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Withdrawn, Substituted, and Refiled June 21, 2022)

Timothy Causey,.....Appellant,

v.

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

REPLY TO APPELLANT'S RETURN TO
MOTION FOR ADDITIONAL RELIEF FROM JUDGMENT

The Respondents, Horry County and the South Carolina Counties Workers' Compensation Trust, respectfully Reply to the Appellant's Return to their Motion for Additional Relief from Judgment, as follows:

- I. The Court of Appeals has statutory authority to order restitution.

Not only have appellate courts exercised inherent authority¹ to order restitution when an order is reversed on appeal since time immemorial², but such authority has been codified in South Carolina since 1873, when our General Assembly enacted what is now known as S.C. Code Ann. § 18-1-140:

“...When the judgment is reversed or modified **the appellate court may make complete restitution** of all property and rights lost by the erroneous judgment.”
(emphasis added).

¹ See Restatement (First) of Restitution § 74 *cmt. a* (“A person who has conferred a benefit upon another in compliance with a judgment, or whose property has been taken thereunder, is entitled to restitution if the judgment is reversed or set aside, unless restitution would be inequitable or the parties contract that payment is to be final; if the judgment is modified, there is a right to restitution of the excess ... in such cases there are various methods which can be used for securing restitution ... **The reversing tribunal can itself direct restitution** either with or without conditions.”) (emphasis added); Restatement (Third) of Restitution and Unjust Enrichment § 18 *cmt. b* (“The rule of this section recognizes a claim in restitution to recover a benefit conferred in consequence of a judgment by a court or other tribunal that is thereafter set aside ... **Restitution may therefore be decreed by an appellate court as an incident of its power to correct errors.**”) (emphasis added).

² This history is perhaps best summarized in United Healthcare Workers-West v. Borsos, 544 B.R. 201 (2016):

“The equitable right to restitution of what has been taken by enforcement of a judgment that is subsequently reversed has an ancient pedigree. It is a matter of inherent authority of every court in the name of doing what is right ... By 1710, it was established in English law that restitution was required where money is levied and paid in execution of a judgment that is later reversed. Anonymous, 2 Salkeld, Reports of Cases Adjudg'd in the Court of King's Bench ... to the Tenth Year of Queen Anne, 288 (printed 1718), *cited with approval*, Bank of United States v. Bank of Wash., 31 U.S. (6 Pet.) 8, 17, 8 L.Ed. 299 (1832). The Supreme Court has repeatedly applied this subsequent reversal restitution doctrine. *E.g.*, Bank of United States, 31 U.S. at 16–17 ; NW Fuel Co. v. Brock, 139 U.S. 216, 219–20, 11 S.Ct. 523, 35 L.Ed. 151 (1891) ; Arkadelphia Milling Co. v. St. Louis S.W. R. Co., 249 U.S. 134, 145–46, 39 S.Ct. 237, 63 L.Ed. 517 (1919); Baltimore & O.R. Co., 279 U.S. 781, 786, 49 S.Ct. 492, 73 L.Ed. 954(1929).”

Therefore, to the extent the Appellant contends that restitution “is not a matter for the appellate courts” and that “[n]o amount of contrivance should distract from the fatal flaw that Respondents have no basis in the law to support any of their requests before this Court,” these contentions are without merit. Respectfully, because the authority of the Court of Appeals to grant the Respondents’ request for restitution has been clearly established by law in South Carolina for at least 149 years, no “contrivance” is necessary for a grant of relief. *See* Civ. P. 1874 Section 342; Civ. P. 1902 Section 342; Civ P. 1912 Section 381; Civ. P. 1922 Section 643; 1932 Code Section 778; 1942 Code Section 778; 1952 Code Section 7-13; 1962 Code Section 7-13; S.C. Code § 18-1-140 (1976).

II. The essential elements of restitution are a matter of record.

The Appellant argues that the three elements of unjust enrichment can only be proven with additional testimony. Respectfully, these three elements³ are plain from the record in this case, including the Appellant’s own admissions, and require no testimony.

