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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. 1302588
Appellate Case No. 2017-001732

Timothy Causey, ...Appellant,

v.

Horry County, Self-insured Employer,
through the S.C. Counties Workers'
Compensation Trust, ... Respondents.

**PETITION FOR REHEARING
AND REQUEST FOR ORAL ARGUMENT
ON BEHALF OF APPELLANT**

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STATEMENT OF THE CASE

This petition is filed pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules. This matter is before the Court of Appeals to review the July 19, 2017, Decision and Order of the South Carolina Workers' Compensation Commission's Appellate Panel. The Court issued its decision January 5, 2022. (*See* Op. No. 2022-UP-002, attached as Ex. A). In that decision, the Court found that the Appellate Panel erred as a matter of law in recounting and analyzing the medical and circumstantial evidence which anchored its causation analysis. The Court reversed the Appellate Panel decision and reinstated the Single Commissioner's award of death benefits for Appellant's 2013 death.

A petition for rehearing was filed by Respondents on January 20, 2022. By order dated May 11, 2022, the Court of Appeals "grant[ed] the petition in part, den[ied] the accompanying request for oral argument, and substitute[d]" a new opinion "for the original opinion, which is withdrawn." (Attached as Ex. B and C). The Order and Substituted Opinion were provided to Appellant and Respondents by e-mail on May 11, 2022. (*See* May 11, 2022, Correspondence from LaToyla Burns, attached as Ex. D). The content of the substituted May 11, 2022, Opinion emailed to the parties and posted on the Court's website was identical to the January 5, 2022, Decision and Order.

Neither party appealed nor objected to the substituted opinion within the deadline to appeal. On June 13, 2022, the Chief Deputy Clerk for the South Carolina Court of Appeals remitted the Court of Appeals' opinion to the Workers' Compensation Commission as required by Rule 221(b), SCACR. The remittitur was mailed to the Commission and the remittitur contained the judgment of the appellate court and was sealed with the seal and signature of the clerk of the court. (Attached as Ex. E). The remittitur was provided to Appellant and

Respondents by e-mail on June 13, 2022. (*See* June 13, 2022, Correspondence from LaToyla Burns, attached as Ex. F).

On June 21, 2022, the Deputy Clerk of Court signed and issued an order—for the Court of Appeals—recalling the remittitur. (*See* Order Recalling Remittitur, filed June 21, 2022, attached as Ex. G). On June 21, 2022, the Clerk of Court notified counsel by letter that an “updated substituted opinion” was filed after the remittitur was recalled. (*See* Letter of The Honorable Jenny Kitchings, dated June 21, 2022, attached as Ex. H). The letter and the newly substituted opinion were provided to Appellant and Respondents by e-mail that same day. (*See* June 21, 2022, Correspondence from Lynn Falin, attached as Ex. I). The third opinion was refiled June 21, 2022. (*See* Substituted Opinion Refiled June 21, 2022, attached as Ex. J.) (Hereinafter “third opinion”). The third opinion reversed the Appellate Panel and remanded to the Appellate Panel to further analyze and address circumstantial evidence of causation.

The Appellant submits this petition is timely under Rule 221(a), SCACR, as to the third opinion. The Appellant respectfully submits the Court may have overlooked or misapprehended whether jurisdiction existed to recall the remittitur and respectfully seeks rehearing on this issue to determine if the third opinion is *void ab initio*.

ARGUMENTS

I. The Court of Appeals lost jurisdiction to issue any order once the remittitur was properly and correctly sent to the Workers' Compensation Commission.

Simply and succinctly put, this court lacked any and all jurisdiction over this matter once the remittitur was issued and the third opinion is *void ab initio*. The May 11, 2022, Decision and Order sealed and signed by the clerk of the court and contained within the June 13, 2022, remittitur is the law of this case and should be reinstated.

Rule 221, SCACR, requires petitions for rehearing to be "actually received by the appellate court no later than fifteen (15) days after the filing of the opinion." Rule 221(a), SCACR. Once this period has elapsed and no petition for a writ of certiorari has been filed, the judgment of the appellate court is final and is to be remitted to the lower court in the form of a remittitur. Rule 221(b), SCACR. "The remittitur shall contain a copy of the judgment of the appellate court, shall be sealed with the seal and signed by the clerk of the court." Rule 221(b), SCACR. Sending the remittitur is a ministerial act confined by law to the Clerk of Court without leave for independent discretion or judgment. *Mississippi v. Johnson*, 71 U.S. 475, 498 (1867) ("A ministerial duty . . . is one in respect to which nothing is left to discretion. It is a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law."). See also *Dep't of Banking v. Pink*, 317 U.S. 264, 268 (1942); *Clark v. Williard*, 292 U.S. 112, 137 (1934); *In re Ayers*, 123 U.S. 443, 506 (1887); *Amy v. Supervisors*, 78 U.S. 136, 138 (1870).

The remittitur is the formal and ministerial action of remitting the judgment of the Court of Appeals to the trial court. Remittitur, *Ballentine's Law Dictionary* (3d ed. 1969) ("The remanding of a case by an appellate court to the trial court from which the appeal taken."). Finality in appeals is one of the bedrock principles of the rule of law, and the remittitur is the action ensuring finality in an appellate court's decision. Cf. *Anderson v. Riley*, No. 0:07-607-CMC, 2008 U.S. Dist. LEXIS 13260, at *3 n.3 (D.S.C. Feb. 21, 2008) (quoting *White v. Klitzkie*, 281 F.3d 920, 924 n.4 (9th Cir. 2002), ("[I]t is the decision of the state appellate court, rather than the ministerial act of entry of the mandate, that signals the conclusion of review for statute of limitations purposes.")).

Prior to the issuance of the remittitur to the lower court, either party could petition this Court for rehearing to challenge the May 11, 2022, opinion under Rule 221(a), SCACR. *See State v. Hallock*, 277 S.C. 413, 414, 288 S.E.2d 398, 398 (1982) (filing a Petition for Rehearing stays "the remittitur of the opinion and deferring final disposition . . . until a decision [is] reached"); *Harleysville Mut. Ins. Co. v. State*, 401 S.C. 15, 23 n.2, 736 S.E.2d 651, 655 (2012) ("The timely filing of a petition for rehearing stays the sending of the remittitur, thereby depriving the decision of finality."). The finality of the remittitur is meaningless unless it simultaneously extinguishes jurisdiction in the issuing court and returns it to the lower court, a doctrine that the South Carolina Supreme Court has consistently enunciated since the 19th century. *See generally, Mooney v. Welsh*, 8 S.C.L. 133, 133-34 (S.C.Const. 1817) (holding that the Constitutional Court of Appeals of South Carolina had authority to review a judgment upon a writ of error but the authority is time limited); *Porteous v. Givens*, 13 S.C.L. 48, 51 (S.C. Const. 1822) (holding that "when judgment is once given and enrolled, no amendment [may be] admitted at any subsequent term."); *Price v. Nesbit*, 10 S.C.Eq. 445, 458, (S.C.App.L & Eq. 1834) (holding that the Court of Appeals of Law and Equity is the court of "last resort" and "a decree by it of affirmance or reversal of a final decree" cannot be challenged "for error in matter of law" because the "controversy is ended"); *Britton v. Johnson*, 13 S.C.Eq. 24, 28, (S.C.App.Eq. 1837) ("It is a great mistake to suppose that parties are at liberty . . . to stir a matter, which has been once adjudged This would be a source of endless confusion, embarrassment and uncertainty."). *Accord, Pringle v. Sizer*, 3 S.C. 335, 337 (1872). As this Court has stated, "once the remittitur is issued from an appellate court, the circuit court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court's ruling." *Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 385, 559 S.E.2d 348, 351-52 (Ct. App. 2001).

The Court of Appeals' jurisdiction is limited to that which the General Assembly "prescribe[s] by general law." S.C. Const. art. V, § 9. The jurisdiction of the Court of Appeals is limited by statute "to reverse, affirm, or modify the judgment, decree, or order appealed from in whole or in part and as to any or all of the parties." S.C. Code Ann. § 18-9-270. Jurisdiction "is generally defined as 'the authority to decide a given case one way or the other. Without jurisdiction, "a court cannot proceed *at all in any cause*; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause.'" *Limehouse v. Hulsey*, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013) (quoting 32A Am. Jur. 2d *Federal Courts* § 581 (2007) (footnotes omitted) (emphasis added)). See also *Beach First Nat'l Bank v. Gurnham (In re Estate of Gurnham)*, 407 S.C. 194, 207-08, 754 S.E.2d 875, 882 (2014).

Once the Court of Appeals has issued an opinion, "the judgment **shall be remitted** to the court below to be enforced according to law." S.C. Code Ann. § 18-9-270 (emphasis added). The courts of this state have long understood the remittitur to signify the end of the appellate court's jurisdiction as well as the finality of the judgment rendered. See, e.g., *Mickle v. Blackmon*, 255 S.C. 136, 141, 177 S.E.2d 548, 549 (1970) (holding that the petitioner's sole remedy "was by petition to [the appellate court] **before the remittitur went down**") (emphasis added); *Thomas v. Lynch*, 87 S.C. 44, 45-46, 68 S.E. 817 (1910) ("The manifest purpose of these provisions is to give parties and their attorneys ample time and opportunity to examine the orders and opinions of the Court, and the grounds upon which they are based, and bring to the attention of the Court any errors or omissions therein, **before the [appellate court] has lost jurisdiction of the cause by sending the remittitur to the [c]ourt below**") (emphasis added); *Carpenter v. Lewis*, 65 S.C. 400, 403, 43 S.E. 881, 882 (1903) (holding that retaining the remittitur is a reservation of

jurisdiction to all the parties "to make any motion in reference thereto, they might have the opportunity to do so, and the Court the power to hear it"); *Sullivan v. Speights*, 14 S.C. 358, 360 (1880) ("**After the remittitur, however, is sent down, the case passes beyond the reach of this court and its jurisdiction is lost**, and no motion can be heard by this court on the matter thereafter.") (emphasis added); *Ex parte Dial*, 14 S.C. 584, 585 (1881) ("**It is well understood . . . that after the remittitur has been transmitted to the court below** in any case, **this court thereby loses jurisdiction of the cause**, and can afterwards entertain no motion whatever in reference thereto") (emphasis added).

The Court of Appeals does not have jurisdiction to recall the remittitur once it has been sent because the remittitur signals the judgment of the appellate court once all avenues of appeal are exhausted. *Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551 (2007) ("When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter"). "The only exception to this rule is when the remittitur is sent down by mistake, error or inadvertence of the Court." *Id.* The clerical error as explained by the Clerk of Court was based upon the issuance of the wrong opinion, not in the issuance of the remittitur as the remittitur was correctly sent as required by Rule 221, SCACR. (Ex. H). The parties had "ample time and opportunity to examine the . . . opinion[] of the [c]ourt . . . and bring to the attention of the [c]ourt any errors or omissions therein" but neither party ever notified the court of any errors or concerns with the opinion. *Carpenter*, 65 S.C. at 403, 43 S.E. at 882. Errors and omissions existing at the time the remittitur is properly sent to the lower court are not justiciable. *Pringle v. Sizer*, 3 S.C. 335, 337 (1872) ("Strictly speaking, after a cause has been once remitted, this Court loses all jurisdiction over it; **but if before the remittitur has, in fact, issued**, an error as to figures is made apparent, or any obvious mistake of fact is shown, the

Court would reform its judgment in conformity to the truth of the matter.") (emphasis added). In *Carpenter*, the Supreme Court had issued an opinion modifying the judgment of the circuit court. *Carpenter*, 65 S.C. at 402, 43 S.E. at 882. The remittitur was properly sent; however, the trial court erred in applying the modified judgment of the Supreme Court. *Id.* at 404, 43 S.E. at 882. As to the question of recalling the remittitur due to the court's mistaken belief, the court found it had no jurisdiction to recall the remittitur to correct errors. *Id.* at 403, 43 S.E. at 882.

Without notice to the parties and *sua sponte*, the Chief Deputy Clerk for the South Carolina Court of Appeals on June 21, 2022, signed, issued, and filed an order recalling the remittitur.¹ (Ex. G). The Clerk for the South Carolina Court of Appeals notified counsel of the recalled remittitur and substituted opinion by cover letter dated June 21, 2022, stating, in part:

Upon review of the substituted opinion issued on May 11, 2022, the Court noted a clerical error. Rather than filing the updated substituted opinion approved by the panel, the original version of the opinion was refiled. Enclosed please find the substituted refiled opinion which should have been filed on May 11, 2022.

(Ex. H). Without jurisdiction, the order is *void ab initio*. See *Thomas & Howard Co. v. T. W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995) ("**[A] judgment is void only if a court acts without jurisdiction.**") (emphasis added). The recalling of the remittitur fouls the administration of justice and renders the doctrine of finality a hollow shell by allowing a reservation of jurisdiction even after the remittitur is issued. The schema of rules, statutes,

¹ The Order states, in part: "This Court's remittitur was sent to the Workers' Compensation Commission on June 12, 2022. It is now necessary for this Court to recall the remittitur."

caselaw, and constitutional boundaries gives rise to the hallowed philosophy of the rule of law that all citizens are safeguarded from "the absence of any arbitrary power on the part of the government." Rule of Law, *Black's Law Dictionary* (11th ed. 2019). Arbitrary power and the rule of law are incompatible; the doctrine of finality, and its benefits, is the bedrock upon which the rule of law is constructed. *See Gordon v. United States*, 117 U.S. 697, 702 (1865) (noting that judicial power cannot be exercised nor required by Congress "where [the court's] judgment would not be final and conclusive"); *Postum Cereal Co. v. Cal. Fig Nut Co.*, 272 U.S. 693, 695, 47 S. Ct. 284, 284 (1927) ("When the litigation is terminated and nothing remains to be done but to carry what has been decreed into execution, such a decree has always been held to be final for the purposes of an appeal.").

Once the judgment of the court has been rendered, the subsequent duty of any clerk of the court is prescribed by S.C. Code Ann. § 18-9-270 and the South Carolina Rules of Appellate Court. The remittitur "shall be sealed with the seal and signed by the clerk of court." Rule 221(b), SCACR. "The commission being signed, the subsequent duty of the secretary of state is prescribed by law He is to affix the seal of the United States to the commission, and is to record it." *Marbury v. Madison*, 5 U.S. 137, 158 (1803). This is a "precise course accurately marked out by law" and should be "strictly pursued." *Id.* The sending of the remittitur is "a ministerial act which the law enjoins on a particular officer for a particular purpose." *Id.*

As discussed above, finality is a bedrock principle of the rule of law because it signals when the parties must act under the judgment of the court. *See Citizens Bank v. Heyward*, 144 S.C. 365, 369, 142 S.E. 651, 653 (1926) (noting that a decision rendered by the Supreme Court must be "final and conclusive" otherwise petitions for rehearing would cause "endless" litigation). "But it must always be remembered that the other party to the cause has the right to

the orderly disposition thereof, and that his rights must be respected; and that it is essential to the due and orderly administration of the law that the methods of procedure prescribed by the statutes and rules of Court be complied with. **Otherwise, there would be no end to litigation.**" *Thomas v. Lynch*, 87 S.C. 44, 46, 68 S.E. 817, 817 (1910) (emphasis added). When there is error in the judgment "founded on a misconception of facts," the court may "correct its judgment . . . while it has any control over the case." *Pringle*, 3 S.C. at 337. Sending the remittitur to the lower court signifies the conclusion of litigation and the expiration of the Court of Appeals' jurisdiction. *Thomas*, 87 S.C. at 46, 68 S.E. at 817 ("It has frequently been decided that when the remittitur has been properly sent to the Court below, the Supreme Court loses jurisdiction, and thereafter neither the Court, nor any Justice thereof, can make any order in the case."). See *Ex parte Knox*, 17 S.C. 207, 218 (1882) ("When a cause is heard in the Supreme Court, and before its jurisdiction ends by remitting its judgment to the Circuit Court the cause may be reheard in a proper case in this tribunal. But when its judgment is remitted to the court below, the Supreme Court loses control of the cause **There must be some end of litigation.**") (emphasis added); *Ex parte Dial*, 14 S.C. 584, 586-87 ("**It concerns the welfare of the country that there should be an end of litigation.** A judgment rendered after full argument should not be disturbed.") (emphasis added).

