

## **Top Ten Things to Remember for Practice Before the Full Commission**

### APPENDIX

Motion to Amend Opinion and Award for the Full Commission

Plaintiff's Statement Upon Remand from the Court of Appeals

Plaintiff's Request for Continuance of Oral Argument

Motion for Attorneys' Fees

Motion for Reconsideration

Motion to Add Evidence to Transcript with Order

Motion for Extension of Time to Complete Supplemental Discovery

Memorandum of Additional Authority

Motion to Allow Additional Evidence

Motion to Amend Record on Appeal and order

**NORTH CAROLINA INDUSTRIAL COMMISSION**

**I.C. File No.: 00000 – JANE SMITH, Employee-Plaintiff v. PBB CORPORATION, Self Insured, Employer/Defendant, and USA INSURANCE, Third-Party Administrator / Defendants.**

**MOTION TO AMEND OPINION AND AWARD FOR THE FULL COMMISSION**

Plaintiff Jane Smith, pursuant to Industrial Commission Rule 609, hereby moves the Commission to amend the Opinion and Award for the Full Commission filed on September 30, 2009. In support of this Motion, defendants show the Commission as follows:

1. On September 30, 2009, the Commission filed its Opinion and Award, in which it adopted the Opinion and Award of Deputy Commissioner Rideout with minor modifications.

2. Plaintiff and defendants filed contentions and proposed opinions and awards with the deputy commissioner on September 19, 2008. Plaintiff then noticed a typographical error in the amount of wage loss claimed per week and corrected it, amending the proposed opinion and filing it with the Commission on September 22, 2008.

3. The original Opinion and Award from Deputy Commissioner Rideout filed on October 19, 2008 stated in Finding of Fact No. 35: “[u]sing the 2007 figures, plaintiff’s average weekly wage following the injury is \$1403.25, yielding a wage loss of \$597.29.” The figures in the Opinion and Award reflected the original typographical error corrected in the proposed amended opinion and award. The parties stipulated in the prehearing agreement, a stipulation also contained in Stipulation No. 7 of the Opinion and Award, that plaintiff’s average weekly wage at the time of her injury by accident was \$2400.54.

3. Following the issuance of the October 19, 2008 Opinion and Award, defendants noted that the Conclusions of Law had been erroneously copied onto the Award. An amended Opinion and Award was filed on November 12, 2008, again containing the erroneous figure.

4. None of the Opinion and Awards reflected the correct difference in the average weekly wage, \$997.29, or the correct amount of wage loss in Award No. 2 pursuant to N.C.Gen. Stat. § 97-30, \$665.19.

5. Plaintiff respectfully requests that the Commission amend the Full Commission’s Opinion and Award to read in Finding of Fact No. 35: “[u]sing the 2007 figures, plaintiff’s average weekly wage following the injury is \$1403.25, yielding a difference of \$997.29, and a compensable wage loss of \$665.19.”

6. Further, plaintiff requests that the Commission amend the Full Commission's Opinion and Award to read in Award No. 2 "The defendants shall pay the plaintiff wage loss benefits in the amount of \$665.19 per week beginning as of September 15, 2006 and continuing through December 31, 2007. Subsequent weekly payments will be made following the entry of an additional order. N.C. Gen. Stat. § 97-30."

7. The undersigned has conferred with counsel for the defendants, who authorized the undersigned to convey that defendants concur with this Motion to Amend.

WHEREFORE, plaintiff respectfully moves the Commission to amend Finding of Fact No. 35 and Award No. 2 in the Opinion and Award for the Full Commission.

This the 5<sup>th</sup> day of October, 2009.

---

Valerie A. Johnson  
North Carolina State Bar No. 21125  
Patterson Harkavy LLP  
100 Europa Drive, Suite 250  
Chapel Hill, NC 27517  
Telephone: (919) 942-5200  
Fax: (919) 942-5256

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Plaintiff's Motion to Amend Opinion and Award for the Full Commission was provided to the defendants through its attorney of record, via e-mail and US Mail, addressed as follows:

Mr. John R. Doe  
Doe, Jones & Brown, PLLC  
Post Office Box 123  
Anywhere, NC 12345

[jdoe@doejonesbrown.com](mailto:jdoe@doejonesbrown.com)

on this 5<sup>th</sup> day of October, 2009.