First, the Appellant admits receipt of “a non-gratuitous benefit” in the form of the Respondent’s check in the amount of \$283,190.00 payable to Donna Causey as Personal Representative of the Estate of Timothy Causey, pursuant to the erroneous judgment of May 11, 2022: “[t]here is no dispute that the funds Respondents remitted ... are being held in trust.”

³“To recover on a theory of restitution, the plaintiff must show (1) that he conferred a non-gratuitous benefit on the defendant; (2) that the defendant realized some value from the benefit; and (3) that it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value.” *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003) (citing *Niggel Assoc., Inc. v. Polos of North Myrtle Beach, Inc.*, 296 S.C. 530, 374 S.E.2d 507 (Ct. App. 1988)).

(Return p.14, ll.10-11). Second, the Appellant has realized “some value” from the payment of \$283,190.00 and has apparently deposited this sum in an interest-bearing account: “[t]he funds have been transferred to a separate interest-bearing account.” (Affidavit of Margaret M. Bluestein dated August 1, 2022). Thirdly, it would clearly be “inequitable” for the Appellant to retain the benefit of \$283,190.00 paid pursuant to an erroneous judgment, which has now been reversed and vacated by the Court of Appeals. As explained by our Supreme Court in Miller v. Springs Cotton Mills, when a judgment is reversed, the Appellant is

“immediately bound to restore any payment so received, under the well-established principle that a party who has received payment under a judgment subsequently reversed must restore any advantages obtained thereby to his adversary.” (225 S.C. 326, 334, 52 S.E.2d 458 (1954) (citing 3 Am. Jur., APPEAL AND ERROR, Sections 1191 and 1242; 5 C.J.S., APPEAL AND ERROR, § 1980).⁴

It is upon this “well-established principle” that the Respondents seek “complete restitution of all property and rights lost by the erroneous judgment,” and, respectfully, no additional evidence is required for the Court of Appeals to so restore the Respondents in accordance with the law. *See* S.C. Code Ann. § 18-1-140.

⁴ *See also*, Restatement (Third) of Restitution and Unjust Enrichment § 18 (2011) (“A transfer ... in compliance with or otherwise in consequence of a judgment that is subsequently reversed or avoided, gives the disadvantaged party a claim in restitution as necessary to avoid unjust enrichment”).

III. There has been no settlement of this claim.

Exhibit 1 to the Appellant's Return is an Affidavit of attorney Margaret M. Bluestein dated August 1, 2022. Paragraph one of this Affidavit swears that,

“On May 31, 2022, counsel for the Defendants/Respondents mailed a settlement check to Appellant's counsel for full and final settlement of the above claim.”

However, there has never been any agreement to settle the workers' compensation claim *sub judice*. As plainly stated in the May 31, 2022, cover letter accompanying the check in the amount of \$283,190.00 to Donna Causey as Personal Representative of the Estate of Timothy Causey, this payment was actually made

“[i]n accordance with the Court of Appeals Opinion dated May 11, 2022, which reinstated Commissioner Campbell's Decision and Order dated January 12, 2017.”

(See Respondents' Exhibit 1). Therefore, any allegation that the \$283,190.00 payment was a “settlement check” for “for full and final settlement” is untenable. (See also, Affidavit of Roy A Howell, III).

IV. The Respondents have standing to seek restitution.

According to the Appellant, the Respondents have “fabricated” a harm and; therefore, do not have “standing” to seek restitution. This argument is specious. The Respondents have not “fabricated” the fact that they paid \$283,190.00 to Donna Causey as Personal Representative of

the Estate of Timothy Causey, pursuant to the erroneous judgment of May 11, 2022 -- the Appellant admits to being in possession of this money. The Respondents have not “fabricated” the fact that the Appellant refuses to return this money whilst seeking reversal of the Court’s June 21, 2022, Order -- the Appellant’s attorney has done so in writing. (See Exhibit 4). The Respondents have not “fabricated” the fact that they do not have use of \$283,190.00 of Horry County Government funds, despite the fact that in equity and good conscience, these funds should have been returned to them by the Appellant -- the Respondents don’t even know where these funds have been deposited, much less have the right to draw upon that account. Therefore, the Respondents respectfully contend that they have suffered a concrete, particularized, actual, redressable, injury in fact, such that they have “standing” to seek restitution before the Court of Appeals at this time. See Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 559-61 (1992) and stating that “[t]he linchpin of this analysis is that the plaintiff must have a personal stake in the litigation, meaning he is the real party in interest.”).

