

APPENDIX

1

United States Court of Appeals
for the Fifth Circuit



No. 21-50337

A True Copy
Certified order issued Oct 20, 2021

John W. Cayce
Clerk, U.S. Court of Appeals, Fifth Cir

LINDA BALDWIN,

Plaintiff—Appellant,

versus

ZURICH AMERICAN INSURANCE COMPANY,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:18-CV-996

Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that Appellee's opposed motion to dismiss appeal for lack of jurisdiction and frivolousness is GRANTED.

IT IS FURTHER ORDERED that Appellee's opposed motion for sanctions against the Appellant, Linda Baldwin, barring her from any further appeals in this cause without leave of court is GRANTED.

IT IS FURTHER ORDERED that Appellee's alternative opposed motion for extension of time to file brief until 30 days after the order denying the motion to dismiss is DENIED AS MOOT.



Certified as a true copy and issued

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

November 12, 2021

Ms. Jeannette Clack
Western District of Texas, Austin
United States District Court
501 W. 5th Street
Austin, TX 78701-0000

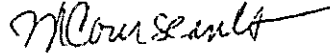
No. 21-50337 Baldwin v. Zurich American Insurance
USDC No. 1:18-CV-996

Dear Ms. Clack,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By:
Melissa B. Courseault, Deputy Clerk
504-310-7701

cc:
Ms. Linda Baldwin
Mr. Blair Dancy

APPENDIX

2

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

November 16, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 21-50337 Baldwin v. Zurich American Insurance
USDC No. 1:18-CV-996

The court has denied the motion to file motion for reconsideration out of time in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Melissa B. Courseault, Deputy Clerk
504-310-7701

Ms. Linda Baldwin
Mr. Blair Dancy

APPENDIX

3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

LINDA BALDWIN,

Plaintiff,

v.

ZURICH AMERICAN INSURANCE CO.,

Defendant.

§
§
§
§
§
§
§
§

1:17-CV-149-RP

ORDER

Before the Court are Plaintiff Linda Baldwin's ("Baldwin") Motion For Relief Under Rule 60 and Motion to Strike Under Rule 12(f), (Dkt. 42), and Motion for Appointment of Counsel and Declaration of Good Faith Efforts to Obtain Counsel, (Dkt. 45).

The Court has already dismissed this action for lack of subject matter jurisdiction because Baldwin's claims fall within the exclusive jurisdiction of the Texas Workers' Compensation Division. (Dkt. 31, at 4-8). Baldwin then filed a motion for reconsideration asking the Court to exercise supplemental jurisdiction over her claims, (Dkt. 32), which the Court denied, (Dkt. 41). Baldwin now asks the Court to again reconsider its decision because she believes the Court has diversity jurisdiction over this action. (Second Mot. Reconsider, Dkt. 42, at 2-3). Nothing in Baldwin's motion alters the Court's determination that it lacks jurisdiction over her claims because the Texas Workers' Compensation Division has exclusive jurisdiction over them. (Dkt. 31, at 4-8). Baldwin's motion for reconsideration is therefore denied.

Baldwin also asks the Court to appoint counsel to represent her. (Mot. Appoint, Dkt. 45). Although 28 U.S.C. § 1915(e) authorizes appointment of an attorney to represent an indigent party, there is no right to the automatic appointment of counsel in civil cases. *Salmon v. Corpus Christi ISD*, 911 F.2d 1165, 1166 (5th Cir. 1990). A court is not required to appoint counsel for an indigent

plaintiff absent exceptional circumstances. *Ulmer v. Chancellor*, 691 F.2d 209, 212 (5th Cir. 1982).

Whether exceptional circumstances exist depends on "the type and complexity of the case and the abilities of the individual pursuing that case." *Cupit v. Jones*, 835 F.2d 82, 86 (5th Cir. 1987). Here, the Court has determined that it lacks subject matter jurisdiction over Baldwin's claims and therefore finds no justification to appoint counsel to represent her.

For these reasons, **IT IS ORDERED** that Baldwin's motion for reconsideration, (Dkt. 42), and motion for appointment of counsel, (Dkt. 45), are each **DENIED**.

