

BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

State of West Virginia ex rel. Lola Crist, Petitioner

vs.) No. 051511

Gregory Burton, Commissioner,
Workers' Compensation Commission, Respondent

AND

State of West Virginia ex rel. Kathy Sweet and Diana Dickerson, Petitioners

vs.) No. 051573

Gregory Burton, Commissioner, Workers'
Compensation Commission, Respondent

AND

State of West Virginia ex rel. Georgette Carte, Petitioner

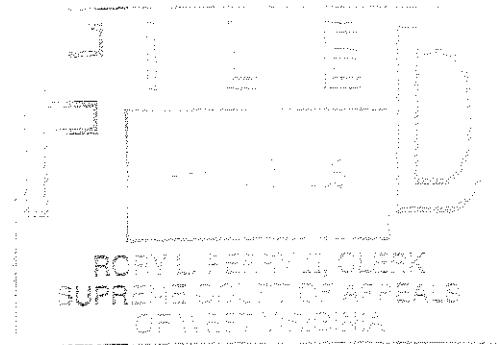
vs.) No. 051668

Gregory Burton, Commissioner, Workers'
Compensation Commission, Respondent

RESPONSE OF CLAIMANTS CARTE, GRUBB AND JENKINS
TO THE MOTION OF THE RESPONDENT TO DISMISS

This is the response of the petitioners Carte, Grubb and Jenkins to the motion of the respondent to dismiss, and for the reasons set forth below, the claimants oppose the dismissal at this time, and in support thereof state as follows:

1. The respondent has filed in support of its motion a copy of a letter sent to Brickstreet directing it to pay these claims and disregard the policy under which the claims were not paid.
2. The letter should be formalized as an informational letter of the Insurance Commissioner, binding on Brickstreet, its successors and assigns, and future



insurers of workers compensation claims in West Virginia or as a part of the Rules and Regulations of the Commissioner, in order to insure that this dispute does not arise again.

3. The claimants Carte, Grubb and Jenkins included as a part of their response to the motion of the Attorney General to intervene a motion to amend the petition to allow petitioners to assert a claim that the Respondent is also violating West Virginia Code 23-5-9g. This section provides:

(g) The decision of the workers' compensation office of judges regarding any objections to a decision of the workers' compensation commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, is **final and benefits shall be paid or denied** in accordance with the decision **unless the decision is subsequently appealed and reversed** in accordance with the procedures set forth in this article.

4. The Commission's Regulation interprets this language as follows:

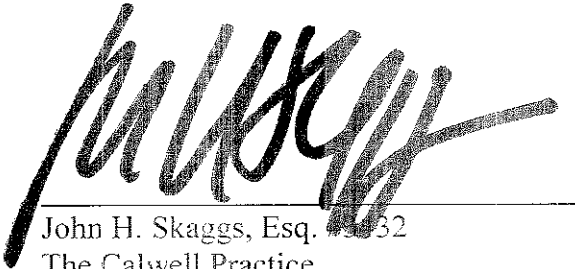
Stay Pending Appeal. Pursuant to West Virginia Code §23-5-9(g), the Commission or private carrier shall not be required to implement an Order from the Office of Judges until either 1) the time period to appeal the Order has expired without appeal; or 2) the matter has been resolved by the Board of Review, whichever is later. C.S.R. 85-1-17.3.

5. This statutory language, like the termination language, is clear and unambiguous and is being applied in a manner inconsistent with its plain and clear language. It in fact requires two events to occur before benefits cannot be paid pursuant to a decision favorable to the claimant: first, appeal and, secondly, a reversal in accordance with the appeal procedures set forth in this article.
6. The letter directive to Brickstreet does not address this issue, which in large part was the reasons for the filing of the writs in the first instance. The Division

terminated payments to widow's without regard to the terms of West Virginia Code 23-5-9g.

7. The claimants have not received a ruling on the motion to amend.
8. The claimants have not as of this date received payment for unpaid back benefits and the current month's benefits, as may be appropriate, and have not received any letter or other order implementing the Commissioner's directive.
9. The court should maintain jurisdiction of these cases to consider any petitions for attorneys fees which may be paid.

Wherefore, the claimants Carte, Grubb and Jenkins oppose the motion to dismiss, and pray that dismissal be deferred pending final payment and resolution of the remaining matters set forth above.



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Petitioners,
By Counsel

CERTIFICATE OF SERVICE

I, John Skaggs, do hereby certify that I have served the foregoing
**RESPONSE OF CLAIMANTS CARTE, GRUBB, AND JENKINS TO THE MOTION OF
THE RESPONDENT TO DISMISS** upon the parties to this matter by depositing true
and correct copies in the regular United States Mail, postage prepaid, and
addressed as follows on this 25TH day of April, 2006.

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Workers' Compensation Division
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The Honorable Jane L. Cline
West Virginia Insurance Commissioner
Office of the Insurance Commission
P.O. Box 50540
Charleston, WV 25305-0540

West Virginia Workers' Compensation Commission
and/or BrickStreet Mutual Insurance Company
4700 MacCorkle Avenue, SE
Charleston, WV 25304

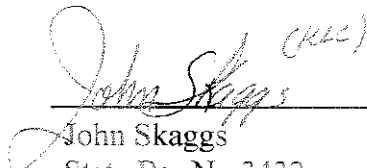
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