---

Valerie A. Johnson

**NORTH CAROLINA INDUSTRIAL COMMISSION**

**I.C. File No.: 00000 – JANE SMITH, Employee-Plaintiff v. PBB CORPORATION, Self Insured, Employer/Defendant, and USA INSURANCE, Third-Party Administrator/ Defendants.**

**PLAINTIFF’S STATEMENT UPON REMAND  
FROM THE COURT OF APPEALS**

Pursuant to Industrial Commission Rule 702A, plaintiff Jane Smith hereby submits the following statement suggesting proceedings upon remand to comply with the recent decision by the Court of Appeals:

**Procedural History**

1. This case was first heard before Deputy Commissioner Robert Wayne Rideout, Jr. on January 29, 2008, in Charlotte. Deputy Commissioner Rideout heard testimony concerning Ms. Smith’s pre-injury employment, injury by accident, medical treatment, and subsequent employment. Following the hearing, the parties took the depositions of Dr. Paul Mason, Dr. Ewen Tseng, Dr. Laura Lacritz, Dr. Denton Watamull, and Dr. John Krumerman.

2. In an Opinion and Award issued October 19, 2008, Deputy Commissioner Rideout concluded that Ms. Smith suffered a compensable injury by accident, and is entitled to temporary total disability benefits for her time out of work, wage loss benefits due to her lower-paying job since being terminated, payment for permanent damage to her teeth, and payment of medical expenses. Fixing a clerical error in the first decision, Deputy Commissioner Rideout issued a substantively similar Amended Opinion and Award on November 12, 2008.

3. The Full Commission reviewed this matter on July 9, 2009, upon defendants’ appeal. A unanimous panel of the Full Commission issued a decision on September 30, 2009, affirming in full the Deputy Commissioner’s decision and similarly concluding that plaintiff

suffered a compensable injury by accident and was entitled to various benefits. These benefits include wage loss benefits under N.C. Gen. Stat. § 97-30 for the period of September 15, 2006, through December 31, 2007, and continuing thereafter. With regard to continuing wage loss benefits, the decision stated: "Defendants are responsible for additional benefits as will be determined by subsequent order." (Conclusion, ¶ 9.) This decision is attached as Exhibit A.

4. The Full Commission's Opinion and Award, however, contained an error in computation. While the Commission found that plaintiff's average weekly wage at the time of her injury was \$2400.54, and found that her 2007 average weekly wage was \$1403.25, the Commission incorrectly calculated the difference in the wages to be \$597.29 instead of \$997.29. This miscalculation improperly reduced the amount of wage loss benefits awarded to plaintiff, which are two-thirds of the difference in weekly wages.

5. Accordingly, plaintiff filed a motion to amend the Opinion and Award with the Full Commission on October 5, 2009, requesting that the Commission correct its computational error and properly calculate plaintiff's wage loss benefits. Defendants concurred with plaintiff's motion to amend. Plaintiff's motion is attached as Exhibit B.

6. The Commission did not rule on plaintiff's motion to amend. Although plaintiff's motion to amend was still pending, defendants filed a notice of appeal on October 26, 2009, appealing the Full Commission's September 30, 2009 Opinion and Award.

7. On October 27, 2009, defendants filed a letter with Commissioner Christopher Scott, requesting that the Full Commission hold plaintiff's motion to amend in abeyance, pending the outcome of defendants' appeal to this Court. The Commission did not issue any order in response to defendant's letter.

8. On March 1, 2011, the Court of Appeals issued an opinion dismissing defendants' appeal as interlocutory. *Smith v. PBB Corporation*, 2011 N.C. App. LEXIS 301 (2011). The Court held that the appeal was interlocutory because (1) the Commission reserved the issue of the amount of continuing wage loss benefits for a future order; and (2) there was a pending motion to amend by plaintiff regarding the amount of wage loss benefits. The opinion is attached as Exhibit C.

9. Defendants did not seek rehearing or petition the Supreme Court for discretionary review. Accordingly, the Court of Appeals issued its mandate on March 21, 2011.