It is deeply rooted in Supreme Court precedent that a judgment is to be returned through a remittitur; that the ministerial act of sending the remittitur extinguishes appellate jurisdiction; and, that the remittitur announces the finality of the judgment. This principle has been acknowledged since the earliest days of the United States of America. See *Arcambel v. Wiseman*, 3 U.S. 306 (1796). See also *Jackson v. Hale*, 55 U.S. 525, 528 (1853); *Sizer v. Many*, 57 U.S. 98, 103 (1854) ("It has been settled, by the decisions of this court, after a case has been brought here

and decided, and a mandate issued to the court below . . . [n]one of the questions which were before the court on the first writ of error can be reheard or reexamined . . . and there is nothing therefore now before the court."); *Browder v. M'Arthur*, 20 U.S. 58, 59 (1822) ("The [court] denied the motion, being of opinion that it was too late to grant a rehearing in a cause after it had been remitted to the Court below, to carry into effect the decree of this Court, according to its mandate . . ."); *President, Dirs. & Co. of Bank v. Ashley*, 27 U.S. 327, 329 (1829) ("The defendants here will be permitted to enter the remittitur, and upon such entry the judgment will be affirmed . . ."). "That the party would have had a right to remit in the court below cannot be questioned: it is every day's practice sustained by the gravest precedents." *Id.* at 328.

Where the remittitur has been properly sent down, jurisdiction of the appellate court ceases to exist because any further action is void and consequent relief nugatory. "In order to justify this court in exercising the unusual power of recalling the remittitur after it has been sent down, a very strong showing would be required that the remittitur was sent down through some mistake or inadvertence on the part of this court or its officer." *State v. Keels*, 39 S.C. 553, 553, 17 S.E. 802, 802 (1893). Abandoning the finality of the remittitur is an abandonment of the doctrine of finality because the remittitur has historically signified the termination of jurisdiction for appeal.

The import of finality in appeals has real world consequences in how parties handle cases and the actions of the Court have thrown this entire case in disarray. On May 31, 2022, the Respondents informed Appellant they would not be appealing the Court's decision and issued a check for \$283,190.00 and mailed it to Appellant on May 31, 2022, "[i]n accordance with the **Court of Appeals Opinion dated May 11, 2022**, which reinstated Commissioner Campbell's

Decision and Order" (*See* Letter of Roy A. Howell, III², dated May 31, 2022, attached as Ex. K) (emphasis added). Based upon the Respondent's representations they would not be appealing, the Respondent's issuance of the check, the lack of a timely appeal within the proscribed appeals period, *and the issuance of the remittitur*, counsel for Appellants deposited the check in trust, prepared and signed checks payable to the appropriate beneficiaries, and the funds would have been disbursed but for the out-of-town status of one of the beneficiaries. Respondents have now requested the return of the funds in light of the Court's recalling of the remittitur and withdrawal of the May 11, 2022, opinion upon which its May 31, 2022, payment was based. The future of this case now remains in flux and the prospect of years of additional litigation and appeals looms large.

Trust in the finality of judgments prevents this type of situation and these types of issues. This longstanding belief in finality is why our courts of last resort from the South Carolina Courts of Law through to the South Carolina Supreme Court have emphasized the finality of remittiturs and applied these doctrines for over 200 years. This belief in finality is precisely why the doctrine has been recognized by the United States Supreme Court for over 225 years and is sacrosanct to the rule of law and the institutions contained within.

CONCLUSION

Once the remittitur containing the May 11, 2022, judgment of the Court was sent properly to the Workers' Compensation Commission, the Court of Appeals lost jurisdiction to issue any further order. *See Ex parte Dial*, 14 S.C. at 586-87 (holding the proper sending of the remittitur to the lower court extinguishes the jurisdiction of the appellate court to "make any

² Due to sensitive financial information being present on the issued check, the account number, routing number, and check number have been redacted.

order in the case"). The Appellant, respectfully, submits the Court of Appeals was without jurisdiction to recall the remittitur because all jurisdiction in this Court ended on the sending of the remittitur to the Workers' Compensation Commission. *See* Rule 221, SCACR.

The Court should grant rehearing and reinstate the May 11, 2022, refiled opinion.

Respectfully submitted,

s/ Allison P. Sullivan

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July 6, 2022

Exhibit A



The South Carolina Court of Appeals

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January 05, 2022

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Re: Timothy Causey v. Horry County
Appellate Case No. 2017-001732

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen

CLERK

cc: Amy Bracy

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Timothy Causey, Appellant,

v.

Horry County, Self-Insured Employer through the S.C.
Counties Workers' Compensation Trust, Respondents.

Appellate Case No. 2017-001732

Appeal From The Workers' Compensation Commission

Opinion No. 2022-UP-002
Submitted October 1, 2021 – Filed January 5, 2022

REVERSED

Francis A. Humphries, Jr. and William Henry Monckton,
VI, both of Monckton, Hembree & Humphries, PA, of
Myrtle Beach, and Allison Paige Sullivan, of Bluestein
Thompson Sullivan LLC of Columbia, for Appellant.

Roy Allen Howell, III and Kirsten Leslie Barr, both of
Trask & Howell, LLC, of Mt. Pleasant for Respondents.

MCDONALD, J.: The statutory dependents of Horry County Sheriff's Deputy Timothy Causey appeal the decision of the Appellate Panel of the South Carolina Worker's Compensation Commission denying death benefits. We reverse.

Deputy Causey died two months after working three twelve-hour shifts on the perimeter of a large structure fire in the Carolina Forest area of Horry County. The fire was massive; it destroyed 26 buildings, each containing four residential units. Jerry DelPercio, a fellow deputy who lived at the complex and helped evacuate the area, described seeing "trees on fire about 50, 60 feet high" and hearing sounds "like a war zone. There [were] explosions, red smoke, black smoke, whatever you can think of." All of the buildings "were engulfed within 20 minutes because of the wind." Although authorities were able to extinguish the fire by the following day, heavy smoke remained in the area for several days.

The Sunday morning after Deputy Causey's first night shift at the fire, Donna Causey observed her husband had "watery eyes, [a] runny nose, coughing, red eyes, [and] he kept rubbing his eyes." After his return from the area of the fire the second day (Monday morning), Donna observed black discharge on the tissue when Deputy Causey blew his nose, and his eyes were "really red, almost swollen." Upon Causey's return Tuesday morning, "he coughed up and showed me on the tissue, and it was a yellowish black color. Blew his nose again, it was a black color. The eyes were really red. The nose was constantly draining. Coughing more on Tuesday morning."

Causey did not return to work for his regular day shift Tuesday or Wednesday. On Thursday, Donna took her husband to Loris Family Health Clinic. Following blood work, a chest X-ray, and a breathing treatment, the clinic provided an antibiotic and sent Deputy Causey home. The following day, Causey was unable to drink Diet Pepsi, as he could only handle water or Gatorade due to the condition of his throat. By Saturday, Causey "was gasping with his head down. He just had this ashen look and this bluish color." At that point, Donna took Causey to the emergency room at McLeod Medical Center. Causey was hospitalized at McLeod, but as his condition continued to worsen, he was airlifted to MUSC on March 27. At MUSC, Causey was diagnosed with acute respiratory distress syndrome (ARDS), secondary to H1N1, also known as swine flu. Causey died at MUSC on May 19; his MUSC death summary provides, Causey died from "hypovolemic shock, secondary to diffuse alveolar hemorrhage, secondary to ventilator-assisted pneumonia, secondary to prolonged intubation, and secondary to smoke inhalation injury with H1N1 influenza." Deputy Causey's death certificate lists his cause of death as "diffuse alveolar hemorrhage, due to ventilator associated pneumonia, due to prolonged intubation, due to smoke inhalation injury."

A number of Deputy Causey's physicians were deposed as to his cause of death, and both Causey and Respondents presented expert opinions, either through live testimony, deposition, or sworn statement. Despite the evidence in the record from several treating physicians, the findings on Deputy Causey's death certificate, the MUSC death summary, and the live testimony of Dr. Kim Collins, the Appellate Panel reversed the Single Commissioner's award of death benefits and found the claimant

has shown nothing more than that one could speculate smoke exposure on March 16, 2013 could have caused some ill-defined injury to Causey's lungs, and that if one so speculates, one could further speculate that such an injury could have impacted Causey's ability to fight a deadly flu virus. But such speculation is insufficient. Without actual evidence that Causey sustained an injury to his lungs on March 16, 2013 and that such injury to his lungs was the proximate cause of his death, he is not entitled to benefits under S.C. Code Ann. § 42-9-920 as a matter of law.^[1]

In reaching this conclusion, the Appellate Panel relied upon its finding that "[no opinion of any doctor who actually treated Causey supports a finding that Causey sustained any injury due to his alleged smoke exposure." This finding, in addition to the Panel's opening statement that four of Deputy Causey's treating physicians agreed "smoke exposure **played no role**" in Causey's death" mischaracterized Dr. Charlton Strange's testimony. Other MUSC physicians then relied upon the mischaracterization of Dr. Strange's testimony in responding to questioning during their own depositions.²

¹ The Appellate Panel's "actual evidence" language here—when read in conjunction with the testimony of the treating physicians discussed below—suggests the Panel erred at the outset of its analysis by imposing an "objective evidence" standard to Deputy Causey's claim. See *Russell v. Wal-Mart Stores, Inc.*, 426 S.C. 281, 288, 826 S.E.2d 863 (2019) (in which our supreme court noted this court's reversal focusing on the Commission's error "in requiring a change of condition to be established by objective evidence.").

² More precisely, the Appellate Panel found "Causey's attending physician, Dr. Charlie Strange, testified that Causey died from Swine Flu and that smoke exposure **played no role in his death**. In this opinion, Causey's other treating physicians (Dr. Timothy Whelan, Dr. William Largen, and Dr. Dee Ford),

Dr. Strange was the admitting physician upon Causey's transfer from McLeod to MUSC. Dr. Strange explained in his deposition that "the impression of the McLeod physicians was that this was smoke inhalation, but they had also given [Causey] antibiotics for the possibility that there was bacterial infection that was also present." More sophisticated testing than was available at McLeod revealed the presence of H1N1, and MUSC began treatment with Tamiflu. Initially, Dr. Strange testified that he did not believe smoke inhalation contributed to Causey's death as "it is really the H1N1 that set up all the subsequent events." However, he immediately clarified this statement by explaining smoke inhalation, if it were an issue, "could have increased his chance of acquiring clinical H1N1 and made his clinical course more severe." When asked whether it was his opinion to a reasonable degree of medical certainty that the H1N1 was "basically the sole cause of his ARDS and ultimately his death," Dr. Strange replied:

That's a hard one. There's pretty big literature out there that shows that cigarette smokers have more H1N1 than people that don't smoke and that the H1N1 that they do acquire is more serious than people that are nonsmokers. And because Mr. Causey was a nonsmoker, we could speculate but not prove that the smoke inhalation that he did have made his presentation of H1N1 worse than it otherwise would have been.

When asked whether he could state his opinion to a reasonable degree of medical certainty, Dr. Strange responded, "There is a possibility but not rising to the level of medical probability that the smoke inhalation contributed in a meaningful way to his ultimate outcome." This is contrary to the Appellate Panel's characterization of this testimony as concluding "smoke inhalation played no role in his death." The Panel's summation of Dr. Whelan's testimony is likewise concerning. Dr. Whelan noted Deputy Causey suffered "severe ARDS, multiple complications with a prolonged ICU stay." He developed multiple infections, including "bacterial ventilator associated pneumonias" and a possible fungal infection. The problem with the Appellate Panel's description of Dr. Whelan's testimony as "corroborating" Dr. Strange's opinion is that Dr. Whelan gave his opinion based on a faulty premise—only after being told "[i]t was Dr. Strange's opinion that the

concurred." (Emphasis added). While it is true that these physicians agreed with Dr. Strange's statements as conveyed to them, these witnesses were not given the context and clarification Dr. Strange provided when further examined.

smoke inhalation did not cause the H1N1 or contribute to his death." And, even after he was provided this characterization, Dr. Whelan's response remained equivocal. He stated, "I believe Dr. Strange could be correct. However, I also think it is very difficult to know, based on the records that I reviewed, the extent of the smoke inhalation itself and if there could have been any contribution of smoke inhalation to susceptibility to H1N1." While Dr. Whelan agreed he could not state to "a reasonable degree of medical certainty that the smoke inhalation played any role" in Causey's death, he emphasized the reverse was also true:

So, I agree with your interpretation. However, I think if one asked the question in the reverse, can you say to a reasonable degree of medical certainty that a significant smoke inhalation exposure around the time that one is infected with H1N1 has absolutely no impact on the disease course, I would also say I cannot say that to a reasonable medical certainty.

Notably, Dr. Whelan was the attending physician who signed off on Deputy Causey's death summary. In discussing the death summary in his deposition, Dr. Whelan explained he would redact only the word "injury" from the final line of the summary, and he could not opine about "smoke inhalation" to a reasonable degree of medical certainty.³

Dr. Dee Ford was Causey's attending physician in the medical intensive care unit at MUSC. She, too, found the death summary reasonable as to the cause of Deputy Causey's death. However, when asked whether she had the medical documentation and history necessary to opine to a reasonable degree of medical certainty as to whether Deputy Causey suffered a smoke inhalation injury, she agreed she did not have the information necessary to so opine. She noted she would need a more detailed occupational exposure history, and she agreed that once H1N1 was diagnosed, other concerns would take a "backseat" because "[o]nce H1N1 were

³ Dr. William Largen, the MUSC ICU resident who dictated and completed the death summary co-signed by attending physician Whelan, was not deposed, but his statement is included in the record. Dr. Largen stated, in pertinent part, that he "would defer any opinions regarding Mr. Causey's death to those of Dr. Whelan and Dr. Strange. I would also agree that the ultimate cause of Mr. Causey's death was complications of Acute Respiratory Distress Syndrome secondary to H1N1 Swine Flu."

identified in a patient with Mr. Causey's constellation of signs and symptoms, his illness would be attributed to H1N1."

Finally—and of significance to our consideration of the Appellate Panel's order—Dr. Nicholas Pastis testified by deposition as to his treatment of Deputy Causey at MUSC. Dr. Pastis's deposition testimony was Claimant's Exhibit 1 before the Single Commissioner. In the deposition, Dr. Pastis was asked:

Q. So is there any way to state, within a reasonable degree of medical certainty, that the smoke inhalation that allegedly occurred in this case had anything to do with his death?

A. I think that I can say with a reasonably - - reasonable degree of certainty, that it made his ability to fight off an infection worse.

Although Dr. Pastis admitted on cross-examination that this opinion would require some degree of speculation as to the presence of a burn injury to Causey's airway, he was careful to note, "I would be uncomfortable saying that it [the smoke inhalation] had nothing to do with his death." And he later clarified evidence of a burn injury would be required only if one needed "absolute proof." Upon hearing the summary of Causey's appearance and symptoms following each of his three nights at the fire perimeter, Dr. Pastis agreed the symptoms were consistent with an inhalation injury. As to the severity of H1N1 and an alleged MUSC communication to Donna Causey that "the smoke inhalation would have made it difficult for [Causey] to fight it [H1N1] off," Dr. Pastis explained that while H1N1 is severe, "most people don't die of this disease. He certainly had a severe case. Those happen without smoke inhalation. But in his case, the timing of it made me think that it exacerbated what was already a severe problem and made it worse."⁴

Like Dr. Ford, Dr. Pastis agreed the cause of death as set forth in the MUSC death summary was one "to which [he] would ascribe." On cross-examination, Respondents asked Dr. Pastis whether "H1N1 is the cause of death of [Causey's]

⁴ Dr. Pastis also referenced the literature indicating a pulmonary infection can be made worse by damage to the airway. For example, "if you have a bad inhalation injury and you get a pneumonia, it is reasonable that it may be worse than somebody who didn't have the inhalation injury."

acute respiratory distress syndrome?" His response: "It - - it is a cause." However, in reversing and vacating the Single Commissioner's order, the Appellate Panel declared Dr. Pastis's opinions as to causation "are not only equivocal, they are admittedly based upon nothing more than speculation."

