 Preparer's Name: _____ Law Firm: _____ Preparer's Phone #: _____

A claim for workers' compensation benefits is made based on the following grounds: **Date of Injury or Illness:**
 Injury Illness Repetitive Trauma Occupational Disease Physical Brain Injury Concurrent Jurisdiction
 1. The claimant sustained an injury to _____ (Part(s) of Body Injured) on _____ (Month/Day/Year) in _____ county, state of _____ Body part(s) affected are: _____
 2. Briefly describe how the accident occurred: _____
 3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
 4. The relationship of employer and employee existed at the time of injury.
 5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
 6. Notice of the accidental injury was given to the Employer on _____ (Month/Day/Year) in the following manner: _____

7. Due to injury, the claimant is in need of (check one):
 (a) medical examination and treatment for: _____
 (b) additional medical examination and treatment for: _____

8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: _____

9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
 (1) General Disability: Total Partial (2) Specific Disability: Total Partial (3) Wage Loss

10a. At the time of the injury, the Claimant was paid weekly wages of \$ _____ and demands accounting of days worked and wages earned as provided by law.
 10b. A determination of permanent disability is premature at this time.
 10c. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: _____

10a. At the time of the injury, the Claimant was paid weekly wages of \$ _____ and demands accounting of days worked and wages earned as provided by law.
 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
 10c. Further grounds or unusual aspects of claim:
 10d. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
 10e. To the best of your knowledge, did you have any prior permanent disability? If yes, describe:
 11. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

13a. I am filing a claim. I am not requesting a hearing at this time. 14. Estimated time needed for hearing: _____
 13b. I am requesting a hearing. A \$25 fee is required.
 Mediation:
 a. Mediation is requested to be ordered pursuant to Reg. 67-1801.6.
 b. Mediation is required pursuant to Reg. 67-1802.
 c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
 d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.
 Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to address _____ on the _____ day of _____, 20____, by first class postage certified mail personal service.
 I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature _____ Title _____ Email _____ Date _____
Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-605 as well as Reg. 67-1801.
 WCC Form # 50 Revised 7/13

50

Employee's Notice of Claim and/or Request for Hearing

South Carolina Workers' Compensation Commission
 1333 Main Street, Suite 500 • Post Office Box 1715
 Columbia, South Carolina 29202-1715
 (803) 737-5723 www.wcc.sc.gov

WCC File #: _____
 Carrier File #: _____
 Carrier Code #: _____
 Employer FEIN #: _____

Claimant's Name: _____ SSN: _____ Employer's Name: _____
 Address: _____ Address: _____
 City: _____ State: _____ Zip: _____ City: _____ State: _____ Zip: _____
 Home Phone: _____ Work Phone: _____ Insurance Carrier: _____
 Preparer's Name: _____ Law Firm: _____ Preparer's Phone #: _____

A claim for workers' compensation benefits is made based on the following grounds: **Date of Injury or Illness: 04/18/13**

Injury Illness Repetitive Trauma Occupational Disease Physical Brain Injury Concurrent Jurisdiction

- The claimant sustained an injury to bilateral knees. (Part(s) of Body Injured) on April 18, 2013 (Month/Day/Year) in Lexington county, state of South Carolina.
- Body part(s) affected are: bilateral knees
Briefly describe how the accident occurred. Claimant tripped over a flat box that had been left on the floor. She fell with both knees hitting the floor. Claimant initially injured her right knee, but subsequently injured her left knee while overcompensating for her right knee injury
- Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
- The relationship of employer and employee existed at the time of injury.
- At the time of the injury the claimant was performing services arising out of and in the course of employment.
- Notice of the accidental injury was given to the Employer on 04/18/13 (Month/Day/Year) in the following manner:
Reported to school office

7. Due to injury, the claimant is in need of (check one):
(a) medical examination and treatment for:
(b) additional medical examination and treatment for: right knee

8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
To date, the claimant has not missed time from work

9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
 (1) General Disability: Total Partial (2) Specific Disability: Total Partial (3) Wage Loss

10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of \$848.94, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
Lexington School District One

11. Further grounds or unusual aspects of claim:

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Occupational Health, West Columbia, SC; Palmetto Imaging, Columbia, SC; Midlands Orthopaedics, Columbia, SC; Progressive Physical Therapy, Columbia, SC

11b. To the best of your knowledge, did you have any prior permanent disability? No
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

13a. I am filing a claim. I am not requesting a hearing at this time. 14. Estimated time needed for hearing: 30 mins.

13b. I am requesting a hearing. A \$25 fee is required.

Mediation

a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.

b. Mediation is required pursuant to Reg. 67-1802.

c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Ernest Lawhorne, Esquire
address 1501 Main St., 5th Floor, Columbia, SC 29201 on the 26 day of June 20 14 by first class postage certified mail personal service.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature _____ Title Esquire Email apsullivan@bntdlaw.com Date 6/26/14


Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

FORM PREPARATION

– Form 51 (Answer to Hearing Request)

- Must be filed within 30 days of service of Form 50
- Used to assert affirmative defenses on a claim including intoxication, willful intent, notice within 90 days, 2 year statute of limitations
- Specify other issues of claim including TTD, medicals, Utica Mohawk/James language, lump sum payment
- Must serve form on claimant (or claimant's attorney)

South Carolina Workers' Compensation Commission
 1133 Main Street, Suite 500 • Post Office Box 1715
 Columbia, South Carolina 29202-1715
 (803) 737-5779 www.wcc.sc.gov



WCC File #: _____
 Claim File #: _____
 Center Code #: _____
 Employer FEIN #: _____

Claimant's Name: _____ SSN: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Home Phone: _____ Work Phone: _____
 Date of Injury: _____

Employer's Name: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Insurance Carrier: _____
 Preparer's Name: _____ Law Firm: _____ Preparer's Phone #: _____

Date of Injury or Illness: _____ **Estimated time for hearing:** _____
 Complete each information block. Clearly specify when contentions are admitted in part and denied in part. The Employer/Carrier in answer to the claim, respectfully shows:

- It is **Admitted** **Denied** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are: _____
- It is **Admitted** **Denied** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: _____
- It is **Admitted** **Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are: _____
- It is **Admitted** **Denied** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: _____
- It is **Admitted** **Denied** notice of injury was given the employer. The reasons for denial are: _____
- It is **Admitted** **Denied** the employee **Needs** **Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are: _____
- It is **Admitted** **Denied** the employee is entitled to temporary total disability for the period(s) of: _____
- It is **Admitted** **Denied** the employee is permanently disabled. The reasons for denial are: _____
- It is **Admitted** **Denied** the employee has serious disfigurement.
- It is contended that an average weekly wage of \$ _____ applies, according to attached Form 20 as provided by law.
- Further contentions, grounds of defense, or unusual aspects are: _____

Mediation

- Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- Mediation is required pursuant to Reg. 67-1802.
- Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature _____ Title _____ Email _____ Date _____

Refer to R.67-208 through R.67-213 and R.67-401 through R.67-415, Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commissioner's Judicial Department at 803-737-6079 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to A-1-406, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC Form # 51
Revised 07/13
51
Employer's Answer to Request for Hearing

Form 51

FORM PREPARATION

– Form 52 (Employee’s Notice of Claim and/or Request for Hearing, Death Case)

- Filing the Form 50 tolls the SOL
- Can either file a “Claim Only”
- File to request a hearing on compensability, payment of medical treatment or compensation
- If additional issues pop up – amend Form 52
- If a death case, file a Form 50

South Carolina Workers' Compensation Commission
 1333 Main Street, Suite 500 • Post Office Box 1715
 Columbia, South Carolina 29202-1715
 (803) 737-5723 www.wcc.sc.gov

WCC File #: _____
 Carrier File #: _____
 Carrier Code #: _____
 Employer FEIN #: _____

Claimant's Name: _____ SSN: _____ Employer's Name: _____
 Address: _____ Address: _____
 City: _____ State: _____ Zip: _____ City: _____ State: _____ Zip: _____
 Home Phone: _____ Work Phone: _____ Insurance Carrier: _____
 Preparer's Name: _____ Law Firm: _____ Preparer's Phone #: _____

A claim for workers' compensation death benefits is made based on the following grounds:
 The Claimant is _____ (relationship to employee) of _____ (employee's name)

- The employee sustained an accidental injury to the _____ (Part of Body Hurt) on _____ (m/d/yyyy) in _____ County, State of _____.
- Both the employee and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
- The relationship of employer and employee existed at the time of injury.
- At the time of the injury the employee was performing services arising out of and in the course of employment.
- Notice of the accidental injury was given to the employer on _____ (m/d/yyyy) in the following manner: _____
- Due to injury, the employee received medical examination and treatment which remains unpaid by the employer.
- Due to injury, the employee lost compensable time from work and wages for the periods of: _____
- The employee died on _____ (m/d/yyyy) as a result of the accidental injury, and death compensation is claimed.
- At the time of the injury, the employee was paid weekly wages of \$_____. The claimant demands an accounting of days worked and wages earned as provided by law.
- Further grounds of claim: _____
- Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

12a. I am filing a claim. I am not requesting a hearing at this time.
 12b. I am requesting a hearing. A \$25 fee is required.
 Mediation
 a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
 b. Mediation is required pursuant to Reg. 67-1802.
 c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
 d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to _____ address _____ on the _____ day of _____, 20____.
 by first class postage certified mail personal service.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature _____ Title _____ Email _____ Date _____

Questions about the use of this form should be directed to the Judicial Department at 803.737.5075 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Refer to Regulations 67-205 through 67-211, 67-216, Regulations 67-601 through 67-615 and, Regulations 67-903 through 67-905, as well as Reg. 67-1801.

