

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STEVEN SESSUM

NO. 2016 CW 1423

VERSUS

QUALITY EXTERIOR SERVICES,
LLC AND BRIDGEFIELD CASUALTY
INSURANCE COMPANY

DECEMBER 5, 2016


In Re: Steven Sessum, applying for supervisory writs, Office
of Workers' Compensation, District 06, No. 15-06130.

BEFORE: WHIPPLE, C.J., GUIDRY AND McCLENDON, JJ.

WRIT GRANTED IN PART AND DENIED IN PART. The September 21, 2016 judgment of the Office of Workers' Compensation is reversed in part as to the granting of defendants' exception of prematurity. The exception of prematurity, a dilatory exception, must be filed either prior to or in the answer, and is waived unless properly pleaded. La. Code Civ. P. arts. 926, 928. These requirements are applicable to proceedings before the Office of Workers' Compensation. **Wilson v. St. Mary Community Action**, 2000-2106 (La. App. 1st Cir. 12/28/01), 803 So.2d 1106, 1111-1112; **Louisiana Commerce & Trade Association - SIF v. Cruz**, 2009-2014 (La. App. 1st Cir. 5/7/10), 38 So.3d 1041, 1045, n. 3. The exception of prematurity filed by defendants herein was not filed either prior to or in the answer, and therefore, was waived. Moreover, the parties herein entered into a stipulation that the denial of plaintiff's lumbar surgery was based on the denial of compensability. La. R.S. 23:1203.1(J) and (K) are applicable to disputes as to whether the recommended care, services or treatment are in accordance with the medical treatment schedule, not disputes based upon compensability. Accordingly, the issue of prematurity raised by defendants in the exception was inapplicable under the facts of this case. The Office of Workers' Compensation was manifestly erroneous in its granting of the exception of prematurity. The exception of prematurity filed by defendants is denied. This writ application is denied in all other respects.

VGW
JMG
PMc

COURT OF APPEAL, FIRST CIRCUIT


DEPUTY CLERK OF COURT
FOR THE COURT