Deputy Causey's retained expert was Dr. Kim Collins, the former Chief Medical Examiner and Director of Autopsy and Forensic Pathology at MUSC. When asked about her opinion regarding Deputy Causey's injuries and the proximate cause of his death, Dr. Collins, who is board certified in anatomic, clinical, and forensic pathology, replied:

My opinion is this was a healthy young man until he experienced three days of smoke inhalation, and that [led] to what we call an inhalation injury which [led] to acute lung injury. And in that process, his immune system—particularly in the lungs that help you fight off what you're breathing in, all the germs, etcetera—during this time he developed H1N1 influenza, influenza A. Secondary to developing influenza, he had secondary bacterial infections, such as Klebsiella, pseudomonas, and then those cause a pulmonary hemorrhage. So he actually dies of the pulmonary hemorrhage and the bacterial infections due to the H1N1 influenza, due to the smoke inhalation.

Dr. Collins then discussed the category of fire deaths resulting from inhalation injury and "the cascade of events because of the systemic problems this can create and the metabolic problems it can create. And so you have acute lung injury, which develops into ARDS, which then can develop into multi-organ failure and secondary infections." In Dr. Collins's opinion, "to a reasonable degree of medical certainty," the underlying cause of death for Deputy Causey was "the smoke inhalation." Dr. Collins explained this is

my medical opinion, more likely than not, that but for this man [having] been involved in this fire and inhaled these chemicals these three days, but for that occurring, he could not have developed H1N1. And this is my opinion if you look at the history, you look at the scenario, the chronology, the events follow perfectly. Acute lung injury from smoke inhalation, ARDS acute

respiratory distress syndrome, H1N1, and then you get your secondary bacterial infections, and your hemorrhage into your lungs.

On cross-examination, Dr. Collins agreed that because no autopsy was conducted, there was no objective medical evidence to identify specific smoke inhalation damage to Deputy Causey's lung tissue. According to Dr. Collins, Deputy Causey contracted H1N1 because of the destruction to his lungs, "because of the inhalation injuries, not because it [H1N1] was inside the smoke." On redirect, Dr. Collins explained "[m]ost people have a very mild flu when they have H1N1 and this was not the case because he was compromised by the smoke inhalation injury." When asked whether this was her opinion to a "reasonable degree of medical certainty more likely than not," Collins replied "Yes, it is. Most certainly."

Again, the Appellate Panel characterized Dr. Collins's testimony as speculative, noting she and Dr. Pastis "both were forced to concede that their opinions were based, not on objective medical evidence, but only speculation." The Panel order further mischaracterizes her testimony, stating, "In fact, Dr. Collins was forced to concede that she did not even understand the nature of Causey's alleged exposure to smoke, believing him (falsely) to have been actually fighting a fire for the three 12-hour shifts." However, a review of this portion of the Collins deposition transcript actually establishes that when she was asked about her file note indicating Deputy Causey was "involved in fighting an apartment fire," Dr. Collins responded, "I don't know what his role was during the fire. He might have been fighting the fire - - apartment fire - - or he might have been assisting in keeping the barriers. I am not sure He was exposed to the soot and to the fumes. It doesn't really matter what he was doing at the time." Dr. Collins then explained that unlike properly equipped firefighters, "security personnel may not have the proper respiratory equipment" and Causey was involved in the area of the fire for "[t]hree 12-hour shifts."

Appellant concedes, as she must, that the various doctors—the treating physicians and Respondents' medical expert witnesses—gave different and, at times, contradictory, opinions regarding the severity of H1N1 in an otherwise healthy individual and the problems a smoke inhalation injury could cause in complicating or exacerbating a patient's ability to fight off respiratory infections.⁵

⁵ For example, in a 3/21/2013 note from McLeod, Dr. Barnard reported, "Deputy Causey is a 50 year old male who has been very, very healthy. He was involved in security with regards to the quite large apartment and forest fire in Myrtle Beach a

Respondents submitted the written opinions of four non-treating pulmonologists, Dr. John Mitchell, Dr. Robert Galphin, Dr. Gregory Cauthen, and Dr. Thomas Sporn, Chief of Pulmonary and Thoracic Pathology at Duke University Medical Center, who reviewed Causey's medical records and "concluded that Causey did not sustain any injury as a result of smoke exposure."

On cross-examination, Donna Causey admitted the medical history given at the Loris clinic reflected her husband had been running a fever for four days when he presented at the clinic. Much was made of a statement that another family member had also been ill; however, evidence in the record indicated the Causeys' daughter was suffering from a urinary tract infection during the early days of Deputy Causey's respiratory symptoms. Also hotly disputed as hearsay was Donna's testimony that an unidentified MUSC physician told her that her husband "had smoke inhalation with H1N1, which made the entire situation what we would consider to be the perfect storm, which made it twice as bad and that he may not survive."

"Proof that a claimant sustained an injury may be established by circumstantial and direct evidence where circumstances lead an unprejudiced mind to reasonably infer the injury was caused by the accident." *Tiller v. Nat'l Health Care Ctr. of Sumter*, 334 S.C. 333, 339–41, 513 S.E.2d 843, 846–47 (1999). In addition to dismissing certain circumstantial evidence as "speculative" or categorizing it as "no evidence," the Appellate Panel failed to recognize that circumstantial evidence may be used to prove causation. See *Glover v. Rhett Jackson Co.*, 274 S.C. 644, 649, 267 S.E.2d 77, 80 (1980). "The causal sequence . . . may be more indirect or complex, but as long as the causal connection is in fact present the compensability of the subsequent condition is beyond question." *Mullinax v. Winn-Dixie Stores, Inc.*, 318 S.C. 431, 436–37, 458 S.E.2d 76, 79–80 (Ct. App. 1995) (omission by court) (quoting Arthur Larson, *The Law of Workmen's Compensation* § 13.11(b) (1994).

couple or so weeks ago." Records from McLeod note Causey's "progressive deterioration" and his elective intubation. Upon the transfer to MUSC, Dr. Barnard wrote in Causey's discharge summary: "Acute lung injury syndrome, most likely related to smoke inhalation at this particular point. Note also that he did present with decreased white count and decreased platelet count that may have been an inflammatory component of this process or of course could be another process of course."

In *Mullinax*, the claimant injured her back lifting heavy bales of flour, sugar, and corn meal. Although she initially sought treatment for back pain, she subsequently claimed incontinence resulted from the back injury. *Id.* at 433, 458 S.E.2d at 78. As in this case, the *Mullinax* claimant was treated by numerous physicians, but no treating physician would definitively state her incontinence, which to some extent pre-dated her back injury, was caused by her work injury. Despite this, a divided Court of Appeals panel found:

The Commission committed legal error when it based its decision solely on the lack of a medical opinion stating Mullinax's injury caused the incontinence. In doing so, it ignored the medical and circumstantial evidence in the record, which shows either the injury or the treatment for the injury aggravated the incontinence. This is true even though Mullinax may have suffered some degree of incontinence before the injury, and even though her prior medical history made her condition more susceptible to aggravation by the injury or its treatment.

Id. at 441, 458 S.E.2d at 82. *See also Hargrove v. Titan Textile Co.*, 360 S.C. 276, 294, 599 S.E.2d 604, 613 (Ct. App. 2004) ("If a medical expert is unwilling to state with certainty a connection between an accident and an injury, the 'expression of a cautious opinion' may support an award if there are facts outside the medical testimony that also support an award." (quoting *Tiller*, 334 S.C. at 340, 513 S.E.2d at 846)); *Grice v. Dickerson, Inc.*, 241 S.C. 225, 127 S.E.2d 722 (1962) (where medical testimony recognized the possibility of a causal connection between claimant's accident and rheumatoid arthritis but no medical testimony stated such connection to a reasonable degree of medical certainty, the Appellate Panel must weigh the facts in light of the medical possibilities and draw inferences consistent with the medical testimony in the record); *Brewer v. Charleston Shipbuilding & Drydock Co.*, 212 S.C. 43, 46 S.E.2d 173 (1948) (doctor's testimony regarding connection between claimant's accident and his subsequent fungal infection, though not stated to a reasonable degree of medical certainty, was sufficient to support an award when combined with lay testimony about claimant's health before and after the accident, despite testimony of another doctor stating there was no connection). Here, the Appellate Panel did not lack a causation opinion. Despite this, it reached its own proximate cause conclusion based on an erroneous mischaracterization of the medical and circumstantial evidence.

The State of South Carolina, Horry County, and national law enforcement organizations recognized Deputy Causey as having died in the line of duty. Horry County Coroner Robert Edge, Jr., testified he amended Deputy Causey's death certificate to change the manner of death from "natural" to "accidental" after reviewing Dr. Largen's MUSC death summary noting Deputy Causey's "smoke inhalation injury." No physician has requested that Coroner Edge correct the death certificate as to Deputy Causey's manner of death. Finally, Horry County Sheriff Phillip Thompson testified before the Single Commissioner that he met with Deputy Causey at the start of his first shift working the Carolina Forest fire perimeter, and Deputy Causey "seemed fine, seemed well," with no coughing, sneezing, or redness in his eyes.

The Administrative Procedures Act (APA) establishes the standard for our review of Commission decisions. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). "An appellate court has the power upon review to reverse or modify a decision of an administrative agency if the findings and conclusions of the agency are (1) affected by an error of law, (2) clearly erroneous in view of the reliable and substantial evidence on the whole record, or (3) arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion." *James v. Anne's Inc.*, 390 S.C. 188, 192, 701 S.E.2d 730, 732 (2010) citing *Gray v. Club Group, Ltd.*, 339 S.C. 173, 182, 528 S.E.2d 435, 440 (Ct. App. 2000); S.C. Code Ann. §1-23-380(5)(d)-(e) (Supp. 2018). "Substantial evidence is 'not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that [the commission] reached or must have reached' to support its orders." *Lewis v. L.B. Dynasty, Inc.*, 419 S.C. 515, 518, 799 S.E.2d 304, 305 (2017) (alteration by court) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981)).

The deference required by our standard of review does not require us to ignore the Appellate Panel's mischaracterization of the medical evidence. Our review of the Appellate Panel's order—in conjunction with the medical records, deposition transcripts, live testimony, and submitted expert opinions—convinces us that substantial evidence does not support the Appellate Panel's findings, most notably, its statement that "[n]o opinion of any doctor who actually treated Causey supports a finding that Causey sustained any injury due to his alleged smoke exposure." *King v. Int'l Knife & Saw-Florence*, 395 S.C. 437, 443, 718 S.E.2d 227, 230 (Ct. App. 2011) (finding substantial evidence did not support the Appellate Panel's findings where it mischaracterized the claimant's injury and barred recovery of benefits for failing to satisfy the notice requirement). The Appellate Panel's factual

misconceptions in recounting and analyzing the medical and circumstantial evidence anchored its causation analysis, resulting in an error of law. Therefore, we reverse the decision of the Appellate Panel and reinstate the Single Commissioner's award of benefits. *James*, 390 S.C. at 192, 701 S.E.2d at 732 ("An appellate court has the power upon review to reverse or modify a decision of an administrative agency if the findings and conclusions of the agency are . . . affected by an error of law.").

REVERSED.⁶

WILLIAMS, A.C.J., concurs.

HUFF, A.J., concurs in result only.

⁶ We decide this case without oral argument pursuant to Rule 215, SCACR.

Exhibit B

The South Carolina Court of Appeals

Timothy Causey, Appellant,

v.

Horry County, Self-Insured Employer through the S.C.
Counties Workers' Compensation Trust, Respondents.

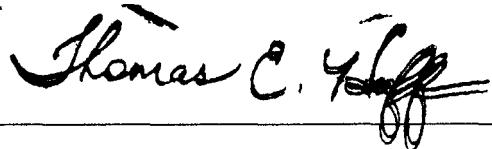
Appellate Case No. 2017-001732

ORDER

After careful consideration of the petition for rehearing, we grant the petition in part, deny the accompanying request for oral argument, and substitute the attached opinion for the original opinion, which is withdrawn.

 C.J.

 J.

 A.J.

Columbia, South Carolina

cc:

Francis A. Humphries, Jr., Esquire

Roy Allen Howell, III, Esquire

Kirsten Leslie Barr, Esquire

William Henry Monckton, VI, Esquire

FILED
May 11 2022

Allison Paige Sullivan, Esquire
Amy Bracy

Exhibit C

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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Horry County, Self-Insured Employer through the S.C.
Counties Workers' Compensation Trust, Respondents.

Appellate Case No. 2017-001732

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2022-UP-002
Submitted October 1, 2021 – Filed January 5, 2022
Withdrawn, Substituted and Refiled May 11, 2022

REVERSED

Francis A. Humphries, Jr. and William Henry Monckton,
VI, both of Monckton, Hembree & Humphries, PA, of
Myrtle Beach, and Allison Paige Sullivan, of Bluestein
Thompson Sullivan LLC of Columbia, for Appellant.

Roy Allen Howell, III and Kirsten Leslie Barr, both of
Trask & Howell, LLC, of Mt. Pleasant for Respondents.

MCDONALD, J.: The statutory dependents of Horry County Sheriff's Deputy Timothy Causey appeal the decision of the Appellate Panel of the South Carolina Worker's Compensation Commission denying death benefits. We reverse.

Deputy Causey died two months after working three twelve-hour shifts on the perimeter of a large structure fire in the Carolina Forest area of Horry County. The fire was massive; it destroyed 26 buildings, each containing four residential units. Jerry DelPercio, a fellow deputy who lived at the complex and helped evacuate the area, described seeing "trees on fire about 50, 60 feet high" and hearing sounds "like a war zone. There [were] explosions, red smoke, black smoke, whatever you can think of." All of the buildings "were engulfed within 20 minutes because of the wind." Although authorities were able to extinguish the fire by the following day, heavy smoke remained in the area for several days.

The Sunday morning after Deputy Causey's first night shift at the fire, Donna Causey observed her husband had "watery eyes, [a] runny nose, coughing, red eyes, [and] he kept rubbing his eyes." After his return from the area of the fire the second day (Monday morning), Donna observed black discharge on the tissue when Deputy Causey blew his nose, and his eyes were "really red, almost swollen." Upon Causey's return Tuesday morning, "he coughed up and showed me on the tissue, and it was a yellowish black color. Blew his nose again, it was a black color. The eyes were really red. The nose was constantly draining. Coughing more on Tuesday morning."

Causey did not return to work for his regular day shift Tuesday or Wednesday. On Thursday, Donna took her husband to Loris Family Health Clinic. Following blood work, a chest X-ray, and a breathing treatment, the clinic provided an antibiotic and sent Deputy Causey home. The following day, Causey was unable to drink Diet Pepsi, as he could only handle water or Gatorade due to the condition of his throat. By Saturday, Causey "was gasping with his head down. He just had this ashen look and this bluish color." At that point, Donna took Causey to the emergency room at McLeod Medical Center. Causey was hospitalized at McLeod, but as his condition continued to worsen, he was airlifted to MUSC on March 27. At MUSC, Causey was diagnosed with acute respiratory distress syndrome (ARDS), secondary to H1N1, also known as swine flu. Causey died at MUSC on May 19; his MUSC death summary provides, Causey died from "hypovolemic shock, secondary to diffuse alveolar hemorrhage, secondary to ventilator-assisted pneumonia, secondary to prolonged intubation, and secondary to smoke inhalation injury with H1N1 influenza." Deputy Causey's death certificate lists his cause of

death as "diffuse alveolar hemorrhage, due to ventilator associated pneumonia, due to prolonged intubation, due to smoke inhalation injury."