SIGNED on May 11, 2018.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

APPENDIX

4

United States Court of Appeals
for the Fifth Circuit

No. 20-50284

LINDA BALDWIN,

Plaintiff—Appellant,

versus

OFFICE OF INJURED EMPLOYEE COUNSEL,

Defendant—Appellee,

CONSOLIDATED WITH

No. 20-50293

LINDA BALDWIN,

Plaintiff—Appellant,

versus

ZURICH AMERICAN INSURANCE COMPANY,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas

20-50293

USDC No. 1:18-CV-996
USDC No. 1:19-CV-454

Before CLEMENT, ELROD, and HAYNES, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that appellee's opposed motion to dismiss appeal
No. 20-50293 for lack of jurisdiction is GRANTED.



Certified as a true copy and issued
as the mandate on Dec 11, 2020

Attest: *John W. Cayce*
Clerk, U.S. Court of Appeals, Fifth Circuit

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

December 11, 2020

Ms. Jeannette Clack
Western District of Texas, Austin
United States District Court
501 W. 5th Street
Austin, TX 78701-0000

No. 20-50293 Linda Baldwin v. Zurich American Insurance
Co.
USDC No. 1:18-CV-996

Dear Ms. Clack,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

Melissa Mattingly

By: _____
Melissa V. Mattingly, Deputy Clerk
504-310-7719

cc w/encl:
Ms. Linda Baldwin
Mr. Blair Dancy

EXHIBIT

A

FLAHIVE, OGDEN & LATSON

ATTORNEYS AT LAW, P.C.

CHUCK C. FINCH
BOARD CERTIFIED - WORKERS' COMPENSATION
TEXAS BOARD OF LEGAL SPECIALIZATION

P. O. Box 201329
Austin, TX 78710
Direct: 512-476-2158
Fax: 512-476-2153

August 19, 2016

COPY

Linda Baldwin
3651 N Rancho Drive Apt 107
Las Vegas, NV 89130

Priority Mail Delivery
Confirmation No.: 9114 9014 9645 0573 5558 61

USPS TRACKING # 9114 9014 9645 0573 5558 61
& CUSTOMER RECEIPT
For Tracking or inquiries go to USPS.com
or call 1-800-722-1811.

RE: CONTESTED CASE HEARING : 10/19/2016; Austin; 2:00PM

Carrier Name : Zurich American Insurance Company
Carrier Claim No. : 2230263023
DWC No. : 12185641
Claimant : Linda Baldwin
D/O/I : 08/18/2006
Employer : Extended Stay, Inc. - Spartanburg
FOL Case No. : 261671

Dear Ms. Baldwin:

Enclosed as carrier's supplemental exchange of information please find a copy of the following: **DWC Claim Notes for DWC No. 12185641; DWC Claim Notes for DWC No. 11148351, and DWC Claim Notes for DWC No.08103562.**

If you have not received all of the listed items, please advise. The carrier incorporates, by reference, all previous exchanges by either party. The enclosed information is supplied to you in an effort to resolve this claim. If, based on your review of this information, you believe the Carrier's position on any issue in dispute is correct, please advise and we will prepare an agreement form for your review and signature.

Sincerely,

Marilyn Anderson

Marilyn Anderson
Legal Assistant to Charles C. Finch

Enclosure

cc: Natalie Jackson
Zurich American Insurance Company
P. O. Box 968023
Schaumburg, IL 60196

Document Name: untitled

INQUIRY COMPLETE	TEXAS COMPASS	(PROD)	08/15/16
CCHI EC01P04	INJURY INFORMATION - IAIABC 148/TWCC 1		10:46:33

12185641-AU00-TX00-021012	LINDA BALDWIN		263-27-2237

DATE OF INJURY: 08/18/06	DATE LAST WORKED:
DATE EMPLOYER NOTIFIED:	DATE DISABILITY BEGAN: 08/19/06
NATURE OF INJURY: 80 ALL OTHER CUMULATIVE INJURIES, NOC	
BODY PART:	
EMPLOYER PREMISES:	INJURY SITE:

ACCIDENT DESCRIPTION:

:

CAUSE OF INJURY:	
DATE RETURNED TO WORK: 08/19/06	DATE OF DEATH:
INITIAL TREATMENT:	
DATE ADMINISTRATOR NOTIFIED:	

PF1=HELP PF2=CLM REF PF3-SUMMARY PF4=FORMS LIST

PF10=RESTART PF12=EXIT

EXHIBIT

B



Texas Department of Insurance

Division of Workers' Compensation

Records Processing

7551 Metro Center Dr. Ste. 100 - MS-94

Austin, TX 78744-1808

(800) 252-7031 (512) 804-4378 fax www.tdi.state.tx.us

DWC Form 041

Carrier Claim#

Send the completed form to this address.