V. **The Appellant correctly admits that interest is owed.**

According to the Appellant’s Return and Affidavit, the Appellant is holding the Respondent’s \$283,190.00 in some “separate interest-bearing trust account” and when their “dispute is resolved⁵ ... the principle [sic] and interest will go to the prevailing party.” At no

⁵ It is unclear whether the Appellant’s “dispute” will be resolved with the disposition of the Petition for Rehearing, or whether the Appellant intends to hold the Respondents’ \$283,190.00 until the Supreme Court rules on some future Petition for Writ of Certiorari, whether the “dispute” will not be resolved until after the Workers’ Compensation Commission issues a remand order and future appeals are finally concluded, or whether the Appellants will force

time have the Respondents agreed to allow the Appellant (or the Appellant's attorney) to retain the Respondent's \$283,190.00 in any account, made a specific demand for return of these funds in writing on June 23, 2022. (*See* Exhibit 3).

However, the Appellant is correct that interest is owed to the Respondents, though the appropriate rate is not established by the Appellant's agreement with its chosen financial institution as the Appellant suggests. Instead, the Appellant, is responsible for post-judgment interest, as a "judgment creditor is chargeable with interest on the sum received from the time of its receipt. This is the general rule." Moore & Son, Inc. v. Drewry & Assoc., Inc., 945 F. Supp. 117 (E.D. Va. 1996) (applying "the appropriate post-judgment rate of interest" and holding that "[i]t is just, therefore, that [the defendant] collect interest from the time funds were actually received by [the plaintiff] in satisfaction of the prior judgment") (citing Restatement (First) of Restitution § 74 *comment* d ("If payment has been made to the judgment creditor or to his agent, or to an officer who has paid the judgment creditor, upon reversal of the judgment the payor is entitled to receive from the creditor the amount thus paid with interest"); Globe Indemnity Co. v. Puget Sound Co., 154 F.2d 249, 250 (2d Cir. 1946); and Baltimore & O.R. Co. v. United States, 279 U.S. 781, 49 S.Ct. 492, 73 L.Ed. 954 (1929)).

In Baltimore & O. R. Co. v. United States, *supra*, the United States Supreme Court held that when an erroneous judgment is vacated after having been previously satisfied, the prevailing party is entitled to repayment, "together with interest thereon from the dates of such payments at the rate established by the law of the state in which the sums are paid." 279 U.S. at 786, 49 S.Ct. at 493, 73 L.Ed at 954. Here, the current post-judgment rate of interest established by S.C. Code

litigation in the circuit court as suggested in their Return (at p.10, ll.9—10). Regardless, the Respondents do not consent to the Appellant retaining their \$283,190.00.

Ann. § 34-31-20(B) and the South Carolina Supreme Court's Order of January 6, 2022, is 7.25% *per annum*. The Respondents tendered payment in the amount of \$283,190.00 to Donna Causey as Personal Representative of the Estate of Timothy Causey on May 31, 2022. (*See* Exhibit 1). Since that time, interest has accrued at the rate of \$56.25 per day [$\$283,190.00 \text{ principal} \times 0.0725 \text{ annual interest rate} = \$20,531.28 \text{ interest accrued annually}; \$20,531.28 \text{ interest accrued annually} / 365 \text{ days per year} = \$56.25 \text{ interest accrued per day}$]. The Respondents respectfully request that interest at this rate be added to the \$283,190.00 principal amount when calculating the amount of restitution owed by the Appellant to the Respondents.

VI. The Respondents seek restitution from the Appellant, not Appellant's attorneys.

The Appellant's Return curiously suggests that to prove the elements of unjust enrichment, "the Respondents would have to make counsel for the Appellants [sic] a party to the case." However, the Respondents paid the erroneous judgment of May 11, 2022, by check in the amount of \$283,190.00 to Donna Causey as Personal Representative of the Estate of Timothy Causey, not to any attorney. (*See* Exhibit 1). It matters not, for the purpose of the Respondents' claim for restitution, what Donna Causey as Personal Representative of the Estate of Timothy Causey has done with this money, or whether she has given it to an attorney. The claim for restitution is properly against Donna Causey as Personal Representative of the Estate of Timothy Causey because the non-gratuitous benefit was conferred on Donna Causey as Personal Representative of Timothy Causey, not any attorney. *See Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003).