#### **Suggested Proceedings Upon Remand**

10. Pursuant to the opinion from the Court of Appeals, plaintiff respectfully suggests that the Commission take the following actions. First, the Commission should grant plaintiff's motion to amend the September 30, 2009 Opinion and Award, which requested that the Commission correct its computational error and properly calculate plaintiff's wage loss benefits. Defendants concurred with plaintiff's motion to amend.

11. Second, the Commission should reopen the record for evidence regarding plaintiff's § 97-30 wage loss benefits for the period following December 31, 2007. Specifically, the Commission should admit into the record evidence regarding plaintiff's wages since that time. Attached as Exhibit D are plaintiff's W-2 forms for the years 2008, 2009, and 2010, which fully document her wages, and thus her wage loss.

12. If the Commission believes that any other evidence is necessary to resolve the amount of wage loss benefits plaintiff is entitled to, plaintiff respectfully suggests that the Full Commission remand this case to a Deputy Commissioner to allow for the introduction of evidence on this issue. The Full Commission can direct the Deputy Commissioner to decide the

issue, or it can make the decision in the first instance based on the evidence produced before the Deputy Commissioner.

This 4<sup>th</sup> day of May, 2011.

---

Valerie A. Johnson  
N.C. State Bar No. 21125  
PATTERSON HARKAVY LLP  
100 Europa Drive, Suite 250  
Chapel Hill, North Carolina 27517  
Telephone: (919) 942-5200  
Fax Number: (919) 942-5256

*Counsel for Plaintiff*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon Defendants by email and by depositing a copy of same in the United States mail, postage prepaid and properly addressed as follows:

Mr. John R. Doe  
Doe, Jones, & Brown, PLLC  
Post Office Box 123  
Anywhere, NC 12345

[jdoe@doesmithlaw.com](mailto:jdoe@doesmithlaw.com)

This the 4<sup>th</sup> day of May, 2011.

---

Valerie A. Johnson



Patterson | Harkavy  
LLP

Leto Copeley  
Burton Craige  
Narendra K. Ghosh  
Ann E. Groninger  
Jonathan R. Harkavy  
Valerie A. Johnson  
Michael G. Okun  
Henry N. Patterson, Jr.

*Of Counsel:*  
Nahomi Harkavy

ATTORNEYS AT LAW

Raleigh • Chapel Hill • Greensboro • Charlotte

July 8, 2009

VIA E-MAIL (Danny.McDonald@ic.nc.gov)

Reply to Chapel Hill

VALERIE A. JOHNSON  
Board Certified Specialist in  
Workers' Compensation

VJohnson@pathlaw.com

Mr. Danny L. McDonald  
Commissioner, Panel Chair  
North Carolina Industrial Commission  
4336 Mail Service Center  
Raleigh, NC 27699-4336

Re: Jane Smith v PBB Corporation and USA Insurance.  
N. C. Industrial Commission File No. 00000  
**Oral Argument: Thursday, April 9, 2009 – 1:30 p.m.**

Dear Mr. McDonald:

The oral argument in this case is scheduled for 1:30 p.m. Thursday, April 9, 2009. While the claim involves disfigurement and scarring, plaintiff has not appealed the award of the Deputy Commissioner. Rule 701(9) indicates that the plaintiff shall appear when appealing the amount of a disfigurement award, and so plaintiff has not made plans to appear. Plaintiff resides in Texas and photographs have been submitted to the Commission of the plaintiff's scarring as well as her appearance pre-accident.

Should the Commission require a viewing, plaintiff respectfully requests that the case either be continued for her travel to North Carolina from Texas or that the Commission make provisions for video conferencing in Texas.

Thank you.

Sincerely yours,

Valerie A. Johnson

VAJ/ldt

cc: John R. Doe (doe@doejonesbrown.com)

## NORTH CAROLINA INDUSTRIAL COMMISSION

**I.C. File No. 00000, JANE W. SMITH, Employee/Plaintiff v ABC CORPORATION,  
Employer, USA INSURANCE, Carrier/Defendants**

### MOTION FOR ATTORNEYS' FEES

Following the Full Commission's Opinion and Award of August 17, 2010, in favor of the plaintiff, Jane Smith, defendants appealed to the Court of Appeals. Plaintiff has prevailed in full on the appeal, and hereby moves the Commission for the remaining benefits due her, specifically attorneys' fees. Defendants have already forwarded payment for the G.S. § 97-88 fees. In support of this motion, plaintiff shows as follows:

1. Plaintiff's claim for a hand injury was accepted by Form 60 and compensation was paid. Defendants later denied compensability for the aggravation of plaintiff's depression by the work-related injury, and compensation ceased. Plaintiff requested a hearing which was held before Deputy Commissioner Myra L. Griffin, on June 18, 2009.