WCC Form # 52 **52** **Employee's Notice of Claim and/or Request for Hearing, Death Case**
 Revised 7/13

A claim for workers' compensation death benefits is made based on the following grounds:

The Claimant is _____ (relationship to employee) of _____ (employee's name)

- The employee sustained an accidental injury to the _____ (Part of Body Hurt) on _____ (m/d/yyyy) in _____ County, State of _____.
- Both the employee and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
- The relationship of employer and employee existed at the time of injury.
- At the time of the injury the employee was performing services arising out of and in the course of employment.
- Notice of the accidental injury was given to the employer on _____ (m/d/yyyy) in the following manner: _____
- Due to injury, the employee received medical examination and treatment which remains unpaid by the employer.
- Due to injury, the employee lost compensable time from work and wages for the periods of: _____
- The employee died on _____ (m/d/yyyy) as a result of the accidental injury, and death compensation is claimed.
- At the time of the injury, the employee was paid weekly wages of \$_____. The claimant demands an accounting of days worked and wages earned as provided by law.

- Further grounds of claim: _____
- Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- I am filing a claim. I am not requesting a hearing at this time.**
- I am requesting a hearing. A \$25 fee is required.**
- Mediation**
 - Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
 - Mediation is required pursuant to Reg. 67-1802.
 - Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
 - Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to _____ address _____ on the _____ day of _____ 20____,
by first class postage certified mail personal service.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature _____ Title _____ Email _____ Date _____

Questions about the use of this form should be directed to the Judicial Department at 803.757.5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Refer to Regulations 67-205 through 67-211, 67-216, Regulations 67-601 through 67-615 and; Regulations 67-901 through 67-905 well as Reg. 67-1801.

WCC Form # 52
Revised 7/13

52


Employee's Notice of Claim and/or Request for Hearing, Death Case

FORM PREPARATION

– Form 53 (Answer to Hearing Request – Death Claim)

- Must be filed within 30 days of service of Form 52
- Used to admit or deny if death was causally related to employment
- Must serve form on claimant (or claimant's attorney)

South Carolina Workers' Compensation Commission
 1333 Main Street, Suite 500
 P.O. BOX 1715
 Columbia, SC 29202-0715
 (803) 737-5675 www.wcc.sc.gov



WCC File #: _____
 Center File #: _____
 Center Code #: _____
 Employer FER #: _____

Claimant's Name: _____ SSN: _____ Employer's Name: _____
 Address: _____ Address: _____
 City: _____ State: _____ Zip: _____ City: _____ State: _____ Zip: _____
 Home Phone: _____ Work Phone: _____ Insurance Carrier: _____
 Preparer's Name: _____ Law Firm: _____ Preparer's Phone #: _____

Date of Injury or Illness: _____

Complete each information blank. Clearly specify when contentions are admitted in part or denied in part.
 The Employer-Insurance Carrier in answer to the claim due to the death of _____ (employee's name) respectively shows:

- It is admitted denied the employee sustained an injury on or about the date set forth in the application.
- It is admitted denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: _____
- It is admitted denied the relationship of employer and employee existed at the time in question. The reasons for denial are: _____
- It is admitted denied at the time in question the employee was performing services arising out of and in the course of employment.
- It is admitted denied notice of injury was given the employer as specified in the application.
- It is admitted denied the employee was entitled to medical care as a result of the injury.
- It is admitted denied the employee lost compensable time from work and wages for period(s) of: _____
- It is admitted denied the employee's death resulted proximately from accidental injury arising out of and in the course of employment on _____ (m/d/yyyy).
- It is contended that an average weekly wage of \$ _____ applies, according to the attached accounting of employee's earnings, as provided by law.
- Further grounds of claim: _____

Mediation

- Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- Mediation is required pursuant to Reg. 67-1802.
- Mediation is requested by consent of the parties pursuant to Reg. 67-1803.
- Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to _____ address _____ on the _____ day of _____, 20____.

by first class postage certified mail personal service.

Preparer's Signature _____ Title _____ Email _____ Date _____

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Refer to Regulations 67-202 through 67-211, 67-215, Regulations 67-601 through 67-610, and Regulations 67-921-922 as well as Reg. 67-1801.

WCC Form # 53
 Revised 7/13

53

Employer's Answer to Request for Hearing, Death Case

Form 53

FORM PREPARATION

- Forms 50 and 51 have been amended per the new Reform Act.
- The attorney when filing the Form:
“I verify the contents of this form are accurate and true to the best of my knowledge.”

Obligation to Update


- 67-610-Amended Forms 50 and 51 **MUST** be filed to indicate a change in the nature of the claim, relief requested, or another defense
- Party can amend once as a matter of course w/in 30 days of service; can only amend after that by leave of the Commissioner or by written consent of adverse party
- “Leave shall be freely given when justice so requires and does not prejudice any other party.”

FORM PREPARATION

- Form 21 (Employer's Stop Payment Hearing Request)

- Used by carrier to request hearing
- Typically used when claimant is at MMI, to suspend benefits, or to pay compensation
- Must attach all supporting documentation before WCC will process
- Must serve claimant (or claimant's attorney)
- Hearing set within 30-60 days after filing

South Carolina Workers' Compensation Commission
 1333 Main Street, Suite 500
 Post Office Box 1715
 Columbia, South Carolina 29202-1715
 (803) 737-5675



WCC File #: _____
 Carrier File #: _____
 Carrier Code #: _____
 Employer FEIN #: _____

Claimant's Name: _____ SSN: _____ Employer's Name: _____
 Address: _____ Address: _____
 City: _____ State: _____ Zip: _____ City: _____ State: _____ Zip: _____
 Home Phone: () - - Work Phone: () - - Insurance Carrier: _____
 Preparer's Name: _____ Law Firm: _____ Preparer's Phone #: () - -

The date of injury reported on Form 12A is: _____ (m/d/yyyy)

Check appropriate section(s). The employer's representative requests a hearing for:

I. **Stop payment of compensation.** Claimant has reached maximum medical improvement and Claimant continues to receive temporary compensation payments. The employer's representative requests a hearing pursuant to § 42-9-260(D) to stop payment of temporary compensation. A hearing requested pursuant to this section must be held within sixty days of the date of the request.

Claimant reached maximum medical improvement on _____ (m/d/yyyy) (copy of medical report must be attached).
 Compensation payments are current as of _____ (m/d/yyyy) and shall continue until otherwise ordered or until Form 17 is signed by the claimant.
 A Form 17 was offered and refused on _____ (m/d/yyyy).

II. **Address suspension, termination, or reduction of temporary disability payments for any cause.**

a. At any time pursuant to § 42-9-260(C).
 b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.

The basis for the termination/ suspension is _____

III. **Determine if compensation is due** pursuant to § 42-9-10, § 42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds:

Claimant reached maximum medical improvement on _____ (m/d/yyyy) (copy of medical report must be attached).

IV. **Request Credit for Overpayment of temporary compensation pursuant to § 42-9-216.**

V. **Determine amount of compensation for claims involving a fatality.** (Dependency investigation must be attached).

a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.
 b. Amount of compensation for death of employee due to accident pursuant to § 42-9-290.
 A hearing requested pursuant to this section will be set on an expedited basis.

- A \$ 25.00 filing fee and updated Form 18 must be included with an employer's request for a hearing.
- An employer requesting a hearing must include certification that the request has been served on all parties in compliance with R.67-211.

Preparer's Signature _____ Title _____ Date _____
 Address _____

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or visit us online at www.wcc.sc.gov.
 WCC Form # 21
 Revised 04/18/2011

21

Employer's Request for Hearing

Form 21

FORM PREPARATION

– Form 22 (Claimant’s Answer to Request for Hearing)

- Response to Claimant’s request to Stop Pay
 - Premature to terminate benefits?
 - If not, what benefits does Claimant claim entitlement?
 - Mediation required or requested?

South Carolina Workers' Compensation Commission
 1332 Main Street, Suite 500
 Post Office Box 1715
 Columbia, South Carolina 29202-1715
 (803) 737-5675 www.wcc.sc.gov

WCC File #: _____
 Carrier File #: _____
 Carrier Code #: _____
 Employer FEIN #: _____

Claimant's Name: _____ SSN: _____ Employer's Name: _____
 Address: _____ Address: _____
 City: _____ State: _____ Zip: _____ City: _____ State: _____ Zip: _____
 Home Phone: _____ Work Phone: _____ Insurance Carrier: _____
 Preparer's Name: _____ Law Firm: _____ Preparer's Phone #: _____

Date of Injury or Illness: _____

Complete each information blank. Clearly specify when contention are admitted in part and denied in part. The Claimant's answer to the claim respectfully shows:

I. **Stop payment of compensation.**
 It is admitted denied the Claimant has reached maximum medical improvement and continues to receive temporary compensation payments.
 It is admitted denied the Claimant's temporary total payments are current.
 It is admitted denied the Claimant's temporary total payments have been properly stopped as of _____ (m/d/yyyy) pursuant to Reg. 67-505.