VII. The Court of Appeals should redress this harm to prevent further litigation.

While the Respondents' "right to reimbursement when a judgment has subsequently been reversed is not restricted," it is unclear whether the Workers' Compensation Commission has authority to order restitution and; therefore, it is important that the issue be addressed by the Court of Appeals, at this juncture⁶, pursuant to their inherent authority and under S.C. Code Ann. § 18-1-140. Moore v. North American Van Lines, 319 S.C. 446, 462 S.E.2d 275 (1995) (citing Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960) and Miller v. Springs Cotton Mills, 225 S.C. 326, 334, 52 S.E.2d 458 (1954)). In Miller, *supra*, the Supreme Court noted that "[t]here are a few cases holding that since there is no provision in the compensation act authorizing a commission ... to compel the restitution of money erroneously paid under an award, it is without authority to do so," although "the statutory powers" of the Commission were not directly involved in that case and the Court did not decide the issue on the merits. Therefore, if the Court of Appeals does not order immediate restitution, the Respondents may be left without any meaningful recourse before the Workers' Compensation Commission on remand, which will necessarily result in further appeals and perhaps unnecessary civil litigation of the ilk the Appellant suggests.

⁶ "The fact that the judgment was merely set aside and that no final judgment was entered for the payor does not prevent restitution; if the appellate court vacates the judgment and orders a new trial, a person who has satisfied the judgment vacated is entitled to restitution." Restatement (First) of Restitution § 74 *cmt. b.*

VIII. Appellate Courts have inherent authority to recall a remittitur and correct clerical mistakes.

The Respondents deny the Appellant's allegation that the "Respondents mislead this Court in their argument that 'it is widely held that the authority to recall a remittitur or mandate to correct a clerical mistake is an 'inherent power' of the judiciary.'" (Appellant's Return p.11, ll.3—5). Far from being misleading, the passage of the Respondents' Memorandum assailed by the Appellant actually contains citations, direct quotations, and a discussion of authority, which the Appellant apparently overlooks⁷ in making this argument, to wit:

"In Wise v. S.C.D.C., 372 S.C. 173, 642 S.E.2d 551 (2007), the Supreme Court explained that '[w]hen 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.' (citing State v. Keels, 39 S.C. 553, 17 S.E. 802 (1893) (emphasis added). In State v. Keels, the Supreme Court established that an appellate court is justified in 'in exercising the unusual power of recalling the remittitur after it has been sent down' upon a showing that the remittitur 'was sent down through some *mistake or inadvertence on the part of this court* or its officer.' (emphasis added); (cited with approval, State v. Barnes, 413 S.C. 1, 774, S.E.2d 454 (2015)). Accordingly, 'a very strong

⁷ The Appellant's Return does not address the authority cited by the Respondents and otherwise makes no mention of the holdings of Wise v. S.C.D.C., 372 S.C. 173, 642 S.E.2d 551 (2007), State v. Keels, 39 S.C. 553, 17 S.E. 802 (1893), State v. Barnes, 413 S.C. 1, 774, S.E.2d 454 (2015), or the discussion of this precedent contained in Toal, Jean H., *et al.*, APPELLATE PRACTICE IN SOUTH CAROLINA (1999) at p.310.

showing is required that the remittitur was sent down through some mistake or inadvertence on the part of the appellate court.’ Toal, Jean H., *et al.*, APPELLATE PRACTICE IN SOUTH CAROLINA (1999) at p.310.” (Respondents’ Memorandum, p.5) (emphasis original).