2. On January 28, 2010, Deputy Commissioner Griffin issued an Opinion and Award in favor of plaintiff, awarding continuing temporary total disability and medical treatment, including for the psychiatric treatment for depression. Defendants appealed.

3. A unanimous panel of the Full Commission issued a decision on August 17, 2010, affirming in full the Deputy Commissioner's decision. This decision is attached as Exhibit A.

4. In the decision, the Full Commission correctly concluded that plaintiff is entitled to attorneys' fees under N.C. Gen. Stat. § 97-88 for successfully defending the appeal. (Ex. A, p. 9, ¶ 4.) Accordingly, the defendants were ordered to "pay plaintiff's counsel a reasonable attorneys' fee, pursuant to N.C. Gen. Stat. § 97-88 and to be taxed as a cost to defendants, in an amount to be determined by the Commission. Plaintiff's counsel is directed to submit to the commission an affidavit as to her fees within thirty (30) days of the entry of this Opinion and Award."

5. Defendants appealed the Full Commission decision on September 2, 2010. The Commission's Award was held in abeyance until resolution of the appeal. Plaintiff defended the appeal without oral argument before the Court of Appeals, on March 7, 2011.

6. On June 7, 2011, a unanimous panel of the Court of Appeals affirmed the Commission's decision. The Court's Opinion is attached as Exhibit B.

7. As the Commission concluded in its August 17, 2010 Opinion and Award, plaintiff is entitled to an award of attorneys' fees under N.C. Gen. Stat. § 97-88. This award should include fees for services defending the appeal to the Full Commission and for defending the appeal to the Court of Appeals. *See Estes v. N.C. State University*, 117 N.C. App. 126, 128, 449 S.E.2d 762, 764 (1994) (holding that under § 97-88, "the Commission may

award plaintiff the costs, including attorney's fees, of defending those appeals to the full Commission and to this Court").

8. Attached as Exhibit C is an affidavit in support of the payment of fess and an itemized bill detailing the services and hours expended on the appeal of this action through August 11, 2011. The bill for services totals \$10,140.00.

9. On August 19, 2011, defendants forwarded payment for G.S. § 97-88 fees. Plaintiff has agreed to accept this amount in full payment. The amount is being held at this time pending approval.

WHEREFORE, plaintiff prays that defendants be ordered to pay attorneys' fees to Copeley Johnson & Groninger PLLC in the amount of \$9,000.00, already forwarded to plaintiff's attorney.

This the \_\_\_ day of September, 2011.

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Valerie A. Johnson, N.C. Bar No. 21125  
Copeley Johnson & Groninger PLLC  
100 Europa Drive, Suite 250  
Chapel Hill, North Carolina 27517  
Telephone: (919) 240-4054  
Fax Number: (919) 942-5256

*Counsel for Plaintiff*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing document was served upon Defendants via e-mail and by depositing a copy of same in the United States mail, postage prepaid and properly addressed as follows:

Mr. John Doe  
Doe, Jones & Brown, PLLC  
Post Office Box 123  
Anywhere, NC 12345  
jdoe@doejonesbrown.com

This \_\_\_ day of September, 2011.