A number of Deputy Causey's physicians were deposed as to his cause of death, and both Causey and Respondents presented expert opinions, either through live testimony, deposition, or sworn statement. Despite the evidence in the record from several treating physicians, the findings on Deputy Causey's death certificate, the MUSC death summary, and the live testimony of Dr. Kim Collins, the Appellate Panel reversed the Single Commissioner's award of death benefits and found the claimant

has shown nothing more than that one could speculate smoke exposure on March 16, 2013 could have caused some ill-defined injury to Causey's lungs, and that if one so speculates, one could further speculate that such an injury could have impacted Causey's ability to fight a deadly flu virus. But such speculation is insufficient. Without actual evidence that Causey sustained an injury to his lungs on March 16, 2013 and that such injury to his lungs was the proximate cause of his death, he is not entitled to benefits under S.C. Code Ann. § 42-9-920 as a matter of law.^[1]

In reaching this conclusion, the Appellate Panel relied upon its finding that "[no opinion of any doctor who actually treated Causey supports a finding that Causey sustained any injury due to his alleged smoke exposure." This finding, in addition to the Panel's opening statement that four of Deputy Causey's treating physicians agreed "smoke exposure **played no role**" in Causey's death" mischaracterized Dr. Charlton Strange's testimony. Other MUSC physicians then relied upon the

¹ The Appellate Panel's "actual evidence" language here—when read in conjunction with the testimony of the treating physicians discussed below—suggests the Panel erred at the outset of its analysis by imposing an "objective evidence" standard to Deputy Causey's claim. See *Russell v. Wal-Mart Stores, Inc.*, 426 S.C. 281, 288, 826 S.E.2d 863 (2019) (in which our supreme court noted this court's reversal focusing on the Commission's error "in requiring a change of condition to be established by objective evidence.").

mischaracterization of Dr. Strange's testimony in responding to questioning during their own depositions.²

Dr. Strange was the admitting physician upon Causey's transfer from McLeod to MUSC. Dr. Strange explained in his deposition that "the impression of the McLeod physicians was that this was smoke inhalation, but they had also given [Causey] antibiotics for the possibility that there was bacterial infection that was also present." More sophisticated testing than was available at McLeod revealed the presence of H1N1, and MUSC began treatment with Tamiflu. Initially, Dr. Strange testified that he did not believe smoke inhalation contributed to Causey's death as "it is really the H1N1 that set up all the subsequent events." However, he immediately clarified this statement by explaining smoke inhalation, if it were an issue, "could have increased his chance of acquiring clinical H1N1 and made his clinical course more severe." When asked whether it was his opinion to a reasonable degree of medical certainty that the H1N1 was "basically the sole cause of his ARDS and ultimately his death," Dr. Strange replied:

That's a hard one. There's pretty big literature out there that shows that cigarette smokers have more H1N1 than people that don't smoke and that the H1N1 that they do acquire is more serious than people that are nonsmokers. And because Mr. Causey was a nonsmoker, we could speculate but not prove that the smoke inhalation that he did have made his presentation of H1N1 worse than it otherwise would have been.

When asked whether he could state his opinion to a reasonable degree of medical certainty, Dr. Strange responded, "There is a possibility but not rising to the level of medical probability that the smoke inhalation contributed in a meaningful way to his ultimate outcome." This is contrary to the Appellate Panel's characterization of this testimony as concluding "smoke inhalation played no role in his death."

² More precisely, the Appellate Panel found "Causey's attending physician, Dr. Charlie Strange, testified that Causey died from Swine Flu and that smoke exposure **played no role in his death**. In this opinion, Causey's other treating physicians (Dr. Timothy Whelan, Dr. William Largent, and Dr. Dee Ford), concurred." (Emphasis added). While it is true that these physicians agreed with Dr. Strange's statements as conveyed to them, these witnesses were not given the context and clarification Dr. Strange provided when further examined.

The Panel's summation of Dr. Whelan's testimony is likewise concerning. Dr. Whelan noted Deputy Causey suffered "severe ARDS, multiple complications with a prolonged ICU stay." He developed multiple infections, including "bacterial ventilator associated pneumonias" and a possible fungal infection. The problem with the Appellate Panel's description of Dr. Whelan's testimony as "corroborating" Dr. Strange's opinion is that Dr. Whelan gave his opinion based on a faulty premise—only after being told "[i]t was Dr. Strange's opinion that the smoke inhalation did not cause the H1N1 or contribute to his death." And, even after he was provided this characterization, Dr. Whelan's response remained equivocal. He stated, "I believe Dr. Strange could be correct. However, I also think it is very difficult to know, based on the records that I reviewed, the extent of the smoke inhalation itself and if there could have been any contribution of smoke inhalation to susceptibility to H1N1." While Dr. Whelan agreed he could not state to "a reasonable degree of medical certainty that the smoke inhalation played any role" in Causey's death, he emphasized the reverse was also true:

So, I agree with your interpretation. However, I think if one asked the question in the reverse, can you say to a reasonable degree of medical certainty that a significant smoke inhalation exposure around the time that one is infected with H1N1 has absolutely no impact on the disease course, I would also say I cannot say that to a reasonable medical certainty.

Notably, Dr. Whelan was the attending physician who signed off on Deputy Causey's death summary. In discussing the death summary in his deposition, Dr. Whelan explained he would redact only the word "injury" from the final line of the summary, and he could not opine about "smoke inhalation" to a reasonable degree of medical certainty.³

Dr. Dee Ford was Causey's attending physician in the medical intensive care unit at MUSC. She, too, found the death summary reasonable as to the cause of Deputy

³ Dr. William Largen, the MUSC ICU resident who dictated and completed the death summary co-signed by attending physician Whelan, was not deposed, but his statement is included in the record. Dr. Largen stated, in pertinent part, that he "would defer any opinions regarding Mr. Causey's death to those of Dr. Whelan and Dr. Strange. I would also agree that the ultimate cause of Mr. Causey's death was complications of Acute Respiratory Distress Syndrome secondary to H1N1 Swine Flu."

Causey's death. However, when asked whether she had the medical documentation and history necessary to opine to a reasonable degree of medical certainty as to whether Deputy Causey suffered a smoke inhalation injury, she agreed she did not have the information necessary to so opine. She noted she would need a more detailed occupational exposure history, and she agreed that once H1N1 was diagnosed, other concerns would take a "backseat" because "[o]nce H1N1 were identified in a patient with Mr. Causey's constellation of signs and symptoms, his illness would be attributed to H1N1."

Finally—and of significance to our consideration of the Appellate Panel's order—Dr. Nicholas Pastis testified by deposition as to his treatment of Deputy Causey at MUSC. Dr. Pastis's deposition testimony was Claimant's Exhibit 1 before the Single Commissioner. In the deposition, Dr. Pastis was asked:

Q. So is there any way to state, within a reasonable degree of medical certainty, that the smoke inhalation that allegedly occurred in this case had anything to do with his death?

A. I think that I can say with a reasonably - - reasonable degree of certainty, that it made his ability to fight off an infection worse.

Although Dr. Pastis admitted on cross-examination that this opinion would require some degree of speculation as to the presence of a burn injury to Causey's airway, he was careful to note, "I would be uncomfortable saying that it [the smoke inhalation] had nothing to do with his death." And he later clarified evidence of a burn injury would be required only if one needed "absolute proof." Upon hearing the summary of Causey's appearance and symptoms following each of his three nights at the fire perimeter, Dr. Pastis agreed the symptoms were consistent with an inhalation injury. As to the severity of H1N1 and an alleged MUSC communication to Donna Causey that "the smoke inhalation would have made it difficult for [Causey] to fight it [H1N1] off," Dr. Pastis explained that while H1N1 is severe, "most people don't die of this disease. He certainly had a severe case. Those happen without smoke inhalation. But in his case, the timing of it made me think that it exacerbated what was already a severe problem and made it worse."⁴

⁴ Dr. Pastis also referenced the literature indicating a pulmonary infection can be made worse by damage to the airway. For example, "if you have a bad inhalation

Like Dr. Ford, Dr. Pastis agreed the cause of death as set forth in the MUSC death summary was one "to which [he] would ascribe." On cross-examination, Respondents asked Dr. Pastis whether "H1N1 is the cause of death of [Causey's] acute respiratory distress syndrome?" His response: "It - - it is a cause." However, in reversing and vacating the Single Commissioner's order, the Appellate Panel declared Dr. Pastis's opinions as to causation "are not only equivocal, they are admittedly based upon nothing more than speculation."

Deputy Causey's retained expert was Dr. Kim Collins, the former Chief Medical Examiner and Director of Autopsy and Forensic Pathology at MUSC. When asked about her opinion regarding Deputy Causey's injuries and the proximate cause of his death, Dr. Collins, who is board certified in anatomic, clinical, and forensic pathology, replied:

My opinion is this was a healthy young man until he experienced three days of smoke inhalation, and that [led] to what we call an inhalation injury which [led] to acute lung injury. And in that process, his immune system—particularly in the lungs that help you fight off what you're breathing in, all the germs, etcetera—during this time he developed H1N1 influenza, influenza A. Secondary to developing influenza, he had secondary bacterial infections, such as Klebsiella, pseudomonas, and then those cause a pulmonary hemorrhage. So he actually dies of the pulmonary hemorrhage and the bacterial infections due to the H1N1 influenza, due to the smoke inhalation.

Dr. Collins then discussed the category of fire deaths resulting from inhalation injury and "the cascade of events because of the systemic problems this can create and the metabolic problems it can create. And so you have acute lung injury, which develops into ARDS, which then can develop into multi-organ failure and secondary infections." In Dr. Collins's opinion, "to a reasonable degree of medical certainty," the underlying cause of death for Deputy Causey was "the smoke inhalation." Dr. Collins explained this is

injury and you get a pneumonia, it is reasonable that it may be worse than somebody who didn't have the inhalation injury."

my medical opinion, more likely than not, that but for this man [having] been involved in this fire and inhaled these chemicals these three days, but for that occurring, he could not have developed H1N1. And this is my opinion if you look at the history, you look at the scenario, the chronology, the events follow perfectly. Acute lung injury from smoke inhalation, ARDS acute respiratory distress syndrome, H1N1, and then you get your secondary bacterial infections, and your hemorrhage into your lungs.

On cross-examination, Dr. Collins agreed that because no autopsy was conducted, there was no objective medical evidence to identify specific smoke inhalation damage to Deputy Causey's lung tissue. According to Dr. Collins, Deputy Causey contracted H1N1 because of the destruction to his lungs, "because of the inhalation injuries, not because it [H1N1] was inside the smoke." On redirect, Dr. Collins explained "[m]ost people have a very mild flu when they have H1N1 and this was not the case because he was compromised by the smoke inhalation injury." When asked whether this was her opinion to a "reasonable degree of medical certainty more likely than not," Collins replied "Yes, it is. Most certainly."

Again, the Appellate Panel characterized Dr. Collins's testimony as speculative, noting she and Dr. Pastis "both were forced to concede that their opinions were based, not on objective medical evidence, but only speculation." The Panel order further mischaracterizes her testimony, stating, "In fact, Dr. Collins was forced to concede that she did not even understand the nature of Causey's alleged exposure to smoke, believing him (falsely) to have been actually fighting a fire for the three 12-hour shifts." However, a review of this portion of the Collins deposition transcript actually establishes that when she was asked about her file note indicating Deputy Causey was "involved in fighting an apartment fire," Dr. Collins responded, "I don't know what his role was during the fire. He might have been fighting the fire - - apartment fire - - or he might have been assisting in keeping the barriers. I am not sure He was exposed to the soot and to the fumes. It doesn't really matter what he was doing at the time." Dr. Collins then explained that unlike properly equipped firefighters, "security personnel may not have the proper respiratory equipment" and Causey was involved in the area of the fire for "[t]hree 12-hour shifts."

Appellant concedes, as she must, that the various doctors—the treating physicians and Respondents' medical expert witnesses—gave different and, at times,

contradictory, opinions regarding the severity of H1N1 in an otherwise healthy individual and the problems a smoke inhalation injury could cause in complicating or exacerbating a patient's ability to fight off respiratory infections.⁵

Respondents submitted the written opinions of four non-treating pulmonologists, Dr. John Mitchell, Dr. Robert Galphin, Dr. Gregory Cauthen, and Dr. Thomas Sporn, Chief of Pulmonary and Thoracic Pathology at Duke University Medical Center, who reviewed Causey's medical records and "concluded that Causey did not sustain any injury as a result of smoke exposure."

On cross-examination, Donna Causey admitted the medical history given at the Loris clinic reflected her husband had been running a fever for four days when he presented at the clinic. Much was made of a statement that another family member had also been ill; however, evidence in the record indicated the Causeys' daughter was suffering from a urinary tract infection during the early days of Deputy Causey's respiratory symptoms. Also hotly disputed as hearsay was Donna's testimony that an unidentified MUSC physician told her that her husband "had smoke inhalation with H1N1, which made the entire situation what we would consider to be the perfect storm, which made it twice as bad and that he may not survive."

"Proof that a claimant sustained an injury may be established by circumstantial and direct evidence where circumstances lead an unprejudiced mind to reasonably infer the injury was caused by the accident." *Tiller v. Nat'l Health Care Ctr. of Sumter*, 334 S.C. 333, 339–41, 513 S.E.2d 843, 846–47 (1999). In addition to dismissing certain circumstantial evidence as "speculative" or categorizing it as "no evidence," the Appellate Panel failed to recognize that circumstantial evidence may be used to prove causation. See *Glover v. Rhett Jackson Co.*, 274 S.C. 644, 649, 267 S.E.2d 77, 80 (1980). "The causal sequence . . . may be more indirect or complex, but as

⁵ For example, in a 3/21/2013 note from McLeod, Dr. Barnard reported, "Deputy Causey is a 50 year old male who has been very, very healthy. He was involved in security with regards to the quite large apartment and forest fire in Myrtle Beach a couple or so weeks ago." Records from McLeod note Causey's "progressive deterioration" and his elective intubation. Upon the transfer to MUSC, Dr. Barnard wrote in Causey's discharge summary: "Acute lung injury syndrome, most likely related to smoke inhalation at this particular point. Note also that he did present with decreased white count and decreased platelet count that may have been an inflammatory component of this process or of course could be another process of course."

long as the causal connection is in fact present the compensability of the subsequent condition is beyond question." *Mullinax v. Winn-Dixie Stores, Inc.*, 318 S.C. 431, 436–37, 458 S.E.2d 76, 79–80 (Ct. App. 1995) (omission by court) (quoting Arthur Larson, *The Law of Workmen's Compensation* § 13.11(b) (1994).

In *Mullinax*, the claimant injured her back lifting heavy bales of flour, sugar, and corn meal. Although she initially sought treatment for back pain, she subsequently claimed incontinence resulted from the back injury. *Id.* at 433, 458 S.E.2d at 78. As in this case, the *Mullinax* claimant was treated by numerous physicians, but no treating physician would definitively state her incontinence, which to some extent pre-dated her back injury, was caused by her work injury. Despite this, a divided Court of Appeals panel found:

The Commission committed legal error when it based its decision solely on the lack of a medical opinion stating Mullinax's injury caused the incontinence. In doing so, it ignored the medical and circumstantial evidence in the record, which shows either the injury or the treatment for the injury aggravated the incontinence. This is true even though Mullinax may have suffered some degree of incontinence before the injury, and even though her prior medical history made her condition more susceptible to aggravation by the injury or its treatment.