Therefore, the Respondents respectfully contend that they have not intentionally “mislead this Court” by arguing that appellate courts possess the inherent power⁸ to recall a remittitur for the correction of a mistake, because the existence of this power has been confirmed by at least three prior decisions of the South Carolina Supreme Court over the course of the past 129 years, as

⁸ For a general discussion of the “inherent powers doctrine, which “[h]istorically ... have been said to reside in courts of superior jurisdiction, and not inferior courts,” *see Gabrelian v. Gabrelian*, 108 A.D.2d 445 (N.Y. App. Div. 1985):

“[t]he so-called ‘inherent powers doctrine’ has been aptly described as follows: ‘Under the inherent powers doctrine a court has all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective. These powers are inherent in the sense that they exist because the court exists; the court is, therefore, it has the powers reasonably required to act as an efficient court. Inherent judicial powers derive not from legislative grant or specific constitutional provision, but from the fact it is a court which has been created, and to be a court requires certain incidental powers in the nature of things. (Carrigan, *Inherent Powers of the Courts*, National College of the State Judiciary, Reno, Nevada [1973].)’ (*Matter of People v Little*, 89 Misc.2d 742, 745, *affd* 60 A.D.2d 797.) A court's inherent powers are derived from the very fact that the court has been created and charged with certain duties and responsibilities; they are those powers which a court may call upon to aid in the exercise of its jurisdiction, in the administration of justice, and in the preservation of its own independence and integrity; such powers have been recognized since the days of the Inns of Court in common-law English jurisprudence. (*Eichelberger v Eichelberger*, 582 S.W.2d 395, 398-399 [Tex]; *see also, Jacobson v Avestruz*, 81 Wis.2d 240, 244-248, 260 N.W.2d 267, 269-270; 20 Am Jur 2d, Courts, §§ 78-79).

well as by the leading treatise on Appellate Practice in this state, as plainly stated in the Respondents' Memorandum.⁹

The Respondents further respectfully contend that the Appellant's suggestion that only the trial courts possess authority to correct mistakes, by virtue of the Rules of Civil Procedure, is without merit. Indeed, the "'inherent powers' ... which a court possesses irrespective of specific grant by Constitution or legislation ... can neither be taken away nor abridged by the legislature." State ex. rel. McLeod v. Hite, 272 S.C. 303, 251 S.E.2d 746 (1979). Indeed, "[c]ourts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible" (internal citations omitted). Robinson v. Estate of Harris, 389 S.C. 360, 698 S.E.2d 801 (2010) (citing Jones v. Leagan, 384 S.C. 1, 19, 581 S.E.2d 6, 15 (Ct. App. 2009)). Therefore, because the Court has inherent jurisdiction, to recall its remittitur, procedural rules are neither necessary, nor relevant, to the Court's exercise thereof.¹⁰

⁹ Accord State v. Marsh, 134 N.C. 184, 47 S.E.6 (N.C. S.Ct. 1903) (holding that "[m]istakes of this court or of its clerk ... have been often corrected after the mandate has gone down, and even at subsequent terms ... This is not new practice. 'Upon a judgment of the King's Bench, if there be error in the process or through defaults of the clerks, it may be reversed in the same court, for error in fact is not error of the judges, and reversing it is not reversing their own judgment.'" (internal citations omitted).

¹⁰ See, e.g., A to Z Portion Meats, Inc. v. N.L.R.B., 643 F.2d 390, 105 L.R.R.M. (BNA) 3136, 106 L.R.R.M. (BNA) 2844, 89 Lab. Cas. (CCH) P 12356, 90 Lab. Cas. (CCH) P 12648 (6th Cir. 1980) (holding that the Federal Rules of Appellate Procedure and Circuit Rules, including time periods associated with those rules, are not applicable where court recalls its own mandate, since power of court to recall its mandate is rooted in inherent power of court); Dilley v. Alexander, 627 F.2nd 407, 411 (D.C. Cir. 1980) (holding that "[t]he power of a court to recall its mandate emanates not from the Federal Rules of Appellate Procedure or the Rules of our Circuit, but from an inherent power ... Since recall of the court's mandate is not governed by these rules, neither are the time periods associated with them applicable here"); see also Chambers v. Nasco, Inc., 501 U.S. 32, 111 S.Ct. 2123 (1991) (holding that it is not an abuse of discretion for a court to "safely rely on its inherent power if, in its informed discretion, neither the statutes nor the rules are up to the task.").