---

Valerie A. Johnson

## NORTH CAROLINA INDUSTRIAL COMMISSION

**I.C. No. 00000, JANE SMITH, Employee, Plaintiff v. THE XYZ COMPANIES, Employer; USA INSURANCE COMPANY, Carrier; Defendants.**

### MOTION FOR RECONSIDERATION

Following the Deputy Commissioner's Opinion and Award in favor of the plaintiff, Jane Smith, defendants appealed. The Full Commission issued its Opinion and Award on August 9, 2011, affirming the Opinion below. Plaintiff prevailed on plaintiff's continuing entitlement to temporary total disability compensation, medical treatment, and vocational rehabilitation. The Opinion and Award did not address plaintiff's entitlement to fees pursuant to N.C. Gen. Stat. § 97-88 for successfully defending the appeal. Plaintiff therefore moves the Commission to reconsider the Opinion, and to award attorneys' fees. In support of the motion, plaintiff shows the following:

1. Plaintiff, a ten-year employee of defendant XYZ, experienced an injury to her arm while working at defendant-employer's distribution center. The claim was accepted after being initially denied. Defendant then filed a request for hearing, asking that compensation be terminated. The hearing was held before Deputy Commissioner Houser on May 20, 2010.

2. On January 25, 2011, Deputy Commissioner Houser issued an Opinion and Award, finding defendants responsible for the continued payment of temporary total disability benefits, awarding the payment of medical benefits, and awarding the payment of vocational rehabilitation services. Defendants appealed.

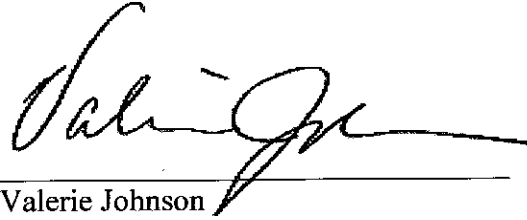
3. A unanimous panel of the Full Commission issued a decision on August 9, 2011, affirming the Deputy Commissioner's decision. This decision is attached as Exhibit A.

4. Plaintiff requested that the Full Commission award attorneys' fees under N.C. Gen. Stat. § 97-88 for successfully defending the appeal. In this action, defendant requested the hearing and requiring the taking of eight depositions. Once the decision was issued in plaintiff's favor, defendants appealed, and the Opinion affirming the Deputy Commissioner was substantially similar. *See Estes v. N.C. State University*, 117 N.C. App. 126, 128, 449 S.E.2d 726 (1994) (holding that the Commission may award plaintiff's costs including attorneys fees, of defending the appeals).

5. Plaintiff's itemized statement of services and hours expended on the appeal and an affidavit in support of the payment of fee will be submitted once the appeal time has expired.

Plaintiff respectfully requests that the Opinion and Award of the Full Commission be amended to award the payment of attorneys' fees pursuant to N.C. Gen. Stat. § 97-88 to Copeley Johnson & Groninger PLLC.

This the 19<sup>th</sup> day of August, 2011.



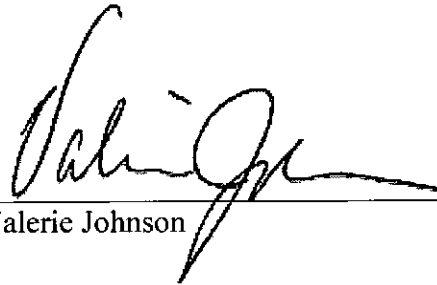
Valerie Johnson  
NC State Bar No. 21125  
Copeley Johnson & Groninger, PLLC  
100 Europa Drive, Suite 250  
Chapel Hill, NC 27517  
(919) 240-4054  
Fax: (919) 942-5256  
Valerie@cjglawfirm.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Motion for Reconsideration was provided to the defendants by emailing and mailing a copy of same to the attorney of record of the defendants, as follows:

Mr. John R. Doe  
Doe, Jones, & Brown, PLLC  
123 Anywhere Street  
Anywhere, NC, 12345  
jdoe@doejonesbrown.com

on this 19th day of August, 2011.



Valerie Johnson

Patterson | Harkavy  
LLP

Leto Copeley  
Burton Craige  
Narendra K. Ghosh  
Ann E. Groninger  
Jonathan R. Harkavy  
Valerie A. Johnson  
Michael G. Okun  
Henry N. Patterson, Jr.