Id. at 441, 458 S.E.2d at 82. See also *Hargrove v. Titan Textile Co*, 360 S.C. 276, 294, 599 S.E.2d 604, 613 (Ct. App. 2004) ("If a medical expert is unwilling to state with certainty a connection between an accident and an injury, the 'expression of a cautious opinion' may support an award if there are facts outside the medical testimony that also support an award." (quoting *Tiller*, 334 S.C. at 340, 513 S.E.2d at 846)); *Grice v. Dickerson, Inc.*, 241 S.C. 225, 127 S.E.2d 722 (1962) (where medical testimony recognized the possibility of a causal connection between claimant's accident and rheumatoid arthritis but no medical testimony stated such connection to a reasonable degree of medical certainty, the Appellate Panel must weigh the facts in light of the medical possibilities and draw inferences consistent with the medical testimony in the record); *Brewer v. Charleston Shipbuilding & Drydock Co.*, 212 S.C. 43, 46 S.E.2d 173 (1948) (doctor's testimony regarding connection between claimant's accident and his subsequent fungal infection, though not stated to a reasonable degree of medical certainty, was sufficient to support an award when combined with lay testimony about claimant's health before and after the accident, despite testimony of another doctor stating there was no

connection). Here, the Appellate Panel did not lack a causation opinion. Despite this, it reached its own proximate cause conclusion based on an erroneous mischaracterization of the medical and circumstantial evidence.

The State of South Carolina, Horry County, and national law enforcement organizations recognized Deputy Causey as having died in the line of duty. Horry County Coroner Robert Edge, Jr., testified he amended Deputy Causey's death certificate to change the manner of death from "natural" to "accidental" after reviewing Dr. Largen's MUSC death summary noting Deputy Causey's "smoke inhalation injury." No physician has requested that Coroner Edge correct the death certificate as to Deputy Causey's manner of death. Finally, Horry County Sheriff Phillip Thompson testified before the Single Commissioner that he met with Deputy Causey at the start of his first shift working the Carolina Forest fire perimeter, and Deputy Causey "seemed fine, seemed well," with no coughing, sneezing, or redness in his eyes.

The Administrative Procedures Act (APA) establishes the standard for our review of Commission decisions. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). "An appellate court has the power upon review to reverse or modify a decision of an administrative agency if the findings and conclusions of the agency are (1) affected by an error of law, (2) clearly erroneous in view of the reliable and substantial evidence on the whole record, or (3) arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion." *James v. Anne's Inc.*, 390 S.C. 188, 192, 701 S.E.2d 730, 732 (2010) citing *Gray v. Club Group, Ltd.*, 339 S.C. 173, 182, 528 S.E.2d 435, 440 (Ct. App. 2000); S.C. Code Ann. §1-23-380(5)(d)-(e) (Supp. 2018). "Substantial evidence is 'not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that [the commission] reached or must have reached' to support its orders." *Lewis v. L.B. Dynasty, Inc.*, 419 S.C. 515, 518, 799 S.E.2d 304, 305 (2017) (alteration by court) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981)).

The deference required by our standard of review does not require us to ignore the Appellate Panel's mischaracterization of the medical evidence. Our review of the Appellate Panel's order—in conjunction with the medical records, deposition transcripts, live testimony, and submitted expert opinions—convinces us that substantial evidence does not support the Appellate Panel's findings, most notably, its statement that "[n]o opinion of any doctor who actually treated Causey supports a finding that Causey sustained any injury due to his alleged smoke exposure."

King v. Int'l Knife & Saw-Florence, 395 S.C. 437, 443, 718 S.E.2d 227, 230 (Ct. App. 2011) (finding substantial evidence did not support the Appellate Panel's findings where it mischaracterized the claimant's injury and barred recovery of benefits for failing to satisfy the notice requirement). The Appellate Panel's factual misconceptions in recounting and analyzing the medical and circumstantial evidence anchored its causation analysis, resulting in an error of law. Therefore, we reverse the decision of the Appellate Panel and reinstate the Single Commissioner's award of benefits. *James*, 390 S.C. at 192, 701 S.E.2d at 732 ("An appellate court has the power upon review to reverse or modify a decision of an administrative agency if the findings and conclusions of the agency are . . . affected by an error of law.").

REVERSED.⁶

WILLIAMS, A.C.J., concurs.

HUFF, A.J., concurs in result only.

⁶ We decide this case without oral argument pursuant to Rule 215, SCACR.

Exhibit D

Burns, LaToyla

From: Burns, LaToyla
Sent: Wednesday, May 11, 2022 11:51 AM
To: 'fhumphries@myrtlebeachlawfirm.net'; 'wmonckton@myrtlebeachlawfirm.net';
'allison@bluesteinattorneys.com'; 'rhowell@trask-howell.com'; 'kbarr@trask-howell.com'
Cc: 'cbrennan@myrtlebeachlawfirm.net'; 'locchipinti@myrtlebeachlawfirm.net';
'kalen@bluesteinattorneys.com'; 'cchassereau@trask-howell.com'; 'cchassereau@trask-howell.com'
Subject: SC Court of Appeals: Timothy Causey v. Horry County (2017-001732)
Attachments: Causey v. Horry County Order and Opinion Refiled.pdf

Dear Counsel,

Attached in this email is correspondence from the Court of Appeals.

Respectfully,

LaToyla Burns

Appeals Specialist
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201
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Exhibit E



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
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COLUMBIA, SOUTH CAROLINA 29201
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FAX: (803) 734-1839
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June 13, 2022

The Honorable Amy Bracy
Worker's Compensation Commission
Post Office Box 1715
Columbia SC 29202

REMITTITUR

Re: Timothy Causey v. Horry County
Lower Court Case No. 1302588
Appellate Case No. 2017-001732

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen

CLERK

Enclosure

cc: Francis A. Humphries, Jr., Esquire
Roy Allen Howell, III, Esquire

Kirsten Leslie Barr, Esquire
William Henry Monckton, VI, Esquire
Allison Paige Sullivan, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Timothy Causey, Appellant,

v.

Horry County, Self-Insured Employer through the S.C.
Counties Workers' Compensation Trust, Respondents.

Appellate Case No. 2017-001732

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2022-UP-002
Submitted October 1, 2021 – Filed January 5, 2022
Withdrawn, Substituted and Refiled May 11, 2022

REVERSED

Francis A. Humphries, Jr. and William Henry Monckton,
VI, both of Monckton, Hembree & Humphries, PA, of
Myrtle Beach, and Allison Paige Sullivan, of Bluestein
Thompson Sullivan LLC of Columbia, for Appellant.

Roy Allen Howell, III and Kirsten Leslie Barr, both of
Trask & Howell, LLC, of Mt. Pleasant for Respondents.

MCDONALD, J.: The statutory dependents of Horry County Sheriff's Deputy Timothy Causey appeal the decision of the Appellate Panel of the South Carolina Worker's Compensation Commission denying death benefits. We reverse.

Deputy Causey died two months after working three twelve-hour shifts on the perimeter of a large structure fire in the Carolina Forest area of Horry County. The fire was massive; it destroyed 26 buildings, each containing four residential units. Jerry DelPercio, a fellow deputy who lived at the complex and helped evacuate the area, described seeing "trees on fire about 50, 60 feet high" and hearing sounds "like a war zone. There [were] explosions, red smoke, black smoke, whatever you can think of." All of the buildings "were engulfed within 20 minutes because of the wind." Although authorities were able to extinguish the fire by the following day, heavy smoke remained in the area for several days.

The Sunday morning after Deputy Causey's first night shift at the fire, Donna Causey observed her husband had "watery eyes, [a] runny nose, coughing, red eyes, [and] he kept rubbing his eyes." After his return from the area of the fire the second day (Monday morning), Donna observed black discharge on the tissue when Deputy Causey blew his nose, and his eyes were "really red, almost swollen." Upon Causey's return Tuesday morning, "he coughed up and showed me on the tissue, and it was a yellowish black color. Blew his nose again, it was a black color. The eyes were really red. The nose was constantly draining. Coughing more on Tuesday morning."

Causey did not return to work for his regular day shift Tuesday or Wednesday. On Thursday, Donna took her husband to Loris Family Health Clinic. Following blood work, a chest X-ray, and a breathing treatment, the clinic provided an antibiotic and sent Deputy Causey home. The following day, Causey was unable to drink Diet Pepsi, as he could only handle water or Gatorade due to the condition of his throat. By Saturday, Causey "was gasping with his head down. He just had this ashen look and this bluish color." At that point, Donna took Causey to the emergency room at McLeod Medical Center. Causey was hospitalized at McLeod, but as his condition continued to worsen, he was airlifted to MUSC on March 27. At MUSC, Causey was diagnosed with acute respiratory distress syndrome (ARDS), secondary to H1N1, also known as swine flu. Causey died at MUSC on May 19; his MUSC death summary provides, Causey died from "hypovolemic shock, secondary to diffuse alveolar hemorrhage, secondary to ventilator-assisted pneumonia, secondary to prolonged intubation, and secondary to smoke inhalation injury with H1N1 influenza." Deputy Causey's death certificate lists his cause of

death as "diffuse alveolar hemorrhage, due to ventilator associated pneumonia, due to prolonged intubation, due to smoke inhalation injury."

A number of Deputy Causey's physicians were deposed as to his cause of death, and both Causey and Respondents presented expert opinions, either through live testimony, deposition, or sworn statement. Despite the evidence in the record from several treating physicians, the findings on Deputy Causey's death certificate, the MUSC death summary, and the live testimony of Dr. Kim Collins, the Appellate Panel reversed the Single Commissioner's award of death benefits and found the claimant

has shown nothing more than that one could speculate smoke exposure on March 16, 2013 could have caused some ill-defined injury to Causey's lungs, and that if one so speculates, one could further speculate that such an injury could have impacted Causey's ability to fight a deadly flu virus. But such speculation is insufficient. Without actual evidence that Causey sustained an injury to his lungs on March 16, 2013 and that such injury to his lungs was the proximate cause of his death, he is not entitled to benefits under S.C. Code Ann. § 42-9-920 as a matter of law.^[1]

In reaching this conclusion, the Appellate Panel relied upon its finding that "[no opinion of any doctor who actually treated Causey supports a finding that Causey sustained any injury due to his alleged smoke exposure." This finding, in addition to the Panel's opening statement that four of Deputy Causey's treating physicians agreed "smoke exposure **played no role**" in Causey's death" mischaracterized Dr. Charlton Strange's testimony. Other MUSC physicians then relied upon the

¹ The Appellate Panel's "actual evidence" language here—when read in conjunction with the testimony of the treating physicians discussed below—suggests the Panel erred at the outset of its analysis by imposing an "objective evidence" standard to Deputy Causey's claim. See *Russell v. Wal-Mart Stores, Inc.*, 426 S.C. 281, 288, 826 S.E.2d 863 (2019) (in which our supreme court noted this court's reversal focusing on the Commission's error "in requiring a change of condition to be established by objective evidence.").

mischaracterization of Dr. Strange's testimony in responding to questioning during their own depositions.²

Dr. Strange was the admitting physician upon Causey's transfer from McLeod to MUSC. Dr. Strange explained in his deposition that "the impression of the McLeod physicians was that this was smoke inhalation, but they had also given [Causey] antibiotics for the possibility that there was bacterial infection that was also present." More sophisticated testing than was available at McLeod revealed the presence of H1N1, and MUSC began treatment with Tamiflu. Initially, Dr. Strange testified that he did not believe smoke inhalation contributed to Causey's death as "it is really the H1N1 that set up all the subsequent events." However, he immediately clarified this statement by explaining smoke inhalation, if it were an issue, "could have increased his chance of acquiring clinical H1N1 and made his clinical course more severe." When asked whether it was his opinion to a reasonable degree of medical certainty that the H1N1 was "basically the sole cause of his ARDS and ultimately his death," Dr. Strange replied:

That's a hard one. There's pretty big literature out there that shows that cigarette smokers have more H1N1 than people that don't smoke and that the H1N1 that they do acquire is more serious than people that are nonsmokers. And because Mr. Causey was a nonsmoker, we could speculate but not prove that the smoke inhalation that he did have made his presentation of H1N1 worse than it otherwise would have been.

When asked whether he could state his opinion to a reasonable degree of medical certainty, Dr. Strange responded, "There is a possibility but not rising to the level of medical probability that the smoke inhalation contributed in a meaningful way to his ultimate outcome." This is contrary to the Appellate Panel's characterization of this testimony as concluding "smoke inhalation played no role in his death."

² More precisely, the Appellate Panel found "Causey's attending physician, Dr. Charlie Strange, testified that Causey died from Swine Flu and that smoke exposure **played no role in his death**. In this opinion, Causey's other treating physicians (Dr. Timothy Whelan, Dr. William Largen, and Dr. Dee Ford), concurred." (Emphasis added). While it is true that these physicians agreed with Dr. Strange's statements as conveyed to them, these witnesses were not given the context and clarification Dr. Strange provided when further examined.

The Panel's summation of Dr. Whelan's testimony is likewise concerning. Dr. Whelan noted Deputy Causey suffered "severe ARDS, multiple complications with a prolonged ICU stay." He developed multiple infections, including "bacterial ventilator associated pneumonias" and a possible fungal infection. The problem with the Appellate Panel's description of Dr. Whelan's testimony as "corroborating" Dr. Strange's opinion is that Dr. Whelan gave his opinion based on a faulty premise—only after being told "[i]t was Dr. Strange's opinion that the smoke inhalation did not cause the H1N1 or contribute to his death." And, even after he was provided this characterization, Dr. Whelan's response remained equivocal. He stated, "I believe Dr. Strange could be correct. However, I also think it is very difficult to know, based on the records that I reviewed, the extent of the smoke inhalation itself and if there could have been any contribution of smoke inhalation to susceptibility to H1N1." While Dr. Whelan agreed he could not state to "a reasonable degree of medical certainty that the smoke inhalation played any role" in Causey's death, he emphasized the reverse was also true:

So, I agree with your interpretation. However, I think if one asked the question in the reverse, can you say to a reasonable degree of medical certainty that a significant smoke inhalation exposure around the time that one is infected with H1N1 has absolutely no impact on the disease course, I would also say I cannot say that to a reasonable medical certainty.

Notably, Dr. Whelan was the attending physician who signed off on Deputy Causey's death summary. In discussing the death summary in his deposition, Dr. Whelan explained he would redact only the word "injury" from the final line of the summary, and he could not opine about "smoke inhalation" to a reasonable degree of medical certainty.³

Dr. Dee Ford was Causey's attending physician in the medical intensive care unit at MUSC. She, too, found the death summary reasonable as to the cause of Deputy

³ Dr. William Largen, the MUSC ICU resident who dictated and completed the death summary co-signed by attending physician Whelan, was not deposed, but his statement is included in the record. Dr. Largen stated, in pertinent part, that he "would defer any opinions regarding Mr. Causey's death to those of Dr. Whelan and Dr. Strange. I would also agree that the ultimate cause of Mr. Causey's death was complications of Acute Respiratory Distress Syndrome secondary to H1N1 Swine Flu."

Causey's death. However, when asked whether she had the medical documentation and history necessary to opine to a reasonable degree of medical certainty as to whether Deputy Causey suffered a smoke inhalation injury, she agreed she did not have the information necessary to so opine. She noted she would need a more detailed occupational exposure history, and she agreed that once H1N1 was diagnosed, other concerns would take a "backseat" because "[o]nce H1N1 were identified in a patient with Mr. Causey's constellation of signs and symptoms, his illness would be attributed to H1N1."

Finally—and of significance to our consideration of the Appellate Panel's order—Dr. Nicholas Pastis testified by deposition as to his treatment of Deputy Causey at MUSC. Dr. Pastis's deposition testimony was Claimant's Exhibit 1 before the Single Commissioner. In the deposition, Dr. Pastis was asked:

Q. So is there any way to state, within a reasonable degree of medical certainty, that the smoke inhalation that allegedly occurred in this case had anything to do with his death?

A. I think that I can say with a reasonably - - reasonable degree of certainty, that it made his ability to fight off an infection worse.