II. **Address suspension, termination, or reduction of temporary disability payments for any cause.**
 a. At any time pursuant to § 42-9-260(F).
 b. After the one hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.
 c. Temporary total compensation was suspended, terminated, or reduced without proper order of the Commission.
 d. Additional compensation and penalties are requested pursuant to Reg. 67-510.
 The basis for additional compensation and penalty is _____

III. **Determine if compensation is due** pursuant to § 42-9-10, § 42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds:
 Claimant reached maximum medical improvement on _____ (m/d/yyyy) (copy of medical report must be attached).
 It is admitted/denied the Claimant has reached maximum medical improvement:
 Claimant has has not returned to work. Claimant has has not returned to light duty.
 a. Permanency is premature at this time.
 b. Claimant is in need of additional medical care and treatment.
 c. Claimant is entitled to permanent partial disability pursuant to 42-9-30.
 d. Claimant is entitled to wage loss pursuant to 42-9-20.
 e. Claimant is entitled to total and permanent disability pursuant to 42-9-10 or 42-9-30(21) and Reg. 67-1802.

IV. **Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.**
 It is admitted denied that the Employer/Carrier is due a credit for overpayment.

V. **Determine amount of compensation for claims involving a fatality.**
 a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.
 b. Amount of compensation for death of employee due to accident pursuant to § 42-9-290.

VI. **Mediation**
 a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
 b. Mediation is required pursuant to Reg. 67-1802.
 c. Mediation is requested by consent of the parties pursuant to Reg. 67-1803.
 d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Failure to respond pursuant to Reg. 67-208 B in writing or by submission of a Form 22 may result in ordered mediation pursuant to Reg. 67-1801 B.
 Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to
 address _____ on the _____ day of _____ 20____
 by first class postage certified mail personal service.

Preparer's Signature _____ Title _____ Email _____ Date _____

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or judicial@wcc.sc.gov or mediation@wcc.sc.gov.
 Refer to Regulations 67-211, 67-504, 67-506, 67-510; and 67-1801.

WCC Form # 22
 Created 7/13

22

Claimant's Answer to Request for Hearing

Date of injury or illness: _____

Complete each information blank. Clearly specify when contention are admitted in part and denied in part. The Claimant's answer to the claim respectfully shows:

I. **Stop payment of compensation.**
 It is admitted denied the Claimant has reached maximum medical improvement and continues to receive temporary compensation payments.
 It is admitted denied the Claimant's temporary total payments are current.
 It is admitted denied the Claimant's temporary total payments have been properly stopped as of _____ (m/d/yyyy) pursuant to Reg. 67-505.

II. **Address suspension, termination, or reduction of temporary disability payments for any cause.**
 a. At any time pursuant to § 42-9-260(E).
 b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.
 c. Temporary total compensation was suspended, terminated, or reduced without proper order of the Commission.
 d. Additional compensation and penalties are requested pursuant to Reg. 67-510.
 The basis for additional compensation and penalty is _____

III. **Determine if compensation is due** pursuant to § 42-9-10, § 42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds:

 Claimant reached maximum medical improvement on _____ (m/d/yyyy) (copy of medical report must be attached).
 It is admitted/denied the Claimant has reached maximum medical improvement.
 Claimant has has not returned to work. Claimant has has not returned to light duty.
 a. Permanency is premature at this time.
 b. Claimant is in need of additional medical care and treatment
 c. Claimant is entitled to permanent partial disability pursuant to 42-9-30.
 d. Claimant is entitled to wage loss pursuant to 42-9-20.
 e. Claimant is entitled to total and permanent disability pursuant to 42-9-10 or 42-9-30(21) and Reg. 67-1802.

IV. **Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.**
 It is admitted denied that the Employer/Carrier is due a credit for overpayment.

V. **Determine amount of compensation for claims involving a fatality.**
 a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.
 b. Amount of compensation for death of employee due to accident pursuant to § 42-9-290.

VI. **Mediation**
 a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
 b. Mediation is required pursuant to Reg. 67-1802.
 c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
 d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Failure to respond pursuant to Reg. 67-208 B in writing or by submission of a Form 22 may result in ordered mediation pursuant to Reg. 67-1801 B.
 Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to _____
 address _____ on the _____ day of _____ 20____
 by first class postage certified mail personal service.

Preparer's Signature _____ Title _____ Email _____ Date _____

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or judicial@wcc.sc.gov or mediation@wcc.sc.gov
 Refer to Regulations 67-211, 67-504, 67-505, 67-506, 67-510; and 67-1801.

WCC Form # 22
 Created 7/13

22

Claimant's Answer to Request for Hearing

FORM PREPARATION

– Form 16A (Agreement for Permanent Disability)

- Advantage-employee retains the right to additional compensation if they have a change of condition within one year of date of the last settlement payment
- Usually used to establish a specific disability or impairment with or without a hearing
- Disadvantage-severely restricts the ability of the attorney to protect a disabled client from having his/her Social Security Disability benefits reduced due to a workers' compensation award.
- Be very careful as to the scope of medical treatment as it may be limited to the Form 14B

FORM PREPARATION

– Form 61 (Attorney Fee Petition)

- Claimant's attorney must submit for approval before collecting fee
- Fee **MUST** be reasonable per RPC 1.5 and Reg. 67-1205
- Must include itemization of costs. Reg 67-1206

Date Attorney Was Hired: 3/18/10 Date of Injury: 03/03/10
 Compensation Rate: \$160.92 Does this conclude the case? X Yes No

PLEASE CHECK AND COMPLETE ONLY ONE: (A, B, C or D)

X A. R.67-1205C does not apply to the facts of this case. A 33 1/3 % fee of the award or settlement (excluding medical costs) and the costs of this action, as shown by the attached Settlement of Costs, are requested for approval.

B. The subsection of R. 67-1205C applicable to this claim is (C) (). A fee of \$ _____ is requested for approval based on the following:
 Date of first impairment rating or offer of settlement: _____
 Impairment Rating given and/or Settlement amount offered prior to date attorney hired: _____
 Impairment Rating given and/or Settlement amount offered after date attorney hired: _____
 Authorized Health Care Provider's Name: _____

C. Admitted Death Claim - \$2,500. **D.** Admitted Lifetime Compensation Claim - \$2,500.

I certify that this form and the attached Statement of Costs are accurate.

Summary	
Total Amount of Compensation	\$ 26,000.00
Attorney's Fee	\$ 8,186.95
Costs	\$ 2,130.11
Total Fees and Costs	\$ 10,317.06
Client Will Receive	\$ 15,682.94

Attorney for the Claimant: [Signature]
 Date: 5-13-14

I agree to pay my attorney the fee and costs stated. I understand the fee and costs are paid out of my compensation and I understand how much money I will receive after I pay my attorney.

Client: [Signature] Date: 5/13/14

A Statement of Costs must be attached before costs may be approved. File this form in duplicate with the Claims Department. Enclose a self-addressed, stamped envelope. For further information, refer to R.67-1203, R.67-1204, R.67-1205, R.67-1206 and Rule 1.5(a), RPC Rule 407, SCACR.

WCC Form # 61 **61** **ATTORNEY FEE PETITION**
 Revised 7/08

**BEFORE THE SOUTH CAROLINA
 WORKERS' COMPENSATION COMMISSION**

[])
 EMPLOYEE/CLAIMANT,)
 vs.)
 [])
 EMPLOYER NAME,)
 and)
 SC Uninsured Employer's Fund,)
 Carrier Name,)
 CARRIER/DEFENDANT)

**ORDER
 APPROVING
 ATTORNEY'S FEE**
 WCC File No: []

After review of the record in the above captioned matter and the controlling legal standards for the award of attorney fees and costs in workers' compensation proceedings under S.C. Reg. 1204-1207 and Rule 1.5(a) of the Code of Professional Conduct, I find the attorney's fee of \$8,186.95 and costs of \$2,130.11 in this matter to be reasonable and hereby approve fees and costs as set forth herein.

AND IT IS SO ORDERED:
 Date: 5-23-2014 [Signature]
 Commissioner SCWCC

FORM PREPARATION

- Form 19 (Final Status Report)

- Used to close claim at WCC
- Reflects benefits and medicals paid in case
- Can be amended later
- Also filed where claim is denied by carrier within 10 days of denial accompanied by denial letter

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # _____
Carrier File # _____
Carrier Code # _____
Employer FEIN _____

Claimant's Name _____ SSN _____ Employer's Name _____
Address _____ City _____ State _____ Zip _____ Address _____ City _____ State _____ Zip _____
Home Phone # _____ Work Phone # _____ Insurance Carrier _____
Preparer's Name _____ Phone # _____

Compensation Paid:	Number of Weeks	From	To	Amount
1. Number of weeks T.T.	_____	_____	_____	\$ _____
2. Number of weeks T.P.	_____	_____	_____	\$ _____
3. Number of weeks P.P.	_____	_____	_____	\$ _____
4. Disfigurement	_____	_____	_____	\$ _____
5. Agreement and Final Release	_____	_____	_____	\$ _____
Total Compensation Paid				\$ _____
6. Total Medical Benefits* Paid	_____	_____	_____	\$ _____
7. Funeral Benefits	_____	_____	_____	\$ _____

Case Denied Date of Injury: _____ month day year

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: _____ Claimant By: _____ Employer's Representative Date: _____

*Plus or type the name of the person, other than the claimant, receiving benefits and sign below.