ATTORNEYS AT LAW

Raleigh • Chapel Hill • Greensboro • Charlotte

Reply to Chapel Hill

VALERIE A. JOHNSON  
Board Certified Specialist in  
Workers' Compensation

VJohnson@pathlaw.com

June 24, 2009

*Of Counsel:*  
Nahomi Harkavy

Via E-Mail (Traci.Waldron@ic.nc.gov)

Ms. Traci Waldron  
Office of the Docket Supervisor  
North Carolina Industrial Commission  
4336 Mail Service Center  
Raleigh, NC 27699-4336

Re: Jane Smith vs. XYZ Companies and USA Insurance.  
NCIC File No. 00000

Dear Ms. Waldron:

On September 5, 2008, we mailed a letter and Stipulation to Deputy Commissioner Philip Baddour, copies of which are attached. In that letter we attached the Form 22 which was referred to in the prehearing agreement. A copy of the Form 22 is attached. The Form 22 was not included in the Appendix to the Transcript of the Evidence that was received by the parties for the appeal.

We ask that the Form 22 be included as pages 148-150 of the Appendix to the Transcript of the Evidence for the hearing on March 17, 2008.

Please contact me if you have any questions. Thank you.

Yours sincerely,

Valerie A. Johnson

VAJ/ldt  
cc: Mr. John Doe (via e-mail)

**NORTH CAROLINA INDUSTRIAL COMMISSION**

**I.C. File No:** \_\_\_\_\_, **Employee-Plaintiff v.**  
\_\_\_\_\_, **Employer, and** \_\_\_\_\_, **Servicing Agent;**  
**Defendants.**

**ORDER BY PAMELA T. YOUNG, CHAIR.**

**FILED: JUL 01 2009**

Defendants have appealed to the Full Commission from the Opinion and Award of Deputy Commissioner Philip Baddour filed on February 12, 2009. This matter comes before the undersigned on plaintiff's motion to amend the record on appeal.

**APPEARANCES**

**Plaintiff:** Patterson Harkavy LLP, Attorneys, Chapel Hill, N.C.;  
Valerie A. Johnson, appearing.

**Defendants:**

\*\*\*\*\*

Plaintiff moves to amend the Record on Appeal before the Full Commission to include the Form 22 that was not included in the Transcript of Evidence as subsequently forwarded to the parties. The undersigned finds that plaintiff has shown good cause to amend the Record on Appeal as described in plaintiff's motion.

It is therefore ORDERED that Plaintiff's motion to amend the record on appeal should be, and hereby is, GRANTED.

THIS the 1 day of July 2009.

  
\_\_\_\_\_  
PAMELA T. YOUNG  
CHAIR

**NORTH CAROLINA INDUSTRIAL COMMISSION**

**No. 00000—JOHN DAVID SMITH , Employee/Plaintiff, v. ABC COMPANIES,  
Employer, self-insured (XYZ Services, Servicing Agent) Defendants.**

**MOTION FOR EXTENSION OF TIME TO  
COMPLETE SUPPLEMENTAL DISCOVERY**

NOW COMES the plaintiff and moves the Industrial Commission for an order extending the period of time to complete the supplemental discovery called for the by the Commission's June 15, 2009 Opinion and Award in this case.

Plaintiff's motion for extension of time is based on the following:

1. On June 15, 2009, the Full Commission issued an Opinion and Award in this case. (The Opinion and Award is attached as Exhibit 1.) As part of the Award, the Commission reopened the record to allow for the introduction of new evidence regarding the proper calculation of plaintiff's average weekly wage.

2. The Award specified that if the parties could not reach a stipulation regarding plaintiff's average weekly wage, additional discovery would be authorized, to be completed within a period of 45 days. Thus, the deadline to complete the supplemental discovery is July 31, 2009.

3. The parties seek to conduct additional depositions as part of this discovery, but have not been able to schedule the depositions yet. Therefore, plaintiff requests that the period for additional discovery be extended for 30 days, until August 31, 2009.

4. Defendant's counsel has consented to this request.

Accordingly, plaintiff respectfully requests that the Commission extend the period of time to the complete the supplemental discovery by 30 days, until August 31, 2009.

This July 10, 2009.

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Valerie A. Johnson  
State Bar No. 21125  
Attorney for Plaintiff  
Patterson Harkavy LLP  
100 Europa Drive, Suite 250  
Chapel Hill, NC 27517  
Telephone: (919) 942-5200  
Facsimilie: (919) 942-5256



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing document was served upon counsel for defendants via e-mail and by depositing a copy of the same in the United States mail, postage prepaid and properly addressed as follows:

Mr. John Doe  
Doe, Jones & Brown, PLLC  
Post Office Box 123  
Anywhere, NC 12345  
jdoe@doejonesbrown.com

This July 10, 2009.