Although Dr. Pastis admitted on cross-examination that this opinion would require some degree of speculation as to the presence of a burn injury to Causey's airway, he was careful to note, "I would be uncomfortable saying that it [the smoke inhalation] had nothing to do with his death." And he later clarified evidence of a burn injury would be required only if one needed "absolute proof." Upon hearing the summary of Causey's appearance and symptoms following each of his three nights at the fire perimeter, Dr. Pastis agreed the symptoms were consistent with an inhalation injury. As to the severity of H1N1 and an alleged MUSC communication to Donna Causey that "the smoke inhalation would have made it difficult for [Causey] to fight it [H1N1] off," Dr. Pastis explained that while H1N1 is severe, "most people don't die of this disease. He certainly had a severe case. Those happen without smoke inhalation. But in his case, the timing of it made me think that it exacerbated what was already a severe problem and made it worse."⁴

⁴ Dr. Pastis also referenced the literature indicating a pulmonary infection can be made worse by damage to the airway. For example, "if you have a bad inhalation

Like Dr. Ford, Dr. Pastis agreed the cause of death as set forth in the MUSC death summary was one "to which [he] would ascribe." On cross-examination, Respondents asked Dr. Pastis whether "H1N1 is the cause of death of [Causey's] acute respiratory distress syndrome?" His response: "It - - it is a cause." However, in reversing and vacating the Single Commissioner's order, the Appellate Panel declared Dr. Pastis's opinions as to causation "are not only equivocal, they are admittedly based upon nothing more than speculation."

Deputy Causey's retained expert was Dr. Kim Collins, the former Chief Medical Examiner and Director of Autopsy and Forensic Pathology at MUSC. When asked about her opinion regarding Deputy Causey's injuries and the proximate cause of his death, Dr. Collins, who is board certified in anatomic, clinical, and forensic pathology, replied:

My opinion is this was a healthy young man until he experienced three days of smoke inhalation, and that [led] to what we call an inhalation injury which [led] to acute lung injury. And in that process, his immune system—particularly in the lungs that help you fight off what you're breathing in, all the germs, etcetera—during this time he developed H1N1 influenza, influenza A. Secondary to developing influenza, he had secondary bacterial infections, such as Klebsiella, pseudomonas, and then those cause a pulmonary hemorrhage. So he actually dies of the pulmonary hemorrhage and the bacterial infections due to the H1N1 influenza, due to the smoke inhalation.

Dr. Collins then discussed the category of fire deaths resulting from inhalation injury and "the cascade of events because of the systemic problems this can create and the metabolic problems it can create. And so you have acute lung injury, which develops into ARDS, which then can develop into multi-organ failure and secondary infections." In Dr. Collins's opinion, "to a reasonable degree of medical certainty," the underlying cause of death for Deputy Causey was "the smoke inhalation." Dr. Collins explained this is

injury and you get a pneumonia, it is reasonable that it may be worse than somebody who didn't have the inhalation injury."

my medical opinion, more likely than not, that but for this man [having] been involved in this fire and inhaled these chemicals these three days, but for that occurring, he could not have developed H1N1. And this is my opinion if you look at the history, you look at the scenario, the chronology, the events follow perfectly. Acute lung injury from smoke inhalation, ARDS acute respiratory distress syndrome, H1N1, and then you get your secondary bacterial infections, and your hemorrhage into your lungs.

On cross-examination, Dr. Collins agreed that because no autopsy was conducted, there was no objective medical evidence to identify specific smoke inhalation damage to Deputy Causey's lung tissue. According to Dr. Collins, Deputy Causey contracted H1N1 because of the destruction to his lungs, "because of the inhalation injuries, not because it [H1N1] was inside the smoke." On redirect, Dr. Collins explained "[m]ost people have a very mild flu when they have H1N1 and this was not the case because he was compromised by the smoke inhalation injury." When asked whether this was her opinion to a "reasonable degree of medical certainty more likely than not," Collins replied "Yes, it is. Most certainly."

Again, the Appellate Panel characterized Dr. Collins's testimony as speculative, noting she and Dr. Pastis "both were forced to concede that their opinions were based, not on objective medical evidence, but only speculation." The Panel order further mischaracterizes her testimony, stating, "In fact, Dr. Collins was forced to concede that she did not even understand the nature of Causey's alleged exposure to smoke, believing him (falsely) to have been actually fighting a fire for the three 12-hour shifts." However, a review of this portion of the Collins deposition transcript actually establishes that when she was asked about her file note indicating Deputy Causey was "involved in fighting an apartment fire," Dr. Collins responded, "I don't know what his role was during the fire. He might have been fighting the fire - - apartment fire - - or he might have been assisting in keeping the barriers. I am not sure He was exposed to the soot and to the fumes. It doesn't really matter what he was doing at the time." Dr. Collins then explained that unlike properly equipped firefighters, "security personnel may not have the proper respiratory equipment" and Causey was involved in the area of the fire for "[t]hree 12-hour shifts."

Appellant concedes, as she must, that the various doctors—the treating physicians and Respondents' medical expert witnesses—gave different and, at times,

contradictory, opinions regarding the severity of H1N1 in an otherwise healthy individual and the problems a smoke inhalation injury could cause in complicating or exacerbating a patient's ability to fight off respiratory infections.⁵

Respondents submitted the written opinions of four non-treating pulmonologists, Dr. John Mitchell, Dr. Robert Galphin, Dr. Gregory Cauthen, and Dr. Thomas Sporn, Chief of Pulmonary and Thoracic Pathology at Duke University Medical Center, who reviewed Causey's medical records and "concluded that Causey did not sustain any injury as a result of smoke exposure."

On cross-examination, Donna Causey admitted the medical history given at the Loris clinic reflected her husband had been running a fever for four days when he presented at the clinic. Much was made of a statement that another family member had also been ill; however, evidence in the record indicated the Causeys' daughter was suffering from a urinary tract infection during the early days of Deputy Causey's respiratory symptoms. Also hotly disputed as hearsay was Donna's testimony that an unidentified MUSC physician told her that her husband "had smoke inhalation with H1N1, which made the entire situation what we would consider to be the perfect storm, which made it twice as bad and that he may not survive."

"Proof that a claimant sustained an injury may be established by circumstantial and direct evidence where circumstances lead an unprejudiced mind to reasonably infer the injury was caused by the accident." *Tiller v. Nat'l Health Care Ctr. of Sumter*, 334 S.C. 333, 339–41, 513 S.E.2d 843, 846–47 (1999). In addition to dismissing certain circumstantial evidence as "speculative" or categorizing it as "no evidence," the Appellate Panel failed to recognize that circumstantial evidence may be used to prove causation. See *Glover v. Rhett Jackson Co.*, 274 S.C. 644, 649, 267 S.E.2d 77, 80 (1980). "The causal sequence . . . may be more indirect or complex, but as

⁵ For example, in a 3/21/2013 note from McLeod, Dr. Barnard reported, "Deputy Causey is a 50 year old male who has been very, very healthy. He was involved in security with regards to the quite large apartment and forest fire in Myrtle Beach a couple or so weeks ago." Records from McLeod note Causey's "progressive deterioration" and his elective intubation. Upon the transfer to MUSC, Dr. Barnard wrote in Causey's discharge summary: "Acute lung injury syndrome, most likely related to smoke inhalation at this particular point. Note also that he did present with decreased white count and decreased platelet count that may have been an inflammatory component of this process or of course could be another process of course."

long as the causal connection is in fact present the compensability of the subsequent condition is beyond question." *Mullinax v. Winn-Dixie Stores, Inc.*, 318 S.C. 431, 436–37, 458 S.E.2d 76, 79–80 (Ct. App. 1995) (omission by court) (quoting Arthur Larson, *The Law of Workmen's Compensation* § 13.11(b) (1994).

In *Mullinax*, the claimant injured her back lifting heavy bales of flour, sugar, and corn meal. Although she initially sought treatment for back pain, she subsequently claimed incontinence resulted from the back injury. *Id.* at 433, 458 S.E.2d at 78. As in this case, the *Mullinax* claimant was treated by numerous physicians, but no treating physician would definitively state her incontinence, which to some extent pre-dated her back injury, was caused by her work injury. Despite this, a divided Court of Appeals panel found:

The Commission committed legal error when it based its decision solely on the lack of a medical opinion stating Mullinax's injury caused the incontinence. In doing so, it ignored the medical and circumstantial evidence in the record, which shows either the injury or the treatment for the injury aggravated the incontinence. This is true even though Mullinax may have suffered some degree of incontinence before the injury, and even though her prior medical history made her condition more susceptible to aggravation by the injury or its treatment.

Id. at 441, 458 S.E.2d at 82. See also *Hargrove v. Titan Textile Co*, 360 S.C. 276, 294, 599 S.E.2d 604, 613 (Ct. App. 2004) ("If a medical expert is unwilling to state with certainty a connection between an accident and an injury, the 'expression of a cautious opinion' may support an award if there are facts outside the medical testimony that also support an award." (quoting *Tiller*, 334 S.C. at 340, 513 S.E.2d at 846)); *Grice v. Dickerson, Inc.*, 241 S.C. 225, 127 S.E.2d 722 (1962) (where medical testimony recognized the possibility of a causal connection between claimant's accident and rheumatoid arthritis but no medical testimony stated such connection to a reasonable degree of medical certainty, the Appellate Panel must weigh the facts in light of the medical possibilities and draw inferences consistent with the medical testimony in the record); *Brewer v. Charleston Shipbuilding & Drydock Co.*, 212 S.C. 43, 46 S.E.2d 173 (1948) (doctor's testimony regarding connection between claimant's accident and his subsequent fungal infection, though not stated to a reasonable degree of medical certainty, was sufficient to support an award when combined with lay testimony about claimant's health before and after the accident, despite testimony of another doctor stating there was no

connection). Here, the Appellate Panel did not lack a causation opinion. Despite this, it reached its own proximate cause conclusion based on an erroneous mischaracterization of the medical and circumstantial evidence.

The State of South Carolina, Horry County, and national law enforcement organizations recognized Deputy Causey as having died in the line of duty. Horry County Coroner Robert Edge, Jr., testified he amended Deputy Causey's death certificate to change the manner of death from "natural" to "accidental" after reviewing Dr. Largen's MUSC death summary noting Deputy Causey's "smoke inhalation injury." No physician has requested that Coroner Edge correct the death certificate as to Deputy Causey's manner of death. Finally, Horry County Sheriff Phillip Thompson testified before the Single Commissioner that he met with Deputy Causey at the start of his first shift working the Carolina Forest fire perimeter, and Deputy Causey "seemed fine, seemed well," with no coughing, sneezing, or redness in his eyes.

The Administrative Procedures Act (APA) establishes the standard for our review of Commission decisions. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). "An appellate court has the power upon review to reverse or modify a decision of an administrative agency if the findings and conclusions of the agency are (1) affected by an error of law, (2) clearly erroneous in view of the reliable and substantial evidence on the whole record, or (3) arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion." *James v. Anne's Inc.*, 390 S.C. 188, 192, 701 S.E.2d 730, 732 (2010) citing *Gray v. Club Group, Ltd.*, 339 S.C. 173, 182, 528 S.E.2d 435, 440 (Ct. App. 2000); S.C. Code Ann. §1-23-380(5)(d)-(e) (Supp. 2018). "Substantial evidence is 'not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that [the commission] reached or must have reached' to support its orders." *Lewis v. L.B. Dynasty, Inc.*, 419 S.C. 515, 518, 799 S.E.2d 304, 305 (2017) (alteration by court) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981)).

The deference required by our standard of review does not require us to ignore the Appellate Panel's mischaracterization of the medical evidence. Our review of the Appellate Panel's order—in conjunction with the medical records, deposition transcripts, live testimony, and submitted expert opinions—convinces us that substantial evidence does not support the Appellate Panel's findings, most notably, its statement that "[n]o opinion of any doctor who actually treated Causey supports a finding that Causey sustained any injury due to his alleged smoke exposure."

King v. Int'l Knife & Saw-Florence, 395 S.C. 437, 443, 718 S.E.2d 227, 230 (Ct. App. 2011) (finding substantial evidence did not support the Appellate Panel's findings where it mischaracterized the claimant's injury and barred recovery of benefits for failing to satisfy the notice requirement). The Appellate Panel's factual misconceptions in recounting and analyzing the medical and circumstantial evidence anchored its causation analysis, resulting in an error of law. Therefore, we reverse the decision of the Appellate Panel and reinstate the Single Commissioner's award of benefits. *James*, 390 S.C. at 192, 701 S.E.2d at 732 ("An appellate court has the power upon review to reverse or modify a decision of an administrative agency if the findings and conclusions of the agency are . . . affected by an error of law.").

REVERSED.⁶

WILLIAMS, A.C.J., concurs.

HUFF, A.J., concurs in result only.

⁶ We decide this case without oral argument pursuant to Rule 215, SCACR.

Exhibit F

Burns, LaToyla

From: Burns, LaToyla
Sent: Monday, June 13, 2022 4:59 PM
To: 'fhumphries@myrtlebeachlawfirm.net'; 'wmonckton@myrtlebeachlawfirm.net';
'allison@bluesteinattorneys.com'; 'rhowell@trask-howell.com'; 'kbarr@trask-howell.com'
Cc: 'cbrennan@myrtlebeachlawfirm.net'; 'locchipinti@myrtlebeachlawfirm.net';
'kalen@bluesteinattorneys.com'; 'cchassereau@trask-howell.com'; 'cchassereau@trask-howell.com'
Subject: SC Court of Appeals: Timothy Causey v. Horry County (2017-001732)
Attachments: Causey v. Horry County Remittitur.pdf

Dear Counsel,

Attached in this email is correspondence from the Court of Appeals.

Do not respond to this email. Send all correspondence to ctappfilings@sccourts.org

Respectfully,

LaToyla Burns

Appeals Specialist
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201
803-734-1890|Office
803-734-1839|Fax
www.sccourts.org|Web

Exhibit G

The South Carolina Court of Appeals

Timothy Causey, Appellant,

v.

Horry County, Self-Insured Employer through the S.C.
Counties Workers' Compensation Trust, Respondents.

Appellate Case No. 2017-001732

ORDER

This Court's remittitur was sent to the Workers' Compensation Commission on June 13, 2022. It is now necessary for this Court to recall the remittitur. Accordingly, the remittitur is hereby recalled.

FOR THE COURT

BY *V. Claire Allen*
CLERK

Columbia, South Carolina

cc:

Francis A. Humphries, Jr., Esquire
Roy Allen Howell, III, Esquire
Kirsten Leslie Barr, Esquire
William Henry Monckton, VI, Esquire
Allison Paige Sullivan, Esquire

FILED
Jun 21 2022

Exhibit H



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
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June 21, 2022

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Mr. Roy Allen Howell, III, Esquire
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Mr. William Henry Monckton, VI, Esquire
1300 Professional Dr., Ste. 102
Myrtle Beach SC 29577

Ms. Allison Paige Sullivan, Esquire
PO Box 7965
Columbia SC 29202

Re: Timothy Causey v. Horry County
Appellate Case No. 2017-001732

Dear Counsel:

Upon review of the substituted opinion issued on May 11, 2022, the Court noted a clerical error. Rather than filing the updated substituted opinion approved by the

panel, the original version of the opinion was refiled. Enclosed please find the substituted refiled opinion which should have been filed on May 11, 2022. The time for the sending of remittitur begins on the date of this letter, as set forth in Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,


CLERK

cc: Amy Bracy

Exhibit I

From: [Falin, Lynn](#)
To: ["fhumphries@myrtlebeachlawfirm.net"; "wmonckton@myrtlebeachlawfirm.net"; "allison@bluesteinattorneys.com"; "rhowell@trask-howell.com"; "kbarr@trask-howell.com"](#)
Cc: ["cbrennan@myrtlebeachlawfirm.net"; "kalen@bluesteinattorneys.com"; "cchassereau@trask-howell.com"](#)
Subject: FW: Timothy Causey v. Horry County 2017-001732
Date: Tuesday, June 21, 2022 2:16:00 PM
Attachments: [Causey v. Horry County Letter.pdf](#)
[22-UP-002 - Timothy Causey v. Horry County \(Refiled \).pdf](#)

Dear Counsel:

Attached please find correspondence from the SC Court of Appeals.