By: _____

Report of additional Fees and Recoupment

A. Carrier Reimbursement by Third Party \$ _____

B. Attorney's Fee Paid by Employer \$ _____

C. Attorney's Fee Paid by Claimant \$ _____
(Non contingent fees, only)

File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. *Do not include as medical costs fees paid for expert testimony. Fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within sixteen days of final payment of compensation. Form 19 must be filed where a claim is denied.

WCC FORM # 19 REV. DATE 3/96 19 STATUS REPORT AND COMPENSATION REPORT

Form 19

FORM PREPARATION

– S-2 (Notice of Third Party Action)

- Carrier/Employer has an automatic statutory lien on any third party actions related to Claimant's injuries per 42-1-560
- Failure to file an S-2 may result in election of remedy and a complete bar against any add'l WC benefits.
- FILE THE S-2

South Carolina Workers' Compensation Commission
1111 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29002-1715
(803) 737-5675

I.C. File #: _____

The use of this form is required under the provisions of the South Carolina Workers' Compensation Law.

**NOTICE
OF
THIRD PARTY ACTION
EMPLOYEE**

In the Workers' Compensation Claim of
_____, Employee
_____, Claimant(s)
vs.
_____, Employer
_____, Carrier

TO THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION and the above-named Carrier or Self-Insurer Employer:

PLEASE TAKE NOTICE that an action has been commenced against _____
as defendant(s) in the Court of _____
County of _____ and State of _____
under date of _____.

Employee or Surviving Workers'
Compensation Beneficiary

DATED: _____

Attorney for Employee or Surviving Workers'
Compensation Beneficiary

A copy of this form must be served upon the South Carolina Workers' Compensation Commission, the Workers' Compensation carrier or self-insurer employer by personal service, registered or certified mail within thirty (30) days after third party action commenced, and, the third party action must be commenced within one (1) year after employee-carrier accepts liability for or makes payment of compensation as provided in the Workers' Compensation Law.

WCC Form # S-2
Rev. 1/96

S-2 Notice of Third Party Action
Employee

Questions?

**Workers'
Compensation
Attorney Form
Preparation**

**Michael W. Burkett, Esquire
Allison P. Sullivan, Esquire**

Workers' Compensation Hearing Preparation

**Michael W. Burkett, Esquire
Allison P. Sullivan, Esquire**

**WHAT DO YOU DO TO PREPARE
FOR A HEARING BEFORE THE
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**

HEARING PREPARATION


- You will receive notice of the Hearing from the Commissioner's assistant
- Notice must be within 30 days of the scheduled hearing
- Majority of the time you get more than 30 days notice
- If Claimant's attorney, need to be aware of when Client approaching MMI as Defendants can file a 21 which means the hearing will be set very quickly

HEARING PREPARATION

- Docket your Pre-hearing Brief Deadline for the Hearing Date
- Moving party [50, 52, or 21], must file their Pre-hearing Brief 15 days before the Hearing Date
- Responsive party [51, 53, or 22], must file their Pre-hearing Brief 10 days before the Hearing Date
- If Hearing on Form 50 and Form 21 then the moving party is whoever filed their pleading first
- PHBs are governed by Reg. 67-611

HEARING PREPARATION

- Follow up on any outstanding subpoenas/requests to medical providers for medical records
- Schedule deposition of any witnesses [claimant, employer representative, doctor] if the depositions have not already been taken in order to obtain same before the Hearing
- Send out subpoena to any witness you want to appear at the hearing
- Ideally, this process should begin when you file your 50 or 51
- Once you learn who the attorney is on the other side, a good practice to contact that attorney to determine if any issues can be resolved


<p>South Carolina Workers' Compensation Commission 1333 Main Street, Suite 500 P.O. BOX 1715 Columbia, SC 29202-1715 803-737-9875</p>		<p>WCC File #: _____ Center File #: _____ Center Code #: _____ Employer FEIN #: _____</p>
<p>Claimant's Name: _____ SSN: _____ Employer's Name: _____ Address: _____ Address: _____ City: _____ State: _____ Zip: _____ City: _____ State: _____ Zip: _____ Home Phone: _____ Work Phone: _____ Insurance Carrier: _____ Preparer's Name: _____ Law Firm: _____ Preparer's Phone #: _____</p>		
SUBPOENA		
<p>To:</p> <p><input type="checkbox"/> YOU ARE COMMANDED to appear before the above-named Commission at the place, date and time specified below to testify in the above case.</p> <p style="margin-left: 40px;">PLACE OF TESTIMONY: _____ ROOM: _____ DATE AND TIME: _____</p> <p><input type="checkbox"/> YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.</p> <p style="margin-left: 40px;">PLACE OF DEPOSITION: _____ DATE AND TIME: _____</p> <p><input type="checkbox"/> YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below.</p> <p style="margin-left: 40px;">LIST OF DOCUMENTS: _____ PLACE: _____ DATE AND TIME: _____</p> <p><input type="checkbox"/> YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.</p> <p style="margin-left: 40px;">PREMISES: _____ DATE AND TIME: _____</p>		
<p>THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.</p>		
ISSUING OFFICER'S SIGNATURE AND TITLE _____	PHONE NUMBER _____	DATE _____
<p>Serve this form according to R.67-211(C). Refer to R.67-211 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-9266.</p>		
WCC Form # 27 Rev. 03/2014	27	SUBPOENA

Form 27

HEARING PREPARATION

PREPARE YOUR PRE-HEARING BRIEF [FORM 58] AND ADMINISTRATIVE PROCEDURE ACT SUBMISSIONS [APAs]

South Carolina Workers' Compensation Commission
 1333 Main Street, Suite 200
 P.O. BOX 1715
 Columbia, SC 29202-1715
 (803) 737-5739 JWS@WCCSC.gov



PRE-HEARING BRIEF
 WCC File No: _____

Claimant's Name: _____
 Address: _____
 City: _____ state: _____ Zip: _____
 Home Phone: _____ Work Phone: _____

Employer's Name: _____
 Address: _____
 City: _____ state: _____ Zip: _____
 Carrier: _____
 Preparer's Name: _____ Preparer's Phone #: _____

A claim for workers' compensation benefits is made based on the following grounds:

Injury: _____
 Sickness: _____
 Repetitive Trauma: _____

1. Compensation Rate: _____ 2. AWW: \$ _____ Date of Injury: _____
3. Type of injury and body part(s): _____
4. Facts in controversy: _____
5. Legal issues involved: _____
6. Unusual aspects: _____
7. Witnesses (designate if expert):*
8. Exhibits: _____
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): _____
10. Name, address, and specialty, if any, of the treating physician: _____
11. Impairment rating(s); body part(s); physician and date of opinion: _____
12. I am amending my Form 50/51 in the following manner:
Mediation
 a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
 b. Mediation is requested pursuant to Reg. 67-1802.
 c. Mediation is requested by consent of the parties pursuant to Reg. 67-1803.
 d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.
 Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.
 I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to _____
 address: _____ on the _____ day of _____, 20____
 by _____ first class postage _____ certified mail _____ personal service. _____
 Signature: _____ Email: _____
 Date of hearing: _____ Time needed for hearing: _____

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-610; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.
 WCC Form # 58
 Revised 7/13

Form 58

58

PRE-HEARING BRIEF

PREHEARING BRIEF [FORM 58]

- 1. Compensation Rate (CR):** List rate off of Form 20. If in dispute, indicate TBD [to be determined]. Also list if you have an alternative calculation of what CR should be.
- 2. Average Weekly Wage (AWW):** List rate off of Form 20, or if disputed, or if alternative rate.

PREHEARING BRIEF [FORM 58]

- 3. Body parts:**
 - List all body parts asserted to this claim.
 - Indicate if admitted or denied

PREHEARING BRIEF [FORM 58]

4. Facts in Controversy:

- List all issues for the hearing.
- List your position for the Commissioner to know on each issue.
- List questions for Commissioner to answer at hearing.
- If lengthy then attach as a separate addendum to the Brief.
- Cite to APAs to support your position

PREHEARING BRIEF [FORM 58]

5. Legal Issues:

- List all appropriate statutes dealing with issues at hearing.
- List specific case law on each issue

PREHEARING BRIEF [FORM 58]

6. Unusual problems:

- **List any issues not specifically addressed as facts of the case including outstanding motions, subpoenas, or request to leave record open.**

PREHEARING BRIEF [FORM 58]

7. Witnesses:

- **List all witnesses you intend to call at the hearing including claimant, specific employer witness, or doctor.**
- **Designate if witness is an expert.**
- **If not listed, the other side can object to you calling them as a witness to the hearing.**
- **Remember to subpoena witness if you want to compel attendance at hearing**

PREHEARING BRIEF [FORM 58]

8. Exhibits:

- List any documentation not from a medical provider including depositions, employer file, SCDEW records, and correspondence.