\_\_\_\_\_  
Valerie A. Johnson

Patterson | Harkavy  
LLP

Leto Copeley  
Burton Craige  
Ann E. Groninger  
Jonathan R. Harkavy  
Valerie A. Johnson  
Jessica E. Leaven  
Michael G. Okun  
Henry N. Patterson, Jr.

ATTORNEYS AT LAW

Raleigh • Chapel Hill • Greensboro

Reply to Chapel Hill

VALERIE A. JOHNSON  
Board Certified Specialist in  
Workers' Compensation

VJohnson@pathlaw.com

October 24, 2007

*Of Counsel:*  
Nahomi Harkavy

Via US Mail and  
E-Mail addressed to Mr. James Vaughan (vaughanj@ind.commerce.state.nc.us)

Mr. James Vaughan  
Agency Legal Specialist to Commissioner Bernadine S. Ballance  
North Carolina Industrial Commission  
4336 Mail Service Center  
Raleigh, NC 27699-4336

Re: James Smith v. ABC Companies  
NCIC File No. 00000

Dear Mr. Vaughan:

I am enclosing in triplicate Plaintiff's Memorandum of Additional Authority. This matter is scheduled for hearing before the Full Commission on Friday, October 26, 2007.

Thank you.

Sincerely,

Valerie A. Johnson

JEL/ldt

cc: Mr. John Doe (via e-mail [jdoe@doejonesbrown.com](mailto:jdoe@doejonesbrown.com) and US Mail) (with enclosure)

**NORTH CAROLINA INDUSTRIAL COMMISSION**

**I.C. FILE NO. 00000, JAMES SMITH , Employee-Plaintiff vs. ABC COMPANIES,  
Employer-Defendant; USA INSURANCE, Carrier-Defendant.**

**PLAINTIFF'S MEMORANDUM OF ADDITIONAL AUTHORITY**

The following additional authorities apply to the issue of whether the contract of employment was formed in North Carolina:

Washington v. Traffic Markings, Inc., et al., 2007 N.C. App. LEXIS 785, 643 S.E.2d 44 (April 17, 2007)

Hill v. Eagle Motor Lines et al., 645 S.E.2d 424 (S.C. 2007)

49 C.F.R. § 382.107 (2007)

Restatement (Second) of Contracts § 64 (1981)

This the 24<sup>th</sup> day of October, 2007.

---

Valerie A. Johnson (N.C. State Bar No. 21125)  
Patterson Harkavy LLP  
100 Europa Drive, Suite 250  
Chapel Hill, NC 27517  
Telephone: (919) 942-5200  
Fax: (919) 942-5256

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Plaintiff's Memorandum of Additional Authority was provided to the Industrial Commission by e-mail addressed to Mr. James Vaughan, Agency Legal Specialist to Commissioner Bernadine S. Ballance ([vaughanj@ind.commerce.state.nc.us](mailto:vaughanj@ind.commerce.state.nc.us)) and by US Mail, in triplicate, addressed to her at 4336 Mail Service Center, Raleigh, NC 27699-4336; and to the defendants through their attorney of record, via e-mail and US Mail, addressed as follows:

Mr. John Doe  
Doe, Jones & Brown, PLLC  
Post Office Box 123  
Anywhere, NC 12345  
[jdoe@doejonesbrown.com](mailto:jdoe@doejonesbrown.com)

This 24<sup>th</sup> day of October, 2007.

---

Valerie A. Johnson

**NORTH CAROLINA INDUSTRIAL COMMISSION**

**I.C. File No. 00000; JANE W. SMITH, Employee/Plaintiff, vs. XYZ COMPANIES, Employer, and USA INSURANCE, Insurer/Defendants.**

**PLAINTIFF'S MOTION TO ALLOW ADDITIONAL EVIDENCE**

Plaintiff Jane W. Smith through her undersigned counsel hereby moves the Industrial Commission to reopen the record in this claim to allow the admission of the letter from Bernard F. Bailey, M.D., dated January 30, 2008, consisting of one page, which is attached hereto as Exhibit A. In the alternative, plaintiff moves to redepose Dr. Bailey for the purpose of obtaining his testimony on the opinions expressed in Exhibit A.