Lynn Falin
Court Solutions Manager
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201
(803) 734-1895

Exhibit J

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Timothy Causey, Appellant,

v.

Horry County, Self-Insured Employer through the S.C.
Counties Workers' Compensation Trust, Respondents.

Appellate Case No. 2017-001732

Appeal From the Appellate Panel of the South Carolina
Workers' Compensation Commission

Opinion No. 2022-UP-002
Submitted October 1, 2021 – Filed January 5, 2022
Withdrawn, Substituted, and Refiled June 21, 2022

REVERSED AND REMANDED

Francis A. Humphries, Jr. and William Henry Monckton,
VI, both of Monckton, Hembree & Humphries, PA, of
Myrtle Beach, and Allison Paige Sullivan, of Bluestein
Thompson Sullivan LLC of Columbia, for Appellant.

Roy Allen Howell, III and Kirsten Leslie Barr, both of
Trask & Howell, LLC, of Mt. Pleasant for Respondents.

MCDONALD, J.: The statutory dependents of Horry County Sheriff's Deputy Timothy Causey appeal the decision of the Appellate Panel of the South Carolina Worker's Compensation Commission denying death benefits. We reverse and remand.

Deputy Causey died two months after working three twelve-hour shifts on the perimeter of a large structure fire in the Carolina Forest area of Horry County. The fire was massive; it destroyed 26 buildings, each containing four residential units. Jerry DelPercio, a fellow deputy who lived at the complex and helped evacuate the area, described seeing "trees on fire about 50, 60 feet high" and hearing sounds "like a war zone. There [were] explosions, red smoke, black smoke, whatever you can think of." All of the buildings "were engulfed within 20 minutes because of the wind." Although authorities were able to extinguish the fire by the following day, heavy smoke remained in the area for several days.

The Sunday morning after Deputy Causey's first night shift at the fire, Donna Causey observed her husband had "watery eyes, [a] runny nose, coughing, red eyes, [and] he kept rubbing his eyes." After his return from the area of the fire the second day (Monday morning), Donna observed black discharge on the tissue when Deputy Causey blew his nose, and his eyes were "really red, almost swollen." Upon Causey's return Tuesday morning, "he coughed up and showed me on the tissue, and it was a yellowish black color. Blew his nose again, it was a black color. The eyes were really red. The nose was constantly draining. Coughing more on Tuesday morning."

Causey did not return to work for his regular day shift Tuesday or Wednesday. On Thursday, Donna took her husband to Loris Family Health Clinic. Following blood work, a chest X-ray, and a breathing treatment, the clinic provided an antibiotic and sent Deputy Causey home. The following day, Causey was unable to drink Diet Pepsi, as he could only handle water or Gatorade due to the condition of his throat. By Saturday, Causey "was gasping with his head down. He just had this ashen look and this bluish color." At that point, Donna took Causey to the emergency room at McLeod Medical Center. Causey was hospitalized at McLeod, but as his condition continued to worsen, he was airlifted to MUSC on March 27. At MUSC, Causey was diagnosed with acute respiratory distress syndrome (ARDS), secondary to H1N1, also known as swine flu. Causey died at MUSC on May 19; his MUSC death summary provides, Causey died from "hypovolemic shock, secondary to diffuse alveolar hemorrhage, secondary to ventilator-assisted pneumonia, secondary to prolonged intubation, and secondary to smoke inhalation injury with H1N1 influenza." Deputy Causey's death certificate lists his cause of

death as "diffuse alveolar hemorrhage, due to ventilator associated pneumonia, due to prolonged intubation, due to smoke inhalation injury."

A number of Deputy Causey's physicians were deposed as to his cause of death, and both Causey and Respondents presented expert opinions, either through live testimony, deposition, or sworn statement. Despite the evidence in the record from several treating physicians, the findings on Deputy Causey's death certificate, the MUSC death summary, and the live testimony of Dr. Kim Collins, the Appellate Panel reversed the Single Commissioner's award of death benefits and found the claimant

has shown nothing more than that one could speculate smoke exposure on March 16, 2013 could have caused some ill-defined injury to Causey's lungs, and that if one so speculates, one could further speculate that such an injury could have impacted Causey's ability to fight a deadly flu virus. But such speculation is insufficient. Without actual evidence that Causey sustained an injury to his lungs on March 16, 2013 and that such injury to his lungs was the proximate cause of his death, he is not entitled to benefits under S.C. Code Ann. § 42-9-920 as a matter of law.^[1]

In reaching this conclusion, the Appellate Panel relied upon its finding that "[no opinion of any doctor who actually treated Causey supports a finding that Causey sustained any injury due to his alleged smoke exposure." This finding, in addition to the Panel's opening statement that four of Deputy Causey's treating physicians agreed "smoke exposure **played no role**" in Causey's death" mischaracterized Dr. Charlton Strange's testimony.²

¹ The Appellate Panel's "actual evidence" language here—when read in conjunction with the testimony of the treating physicians discussed below—suggests the Panel erred at the outset of its analysis by imposing an "objective evidence" standard to Deputy Causey's claim. See *Russell v. Wal-Mart Stores, Inc.*, 426 S.C. 281, 288, 826 S.E.2d 863 (2019) (in which our supreme court noted this court's reversal focusing on the Commission's error "in requiring a change of condition to be established by objective evidence.").

² More precisely, the Appellate Panel found "Causey's attending physician, Dr. Charlie Strange, testified that Causey died from Swine Flu and that smoke exposure **played no role in his death**. In this opinion, Causey's other treating

Dr. Strange was the admitting physician upon Causey's transfer from McLeod to MUSC. Dr. Strange explained in his deposition that "the impression of the McLeod physicians was that this was smoke inhalation, but they had also given [Causey] antibiotics for the possibility that there was bacterial infection that was also present." More sophisticated testing than was available at McLeod revealed the presence of H1N1, and MUSC began treatment with Tamiflu. Initially, Dr. Strange testified that he did not believe smoke inhalation contributed to Causey's death as "it is really the H1N1 that set up all the subsequent events." However, he immediately clarified this statement by explaining smoke inhalation, if it were an issue, "could have increased his chance of acquiring clinical H1N1 and made his clinical course more severe." When asked whether it was his opinion to a reasonable degree of medical certainty that the H1N1 was "basically the sole cause of his ARDS and ultimately his death," Dr. Strange replied:

That's a hard one. There's pretty big literature out there that shows that cigarette smokers have more H1N1 than people that don't smoke and that the H1N1 that they do acquire is more serious than people that are nonsmokers. And because Mr. Causey was a nonsmoker, we could speculate but not prove that the smoke inhalation that he did have made his presentation of H1N1 worse than it otherwise would have been.

When asked whether he could state his opinion to a reasonable degree of medical certainty, Dr. Strange responded, "There is a possibility but not rising to the level of medical probability that the smoke inhalation contributed in a meaningful way to his ultimate outcome." This is contrary to the Appellate Panel's characterization of this testimony as concluding "smoke inhalation played no role in his death."

The Panel's summation of Dr. Whelan's testimony is likewise concerning as it did not acknowledge Dr. Whelan's recognition of the possibility of smoke inhalation playing a role in Deputy Causey's death. Dr. Whelan noted Deputy Causey suffered "severe ARDS, multiple complications with a prolonged ICU stay." He

physicians (Dr. Timothy Whelan, Dr. William Largent, and Dr. Dee Ford), concurred." (Emphasis added). While it is true that these physicians agreed with Dr. Strange's statements as conveyed to them, the Appellate Panel's finding ignores the context and clarification Dr. Strange, Dr. Whelan, and Dr. Ford provided in their full testimony.

developed multiple infections, including "bacterial ventilator associated pneumonias" and a possible fungal infection. While Dr. Whelan agreed he could not state to "a reasonable degree of medical certainty that the smoke inhalation played any role" in Causey's death, he emphasized the reverse was also true:

So, I agree with your interpretation. However, I think if one asked the question in the reverse, can you say to a reasonable degree of medical certainty that a significant smoke inhalation exposure around the time that one is infected with H1N1 has absolutely no impact on the disease course, I would also say I cannot say that to a reasonable medical certainty.

He explained, "I . . . think it is very difficult to know, based on the records that I reviewed, the extent of the smoke inhalation itself and if there could have been any contribution of smoke inhalation to susceptibility to H1N1." Notably, Dr. Whelan was the attending physician who signed off on Deputy Causey's death summary. In discussing the death summary in his deposition, Dr. Whelan explained he would redact only the word "injury" from the final line of the summary, and he could not opine about "smoke inhalation" to a reasonable degree of medical certainty.³

Dr. Dee Ford was Causey's attending physician in the medical intensive care unit at MUSC. She, too, found the death summary reasonable as to the cause of Deputy Causey's death. However, when asked whether she had the medical documentation and history necessary to opine to a reasonable degree of medical certainty as to whether Deputy Causey suffered a smoke inhalation injury, she agreed she did not have the information necessary to so opine. She noted she would need a more detailed occupational exposure history, and she agreed that once H1N1 was diagnosed, other concerns would take a "backseat" because "[o]nce H1N1 were identified in a patient with Mr. Causey's constellation of signs and symptoms, his illness would be attributed to H1N1."

³ Dr. William Largen, the MUSC ICU resident who dictated and completed the death summary co-signed by attending physician Whelan, was not deposed, but his statement is included in the record. Dr. Largen stated, in pertinent part, that he "would defer any opinions regarding Mr. Causey's death to those of Dr. Whelan and Dr. Strange. I would also agree that the ultimate cause of Mr. Causey's death was complications of Acute Respiratory Distress Syndrome secondary to H1N1 Swine Flu."

Finally—and of significance to our consideration of the Appellate Panel's order—Dr. Nicholas Pastis testified by deposition as to his treatment of Deputy Causey at MUSC. Dr. Pastis's deposition testimony was Claimant's Exhibit 1 before the Single Commissioner. In the deposition, Dr. Pastis was asked:

Q. So is there any way to state, within a reasonable degree of medical certainty, that the smoke inhalation that allegedly occurred in this case had anything to do with his death?

A. I think that I can say with a reasonably - - reasonable degree of certainty, that it made his ability to fight off an infection worse.

Although Dr. Pastis admitted on cross-examination that this opinion would require some degree of speculation as to the presence of a burn injury to Causey's airway, he was careful to note, "I would be uncomfortable saying that it [the smoke inhalation] had nothing to do with his death." And he later clarified evidence of a burn injury would be required only if one needed "absolute proof." Upon hearing the summary of Causey's appearance and symptoms following each of his three nights at the fire perimeter, Dr. Pastis agreed the symptoms were consistent with an inhalation injury. As to the severity of H1N1 and an alleged MUSC communication to Donna Causey that "the smoke inhalation would have made it difficult for [Causey] to fight it [H1N1] off," Dr. Pastis explained that while H1N1 is severe, "most people don't die of this disease. He certainly had a severe case. Those happen without smoke inhalation. But in his case, the timing of it made me think that it exacerbated what was already a severe problem and made it worse."⁴

Like Dr. Ford, Dr. Pastis agreed the cause of death as set forth in the MUSC death summary was one "to which [he] would ascribe." On cross-examination, Respondents asked Dr. Pastis whether "H1N1 is the cause of death of [Causey's] acute respiratory distress syndrome?" His response: "It - - it is a cause." However, in reversing and vacating the Single Commissioner's order, the Appellate Panel

⁴ Dr. Pastis also referenced the literature indicating a pulmonary infection can be made worse by damage to the airway. For example, "if you have a bad inhalation injury and you get a pneumonia, it is reasonable that it may be worse than somebody who didn't have the inhalation injury."

declared Dr. Pastis's opinions as to causation "are not only equivocal, they are admittedly based upon nothing more than speculation."

Deputy Causey's retained expert was Dr. Kim Collins, the former Chief Medical Examiner and Director of Autopsy and Forensic Pathology at MUSC. When asked about her opinion regarding Deputy Causey's injuries and the proximate cause of his death, Dr. Collins, who is board certified in anatomic, clinical, and forensic pathology, replied:

My opinion is this was a healthy young man until he experienced three days of smoke inhalation, and that [led] to what we call an inhalation injury which [led] to acute lung injury. And in that process, his immune system—particularly in the lungs that help you fight off what you're breathing in, all the germs, etcetera—during this time he developed H1N1 influenza, influenza A. Secondary to developing influenza, he had secondary bacterial infections, such as Klebsiella, pseudomonas, and then those cause a pulmonary hemorrhage. So he actually dies of the pulmonary hemorrhage and the bacterial infections due to the H1N1 influenza, due to the smoke inhalation.

Dr. Collins then discussed the category of fire deaths resulting from inhalation injury and "the cascade of events because of the systemic problems this can create and the metabolic problems it can create. And so you have acute lung injury, which develops into ARDS, which then can develop into multi-organ failure and secondary infections." In Dr. Collins's opinion, "to a reasonable degree of medical certainty," the underlying cause of death for Deputy Causey was "the smoke inhalation." Dr. Collins explained this is

my medical opinion, more likely than not, that but for this man [having] been involved in this fire and inhaled these chemicals these three days, but for that occurring, he could not have developed H1N1. And this is my opinion if you look at the history, you look at the scenario, the chronology, the events follow perfectly. Acute lung injury from smoke inhalation, ARDS acute respiratory distress syndrome, H1N1, and then you get

your secondary bacterial infections, and your hemorrhage into your lungs.

On cross-examination, Dr. Collins agreed that because no autopsy was conducted, there was no objective medical evidence to identify specific smoke inhalation damage to Deputy Causey's lung tissue. According to Dr. Collins, Deputy Causey contracted H1N1 because of the destruction to his lungs, "because of the inhalation injuries, not because it [H1N1] was inside the smoke." On redirect, Dr. Collins explained "[m]ost people have a very mild flu when they have H1N1 and this was not the case because he was compromised by the smoke inhalation injury." When asked whether this was her opinion to a "reasonable degree of medical certainty more likely than not," Collins replied "Yes, it is. Most certainly."

Again, the Appellate Panel characterized Dr. Collins's testimony as speculative, noting she and Dr. Pastis "both were forced to concede that their opinions were based, not on objective medical evidence, but only speculation." The Panel order further misstates her testimony, finding, "In fact, Dr. Collins was forced to concede that she did not even understand the nature of Causey's alleged exposure to smoke, believing him (falsely) to have been actually fighting a fire for the three 12-hour shifts." However, a review of this portion of the Collins deposition transcript actually establishes that when she was asked about her file note indicating Deputy Causey was "involved in fighting an apartment fire," Dr. Collins responded, "I don't know what his role was during the fire. He might have been fighting the fire - - apartment fire - - or he might have been assisting in keeping the barriers. I am not sure He was exposed to the soot and to the fumes. It doesn't really matter what he was doing at the time." Dr. Collins then explained that unlike properly equipped firefighters, "security personnel may not have the proper respiratory equipment" and Causey was involved in the area of the fire for "[t]hree 12-hour shifts."

Appellant concedes, as she must, that the various doctors—the treating physicians and Respondents' medical expert witnesses—gave different and, at times, contradictory, opinions regarding the severity of H1N1 in an otherwise healthy individual and the problems a smoke inhalation injury could cause in complicating or exacerbating a patient's ability to fight off respiratory infections.⁵

⁵ For example, in a 3/21/2013 note from McLeod, Dr. Barnard reported, "Deputy Causey is a 50 year old male who has been very, very healthy. He was involved in security with regards to the quite large apartment and forest fire in Myrtle Beach a couple or so weeks ago." Records from McLeod note Causey's "progressive

Respondents submitted the written opinions of four non-treating pulmonologists, Dr. John Mitchell, Dr. Robert Galphin, Dr. Gregory Cauthen, and Dr. Thomas Sporn, Chief of Pulmonary and Thoracic Pathology at Duke University Medical Center, who reviewed Causey's medical records and "concluded that Causey did not sustain any injury as a result of smoke exposure."