PREHEARING BRIEF [FORM 58]

9. Medical Records:

- List any and all medical records you are submitting by provider/doctor with date range and page numbers.

PREHEARING BRIEF [FORM 58]

10. Treating doctors:

- **List all treating doctors and providers in this case**

PREHEARING BRIEF [FORM 58]

11. Impairment Rating:

- **List all ratings from all doctors including an IME doctors**

12. Amend: If you are asserting a new position/issue not already on your 50, or 21, indicate at this line.

APAs

- Submission of APAs governed by S.C. Code Ann. Sec. 1-23-330 and Reg. 67-612.

1-23-330(1)

- Irrelevant, immaterial or unduly repetitious evidence shall be excluded. **Except in proceedings before the Industrial Commission the rules of evidence as applied in civil cases in the court of common pleas shall be followed.**

1-23-330(1)

- Hearsay testimony may be admissible in workers comp matters if corroborated by facts, circumstances or other evidence.
Hamilton v. Bob Bennett Ford, 339 SC 68 (2000)

1-23-330(1)

- Agencies shall give effect to the rules of privilege recognized by law. **Objections to evidentiary offers may be made and shall be noted in the record.** Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

1-23-330(2)

- Documentary **evidence may be received in the form of copies or excerpts**, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;

1-23-330(3)

- Any party may conduct cross-examination;
- (This includes the Commissioner)

1-23-330(4)

- Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge.

1-23-330(4)

- Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

Admission of Expert's Report as Evidence (Reg. 67-612)

- 67-612(D): Any report submitted to the opposing party in accord with B(1) or B(2) above shall be submitted as an APA exhibit at the hearing unless withdrawn with the consent of the other party, and the non-moving party shall submit only reports not submitted by the moving party. The actual report shall not be filed with the Commission prior to the hearing.

Admission of Expert's Report as Evidence (Reg. 67-612)

- 67-612(E): Failure to provide reports and notices as required under this section **may** result in the exclusion of such reports from the evidence of the case. This paragraph shall not be construed to limit the **discretionary** authority of a Hearing Commissioner to accept reports, depositions or other evidence at the conclusion of the scheduled hearing pursuant to subsection J below.

Admission of Expert's Report as Evidence (Reg. 67-612)

- J. All available evidence and testimony shall be presented at the scheduled hearing or a party must move for an adjournment according to R.67-613:
 - (1) The Commissioner **may** adjourn the hearing, and testimony of a necessary witness unable to appear at the scheduled hearing may be presented by deposition or at a hearing reconvened at a later date.
 - (2) The Commissioner may order the party moving for adjournment to take the de bene esse deposition of the expert. The Commissioner may order the party moving for adjournment to pay hearing costs if it is necessary to reconvene.

How Should I Submit APAs?

- <http://www.wcc.sc.gov/commissioners/preferences>
- G. The following rules in this subsection shall govern the format in which Administrative Procedures Act (APA) exhibits are submitted into evidence. Each APA or set of APA's shall have:
 - (1) An index sheet listing the APA number, name of the provider, dates of service and number of pages in the APA, with the records from each medical provider identified in groups, as APA #1, APA #2; etc. The reports of each expert shall be arranged in **either chronological or reverse chronological order.**
 - (2) A consecutive number beginning with the first page of APA #1 and continuing through the final page of the last APA submitted.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
*****)
Claimant,)
v.)
, LLC)
Employer,)
and)
SC Uninsured Employer's Fund,)
Carrier,)
Defendants.)

BEFORE THE
SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No. 1003

NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS DIRECT
EVIDENCE ON BEHALF OF
CLAIMANT

TO: COMMISSIONER ANDREA ROCHE, E. ROS HUFF, JR., AND LISA GLOVER, ESQUIRE:
YOU ARE HEREBY NOTIFIED THAT THE Employee pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as amended), herewith submits the following medical reports as direct evidence on behalf of the Employee, to wit:

Tab	Physician	Date(s)	Page Number
1	Dr. Jeffrey Guy	06-17-10 to 03-06-13	1-14
2	Columbia Rehabilitation Clinic	06-17-13	15-36

Tab	Exhibit	Date(s)	Page Number
A	Medical Bill of Doctor's Care-\$445.00	03-08-10 - 05-15-10	37-43
B	Medical Bill of Palmetto Imaging -\$460.00	05-12-10	44-46
C	Medical Bill of DJQ, LLC-\$475.00	06-17-10	47-50
D	Decision and Order	02-13-12	51-77

YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination, and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the employer-defendant.

YOU ARE FURTHER NOTIFIED that the witnesses to be called on behalf of the claimant will be the Claimant.

Allison P. Sullivan

Allison P. Sullivan
BLUESTEIN, NICHOLS, THOMPSON, &
DELGADO, LLC
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599
Attorney for Employee

Dated _____
Columbia, South Carolina

What to Expect at the Hearing?

- Be prepared for a “pre-trial” meeting with Commissioner with other attorney
- You may have opportunity to put your client’s position on the record before testimony starts
- No time limit on hearings (but give the Commissioner’s office a heads up if going to go long)
- Commissioner may rule at conclusion of the hearing
- No Closing Arguments

Hearing Procedure

- Held in county where accident occurred
- Held before one of seven commissioners
 - appointed by Governor (consent of Senate)
 - six-year terms
 - get to know your Commissioners
 - some rule from bench / others send out ruling with instruction for one party to draft order
 - if drafting, get a copy of the transcript

Hearing questions

- Age
- Education
- Work background
- Marital status/children
- Disputed issues....

Disputed issues

- Notice
- Compensability
- Medical treatment
- Lost time from work
- Compensation rate
- Permanency

APPEALS

- Application for review of decision within 14 days
 - Form 30
 - Questions presented on appeal
 - \$150 filing fee
 - proof of service
- Appeals heard by 3 commissioner panel

What If You're Not Ready

- 67-609(A) allows a claimant to withdraw a Form 50 or Form 52 **once** as a matter of right with leave to renew.
- 67-609(C): Withdrawing a Form 50 or Form 52 the second time without good cause **may operate as a voluntary dismissal of the claim when the form is withdrawn by a claimant who has once withdrawn a Form 50 or Form 52 based on the same set of facts, and, in the opinion of the Commissioner, the form is withdrawn merely for the purpose of delay.**
- Bottom line: Don't file your 50 unless you KNOW you can be ready before the hearing!

Questions?

**Workers'
Compensation
Hearing
Preparation**

Michael W. Burkett, Esquire
Allison P. Sullivan, Esquire



South Carolina Bar

Continuing Legal Education Division

2019 Workers' Compensation Practice Essentials

Mediation
And
Settlement

*Landon "Rocky" Hughey
Andrea C. Roche*

**Workers' Compensation
Essentials:**

MEDIATION

&

SETTLEMENT

Landon "Rocky" Hughey, Esq.
Andrea C. Roche, Esq.

Mediation

- May 2013, WCC approved new mediation regulations 67-1801 - 67-1809, which provide that certain types of cases must be mediated
- A Commissioner may order mediation in any given claim
- Result has been that many more cases go to mediation
- The large majority of cases do settle at mediation
- Good mediation practice from all sides to a workers' compensation claim help to achieve favorable outcomes for the parties

Mediation Regulations 67-1801

- Purpose of regulations is to afford a meaningful opportunity to the parties to achieve an efficient and just resolution in a timely and cost-effective manner
- Commissioner may order mediation in any claim
- Commissioner may appoint "duly qualified" mediator
- Commissioner may or may not retain jurisdiction of the file
- Ability to order mediation is not limited to cases subject to mandatory mediation

Mediation Regulations 67-1802

Claims subject to mandatory mediation:

- Allegation of permanent and total disability;
- Occupational disease claims;
- Third-party lien reduction claims;
- Contested death claims;
- Mental/mental injury claims;
- Concurrent jurisdiction claims under Act and Federal Longshore and Harbor Workers Act.

