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**May 12 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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Appellate Case No. 2022-001595

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Timothy Starnes, Claimant, Appellant,

v.

Meritage Asset Management, Inc. d/b/a Century Glass, Employer,

and

Insurance Company of the West, Carrier, Respondents.

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FINAL BRIEF OF RESPONDENTS

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Christopher T. Hourihan  
SC Bar No. 103645  
Willson, Jones, Carter & Baxley  
4922 O'Hear Avenue, Suite 301  
North Charleston, South Carolina 29405  
(843) 284-0833  
cthourihan@wjcblaw.com  
Attorney for Respondents

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## STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION PROPERLY FOUND THAT ATTORNEY ALEXANDER IS ENTITLED TO \$13,458.02 IN ATTORNEY'S FEES?

## STATEMENT OF THE CASE

The claimant, Mr. Timothy Starnes, filed a workers' compensation claim arising out of an admitted accident on January 6, 2020. Mr. Starnes was represented by Attorney Richard "Chip" Alexander as relates to his workers' compensation claim (hereinafter "Attorney Alexander").

The parties ultimately entered into a full and final settlement agreement (hereinafter "Clincher") on July 8, 2021, which was approved by the South Carolina Workers' Compensation Commission (hereinafter "the Commission") on July 12, 2021. (R. pp. 39-43). In relevant part, the Clincher indicates that Claimant received \$85,000.00, representing forty percent (40%) permanent partial disability to the right leg, fifteen percent (15%) permanent partial disability to the lumbar spine, and the remaining balance "in exchange for the Clincher and future medical treatment." (R. p. 40). Notably, the Clincher explicitly states that "[i]t is expressly understood that Defendants take no position and make no representation as to the requested allocation of the settlement sum as set forth above and that the proposed allocation in no way affects the absolute release of Defendants." (R. p. 41).

Attorney Alexander filed an Attorney Fee Petition attendant to the Clincher. (R. pp. 45-49). The Single Commissioner set the matter for a hearing. Defense Counsel was not required to and did not appear for the hearing, as Attorney Alexander's legal fee petition was the only issue for adjudication. Following the hearing, the Single Commissioner issued

a Decision & Order on February 17, 2022, awarding Attorney Alexander attorney's fees in the amount of \$13,458.02. (R. pp. 3-13).

Attorney Alexander appealed the matter to the Appellate Panel of the Workers' Compensation Commission (hereinafter "Full Commission"), and a hearing was held, *en banc*, on May 16, 2022. Prior to the hearing, Counsel for Respondents filed a letter with the Commission reiterating that Respondents take no position as relates to Attorney Alexander's legal fees and, therefore, would not be appearing at the hearing. (R. pp. 82-84). The Full Commission affirmed the Decision & Order of the Single Commissioner in full. (R. pp. 16-37). From this decision, Attorney Alexander has now appealed to this Court.

### **STANDARD OF REVIEW**

The South Carolina Administrative Procedures Act (APA) governs the standard of judicial review in workers' compensation cases. Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981); Hargrove v. Titan Textile Co., 360 S.C. 276, 288, 599 S.E.2d 604, 610 (Ct. App. 2004). Under the APA, an appellate court's review is limited to deciding whether the Appellate Panel's decision is unsupported by substantial evidence or is controlled by an error of law. Hargrove v. Titan Textile Co., 360 S.C. 276, 289, 599 S.E.2d 604, 610–11 (Ct. App. 2004).

In this case, the only issue on appeal is Attorney Alexander's legal fees. In workers' compensation cases, "[a]ttorney fees. . . are subject to the approval of the commission[.]" S.C. Code Ann. § 42-15-90(A); See also S.C. Reg. 67-1204-1207).

### **ARGUMENT**

- I. THE WORKERS' COMPENSATION COMMISSION HAS THE AUTHORITY TO DETERMINE ENTITLEMENT TO AND REASONABLENESS OF ATTORNEY'S FEES.

The only issue on appeal is the extent of Attorney Alexander's entitlement to attorney's fees. Respondents have consistently and unequivocally taken no position on the issue of Attorney Alexander's legal fees. (R. pp. 39-43, 82-84). Candidly, Respondents' involvement in this matter is inconsequential and unnecessary. Respondents have no legal interest in this matter, nor can Respondents provide Attorney Alexander any relief. Pursuant to the Clincher approved by the Commission, Respondents are fully and forever discharged from any and all liability, obligations, and/or responsibility as relates any aspect of this workers' compensation claim – which includes any attorney's fees sought therefrom. (R. pp. 39-43).

Insofar as Respondents have been named a party to this appeal, we concur with Attorney Alexander that the Commission is endowed with the authority to determine entitlement to and reasonableness of attorney's fees. (S.C. Code Ann. § 42-15-90; S.C. Reg. 67-1204-1207; Final Brief of Appellant, p. 5). Importantly, however, disputes surrounding the apportionment of settlement proceeds amongst a claimant and his lawyer do not affect the validity or finality of the executed and approved settlement agreement and release. See S.C. Reg. 67-801(E). As such, this dispute involves only Attorney Alexander, Mr. Starnes, and the Commission. It is not within the purview of Respondents to comment on the Commission's determination as relates to the legal fees sought by Attorney Alexander.

### **CONCLUSION**

Based on the foregoing, Respondents decline to take a position as relates to the Commission's determinations surrounding Attorney Alexander's legal fees.

**[SIGNATURE ON FOLLOWING PAGE]**

Respectfully submitted,

**WILLSON JONES CARTER & BAXLEY, P.A.**



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Christopher T. Hourihan  
SC Bar No. 103645  
Willson Jones Carter & Baxley  
4922 O'Hear Avenue, Suite 301  
North Charleston, SC 29405  
(843) 284-0833  
cthourihan@wjcblaw.com  
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondents complies with Rule 211(b), SCACR.

May 12, 2023



Christopher T. Hourihan  
SC Bar No. 103645  
Willson, Jones, Carter & Baxley  
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Attorney for Respondents