Employee's Claim for Compensation for a Work-Related Injury or Occupational Disease (DWC Form-041)

Claim for workers' compensation must be filed by the injured employee or by a person acting on the injured employee's behalf within one year of the date of injury or within one year from the date the injured employee knew or should have known the injury or disease may be work-related.

I. INJURED EMPLOYEE INFORMATION

Name (First, Middle, Last) <u>Linda Baldwin</u>	Social Security Number <u>263-27-2237</u>	Date of birth (mm / dd / yyyy) <u>1-9-55</u>
Address (street, city/town, state, zip code, country) <u>P.O. Box 2632 Cedar Park TX 78630</u>		
Phone Number <u>512 810-3126</u>	E-Mail address	Sex <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female
Race / Ethnicity <input type="checkbox"/> White, not of Hispanic Origin <input checked="" type="checkbox"/> Black, not of Hispanic Origin <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian or Pacific Islander		
Do you speak English? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If no, specify language		
Marital status <input type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Separated <input checked="" type="checkbox"/> Single <input type="checkbox"/> Divorced		
Do you have an attorney or other representation? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, name of representative		
Have you returned to work? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If returned to work, date returned (mm/dd/yyyy)		Work status <input type="checkbox"/> Regular <input checked="" type="checkbox"/> Restricted
Occupation at time of injury <u>Night Laundry</u>		Date of hire (mm / dd / yyyy) <u>4-7-03</u>
Hired or recruited in Texas <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Pre-tax wages (at the time of injury) \$ <u>10.10</u> <input checked="" type="checkbox"/> Hourly <input type="checkbox"/> weekly <input type="checkbox"/> monthly	

II. INJURY INFORMATION

I am reporting an <input checked="" type="checkbox"/> injury or <input type="checkbox"/> occupational disease	Date of injury (mm / dd / yyyy) <u>8/18/06</u>	Time of injury <u>2:50</u>
First work day missed (mm / dd / yyyy) <u>8/20/07</u>	Date injury was reported to the employer (mm / dd / yyyy)	
Where did the injury occur? County <u>Travis</u> State <u>Texas</u> Country <u>USA</u>		
If accident occurred outside of Texas, on what date did you leave Texas? (mm/dd/yyyy) <u>N/A</u>		
Witness(es) to the injury (list by name) <u>Dolly Wade</u>		
Describe cause of injury or occupational disease, including how it is work related <u>Standing on a hard floor for long hours a day which caused plantar fasciitis.</u>		
Body part(s) affected by the injury <u>Knee, Ankle and Heel and Foot</u>		
If injury is the result of an occupational disease: 1. On what date was the employee last exposed to the cause of the occupational disease? (mm / dd / yyyy) <u>8/20/07</u> 2. When did you first know occupational disease was work related? (mm / dd / yyyy) <u>8/18/06</u>		

III. EMPLOYER INFORMATION (at the time of injury)

Employer name <u>Extended Stay Hotel</u>	Employer address (street, city/town, state, zip code, country) <u>2700 Gracey Farm Ln. Austin, TX 78758</u>
Employer phone number <u>512</u>	Supervisor name <u>Dolly Wade</u>

IV. DOCTOR INFORMATION

Name of treating doctor <u>Dr. Shock</u>	Phone number <u>512 244-7860</u>
Address (street, city/town, state, zip code) <u>3107 Oak Creek Suite 120 Austin Texas 78727-5025</u>	
Name of workers' compensation health care network, if any	

Signature of injured employee or person filing out this form on behalf of injured employee

Printed name of injured employee or person filing out form on behalf of injured employee

2-9-12
Date

RECEIVED
HAND DELIVERED

FEB 09 2012

TDI/DWC
AUSTIN F.O.

DWC041 Rev. 03/07



20-50293.599