Mediation Regulations 67-1803

- The parties may request mediation on Form 21, Form 50, Form 51 or the response to the Form 21 (Form 22)
- Strategy may be involved with requesting mediation when further discovery is needed
- Common scenario: Form 21 is filed to stop TTD and Form 22 is filed alleging permanent and total disability and/or requesting mediation
- Commission encourages mediation in most cases

Mediation Regulations 67-1804

- Parties may consent to duly qualified mediator or WCC appoints
- Mediator must be certified as a mediator by the certification process established by the SC Bar (doesn't have to be a lawyer)
- Must select a mediator within 10 days of filing of the Form 51 or response to the Form 21
- Must notify the WCC of mediator and date
- Mediation must be completed within 60 days, unless otherwise agreed by parties
- Commission will set for hearing if not mediated



**Mediation Regulations
67-1805**

- In addition to attorneys being present, each party shall provide a representative to attend in person or by telephone
- Representative shall have the authority to enter into negotiations in good faith
- If available by phone, the representative must be available throughout the mediation
- Notice shall be provided to the other side if attendance is to be by telephone



**Mediation Regulations
67-1806**

- Communications at mediation are confidential
- Communications or statements cannot be disclosed by any party (or mediator) as evidence in a proceeding
- An executed settlement agreement is not subject to these limitations
- Mediator cannot be called as a witness
- Mediator's notes cannot be used as evidence or become part of the Commission file

Mediation Regulations 67-1807

- Expenses are shared by the parties
- Parties can agree to some other arrangement
- Commission may also order alternative arrangement for expenses
- Frequently, the Employer / Carrier will use payment of the mediator's bill as leverage if the parties reach an agreement to settle the claim
- With more mediations and more mediators (some more experienced than others), expenses of mediations can vary

Mediation Regulations 67-1808

- WCC can assess penalties
- Any party who refuses to act in good faith may be subject to a fine
- Fine may not exceed cost of mediation
- Party may file a Motion for a Rule to Show Cause for purposes of assessing fines
- Set before the Jurisdictional Commissioner
- Parties have a right to appeal to Full Commission

Mediation Regulations 67-1809

- Form 70 must be filed
- Identifies mediator
- Outlines issue and outcome of mediation
- If settled, identifies terms of settlement
- Outlines cost of mediation
- Identifies how costs were paid
- Form 70 does not become part of the WCC file

Prior to Mediation

- Mediator will provide letter outlining fees and will likely request a short summary of the claim
- Summaries will be kept confidential upon request of party
- Summaries help the mediator to understand the issues prior to mediation
- Pre-Mediation phone conferences are often helpful
- Do not ignore Mediator's request for information – it increases the chance of success at mediation
- If pressed for time, a short e-mail or phone call will suffice
- Mediator provides mediation agreement for review with clients

What Happens at a Mediation?

- Mediation typically begins with introductions
- Often held at mediator's office – but can be held elsewhere
- Introductions allow for face-to-face meeting and provides a human element to the claim
- Parties can outline position in a non-threatening manner
- Can serve as "day in court" for either side
- Styles vary, but at times a less adversarial approach is helpful at mediation
- It is helpful to manage client expectations as to what to expect in introduction

Mediation (Continued)

- After introductions, typically break into separate rooms or caucuses
- Confidential information may be shared with the mediator to help with settlement
- Mediator works to move negotiations forward
- Parties must keep an open mind – remind parties they will not get everything they want
- Successful mediation required compromise
- May concede points at mediation that you would not at a hearing
- Mediator will point out weaknesses of case and ask questions about probabilities

Mediation Conclusion

- If settlement is reached, mediator typically brings the parties back together
- Finalize terms of agreement and sign mediation agreement
- Mediator will provide copies of agreement to the parties
- Mediator files Form 70 with WCC

Practice Tips for Attorneys

- Manage client expectations prior to mediation as to process, introductions, claim value, merits of case
- Think about your mediator – some are more experienced, some more costly, some more available – each case is different
- PREPARE for mediation – your client may know the case better than you and it won't take long to find out
- *** Claimant's attorneys – get demands out early and share information (voc report, IME, etc.) – last minute ambush does not help ***
- *** Defense attorneys – get evaluations out EARLY and HAVE DECISION MAKER PRESENT – telephone attendance greatly reduces chance of settlement ***

Practice Tips for Attorneys (Cont.)

- Even if decision maker is not present, have someone attend on behalf of the Employer – this is helpful to all parties to the claim, even if it does not settle at mediation (higher ups and carrier may tire of hearing the message from you)
- Prepare your mediation statement and understand the audience – attacking the other side is often not helpful
- Work with the mediator and don't just focus on strengths
- Don't focus on hardball tactics and future litigation – you are here to mediate
- Understand what it is your client wants – it may open avenues to settlement
- Help your client to understand risks – gray areas in WC

Tips for Mediators

- Contact the parties prior to mediation
- Review documents and pre-mediation statements
- Understand the style of the lawyers
- Have parties focus on the aspect of CONTROL – they lose some control at a hearing
- Do everything you can to have decision makers present
- Pay attention to litigants and show a personal side – this can be particularly true with Claimants who can be intimidated by the process
- Show empathy, respect and attention to the importance of the case (for both businesses and injured workers)
- Don't take sides

Tips for Mediators

- Consider bracketing (If Mr. Owens would decrease his demand to \$100,000.00, would you be willing to increase your offer to \$60,000.00?)
- Reframe the issues – move away from who is “right” and focus on the goals of the parties
- Help each side to understand the interests and goals of the other side, where appropriate
- Ask counsel about probabilities / downside when a hard line is drawn
- Thank the parties for the chance to mediate the case
- Consider staying on file if resolution is not reached

Settlement

- Two ways to settle a case in South Carolina – **clincher (full and final) or Form 16A**
- Advantages to both – be sure you know which one is appropriate in any given situation
- Future medicals are closed on a clincher – with a Form 16A certain medical care can remain open for one year, or longer
- Form 16A is similar to an award at a hearing – Claimant will have one year from date of last payment to file for a change of condition

FORM 16A Settlement

- After Claimant reaches MMI, may settle on a Form 16A
- If each party is represented, appearance before a Commissioner is not required
- Claimant retains the right to file for a change of condition
- By signing the Form 16A, the Employer does not agree to any future payments unless the form says otherwise
- Parties agree to compensation rate, permanent partial disability (PPD), scarring
- Future medicals must be clearly stated on Form 16A
- Example: 10% to the leg (195 weeks * .10) x comp rate = award. 10% to leg at \$500 comp rate = \$9,750.00 (19.5 weeks x \$500)

Future Medicals – Form 16A

- Earlier today we discussed 42-15-60, which addressed time period for medical treatment
- When a case is settled on a 16A, the Employer is not required to provide further medical after one year from full payment unless the form specifically provides otherwise.
- Medical treatment or modalities must be set forth with as much specificity as possible
- In no case shall the employer provide treatment after a lapse in medical care for one year unless the settlement agreement specifically states otherwise or reasonable attempts where made by the Claimant

Claimant Practice Tips for Form 16A / Future Medicals

- For Claimant's attorneys: be sure you clarify what medical is being recommended by the doctor
- Form 14B's can be confusing – doctor will often say "may" at bottom of Form 14B after checking "will"
- Be sure you get as specific as you can as to the medical being recommended by the doctor
- You may need to pay for a conference with the doctor, a meeting and/or a deposition
- Understand how specific the statute is
- In some cases with significant, specific medicals you may consider a Consent Order that serves as a Form 16A (this allows more flexibility with the language)

Unrepresented Claimants Informal Conference

- Rather than a clincher, these are settled on a Form 16A
- Does not require an attorney to be present like a clincher conference
- Typically before Deputy Commissioner
- Offer made by Defendants and agreement will be reviewed by Deputy Commissioner
- If medicals are over \$50,000.00 it must go before the Jurisdictional Commissioner
- Cost-effective means to get claims resolved
- Often times seen with Claimant who is still working for the same employer
- If case does not settle, it is set for a hearing

Clincher Settlements – Full and Final

- Paying more for a clincher, as you are closing out future medicals and the change of condition
- Perhaps undervalued from the carrier side – no longer have to pay attorneys, doctors, benefits to the Claimant, etc.
- Clincher documents must include facts of case, nature of injury, date of injury, settlement amount, terms of payment and signatures of Claimant, his/her attorney (if any) and the attorney for the Employer/Carrier
- If both sides are represented, clincher is filed with WCC and does not require Commission approval
- A clincher agreement is binding
- Doubtful and disputed clincher – no payment of medicals

Unrepresented Claimants Clincher Conference

- A clincher conference must be requested if an agreement is reached with a pro se Claimant
- WCC requires a Form 14B – want to see future medicals
- Must go in front of a Commissioner and will be closely scrutinized
- Must have cost projection for future medicals or hardware removal in front of most Commissioners
- Commissioners will not buy argument that lower settlement reflects what the Claimant would get if represented
- PRACTICE TIP – settle for a fair amount up front to reduce costs in the long run – carriers do not get a bargain because unrepresented (Commission is not going to let you take advantage of anyone)

Resignations / Confidentiality Clauses in Clincher Agreements

- Often, the employer will ask for a resignation and release of any employment claims with a clincher
- Both sides should be careful as employment issues can be complex – best to engage employment counsel
- Problems can arise if the Claimant is not interested in resigning
- There is no mechanism to force a Claimant to resign at a hearing – the Commission does not have jurisdiction over employment law matters
- Consideration for resignation is paid separately, document is separate and not filed with the Commission
- Confidentiality clauses may be included, but not enforceable at the Commission

Utica-Mohawk / James v. Anne's Language in Clincher

- Often the clincher will include language that pro-rates the award over a Claimant's life expectancy
- A Claimant's Social Security benefits can be reduced if they are awarded a lump sum without proration
- In James v. Anne's, the Supreme Court held the Commission has the power to include this proration language in an Order, as it is in the best interests of a Claimant
- Be sure to consider Utica-Mohawk language where appropriate in both Form 16A and clincher settlements

Medicare Issues with Settlement

- All parties to a claim have responsibilities to protect Medicare's interests when resolving cases with future medical expenses
- Medicare issues can be extremely complex and the law is not always clear as to what is required – MSA's are only needed in certain situations
- A Medicare Set-Aside (MSA) is a financial arrangement that allocates a portion of a settlement to pay for future medical services related to a claim
- The MSA must be depleted before Medicare will pay for any treatment
- MSA's are usually provided by third-party vendors

Medicare / MSA's

- The Center for Medicare and Medicaid Services (CMS) will only review MSA's if: (1) the Claimant is a Medicare beneficiary and the total settlement amount is over \$25,000.00 or (2) the Claimant has a reasonable expectation of Medicare enrollment within 30 months and the total settlement is over \$250,000.00
- The result is that CMS tells us to always protect their interests, but only reviews certain cases
- Be sure you are knowledgeable about Medicare issues before settling a workers' compensation claim
- Issues arise with self-administration versus professional administration (is your client able to handle the funds)?