On cross-examination, Donna Causey admitted the medical history given at the Loris clinic reflected her husband had been running a fever for four days when he presented at the clinic. Much was made of a statement that another family member had also been ill; however, evidence in the record indicated the Causeys' daughter was suffering from a urinary tract infection during the early days of Deputy Causey's respiratory symptoms. Also hotly disputed as hearsay was Donna's testimony that an unidentified MUSC physician told her that her husband "had smoke inhalation with H1N1, which made the entire situation what we would consider to be the perfect storm, which made it twice as bad and that he may not survive."

In addition to dismissing certain circumstantial evidence as "speculative" or categorizing it as "no evidence," the Appellate Panel failed to recognize that circumstantial evidence may be used to prove causation in a worker's compensation case. *See Glover v. Rhett Jackson Co.*, 274 S.C. 644, 649, 267 S.E.2d 77, 80 (1980). "Proof that a claimant sustained an injury may be established by circumstantial and direct evidence where circumstances lead an unprejudiced mind to reasonably infer the injury was caused by the accident." *Tiller v. Nat'l Health Care Ctr. of Sumter*, 334 S.C. 333, 339–41, 513 S.E.2d 843, 846–47 (1999). "The causal sequence . . . may be more indirect or complex, but as long as the causal connection is in fact present the compensability of the subsequent condition is beyond question." *Mullinax v. Winn-Dixie Stores, Inc.*, 318 S.C. 431, 436–37, 458 S.E.2d 76, 79–80 (Ct. App. 1995) (omission by court) (quoting Arthur Larson, *The Law of Workmen's Compensation* § 13.11(b) (1994).

In *Mullinax*, the claimant injured her back lifting heavy bales of flour, sugar, and corn meal. Although she initially sought treatment for back pain, she subsequently

deterioration" and his elective intubation. Upon the transfer to MUSC, Dr. Barnard wrote in Causey's discharge summary: "Acute lung injury syndrome, most likely related to smoke inhalation at this particular point. Note also that he did present with decreased white count and decreased platelet count that may have been an inflammatory component of this process or of course could be another process of course."

claimed incontinence resulted from the back injury. *Id.* at 433, 458 S.E.2d at 78. As in this case, the *Mullinax* claimant was treated by numerous physicians, but no treating physician would definitively state her incontinence, which to some extent pre-dated her back injury, was caused by her work injury. Despite this, a divided Court of Appeals panel found:

The Commission committed legal error when it based its decision solely on the lack of a medical opinion stating Mullinax's injury caused the incontinence. In doing so, it ignored the medical and circumstantial evidence in the record, which shows either the injury or the treatment for the injury aggravated the incontinence. This is true even though Mullinax may have suffered some degree of incontinence before the injury, and even though her prior medical history made her condition more susceptible to aggravation by the injury or its treatment.

Id. at 441, 458 S.E.2d at 82. *See also Hargrove v. Titan Textile Co*, 360 S.C. 276, 294, 599 S.E.2d 604, 613 (Ct. App. 2004) ("If a medical expert is unwilling to state with certainty a connection between an accident and an injury, the 'expression of a cautious opinion' may support an award if there are facts outside the medical testimony that also support an award." (quoting *Tiller*, 334 S.C. at 340, 513 S.E.2d at 846)); *Grice v. Dickerson, Inc.*, 241 S.C. 225, 127 S.E.2d 722 (1962) (where medical testimony recognized the possibility of a causal connection between claimant's accident and rheumatoid arthritis but no medical testimony stated such connection to a reasonable degree of medical certainty, the Appellate Panel must weigh the facts in light of the medical possibilities and draw inferences consistent with the medical testimony in the record); *Brewer v. Charleston Shipbuilding & Drydock Co.*, 212 S.C. 43, 46 S.E.2d 173 (1948) (doctor's testimony regarding connection between claimant's accident and his subsequent fungal infection, though not stated to a reasonable degree of medical certainty, was sufficient to support an award when combined with lay testimony about claimant's health before and after the accident, despite testimony of another doctor stating there was no connection). Here, while the record contains evidence that supports both parties' positions, the Appellate Panel reached its own proximate cause conclusion based on an erroneous understanding of the medical and circumstantial evidence.

The Administrative Procedures Act (APA) establishes the standard for our review of Commission decisions. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). "An appellate court has the power upon review to reverse or modify a

decision of an administrative agency if the findings and conclusions of the agency are (1) affected by an error of law, (2) clearly erroneous in view of the reliable and substantial evidence on the whole record, or (3) arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion." *James v. Anne's Inc.*, 390 S.C. 188, 192, 701 S.E.2d 730, 732 (2010) citing *Gray v. Club Group, Ltd.*, 339 S.C. 173, 182, 528 S.E.2d 435, 440 (Ct. App. 2000); S.C. Code Ann. §1-23-380(5)(d)-(e) (Supp. 2018). "Substantial evidence is 'not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that [the commission] reached or must have reached' to support its orders." *Lewis v. L.B. Dynasty, Inc.*, 419 S.C. 515, 518, 799 S.E.2d 304, 305 (2017) (alteration by court) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981)).

The deference required by our standard of review does not require us to ignore the Appellate Panel's apparent misunderstanding of the medical evidence and its relationship to the circumstantial evidence of causation in this case. Our review of the Appellate Panel's order—in conjunction with the medical records, deposition transcripts, live testimony, and submitted expert opinions—convinces us that substantial evidence does not support the Appellate Panel's findings, most notably, its statement that "[n]o opinion of any doctor who actually treated Causey supports a finding that Causey sustained any injury due to his alleged smoke exposure." *King v. Int'l Knife & Saw-Florence*, 395 S.C. 437, 443, 718 S.E.2d 227, 230 (Ct. App. 2011) (finding substantial evidence did not support the Appellate Panel's findings where it mischaracterized the claimant's injury and barred recovery of benefits for failing to satisfy the notice requirement). The Appellate Panel's factual misconceptions in recounting and analyzing the medical and circumstantial evidence anchored its causation analysis, resulting in an error of law. Therefore, we reverse the decision of the Appellate Panel and remand this matter so that the Appellate Panel may properly analyze and address the circumstantial evidence of causation in this record. The Panel should address causation in conjunction with an appropriate review of the deposition testimony and medical records of Causey's treating physicians and Respondents' reviewing experts. *See James*, 390 S.C. at 192, 701 S.E.2d at 732 ("An appellate court has the power upon review to reverse or modify a decision of an administrative agency if the findings and conclusions of the agency are . . . affected by an error of law.").

REVERSED AND REMANDED.⁶

⁶ We decide this case without oral argument pursuant to Rule 215, SCACR.

WILLIAMS, C.J., and HUFF, A.J., concur.

Exhibit K

TRASK
HOWELL
WORKERS' COMPENSATION DEFENSE

Reply to
Roy A. Howell, III
(843) 881-2236
rhowell@trask-howell.com

May 31, 2022

Via FedEx

Marti Bluestein, Esq.
Bluestein and Nichols
1614 Taylor Street
Columbia, SC 29201

Re: Timothy Causey (dec.) v. Horry County
W.C.C. File No.: 1302588
Carrier File No.: 2013058409
Date of Accident: March 16, 2013

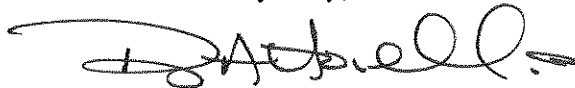
Dear Marti:

In accordance with the Court of Appeals Opinion dated May 11, 2022, which reinstated Commissioner Campbell's Decision and Order dated January 12, 2017, I am enclosing the following:

1. Draft No. [REDACTED] made payable to Donna Causey as Personal Representative of the Estate of Timothy Causey in the sum of \$283,190.00;
2. Status Report and Compensation Receipt (W.C.C. Form 19), to be signed and dated by your client.

Thank you for your assistance.

Yours very truly,



Roy A. Howell, III

RAHIII/mec/lth

Enc.

Cc: Janet Cook, SC Association of Counties (via email only)
Lang Kelly, SC Association of Counties (via email only)



South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: **1302588**
Carrier File #: **2013058409**
Carrier Code #: **00930**
Employer FEIN #: **576000365**

Claimant's Name: TIMOTHY CAUSEYEmployer's Name: HORRY COUNTYAddress: 2746 MT. OLIVE CHURCH ROADAddress: PO BOX 997City: NICHOLS State: SC Zip: 29581City: CONWAY State: SC Zip: 29526Home Phone: _____ Work Phone: () -Insurance Carrier: SC ASSOCIATION OF COUNTIESPreparer's Name: JANET COOK

Law Firm: _____

Preparer's Phone #: (803) 771 - 2529

Compensation Paid:	Number of Weeks	From (m/d/yyyy)	To (m/d/yyyy)	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	DEATH BENEFIT			\$ 283190.00
Total Compensation Paid				\$ 283190.00
6. Total Medical Benefits* Paid	_____			\$ 4946.25
7. Funeral Benefits	_____			\$ _____

☐ Case DeniedDate of Injury: 3/16/2013
(m/d/yyyy)

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

By: N/A (deceased)

Claimant

By: _____

Employer's Representative

Date
(m/d/yyyy)

Donna Causey, in her capacity as Personal Representative of the Estate of Timothy Causey per Order of the South Carolina Court of Appeals
Print 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	_____	\$ _____

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 16 days of final payment of compensation. Form 19 must be filed when a claim is denied.

South Carolina Counties Workers' Compensation Trust

Check # [REDACTED]

Claim #	Date of Loss	Claimant	Adjuster	Reference	Description	Service Dates	Billed	Paid
2013058409 0001	3/16/2013	TIMOTHY CAUSEY	Janet Cook		IND- Death Benefit	5/16/2022- 5/16/2022	283,190.00	283,190.00

REMITTANCE STATEMENT-PLEASE DETACH BEFORE DEPOSITING

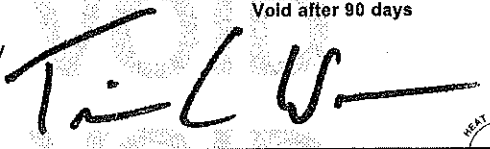
DOCUMENT CONTAINS INVISIBLE FLUORESCENT FIBERS AND CHEMICAL REACTIVE PROPERTIES		SECURE		PAPER CONTAINS TONER ADHESION PROTECTION, AND A METALLIC HOLOGRAM									
South Carolina Counties Workers' Compensation Trust PO Box 8207 Columbia, SC 29202-8207		UNCOMPROMISED CHECK SOLUTIONS SECURITY * DELIVERY * VALUE		Synovus Bank Columbia, SC 67-548/532									
PAY	Two Hundred Eighty Three Thousand One Hundred Ninety Dollars		<table><tr><td>Date</td><td>Check No.</td></tr><tr><td>5/17/2022</td><td>[REDACTED]</td></tr><tr><td colspan="2">Amount</td></tr><tr><td colspan="2">**\$283,190.00**</td></tr></table>			Date	Check No.	5/17/2022	[REDACTED]	Amount		**\$283,190.00**	
	Date	Check No.											
	5/17/2022	[REDACTED]											
Amount													
\$283,190.00													
Donna Causey as Personal Representative of the Estate of Timothy Causey		VOID after 90 days											
TO THE ORDER OF													
Insured: Harry County Memo:		VOID											

Exhibit L

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1302588

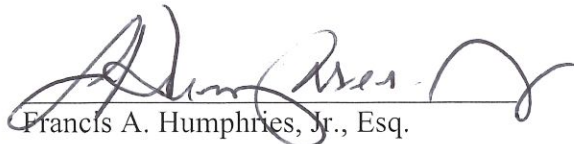
Timothy Causey,)
)
Claimant/Appellant,)
)
v.)
)
Horry County,)
)
Self-Insured Employer)
through the)
)
S.C. Counties Workers' Compensation)
Trust,)
)
Defendants/Respondents.)

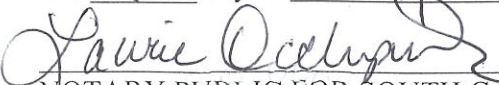
**AFFIDAVIT OF FRANCIS A.
HUMPHRIES, JR., ESQUIRE**

Francis A. Humphries, Jr., Esquire states that he is under oath, an adult over the age of eighteen, and the following:

1. On May 31, 2022, counsel for the Defendants mailed a settlement check to Appellant's counsel for full and final settlement of the above claim.
2. Counsel for Appellant deposited the check into a trust account.
3. Checks had been cut to the appropriate beneficiaries.
4. The checks would have been given to the beneficiaries but for one of the beneficiaries being out of state at the time the checks were available to be picked up.

Further affiant say not.


Francis A. Humphries, Jr., Esq.

SWORN and subscribed to before me
this 6 day of July, 2022
 (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires 10/19/2031.



RECEIVED

Jul 06 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1302588
Appellate Case No. 2017-001732

Timothy Causey, ... Appellant,

v.

Horry County, Self-Insured Employer
through the S.C. Counties Workers' Compensation Trust. Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondents with a copy of the *Petition for Rehearing and Request for Oral Argument on Behalf of Appellant* by email only to the following:

Roy A. Howell, III, Esq.
Rhowell@trask-howell.com

Kirsten L. Barr, Esq.
kbarr@trask-howell.com

July 6, 2022

s/ Allison P. Sullivan
Allison P. Sullivan
Bluestein Thompson Sullivan, LLC
P.O. Box 7965
Columbia, SC 29202
(803) 779-7599
Attorneys for Appellant

Kalen Reed

From: Kalen Reed
Sent: Wednesday, July 6, 2022 4:07 PM
To: rhowell@trask-howell.com; kbarr@trask-howell.com
Cc: Allison Sullivan; cchassereau@trask-howell.com
Subject: Timothy Causey v. Horry County 2017-001732
Attachments: Appellant Petition for Rehearing.pdf; Exh A - Opinion from COA.pdf; Exh B - Order Granting Rehearing.pdf; Exh C - May 11 Refiled Opinion.pdf; Exh D - Email to Counsel May 11.pdf; Exh E - June 13 Remittitur and Opinion.pdf; Exh F - Email to Counsel June 13.pdf; Exh G - June 21 Order recalling remittitur.pdf; Exh H - June 21 Cover letter-1.pdf; Exh I - June 21 Email to counsel.pdf; Exh J - Refiled June 21 opinion 2022-UP-002.pdf; Exh K - Settlement Check.pdf; Exh L - Affidavit of Fran Humphries.pdf

Good afternoon,

Attached please find a *Petition for Rehearing and Request for Oral Argument on behalf of Appellant* which is being served upon you in the above matter.

Thank you,

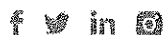


KALEN REED PARALEGAL

1614 TAYLOR STREET | PO BOX 7965
COLUMBIA, SOUTH CAROLINA 29202
O: 803.779.7599 F: 803.771.8097

KALEN@BLUESTEINATTORNEYS.COM

BLUESTEINATTORNEYS.COM



NOTICE: This e-mail is confidential and may contain information which is legally privileged or otherwise exempt from disclosure. If you received this message in error, please notify the sender and delete this message from your device.

July 6, 2022

RECEIVED**Jul 06 2022****SC Court of Appeals****VIA EMAIL ONLY - ctappfilings@sccourts.org**

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Timothy Causey (dec.) v. Horry County
Appellate Case No.: 2017-001732

Dear Ms. Kitchings:

Enclosed for filing, please find a *Petition for Rehearing and Request for Oral Argument on behalf of Appellant* in reference to this case as well as a Proof of Service for same.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Yours truly,

s/ Allison P. Sullivan

Allison P. Sullivan

APS/knr
Enclosures

cc: Roy A. Howell, III, Esq.
Kirsten L. Barr, Esq.
Francis A. Humphries, Jr., Esq.
William Henry Monckton, IV, Esq.