Conclusion

THEREFORE, the Respondents respectfully request an additional Order of the Court of Appeals declaring -- consistent with the Court's "inherent power to do all things reasonably necessary to ensure that just results are reached," *Id.* -- that the May 11, 2022, judgment and subsequent Remittitur were issued as a result of a clerical mistake; that the May 11, 2022, judgment has been withdrawn and vacated as a result of said clerical mistake following proper recall of the Remittitur; that the Respondents' payment to the Appellant in the amount of \$283,190.00 on May 31, 2022, was not gratuitous, but made in reasonable reliance upon, and as a direct result of, the Court's clerical mistake and in accordance with the Court's May 11, 2022, judgment that has now been withdrawn and vacated; that the Appellant is not currently entitled to (and the Respondents are not currently liable for) any payment pursuant to the terms of the Court's June 21, 2022 substitute Order; that the Respondents are entitled to restitution from the Appellant and/or the Appellant's attorneys in the principal amount of \$283,190.00, so as to avoid their unjust enrichment; that the Respondents are entitled to interest on this principal amount at the rate of 7.25% *per annum* or \$56.25 per day; as well as such other and further relief as the Court deems just and proper, including attorneys' fees and costs pursuant to Rule 269, S.C.A.C.R.; based on the arguments stated herein, the terms of S.C. Code Ann. § 18-1-140, well-established principles of equity, and the inherent powers of this Court.

Respectfully submitted,



Kirsten Leslie Barr, S.C. Bar #15525
Roy A. Howell, III, S.C. Bar #11888
Trask & Howell, L.L.C.
P.O. Box 2167, Mt. Pleasant, SC 29465
(843) 881-4228
Attorneys for Respondents

August 8, 2022

EXHIBIT 1

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

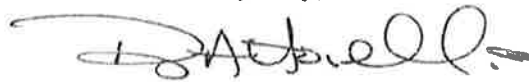
Dear Marti:

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. 997350 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

RAI/III/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 CAUSEY
 Address: 2746 MT. OLIVE CHURCH ROAD
 City: NICHOLS State: SC Zip: 29581
 Home Phone: _____ Work Phone: (____) _____
 Preparer's Name: JANET COOK Law Firm: _____
 Employer's Name: HORRY COUNTY
 Address: PO BOX 997
 City: CONWAY State: SC Zip: 29526
 Insurance Carrier: SC ASSOCIATION OF COUNTIES
 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 Denied

Date 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 # 997350

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- 5/18/2022	283,190.00	283,190.00

REMITTANCE STATEMENT-PLEASE DETACH BEFORE DEPOSITING

TIME WATERMARKED PAPER - HOLD TO LIGHT TO VIEW	South Carolina Counties Workers' Compensation Trust PO Box 8207 Columbia, SC 29202-8207	UNCOM CHECK SOLUTIONS <small>INC. • 1-800-875-8207 • WWW.UNCOMCHECKSOLUTIONS.COM</small>	Synovus Bank Columbia, SC 67-548/532									
	PAY Two Hundred Eighty Three Thousand One Hundred Ninety Dollars	Donna Causey as Personal Representative of the Estate of Timothy Causey		<table border="1"> <thead> <tr> <th>Date</th> <th>Check No.</th> </tr> </thead> <tbody> <tr> <td>5/17/2022</td> <td>997350</td> </tr> <tr> <th colspan="2">Amount</th> </tr> <tr> <td colspan="2" style="text-align: center;">**\$283,190.00**</td> </tr> </tbody> </table>	Date	Check No.	5/17/2022	997350	Amount		**\$283,190.00**	
				Date	Check No.							
				5/17/2022	997350							
Amount												
\$283,190.00												
TO THE ORDER OF												
Insured: Harry County Memo:												

Timothy Causey

⑈997350⑈ ⑆053205483⑆ 1013536493⑈

EXHIBIT 2



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
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
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June 21, 2022

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Mr. William Henry Monckton, VI, Esquire
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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 3

TRASK
HOWELL
WORKERS' COMPENSATION DEFENSE

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

June 23, 2022

VIA EMAIL ONLY

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:

This will follow our conversation from yesterday. On May 31, 2022, we tendered payment in the amount of \$283,190.00 in accordance with the Court of Appeals order dated May 11, 2022. As you know, the Court of Appeals has now withdrawn that order and remanded the matter to the Workers' Compensation, indicating that the May 11, 2022, order was issued by mistake.