This, the 30th day of May, 2008.

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Valerie A. Johnson, N.C. State Bar No. 21125  
Attorney for Plaintiff  
Patterson Harkavy LLP  
100 Europa Drive, Suite 250  
Chapel Hill, NC 27517  
Tel: 919-942-5200  
Fax: 919-942-5256

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Plaintiff's Motion to Allow Additional Evidence was provided to the defendants through its attorney of record, via e-mail (jdoe@doejonesbrown.com), and by U.S. Mail, postage prepaid, as follows:

Mr. John Doe  
Doe, Jones & Brown, PLLC  
Post Office Box 123  
Anywhere, NC 12345

This 30th day of May, 2008.

---

Valerie A. Johnson

Leto Copeley  
Burton Craige  
Narendra K. Ghosh  
Ann E. Groninger  
Jonathan R. Harkavy  
Valerie A. Johnson  
Jessica E. Leaven  
Michael G. Okun  
Henry N. Patterson, Jr.

Patterson | Harkavy  
LLP

ATTORNEYS AT LAW

Raleigh • Chapel Hill • Greensboro • Charlotte

March 30, 2009

Reply to Chapel Hill:

VALERIE A. JOHNSON  
Board Certified Specialist in  
Workers' Compensation

vjohnson@pathlaw.com

*Of Counsel:*  
Nahomi Harkavy

**VIA EMAIL ([Traci.Waldron@ic.nc.gov](mailto:Traci.Waldron@ic.nc.gov))**

Ms. Traci Waldron  
Office of the Docket Supervisor  
North Carolina Industrial Commission  
4336 Mail Service Center  
Raleigh, NC 27699-4336

RE: Jay Smith v Town of Anywhere, N.C. League of Municipalities and BCU  
NCIC File No. 00000

Dear Ms. Waldron:

A Stipulation was entered into by the parties to enter into evidence the letter signed by Bernard F. Bailey, M.D., dated August 7, 2008. A copy of the Stipulation and letter is attached. On October 17, 2008, we e-mailed the Stipulation and letter to Deputy Commissioner Taylor. A copy of the letter of October 17, 2008, is also attached. The Stipulation and letter of Dr. Bailey was not included in the Appendix to the Transcript of the Evidence that was received by the parties for the appeal.

We ask that the Stipulation and letter from Dr. Bailey be included as pages 330-332 of the Appendix to the Transcript of the Evidence.

Please contact me if you have any questions. Thank you.

Sincerely yours,

Valerie A. Johnson

VAJ/ldt  
Enclosures  
cc: John R. Doe (via e-mail with enclosures)

**NORTH CAROLINA INDUSTRIAL COMMISSION**

**I.C. NO.** , **Employee, Plaintiff v. TOWN OF**  
**and/or UNIVERSITY, Employer, N.C. LEAGUE OF MUNICIPALITIES**  
**and/or , Carrier, Defendants.**

**ORDER by PAMELA YOUNG, Chair.**

**Filed: APR 24 2009**

Defendants have appealed to the Full Commission from the Opinion and Award of Deputy Commissioner Wanda Blanche Taylor filed on December 15, 2008. This matter comes before the undersigned on Plaintiff's motion to amend the record on appeal.

**APPEARANCES**

**Plaintiff: Patterson Harkavy, Chapel Hill, N.C.; Valerie A. Johnson, Counsel of Record.**

**Defendants:**

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Plaintiff moves to amend the Record on Appeal before the Full Commission to include a letter from Dr. that was stipulated as evidence by the parties before Deputy Commissioner Taylor but was not included in the Transcript of Evidence as subsequently forwarded to the parties. The undersigned finds that Plaintiff has shown good cause to amend the Record on Appeal as described in Plaintiff's Motion.

It is therefore ORDERED that Plaintiff's motion to amend the record on appeal should be, and hereby is, GRANTED.



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This the 24 day of April, 2009.

  
PAMELA YOUNG  
CHAIR