Medicare (Continued)

- MSA is not required if future medicals are not being settled
- Form 14B can cover you here – did the doctor say the Claimant needed further medical?
- If settling on a doubtful and disputed basis and medicals have not been paid, MSA is usually not a concern
- Medicare specialists are available for consultation on complex cases
- If carrier settles with MSA requiring CMS approval, will typically agree to either fund a higher recommend amount, or leave medicals open
- Visit www.cms.gov for additional information

WCC Forms



Claimant's Name: _____ SSN: _____ Employer's Name: _____
 Address: _____ Address: _____
 City: _____ State: _____ Zip: _____ City: _____ State: _____ Zip: _____
 Home Phone: _____ Work Phone: _____ Insurance Carrier: _____
 Preparer's Name: _____ Law Firm: _____ Preparer's Phone #: _____

The date of injury reported on Form 12A is: _____ (m/d/yyyy)

Check appropriate section(s). The Employer's Representative requests a hearing to:

I. **Stop payment of compensation.** Claimant has reached maximum medical improvement and Claimant continues to receive temporary compensation payments. The employer's representative requests a hearing pursuant to § 42-9-260(D) to stop payment of temporary compensation. A hearing requested pursuant to this section must be held within sixty days of the date of the request.

Claimant reached maximum medical improvement on _____ (m/d/yyyy) (copy of medical report must be attached).
 Compensation payments are current as of _____ (m/d/yyyy) and shall continue until otherwise ordered or until Form 17 is signed by the claimant.
 A Form 17 was offered and refused on _____ (m/d/yyyy).

II. **Address suspension, termination, or reduction of temporary disability payments for any cause.**

- a. At any time pursuant to § 42-9-260(E).
- b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.

The basis for the termination/ suspension is _____

III. **Determine if compensation is due** pursuant to § 42-9-10, § 42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds:

Claimant reached maximum medical improvement on _____ (m/d/yyyy) (copy of medical report must be attached).

IV. **Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.**

V. **Determine amount of compensation for claims involving a fatality.**

- a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.
- b. Amount of compensation for death of employee due to accident pursuant to § 42-9-290.

VI. **Mediation**

- a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- b. Mediation is required pursuant to Reg. 67-1802.
- c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- d. Mediation has been conducted by a duly qualified mediator and resulted in an Impasse.

Failure to respond pursuant to Reg. 67-208 B in writing or by submission of a Form 22 may result in ordered mediation pursuant to Reg. 67-1801 B.
 Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to _____ address _____ on the _____ day of _____ 20____,
 by first class postage certified mail personal service electronic service. **A \$25.00 filing fee and updated Form 18 is required.**

Preparer's Signature _____ Title _____ Email _____ Date _____



Claimant's Name: _____ SSN: _____ Employer's Name: _____
Address: _____ Address: _____
City: _____ State: _____ Zip: _____ City: _____ State: _____ Zip: _____
Home Phone: _____ Work Phone: _____ Insurance Carrier: _____
Preparer's Name: _____ Law Firm: _____ Preparer's Phone #: _____

Date of Injury or Illness: _____

Complete each information blank. Clearly specify when contention are admitted in part and denied in part. The Claimant's answer to the claim respectfully shows:

- I. **Stop payment of compensation.**
It is admitted denied the Claimant has reached maximum medical improvement and continues to receive temporary compensation payments.
It is admitted denied the Claimant's temporary total payments are current.
It is admitted denied the Claimant's temporary total payments have been properly stopped as of _____ (m/d/yyyy) pursuant to Reg. 67-505
- II. **Address suspension, termination, or reduction of temporary disability payments for any cause.**
 a. At any time pursuant to § 42-9-260(E).
 b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.
 c. Temporary total compensation was suspended, terminated, or reduced without proper order of the Commission.
 d. Additional compensation and penalties are requested pursuant to Reg. 67-510.
The basis for additional compensation and penalty is _____

- III. **Determine if compensation is due** pursuant to § 42-9-10, § 42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds:

Claimant reached maximum medical improvement on _____ (m/d/yyyy) (copy of medical report must be attached).

It is admitted/denied the Claimant has reached maximum medical improvement.

Claimant has has not returned to work. Claimant has has not returned to light duty.

- a. Permanency is premature at this time.
 b. Claimant is in need of additional medical care and treatment
 c. Claimant is entitled to permanent partial disability pursuant to 42-9-30.
 d. Claimant is entitled to wage loss pursuant to 42-9-20.
 e. Claimant is entitled to total and permanent disability pursuant to 42-9-10 or 42-9-30(21) and Reg. 67-1802.

- IV. **Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.**

It is admitted denied that the Employer/Carrier is due a credit for overpayment.

- V. **Determine amount of compensation for claims involving a fatality.**

- a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.
 b. Amount of compensation for death of employee due to accident pursuant to § 42-9-290.

- VI. **Mediation**

- a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
 b. Mediation is required pursuant to Reg. 67-1802.
 c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
 d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Failure to respond pursuant to Reg. 67-208 B in writing or by submission of a Form 22 may result in ordered mediation pursuant to Reg. 67-1801 B.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to _____
address _____ on the _____ day of _____ 20____
by first class postage certified mail personal service electronic service

Preparer's Signature _____ Title _____ Email _____ Date _____

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or judicial@wcc.sc.gov or mediation@wcc.sc.gov
Refer to Regulations 67-211, 67-504, 67-505, 67-506, 67-510; and 67-1801.



WCC File #: _____
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: _____ SSN: _____ Employer's Name: _____
Address: _____ Address: _____
City: _____ State: _____ Zip: _____ City: _____ State: _____ Zip: _____
Home Phone: _____ Work Phone: _____ Insurance Carrier: _____
Preparer's Name: _____ Law Firm: _____ Preparer's Phone #: _____

A claim for workers' compensation benefits is made based on the following grounds: _____ Date of Injury or Illness: _____

Injury Illness Repetitive Trauma Occupational Disease Physical Brain Injury Concurrent Jurisdiction

1. The claimant sustained an injury to _____ (Part(s) of Body Injured) on _____ (Month/Day/Year) in _____ county, state of _____. Body part(s) affected are: _____
2. Briefly describe how the accident occurred. _____
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on _____ (Month/Day/Year) in the following manner: _____

7. Due to injury, the claimant is in need of (check one):
 (a) medical examination and treatment for: _____
 (b) additional medical examination and treatment for: _____

8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: _____

9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
 (1) General Disability: Total Partial (2) Specific Disability: Total Partial (3) Wage Loss

9a. A determination of permanent disability is premature at this time.

10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: _____

10a. At the time of the injury, the Claimant was paid weekly wages of \$ _____, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident: _____

11. Further grounds or unusual aspects of claim: _____

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: _____

11b. To the best of your knowledge, did you have any prior permanent disability?
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

13a. **I am filing a claim. I am not requesting a hearing at this time.** 14. Estimated time needed for hearing: _____

13b. **I am requesting a hearing. A \$25 fee is required.**

Mediation

- a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- b. Mediation is required pursuant to Reg. 67-1802.
- c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- d. Mediation has been conducted by a duly qualified mediator and resulted in an Impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to _____ address _____ on the _____ day of _____ 20____, by first class postage certified mail personal service.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature _____ Title _____ Email _____ Date _____

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.