Given the Court's mistake and given the fact that the Estate is no longer entitled to this payment, we ask that draft number 997350 made payable to Donna Causey as Personal Representative of the Estate of Timothy Causey in the sum of \$283,190.00 be returned to our office. If this draft has already been negotiated, please issue a reimbursement check payable to the South Carolina Counties Workers' Compensation Trust in the amount of \$283,190.00 and forward the same to my attention.

Thank you for your assistance.

Yours very truly,



Roy A. Howell, III

RAHIII/mec/lth

Cc: Janet Cook, SC Association of Counties (via email only)
Lang Kelly, SC Association of Counties (via email only)
Francis A. Humphries, Jr., Esq. (via email only)

763 JOHNNIE DODDS BLVD. | P.O. BOX 2167
P 843.881.4228 | F 843.881.8784



MT. PLEASANT, SOUTH CAROLINA 29465
www.TRASK-HOWELL.com

116511671-nty return award check

EXHIBIT 4

From: Marti Bluestein <marti@bluesteinattorneys.com>

Sent: Tuesday, June 28, 2022 1:57 PM

To: Roy Howell <rhowell@trask-howell.com>

Subject: Timothy Causey v. Horry County

Dear Roy:

I have been able to consult with ethics counsel. According to my counsel, I can hold the funds as there is a legitimate, viable dispute.

As I mentioned last week, we are working on our Petition for Rehearing as it is our position that the Court of Appeals did not have the authority to issue the most recent opinion.

[REDACTED]

[REDACTED]

Yours truly,

Marti



[REDACTED]

MARTI BLUESTEIN PARTNER

1614 TAYLOR STREET | PO BOX 7965

COLUMBIA, SOUTH CAROLINA 29202

O: 803.779.7599 F: 803.771.8097

MARTI@BLUESTEINATTORNEYS.COM

BLUESTEINATTORNEYS.COM



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

Timothy Causey,.....Appellant,

v.

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

**AFFIDAVIT IN SUPPORT OF
MOTION FOR ADDITIONAL RELIEF FROM JUDGMENT**

PERSONALLY APPEARED BEFORE ME, this 7th day of July 2022, in Mount Pleasant,
South Carolina, Roy A. Howell, III, who doth depose and state that:

1. He is an attorney of record for the Respondents in the above-referenced case, Horry County and the South Carolina Counties Workers' Compensation Trust.
2. That the Respondents were served with the January 5, 2022, judgement of the Court of Appeals reinstating the award of Hearing Commissioner R. Michael Campbell, II, to the Appellant's "estate ... in the amount of \$283,190.00."
3. That the Respondents filed a Petition for Rehearing on January 20, 2022, arguing, *inter alia*, that the Court of Appeals was without authority to make findings of facts based on

disputed evidence, such that a remand would be required if the Appellate Panel's Decision was not simply affirmed.



4. That the Respondents were then served with the Order of the Court of Appeals dated May 11, 2022, which granted the Petition for Rehearing "in part," withdrew the January 5, 2022, judgement, and (purportedly) filed a substituted opinion. However, the opinion actually filed on May 11, 2022, appeared (virtually) identical to the prior judgment issued on January 5, 2022, and also awarded \$283,190.00 to the Appellant's Estate.
5. That on May 31, 2022, the Respondents complied with the May 11, 2022, judgment of the Court of Appeals and paid \$283,190.00 to Donna Causey as Personal Representative of the Estate of Timothy Causey, by and through Donna Causey's attorneys of record, to satisfy the terms of the January 5, 2022, and May 11, 2022, judgments of the Court of Appeals.
6. That the payment of \$283,190.00 to Donna Causey as Personal Representative of the Estate of Timothy Causey was not a gratuitous benefit but was tendered in reliance on, and in satisfaction of, what was believed to be a final judgment of the Court of Appeals mandating said payment.
7. That on June 21, 2022, the Respondents received correspondence from the Court of Appeals informing them for the first time that the May 11, 2022, judgment awarding \$283,190.00 to the Appellant's Estate was filed as a result of a clerical mistake. Accompanying that correspondence was the Court's Order recalling the Remittitur and a corrected, substitute Order dated June 21, 2022, remanding the claim to the Workers' Compensation Commission.


8. That upon learning of the Court's inadvertent clerical mistake and having received the Court's corrected, substitute order dated June 21, 2022, the Respondents wish to exercise their rights under the June 21, 2022, Order and do not wish to waive any defense or argument previously raised and preserved.
9. That but for the Court's inadvertent mistake, the Respondents would not have paid \$283,190.00 to the Appellant on May 31, 2022, because the Respondents would have had no legal obligation to tender any such payment pending further consideration by the Workers' Compensation Commission on remand and the conclusion of any subsequent appeals
10. That immediately upon receipt of the Court's June 21, 2022, correspondence regarding the existence of the clerical mistake and after issuance of the Court's June 21, 2022, Order remanding the claim to the Workers' Compensation Commission, the Respondents formally requested, in writing, that the Appellant return the previous payment of \$283,190.00 to Horry County and the South Carolina Association of Counties because the payment was made as a result of a mistake.
11. That by correspondence dated June 28, 2022, the Appellant declined the Respondents' request to return the \$283,190.00 payment, though attorneys for the Appellant indicated that they would hold the \$283,190.00 in one of their trust accounts.

FURTHER AFFIANT SAYETH NOT!

Sworn before me this 7th day of July 2022

Signature of Affiant:


Linda E. Sanchez
Notary Public for South Carolina
My Commission expires: 7/1/26



Roy A. Howell, III

RECEIVED

Aug 08 2022

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

Timothy Causey,.....Appellant,

v.

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

PROOF OF SERVICE

The undersigned hereby certifies that the above-named Appellant, Timothy Causey, was served with our Reply to Appellant’s Return Motion for Additional Relief From Judgment on behalf of the Respondents this 8th day of August 2022, by email and by depositing a copy of the same in the United States Mail, first class postage prepaid, addressed to the parties of record, as follows:

Francis A. Humphries, Jr., Esq
1300 Professional Drive, Suite 102
Myrtle Beach, SC 29577
fhumphries@myrtlebeachlawfirm.net

William Henry Monckton, IV, Esq.
1300 Professional Drive, Suite 102
Myrtle Beach, SC 29577
wmonckton@myrtlebeachlawfirm.net

Allison Paige Sullivan, Esq.
P.O. Box 7965
Columbia, SC 29202
allison@bluesteinattorneys.com

Marti Bluestein, Esq.
P.O. Box 7965
Columbia, SC 29202
marti@bluesteinattorneys.com

August 8, 2022



Kirsten Leslie Barr
Roy A. Howell, III
Trask & Howell, L.L.C.
P.O. Box 2167
Mt. Pleasant, SC 29465
(843) 881-4228
Attorneys for Respondents

TRASK
HOWELL
WORKERS' COMPENSATION DEFENSE

Reply to
Kirsten L. Barr
(843) 881-1027
kbarr@trask-howell.com

August 8, 2022

Via Email-ctappfilings@sccourts.org and Regular Mail

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

RECEIVED

Aug 08 2022

SC Court of Appeals

Re: Timothy Causey (dec.) v. Horry County
W.C.C. File No.: 1302588
Appellate Case No.: 2017-001732
Carrier File No.: 2013058409
Date of Accident: March 16, 2013

Dear Ms. Kitchings:

Enclosed herewith for filing, please find our Reply to Appellant's Return to Motion for Additional Relief From Judgment and Proof of Service of the same in the above-referenced matter. By a copy of this correspondence, I am serving counsel of record with a copy of these documents.

Yours very truly,

Kirsten L. Barr

Kirsten L. Barr

KLB/mec/les

Enc.

cc: Janet Cook, SC Association of Counties (w/enc.) (email only)
Lang Kelly, SC Association of Counties (w/enc.) (email only)
Francis A. Humphries, Jr., Esq. (w/enc.) (email/mail)
William Henry Monckton, VI, Esq. (w/enc.) (email/mail)
Allison Paige Sullivan, Esq. (w/enc.) (email/mail)
Marti Bluestein, Esq. (w/enc.) (email/mail)
Roy A. Howell, III