WCC File #: _____
 Carrier File #: _____
 Carrier Code #: _____
 Employer FEIN #: _____

Claimant's Name: _____ SSN: _____ Employer's Name: _____
 Address: _____ Address: _____
 City: _____ State: _____ Zip: _____ City: _____ State: _____ Zip: _____
 Home Phone: _____ Work Phone: _____ Insurance Carrier: _____
 Date of Injury: _____
 Preparer's Name: _____ Law Firm: _____ Preparer's Phone #: _____

Date of Injury or Illness: _____ **Estimated time for hearing:** _____
Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer/Carrier in answer to the claim, respectfully shows:

1. It is **Admitted** **Denied** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are: _____
2. It is **Admitted** **Denied** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: _____
3. It is **Admitted** **Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are: _____
4. It is **Admitted** **Denied** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: _____
5. It is **Admitted** **Denied** notice of injury was given the employer. The reasons for denial are: _____
6. It is **Admitted** **Denied** the employee **Needs** **Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are: _____
7. It is **Admitted** **Denied** the employee is entitled to temporary total disability for the period(s) of : _____
8. It is **Admitted** **Denied** the employee is permanently disabled. The reasons for denial are: _____
9. It is **Admitted** **Denied** the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ _____ applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: _____

- Mediation**
- a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
 - b. Mediation is required pursuant to Reg. 67-1802.
 - c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
 - d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to _____
 Address _____ on the ____ day of _____ 20____ by:
 first class postage certified mail personal service electronic service

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature _____ Title _____ Email _____ Date _____

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.



Physician's Statement

Claimant's Name: _____ Employer's Name: _____
Physician's Name: _____ Insurance Carrier: _____
Practice/Clinic: _____ SCWCC File No: _____
Preparer's Name: _____
Phone: _____

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§42-15-60, 42-1-172 or 42-11-10.

Date of Injury or Illness: _____

Date of first office visit: _____ Date of last visit: _____

Diagnosis or nature of injury or illness: _____

Body part(s) injured: _____ Body part(s) affected: _____

Date of **Maximum Medical Improvement**: _____

Based on the **AMA Guidelines**, the claimant has sustained a _____ % **medical impairment** to _____ injured body part(s) and a _____ % **medical impairment** to _____ other affected body part(s).

- The claimant is **able to return to work** without restriction.
 The claimant is **able to return to work with the following restrictions:**

- The claimant is **unable to return to work** at his or her current employment.
 Claimant **possesses retained hardware** casually related to this injury.

As of the date I last saw this patient, it is **my professional medical opinion** the claimant:

will not need future medical care related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not).

will need future medical care and treatment related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not) and that medical care and treatment including medication is as follows:

Treating Physician

Date

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



WCC File #: _____
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Home Phone: _____ Work Phone: _____
Preparer's Name: _____

Employer's Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Carrier: _____
Preparer's Phone #: _____

This form is only applicable to injuries by accident occurring on or after July 1, 2007 pursuant to Title 42-15-60 (A) as amended. The execution of this document is an agreement between the parties relating to a Workers' Compensation claim under §§42-1-160, 42-1-172 or 42-11-10.

Date of Injury or Illness _____

The above parties agree to pay and accept compensation based on the following facts:

A compensable Injury Illness Repetitive Trauma occurred on: _____ (month/day/year).

The injury was to _____ body part(s) injured and also the injury affected other body part(s).

The authorized treating physician has released the Claimant from his or her care and has found maximum medical improvement on _____ (month/day/year) with an impairment rating of _____.

Average weekly wage \$ _____ Compensation rate \$ _____

By agreement of the parties, the following award has been referred to the Commission for approval:

_____ Percentage loss of use to: _____ (body part(s) injured).	_____ weeks
_____ Percentage loss of use to: _____ (body part(s) affected).	_____ weeks
_____ Percentage loss of use to: whole person	_____ weeks
Disfigurement to: _____	_____ weeks
Wage Loss: \$ _____ amount	_____ weeks
Total and Permanent Disability: _____	_____ weeks
Other: _____	_____ weeks

Estimated award (number of weeks times compensation rate) \$ _____

The estimated award is subject to verification by the Commission

Additionally, the Employer's Representative agrees to pay and the Claimant accepts the following medical care and treatment as recommended by the authorized treating physician pursuant to the attached physician's statement, **Form 14B**

Additional medical ordered: Yes No
See attached 14B physician's statement dated: _____

Claimant is entitled to lifetime replacement, repair and maintenance of causally related medical hardware pursuant to 42-15-60(C).

This agreement is binding on approval by the Commission. A claim for additional compensation based on a worsening of the Claimant's condition **must be filed no later than one (1) year from the date of the last payment of compensation.** Only medical care specifically detailed herein will be paid under this agreement. If a dispute arises with regard to continued medical treatment, either party may request a hearing before the Commission pursuant to 42-15-60(B) 3 and (C).

Claimant's Signature

Date Agreement Signed

Attorney/Witness/Translator

Employer's Representative

Attorney for Carrier

Email

Deputy Commissioner

Date Agreement Approved

Jurisdictional Commissioner

Sample Mediation Forms

Reply To

LONDON HUGHEY
RHUGHEY@MGCLAW.COM
(803) 227-2261

August 3, 2015

Brett A. Owens, Esquire
Lee Eadon Popwell & Owens
1314 Lincoln Street
Columbia, South Carolina 29201

Peter H. Dworjanyn, Esquire
Collins & Lacy, P.C.
Post Office Box 12487
Columbia, South Carolina 29211

RE: John Doe v. XYZ, LLC and Big Insurance Company
WCC File No.: 1407138
Our File No.: 20202.15033

Gentlemen:

Thank you for asking me to serve as your mediator in this case. I look forward to helping the parties achieve an amicable resolution. My fees for mediating a case are \$250.00 per hour. In addition, there will be a one-time administration fee of \$150.00. I generally submit my bill for professional services in equal shares to counsel for the parties. Please advise me if you prefer I handle the billing otherwise.

I have found it difficult to have a successful mediation unless the clients (or, in the case of a corporate party or insurance carrier, someone having authority to negotiate a complete settlement) are physically present. It is usually not sufficient merely for the decision maker to be available by telephone or to have given limited settlement authority to the attorney. The face to face meeting of the parties is essential to the success of the process. Please let me know if a person with settlement authority cannot be physically present on the date and time scheduled.

It would be helpful if you could provide me a one or two page letter summarizing the causes of action, the defenses, the issues and your position in the case. I want to be familiar with the case in order to save time at the mediation. I would be happy to look at anything else you think will be helpful in understanding the case.

I am enclosing for each of you an Agreement to Mediate. Please review this with your clients in advance of our meeting so I can answer any questions they might have. I look forward to seeing you on **August 13, 2015 at 10:00 a.m. at McAngus**

August 4, 2015
Page 2

Goude-lock and Courie. Please give me a call if you have any questions in the meantime.

Very truly yours,

Landon "Rocky" Hughey, Esq.

**JOHN DOE V. XYZ, LLC AND BIG INSURANCE COMPANY
1407138**

AGREEMENT TO MEDIATE

THE UNDERSIGNED PARTIES and their attorneys agree the above matter shall be submitted to mediation pursuant to the applicable rules, guidelines or Order of the Court having jurisdiction over this matter, and further agree:

1. All statements made during the course of mediation are privileged, are made without prejudice to any party's legal position and are non-discoverable and inadmissible for any purpose in any legal proceeding.

2. The privileged character of any information is not altered by disclosure to the mediator. Disclosure of any records, reports or other documents received or prepared by the mediator cannot be compelled. The mediator shall not be compelled to disclose or to testify in any proceeding about (i) any records, reports or other documents received or prepared by the mediator or (ii) information disclosed or representations made in the course of the mediation or otherwise communicated to the mediator in confidence. The mediator will not retain any exhibits, briefs or materials submitted following the conclusion of the mediation. Any party may retrieve such documentation delivered to the mediator within seven (7) days of the conclusion of the mediation. Any documentation not retrieved within that time may be discarded.

3. Evidence of anything said or any admission made in the course of mediation is not admissible in evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given.

4. Unless a document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence, and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given.

5. The parties understand the mediator does not represent any party, and does not provide legal or financial advice. Parties not represented by counsel are urged to seek legal advice from an attorney and to obtain financial advice as needed from qualified professionals. The parties agree the mediator shall have no liability for any act or omission in connection with the mediation.

6. The parties further understand and agree the mediator's fee and expenses will be paid in equal shares by all parties unless other arrangements are made at the time of the mediation. In addition, the parties agree the attorney(s) representing each party will bear the responsibility and pay its respective share.

7. In the event the mediation is canceled or postponed, the parties agree to notify the mediator's office not later than three (3) working days prior to the mediation.

Dated _____, _____, and signed before commencement of the mediation by each of the persons whose signatures appear below.

Plaintiff(s)

Defendant(s)

Attorneys for Plaintiff(s)

Attorneys for Defendant(s)

If there are more parties or attorneys participating in the mediation than provided for in the space above, they may sign below or on an additional page which shall be attached to this agreement.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO:

Employee,

Claimant,

vs.

Employer,

AND

Carrier,

Defendants.

AGREEMENT OF THE PARTIES

1. A mediated settlement conference was held before me on _____.
2. As a result of the conference, this case should be considered fully settled, by voluntary dismissal, to be filed by the parties' attorneys.
3. Participants in attendance at this conference are listed below:

4. Terms of the parties' agreement are as follows:

WE CONSENT TO THE FOREGOING TERMS:

<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

Landon "Rocky" Hughey, as Mediator

DATE: _____



South Carolina Bar

Continuing Legal Education Division

2019 Workers' Compensation Practice Essentials

Hints from the Commission

Commission T. Scott Beck